

**Mayor**

Suzanne Jones

**Council Members**

Aaron Brockett

Cindy Carlisle

Lisa Morzel

Mirabai Nagle

Sam Weaver

Bob Yates

Mary Young



Council Chambers

1777 Broadway

Boulder, CO 80302

August 20, 2019

6:00 PM

**City Manager**

Jane Brautigam

**City Attorney**

Thomas A. Carr

**City Clerk**

Lynnette Beck

## **AGENDA FOR THE REGULAR MEETING OF THE BOULDER CITY COUNCIL**

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**1. Call to Order and Roll Call**

**A. Presentation by Dr. David Gross of the 2018 Comprehensive  
Annual Financial Report**

**15 min**

**2. Open Comment**

**3. Consent Agenda**

- A. Consideration of a motion to call a special meeting of the Boulder City Council on Tuesday, September 24, 2019, at 6 p.m., in Council Chambers, located at 1777 Broadway, Boulder for a joint public hearing with Planning Board**
- B. Consideration of a motion to approve the July 16, 2019 Regular Meeting Minutes**
- C. Consideration of a motion to approve the July 23, 2019 Special Meeting Minutes**
- D. Consideration of a motion to accept the July 23, 2019 Study Session Summary on Update to the May Ballot Discussion and Mid-Year Financial Context**
- E. Consideration of a motion to adopt Resolution 1264 appointing the firm of CliftonLarsonAllen to examine the financial accounts of the City of Boulder for the year ending on December 31, 2019**
- F. Consideration of a motion to adopt Resolution 1265 accepting the City of Boulder's 2018 Comprehensive Annual Financial Report and Independent Auditor's Report**
- G. Items related to a marijuana board and marijuana regulations: 1. Continued Second reading and consideration of a motion to adopt Ordinance 8338 amending Chapter 2-3, by adding a new Section**

2-3-25, “Marijuana Licensing Authority,” B.R.C. 1981, pertaining to the composition, duties and powers of a new city board related to marijuana issues; and 2. Continued Second Reading and consideration of a motion to adopt Ordinance 8345 amending Sections 6-14-3(e) “License Required” and 6-16-3(e) “License Required,” B.R.C. 1981, creating an option to transfer a marijuana license if the purchase is an arms-length with a third party, resulting in a 100% change in ownership and management and setting forth related details

- H. Introduction and consideration of a motion to adopt by emergency measure and order published by title only, Ordinance 8339 adopting Supplement 140, which codifies previously adopted Ordinances 8304, 8323, and 8332 and other miscellaneous corrections and amendments, as an amendment to the Boulder Revised Code, 1981
  - I. Introduction, first reading and consideration of a motion to order published by title only, Ordinance 8348 to annex approximately 28.67 acres of land generally including the Knollwood Subdivisions and the properties at 150 Green Rock Drive and 2285 Knollwood Drive with an initial zoning designation of Residential – Estate (RE) and setting forth related details (LUR2018-00048)
  - J. Consideration of a motion authorizing the city manager to enter into a settlement agreement in the claim filed against the city by Luis Chavez
4. Call-Up Check-In
- A. 400 block of Marine Street as a Historic District
  - B. 10 Goldenrod, Chautauqua Historic District; Reconstruction
5. Public Hearings
- A. Second reading and consideration of a motion to adopt Ordinance 8343 designating the c.1900 building and a portion of the property at 940 North Street as an individual landmark under the city’s Historic Preservation Ordinance **30 min**
  - B. Second reading, public hearing and consideration of a motion to adopt (on September 3, 2019) Ordinance 8344 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 5, 2019, the question of authorizing the city council to increase City of Boulder debt by an amount not to exceed \$10,000,000, with a maximum repayment cost of not to exceed \$15,000,000, without raising taxes, to provide for a housing assistance program that will include permanently affordable deed restrictions and make loans to middle-income households to purchase homes sold in boulder; and setting forth the ballot title and other election **30 min**



procedures and setting forth related details

- C. **Second reading, public hearing, and consideration of a motion to pass Ordinance 8346 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday November 5, 2019, the question of whether the City of Boulder should extend and dedicate to Open Space and the General Fund a 0.15 cent sales tax; with eight potential alternative options for dedication of the revenue including options for a 1-year, 10-year, or 20-year extension, options to fund Transportation and for funding the acquisition of a property interest in an approximately 25-acre property known as Long's Gardens and setting forth the ballot title and other election procedures and setting forth related details** **120 min**

- D. **\*\*\*If Time Allows\*\*\* Items related to the tobacco tax measures: Continued Second Reading and consideration of a motion to adopt Ordinance 8341 placing on the November 5, 2019 Ballot a New Sales Tax on Cigarettes and Other Tobacco Products OR Ordinance 8342 placing on the November 5, 2019 Ballot a New Sales Tax on Tobacco Products Other Than Cigarettes, with Ordinance 8341 and Ordinance 8342 to be considered by council as alternatives; and setting forth the ballot title and other election procedures and setting forth related details (The public hearing was held on August 13, 2019. No new testimony will be received.)**

Updated on August 19. Tax measures will be discussed (Ord 8341 and 8342). The regulatory item (Ord 8340) will be discussed tentatively on September 17.

6. **Matters from the City Manager**

7. **Matters from the City Attorney**

8. **Matters from the Mayor and Members of Council**

- A. **Call-Up Consideration: Designate the 400 block of Marine Street, including 1628 4th Street, 1606 4th Street, and 1603 4th Street as a local historic district pursuant to Section 9-11-5, B.R.C. 1981**
- B. **Call-Up Consideration: Proposal to lift the building and construct a basement with two window wells, reconstruct a front porch, enlarge two windows on the east elevation, and install a stone patio in the rear of a contributing cottage at 10 Goldenrod located in the Chautauqua Historic District, pursuant to Section 9-11-18, B.R.C. 1981**

- C. **Nod of Five for Marijuana Licensing Authority seating outside of annual recruitment** **5 min**

Updated on August 19. Added as a request by Council Member Morzel to seat the MLA board soon.

- D. **Scheduling of tobacco items and other regulatory items in the next month** **10 min**

Updated on August 19. Added for scheduling upcoming meetings.

9. Discussion Items
10. Debrief
11. Adjournment

**4:30 Hours**

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### **Additional Materials**

#### **Information Items**

- A. University Hill General Improvement District (UHGD) Pleasant Street Sale Consideration – Response to Information Requests

#### **Boards and Commissions**

- A. June 5, 2019 Library Commission Minutes

#### **Declarations**

#### **Heads Up! Email**

- A. Heads Up! August 2, 2019
- B. Heads Up! August 12, 2019

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If you need Spanish interpretation or other language-related assistance for this meeting, please call (303) 441-1905 at least three business days prior to the meeting. Si usted necesita interpretacion o cualquier otra ayuda con relacion al idioma para esta junta, por

favor comuníquese al (303) 441-1905 por lo menos 3 negocios días antes de la junta.

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no later than 2 p.m. the day of the meeting.



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Consideration of a motion to approve the July 16, 2019 Regular Meeting Minutes

### **PRIMARY STAFF CONTACT**

Heidi Leatherwood, Deputy City Clerk

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3B- July 16 Minutes**

**CITY OF BOULDER**  
**CITY COUNCIL MEETING**  
Municipal Building, 1777 Broadway  
Boulder, Colorado 80302  
Tuesday, July 16, 2019

**MINUTES**

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

Mayor Jones called the meeting to order at 6:05 p.m.

Council Members Brockett, Carlisle, Morzel, Nagle, Weaver, Yates and Young were present.

**COUNCIL MEMBER WEAVER MOVED TO APPROVE THE AMENDED AGENDA TO ADD ITEMS 3K- CALLING A SPECIAL MEETING ON JULY 23, 8E- NOD OF FIVE TO DRAFT RESOLUTION DECLARING A CLIMATE EMERGENCY, 8H- EXPECTATIONS OF APPROPRIATE BEHAVIOR FOR BOARD AND COMMISSION MEMBERS, 8I- NOD OF FIVE FOR PLANNING DEPARTMENT RESEARCH REGARDING DEVELOPMENT FEES AND CONSULTANT COSTS, AND TO HEAR ITEM 8D- VAPING REGULATIONS FOR TEENS EARLIER IN THE MEETING. COUNCIL MEMBER MORZEL SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 6:09 P.M.**

**2. OPEN COMMENT**

(Public comments are a summary of actual testimony. Full testimony is available on the council web page at: <https://bouldercolorado.gov/city-council> > Watch Live or Archived Meetings.)

Open Comment began at 6:05 p.m.

1. Amber Hess spoke about 5G.
2. Mark Gelband spoke about police incidents and racism in Boulder.
3. Stephan van der Mersch spoke about the Marpa House situation.
4. Stacy Silverstein Apple spoke about the Marpa House situation
5. Elizabeth Black spoke about water rights.
6. Vita Waters spoke about the Marpa House situation.
7. AllyCatherine Wild spoke about Boulder Housing Partner lease violations and Community Center.
8. John Garcia spoke signed up but did not speak.

9. Annie Brook spoke signed up but did not speak.
10. Ben Bertino spoke about the Marpa House situation.
11. Joell Rossback-Dahl spoke about teen vaping and harmful effects.
12. Richard O'Brien spoke about amendments to the dark skies' ordinance.
13. Shawn Rodda spoke about teen vaping and harmful effects.
14. Susan Conversano spoke about 5G.
15. Gwen Dooley spoke about the Open Space Board of Trustees appointment.
16. Patrick Murphy spoke about municipalization.
17. Ginger Tanner spoke about teen vaping and harmful effects.
18. Foster Goodwill spoke about 5G.
19. Jeff Martin spoke about the homeless community and effects to the city and residents.
20. Ryan Clark spoke about 5G.

Open Comment closed at 6:49 p.m.

### **3. CONSENT AGENDA**

- A. Consideration of a motion to approve the June 4, 2019 Regular Meeting Minutes
- B. Consideration of a motion to approve the June 18, 2019 Regular Meeting Minutes
- C. Consideration of a motion to accept the May 28, 2019 Study Session Summaries regarding Large Homes and Lots; and Use Tables and Standards
- D. Consideration of a motion to accept the June 11, 2019 Study Session Summary on the Draft Master Plan for Open Space and Mountain Parks
- E. Consideration of a motion to accept the July 9, 2019 Study Session Summary on the Climate Mobilization Action Plan
- F. Consideration of a motion authorizing the city manager to convey the permanently affordable housing unit at 216 Seminole Drive to an eligible buyer and sign all associated agreements

- G. Consideration of a motion to authorize the city manager to execute a 20-year revocable license under 30th Street to the University of Colorado to operate an irrigation ditch carrying water to the University's East Campus
- H. Consideration of a motion to approve Resolution 1259 authorizing the City of Boulder to assign to the Housing Authority of the City of Boulder, Colorado, D/B/A Boulder Housing Partners its 2019 private activity bond cap allocation for the purpose of financing the 30Pearl Apartments
- I. Introduction, first reading and consideration of a motion to order published by title only, Ordinance 8334 vacating and authorizing the city manager to execute a deed of vacation to vacate portions of public right-of-way for former Arapahoe Avenue adjacent to the properties at 90 and 96 Arapahoe Avenue
- J. Consideration of a motion to accept the July 9, 2019 Advance Study Session Summary on the Citywide Retail Study Final Report
- K. Consideration of a motion to call a Special Meeting of the Boulder City Council on Tuesday, July 23, 2019 at 6 p.m. in Council Chambers located at 1777 Broadway, Boulder prior to the scheduled study session

**COUNCIL MEMBER YATES MOVED TO APPROVE THE CONSENT AGENDA ITEMS 3A-3K. COUNCIL MEMBER MORZEL SECONDED THE MOTION. THE MOTION PASSED 7:0 AT 7:24 P.M. WITH COUNCIL MEMBER CARLISLE ABSENT FOR THE VOTE.**

#### **4. CALL-UP CHECK-IN**

- A. Site Review - 90, 96 Arapahoe Avenue  
No action.
- B. Site Review - 2150 Folsom  
Applicant Adrian Sopher spoke at 7:25 p.m. and answered questions.  
No action.
- C. Site Review Amendment - 3350 Bluff Street  
No Action.

**Item 8D.** Discussion of a Nod of Five regarding the regulation of electronic cigarettes by youth including licensing, zoning restrictions, age limits and banning flavors

City Attorney Tom Carr introduced this item at 7:28 p.m.

Deputy Director of Housing and Human Services Kristin Hyser spoke about the availability of the substance education fund as a possibility to address financial concerns related to the initiative.



Council asked for a draft of ballot measure for city tax on nicotine products for the 2019 Election. Staff will return with ordinance options. Nod of Five was given.

## 5. PUBLIC HEARINGS

- A. Consideration of a motion to designate Hogan Pancost property for future flood mitigation and Open Space.

City Manager Jane Brautigam introduced the item at 8:03 p.m. with a brief history of the property.

Director of Public Works for Utilities Jeff Arthur spoke about utility use at 8:08 p.m.

Resources & Stewardship Division Manager John Potter spoke about the designation of future Open Space at 8:14 p.m.

A public hearing was opened at 8:21 p.m. and the following spoke about designating Hogan Pancost property for future flood mitigation and Open Space:

1. Suzanne DeLucia
2. Donna George

The public hearing was closed at 8:27 p.m.

**COUNCIL MEMBER MORZEL MOVED TO DESIGNATE THE HOGAN PANCOST PROPERTY PARTIALLY FOR PARKS AND RECREATION PURPOSES, PARTIALLY FOR FUTURE FLOOD MITIGATION AND PARTIALLY FOR OPEN SPACE USE, INCLUDING AN AMENDMENT TO DIRECT STAFF TO RETURN TO COUNCIL WITHIN SIX WEEKS CLARIFYING HOW PARKS AND RECREATION FUNDS CAN BE USED TO IMPROVE THE PROPERTY. COUNCIL MEMBER YOUNG SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 8:09 P.M.**

## 6. MATTERS FROM THE CITY MANAGER

- A. CU South: Direction on key project components and next steps

Senior Planner Phil Kleisler introduced this item at 8:42 p.m.

Director of Public Works for Utilities Jeff Arthur spoke showed the 100-Year Flood Simulation derived from the hydraulic model. and addressed potential water flow and drainage at 8:43 p.m.

Resources & Stewardship Division Manager John Potter answered questions.

Vice-Chancellor for Strategic Relations at CU-Boulder, Frances Draper showed a slide presentation with map overlays to speak to council.

Interim Director of Open Space & Mountain Parks Dan Burke spoke and answered questions.

The direction of council was to go forward with the floodwall placement mitigating use of open space, apply aggressive restoration, if possible, and work with project variables to find best options.

**COUNCIL MEMBER WEAVER MOVED TO EXTEND THE MEETING. COUNCIL MEMBER BROCKETT SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 11:18 P.M.**

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

- A. Update on settlement regarding 4795 Broadway; Swoon Art House

City Attorney Tom Carr introduced this item at 11:18 p.m. and explained the history and settlement that was reached.

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

- A. Call-Up Consideration: Site Review application for the redevelopment of the existing site located consideration of the following items related to the proposed redevelopment of a 4.99-acre property located at 90 and 96 Arapahoe Ave. within the Residential - Medium 3 (RM-3) zoning district. As reviewed under application no. LUR2018-00005, the proposal includes 46 attached residential units, 19 of which are intended as permanently affordable along with continued use of the 96 Arapahoe Ave. property as the September School, a non-profit private high school and an interconnected access road. The plans include adaptive reuse of several of the former Silver Saddle motel buildings and an access road linkage of the two sites

**No action.**

- B. Call-Up Consideration: Site Review to redevelop a 0.59-acre property at 2150 Folsom with a total of eight attached dwelling units in two buildings in the RMX-1 and RH-2 zoning districts (LUR2018-00043). The proposal requires review by Planning Board because it proposes additional density in the portion of the site zoned RH-2 (Residential – High 2) to construct six units where a maximum of three units could be constructed by right and a 53 percent parking reduction

**No Action.**

- C. Call-Up Consideration of three related cases: Site Review Amendment case no. LUR2018-00016 to amend case no LUR2015-00010 by removing the subject site

from that approved Site Review; Form-Based Code (FBC) Review application no. LUR2018-00017 for a new mixed-use building with 85 residential units and approximately 1,976 square feet of non-residential space on the ground floor along with parking at the rear of the building; and Use Review to permit greater than 20 percent of the units as Efficiency Living Units (ELUs) under application case no. LUR2018-00018 and located at 3350 Bluff Street

**No Action.**

- D. Discussion of a Nod of Five regarding the regulation of electronic cigarettes by youth including licensing, zoning restrictions, age limits and banning flavors

**This item was moved up and heard at 7:24 p.m. after Item 4C. Nod of Five was given.**

- E. Nod of Five to draft a resolution to be considered at the July 23 Special Meeting declaring climate emergency

Mayor Jones introduced this item at 11:28 p.m.

**A Nod of Five was given at 11:30 p.m.**

- F. Discussion of Attention Home's request for a council member on the advisory board

Council Member Yates introduced this item at 11:31 p.m. and with discussion from council decided that the advisory board did not need to incorporate a council member as a member. Council Member Yates will write a response to Attention Homes.

**No action.**

- G. Revisit council's expectations of appropriate behavior for board and commission members

Members of the subcommittee, Council Members Nagle and Young, introduced this item at 11:33 p.m.

Council reminded board and commission members to conduct themselves in a professional manner regardless of whether they are actively representing the board or are on personal social media. The City Attorney's Office will review the boards and commissions rules and guidelines to see if updates are needed.

- H. Consideration of a motion to appoint boards and commissions members to the following boards: the Colorado Chautauqua Association (CCA), the Housing Advisory Board (HAB) and the Open Space Board of Trustees (OSBT)

Mayor Jones introduced this item at 11:35 p.m.

City Clerk Lynnette Beck flipped the coin and it landed on “tails.” If voting is necessary, it will begin with applicants’ last names in reverse-alphabetical order and the next round will be voted beginning with last name alphabetical order and so forth until a single applicant remains or receives a majority vote from council.

Colorado Chautauqua Association

Council Member Young was nominated.

No other nominations were made.

Therefore, by acclamation,

**Council Member Young was appointed to CCA for a 3-year term through March 31, 2022.**

Housing Advisory Board

Daniel Teodoru, Laura Kaplan, Arthur Okner and Claudia Thiem were nominated.

Council members spoke about their nominees.

Voting occurred last name, reverse-alphabetical order.

**Daniel Teodoru was appointed to HAB for a 1-year term through March 31, 2020.**

Open Space Board of Trustees

Doug Ginly and Harold Hallstein were nominated.

Council Members spoke about their nominees.

Voting occurred last name alphabetical order.

**Harold Hallstein was appointed to OSBT effective August 2, 2019 for a term through March 31, 2022.**

**Council motion and vote will be at the end of Matters.**

- I. Nod of Five to research development fees related to planning processes and consultation fees over the last 5 years

Council Member Carlisle introduced this item at 11:55 p.m. In the process of discussion, it was recommended that she ask for the information over the last three years to accommodate the latest software system installed.

**A Nod of Five was given at 12:04 a.m.**

A public hearing was opened for all motions made under “Matters” at 12:05 a.m. and with no speakers, the public hearing was closed at 12:05 a.m.

**COUNCIL MEMBER MORZEL MOVED TO RATIFY THE APPOINTMENTS TO THE COLORADO CHAUTAUQUA ASSOCIATION, HOUSING ADVISORY BOARD AND THE OPEN SPACE BOARD OF TRUSTEES. COUNCIL MEMBER YATES SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 12:06 A.M.**

9. **DISCUSSION ITEMS**

10. **DEBRIEF**

11. **ADJOURNMENT**

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON JULY 17, 2019 AT 12:06 A.M.**

Approved this 20<sup>th</sup> day of August 2019.

APPROVED BY:

\_\_\_\_\_  
Suzanne Jones, Mayor

ATTEST:

\_\_\_\_\_  
Lynnette Beck, City Clerk



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Consideration of a motion to approve the July 23, 2019 Special Meeting Minutes

### **PRIMARY STAFF CONTACT**

Heidi Leatherwood, Deputy City Clerk

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3C- July 23 Minutes**

**CITY OF BOULDER**  
**CITY COUNCIL MEETING**  
Municipal Building, 1777 Broadway  
Boulder, Colorado 80302  
Tuesday, July 23, 2019

**MINUTES**

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

Mayor Jones called the meeting to order at 6:06 p.m. Council Members Brockett, Carlisle, Nagle, Morzel, Weaver, Yates and Young were present.

**2. CONSENT AGENDA**

- A.** Consideration of a motion to adopt Resolution 1260 endorsing the declaration of a climate emergency and reaffirming Boulder's commitment to climate action

Mayor Jones introduced the item at 6:07 p.m.

Council proposed an amendment to the resolution, broadening the issue to, “the droughts and extreme weather brought on by climate change disrupt the ability of civilization to support species’ health and well being.”

**COUNCIL MEMBER MORZEL MOVED TO MOTION TO ADOPT RESOLUTION 1260 ENDORSING THE DECLARATION OF A CLIMATE EMERGENCY AND REAFFIRMING BOULDER'S COMMITMENT TO CLIMATE ACTION WITH THE PROPOSED AMENDMENT TO UPDATE THE LANGUAGE. COUNCIL MEMBER CARLISLE SECONDED THE MOTION. THE MOTION PASSED 8:0 AT 6:10 P.M.**

**3. ADJOURNMENT**

**THERE BEING NO FURTHER BUSINESS TO COME BEFORE COUNCIL AT THIS TIME, BY MOTION REGULARLY ADOPTED, THE MEETING WAS ADJOURNED ON JULY 23, 2019 AT 6:10 P.M.**

Approved this 20<sup>th</sup> day of August 2019.

APPROVED BY:

ATTEST:

\_\_\_\_\_  
Suzanne Jones, Mayor

\_\_\_\_\_  
Lynnette Beck, City Clerk





## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Consideration of a motion to accept the July 23, 2019 Study Session Summary on Update to the May Ballot Discussion and Mid-Year Financial Context

### **PRIMARY STAFF CONTACT**

Kady Doelling, Executive Budget Officer

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3D-Summary for Ballot discussion and Financial Update**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE**

Consideration of a motion to accept the Study Session Summary from the July 23, 2019 study session on Update to May Ballot Discussion and Mid-Year Financial Context.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Tanya Ange, Deputy City Manager  
Cheryl Pattelli, Chief Financial Officer  
Kara Skinner, Assistant Director of Finance  
Kady Doelling, Executive Budget Officer

**EXECUTIVE SUMMARY**

In 2019, council has received briefings regarding current economic forecasts, unfunded city needs, potential ballot items, and various Master Plan updates. The purpose of the July 23 study session was to bring those various pieces of information together to provide council the context to consider and provide direction on potential 2019 ballot questions.

In 2013, voters approved an incremental decrease in the overall Open Space tax, leveling out from 0.88 percent in 2018 to 0.62 percent by 2020. At the time this was approved, the focus was on the 2013 OSMP Acquisition Plan which outlined projected costs to strategically acquire land, mineral and water interests and to grow the Open Space system. After a period of accelerated acquisitions, tax increments supporting OSMP were designed to sunset or transfer to other city departments to account for declining land acquisition needs over time. It also accounted for expiring debt service payments that would decrease by almost \$7 million dollars between 2013 and 2020. OSMP has been preparing for these funding decreases through a series of actions to reduce the impact.

Overall, the cost of maintaining the system has outpaced earlier projections. OSMP recognizes that there is still work to be done to understand total cost of system management, and this will be reflected as a strategy in the financial sustainability focus area of the draft Master Plan.

Nevertheless, numerous items within the Master Plan can still be accomplished with the given sales tax rate. Under this scenario, the department anticipates:

- Implementing the fiscally constrained scenario described in the Draft Master Plan.
  - Focusing funding on Tier 1 (highest priority) strategies first.
  - Investment in Tier 2 and 3 strategies as capacity allows.
- Emphasizing annual funding for capital improvements, plans, programs and projects on maintenance of existing lands, trails and programs over new initiatives and acquisitions.
- Emphasizing the reduction of a portion of the trail maintenance backlog over adding new trail mileage. While new trail mileage may be added through existing approved plans under this scenario, less funding would be devoted to it.
- Pursuing new or enhanced efforts only as staff capacity and funding allow.
- Continuing to make gradual reductions to the operating budget to bring annual expenditures within annual revenues, utilizing fund balance that has been saved for this purpose to ensure shifts are gradual and to avoid a significant reduction in force over the next five years. Under current projections, an additional \$2.3 million in operating budget reductions will be needed in the coming years.

Overall, the department's goal under this constrained scenario is to maintain current conditions throughout the system realizing that in a few instances conditions may improve, while others may decline. If council wishes to place an item on the 2019 ballot, staff analyzed what, in addition, could be accomplished with either a 0.10 percent or a 0.15 percent sales tax increment.

#### **STAFF RECOMMENDATION**

##### **Suggested Motion Language:**

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

Motion to accept the summary of the July 23 study session related to the May Ballot Discussion and Mid-Year Financial Context. The summary is included as **Attachment A** to this agenda item.

#### **BACKGROUND**

Background information can be found in the [July 23 Study Session Packet](#), [July 23 Study Session Presentation](#), and the [Advance Study Session Summary](#) that was included in the August 6 City Council packet.

#### **NEXT STEPS**

First reading of ballot measures was on the August 6 consent agenda with a public hearing at second reading on August 20. The ballot content is due to the county by September 3, leaving final adoption by council no later than September 3.

The City Manager's Recommended budget will be presented at the September 10 study session with a public hearing schedule for October 1 and 15.

**ATTACHMENTS**

A. Summary of the July 23 City Council Study Session

**July 23, 2019**  
**City Council Study Session Summary**  
**Update to May Ballot Discussion and Mid-Year Financial Context**

**PRESENT**

Council Members: Suzanne Jones, Bob Yates, Sam Weaver, Aaron Brockett, Cindy Carlisle, Mirabai Kuk Nagle, Lisa Morzel, Mary Young.

Staff Members: Jane Brautigam, Kady Doelling

**PURPOSE**

In 2019, council has received briefings regarding current economic forecasts, unfunded city needs, potential ballot items, and various Master Plan updates. The purpose of the July 23 study session was to bring those various pieces of information together to provide council the context to consider and provide direction on potential 2019 ballot questions. The study session had the following agenda:

- Background
  - Mid 2000s Recommendations
  - 2013 Financial Accomplishments
  - 2013 Ballot Items Discussion
- City of Boulder Sales Tax Rate
  - Municipal Comparison
- Open Space Tax Options
- Citywide Needs
  - Master Planning Process
- 2020 Budget Preview
- Questions for Council

**PRESENTATION**

The presentation began with Executive Budget Officer, Kady Doelling, providing contextual information regarding past analysis on the city's financial status including goals and outcomes of the Blue Ribbon Commission I and II. Additionally, she emphasized the city's commitment to taking care of what we have as a strategy that stemmed from the 2011 Bond projects and has carried through to the most recent Master Plans. The conversation then shifted to explaining how various sunseting taxes were addressed in 2013.

In 2013, council was presented with a report from the Transportation Advisory Board expressing concern with the city's ability to maintain road infrastructure and recommending the imposition of a transportation maintenance fee. The council had several discussions related to Transportation funding needs as well as Open Space and Mountain Parks ("Open Space" or OSMP) sales and use taxes that were scheduled to sunset. Ultimately, council approved placing three tax questions on the ballot. The final version of one ballot item asked the voters to renew the 0.33 percent sales and use tax supporting Open Space until 2018 and then beginning in 2019 allocating 0.22 percent to Open Space and 0.11 percent to the General Fund. The 0.22 percent tax to be dedicated to

Open Space included 0.05 percent that would take the place of the annual General Fund transfer to OSMP. The ordinance provided for a further reallocation in 2030 when the 0.22 percent to Open Space would be reduced to 0.10 percent with the additional 0.12 percent going to the General Fund. Council considered and unanimously voted for the revised ordinance on third reading on [August 5, 2013](#). The tax was extended and rededicated by 75 percent of the voters at the November 5, 2013 election. At the time this was approved, the focus was on the 2013 OSMP Acquisition Plan which outlined projected costs to strategically acquire land, mineral and water interests, and to grow the Open Space system. After a period of accelerated acquisitions, tax increments supporting OSMP were designed to sunset or transfer to other city departments to account for declining land acquisition needs over time. It also accounted for expiring debt service payments that would decrease by almost \$7 million between 2013 and 2020.

Rather than focus on a transportation maintenance fee, council also decided to ask the voters to place a temporary 0.15 percent tax for Transportation on the ballot that would be effective from 2014 through 2019. The temporary transportation tax was approved by 66 percent of the voters. A separate question was asked to renew the 0.15 percent tax dedicated to Open Space through 2019 and then reallocate the revenues to Transportation from January 1, 2020 through December 31, 2029. The tax would then shift to the General Fund from January 1, 2030 until sunseting on December 31, 2039. The renewal and reallocation of the 0.15 percent tax was approved by 72percent of the voters.

### **Sales and Use Taxes**

Ms. Doelling detailed upcoming changes to the city's sales and use tax rate between 2019 and 2039 as dedicated portions of the aggregate sales and use tax rate expire.

Additionally, Ms. Doelling provided a comparison of Boulder's total sales tax rates to other Front Range cities. Each city's aggregate sales tax rate was broken down to delineate between city and non-city service tax rates including the dedications to their General Fund, community projects, open space, historic preservation, parks and recreation, the State of Colorado, public safety, transportation, capital improvements, county, Regional Transportation District (RTD), and Scientific, Cultural, and Facilities District (SCFD). Ms. Doelling concluded this portion of the presentation by showing the Colorado communities that have a sales tax rate above 9 percent.

### **Ballot Initiatives**

The presentation then shifted to focus on Open Space, building off of the 2013 ballot conversation earlier in the presentation.

Ms. Doelling presented a slide explaining information that we know now compared to 2013, such as OSMP's completion of several assessments and studies that better inform out-year budgets. In 2018, the department completed an update to the 2005 visitation study, which showed that over a 13-year period, visitation grew from 4.68 million to 6.25 million visits per year, or roughly 34 percent per year, impacting the cost of maintaining the system beyond what was anticipated in 2013. The key takeaway was that the cost of maintaining the system has outpaced earlier projections.

Ms. Doelling then presented how Open Space has been preparing for these funding decreases through a series of actions to reduce the impact including:

- Paying down outstanding obligations for past acquisitions,
- Maintaining strong fund balances,
- Improving efficiency of internal processes,
- Expiring vacant positions where appropriate,
- Scaling back or deferring projects and programs,
- Being responsible stewards of Open Space Fund dollars in a fiscally constrained time, and
- Increasing reserve funds to account for economic fluctuations.

The next three slides provided context around what can be accomplished in the Master Plan with no change in sales tax rate, an additional 0.10 percent and an additional 0.15 percent.

With the given sales tax rate, the department anticipates:

- Implementing the fiscally constrained scenario described in the Draft Master Plan.
  - Focusing funding on Tier 1 (highest priority) strategies first.
  - Investment in Tier 2 and 3 strategies as capacity allows.
- Emphasizing annual funding for capital improvements, plans, programs, and projects on maintenance of existing lands, trails, and programs over new initiatives and acquisitions.
- Emphasizing the reduction of a portion of the trail maintenance backlog over adding new trail mileage. While new trail mileage may be added through existing approved plans under this scenario, less funding would be devoted to it.
- Pursuing new or enhanced efforts only as staff capacity and funding allow.
- Continuing to make gradual reductions to the operating budget to bring annual expenditures within annual revenues, utilizing fund balance that has been saved for this purpose to ensure shifts are gradual and to avoid a significant reduction in force over the next five years. Under current projections, an additional \$2.3 million in operating budget reductions will be needed in the coming years.

In 2020, the addition of a 0.10 percent increment would result in approximately \$3.5 million in added annual revenue to OSMP (\$35 million over the ten-year Master Plan time horizon). These additional funds would be used to:

- Accelerate implementation of Tier 1 strategies from the draft OSMP Master Plan, including reducing more of the trail maintenance backlog and preserving and restoring more important habitat blocks and corridors.
- Increase the annual capital program by roughly \$500,000 per year and use towards priority projects. Open Space's capital program budget has been reduced by \$6 million from 2018 levels.
- Sustain current levels of seasonal, temporary, and standard staffing to accomplish on the ground Master Plan implementation.



- Support for three years the fixed-term prairie dog management and soil health positions recently created and supported by the General Fund, reducing General Fund expenditures by \$185,000.
- Invest Fund Balance in top priorities of the Master Plan, once adopted.

In 2020, the addition of a 0.15 percent increment would result in approximately \$5.3 million in added annual revenue to OSMP (\$53 million over ten years). Like in the 0.10 percent scenario, additional funds will be used to:

- Accelerate implementation of Tier 1 strategies from the Master Plan and may also support increased investment towards Tier 2 and Tier 3 strategies.
- Increase the capital program by roughly \$1 million per year, which would represent a return to pre-flood averages of \$4 to \$5 million annually in capital funding.
- Sustain current levels of seasonal, temporary, and standard staffing to accomplish on the ground Master Plan implementation.
- Support for three years the fixed-term prairie dog management and soil health positions currently supported by the General Fund, reducing General Fund expenditures by \$185,000.
- Increase the ability to make opportunistic investments, from pursuing partnership projects and regional collaboration to supporting some strategic land and water and mineral rights acquisitions.
- Support resiliency efforts around climate change, disaster preparedness and response, and increasing visitation.
- Allow for the potential to bond in out-years, if needed.

### **Unfunded Priorities**

Building off of the April 9 unfunded needs discussion, Ms. Doelling explained that current and future master/strategic plans have identified unfunded needs. She highlighted in 2019 and 2020, the Library, Technology, Open Space, and Transportation had varying degrees of unfunded needs and daylighted that the upcoming Fire-Rescue, Facilities, Police, Parks & Recreation, and Human Resource plans will all identify high priority, unfunded needs. These needs largely stem from increased demand, cost escalation, and aging infrastructure. She ended this portion with highlighting the challenge of balancing these community/council priorities with available funding.

### **2020 Budget Preview**

Ms. Doelling then shifted to setting the stage for the 2020 budget, including reminding council how the 2019 budget was balanced. She then moved to 2020 revenue projections for sales and use taxes, property tax, and the other General Fund revenue sources. The takeaway from this section was that the anticipated ongoing operating budget is \$3.3 million more than 2019, even with substantial increases in those revenue streams. Overall, council and departmental priority needs exceed available General Fund sources for 2020. She reminded council that the City Manager recommendations will be presented at the September 10 Study Session.

### Questions for Council

The presentation concluded with Ms. Doelling posing the following questions to council:

- Does City Council wish to put (up to) a 0.15 percent sales tax extension question on the 2019 Ballot to support Open Space (and/or General Fund priority needs)?
- If so,
  - *of the (up to) 0.15 percent, how much would you like dedicated to:*
    - Open Space
    - General Fund Operating/Capital
  - *How long?*

### Closing Remarks and Discussion

Overall, council is supportive of placing a sales tax question on the 2019 ballot. Some members of council did express concerns about reaching the maximum sales tax rate before fully understanding additional needs throughout the city. An example that was discussed at length was a conservation easement at Longs Garden. Staff are currently under the appraisal process and will be sending out additional information via confidential memo in the coming weeks. Initial estimates indicate a cost between \$4-10 million depending on terms of the purchase.

Additionally, council inquired about the renovation of Alpine Balsam site and how the city is planning on funding that cost. Staff indicated that council would see more during the budget study session on September 10, but there was a non-tax plan to fund that commitment.

Support for an open space tax was generally received well. Council was split on whether the tax ought to be 0.15% or 0.10% for open space but overall, they all believe that Open Space supports quality of life and helps achieve climate commitment goals. Additional support was expressed for transportation safety, General Fund with potentially including the purchase of the conversation easement for Longs Garden.

Therefore, council members expressed interest in various tax initiatives including:

- 0.15 percent for Open Space
- 0.10 percent for Open Space and
  - 0.05 percent for Transportation, or
  - 0.05 percent for General Fund, or
  - 0.05 percent for General Fund including Longs Garden Conservation Easement.

Staff will bring forward eight versions of a tax ballot question on August 6 for first reading.



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Consideration of a motion to adopt Resolution 1264 appointing the firm of CliftonLarsonAllen to examine the financial accounts of the City of Boulder for the year ending on December 31, 2019

### **PRIMARY STAFF CONTACT**

Anne Penney, Controller

### **REQUESTED ACTION OR MOTION LANGUAGE**

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3E-Appointing CliftonLarsonAllen for Financial Audit Firm**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE:** Consideration of a motion to adopt Resolution 1264 appointing the firm of CliftonLarsonAllen to examine the financial accounts of the City of Boulder for the year ended December 31, 2019

**PRESENTER/S**

Jane S. Brautigam, City Manager  
Cheryl Pattelli, Chief Financial Officer  
Anne Penney, Controller  
Ron Gilbert, Assistant Controller

**EXECUTIVE SUMMARY**

Under Colorado law, the City Charter and various ordinances of the city of Boulder, the City Council is required to appoint an auditor to make a thorough and complete annual examination and audit of all the financial accounts of the city, as summarized in the Comprehensive Annual Financial Report (CAFR). This “Independent Auditor” also reports and makes recommendations regarding the results of that examination, as communicated in an audit management letter.

During 2015, audit services were rebid for the five-year period beginning with the 2015 audit and ending with the 2019 audit. At the conclusion of the selection process in 2015, the City Audit Committee recommended appointment of the firm of CliftonLarsonAllen as the city’s auditor for the next five years subject to annual appropriation and approval.

During the 2018 audit, CliftonLarsonAllen proved that they were well qualified as governmental accountants and auditors and exercised due care and diligence in the execution of their duties in an effective and efficient manner.

## **STAFF RECOMMENDATION**

### **Suggested Motion Language:**

The 2019 City Audit Committee recommends that City Council officially appoint the firm of CliftonLarsonAllen as the city's independent auditors for fiscal year ended December 31, 2019 in the form of the following motion:

Motion to adopt Resolution 1264 appointing the Firm of CliftonLarsonAllen to examine the financial accounts of the City of Boulder for the fiscal year ended December 31, 2019.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic:** The city is required by the city's bond ordinances and many different governmental agencies to have annual audits of the city's financial statements and its various grant programs. The proposed audits are planned as a combined "single audit" designed to satisfy all of those requirements. Failure to have an audit would be a violation of the bond requirements and could also negatively impact future grant eligibility of the city.
- **Environmental:** CliftonLarsonAllen is a national firm with offices in many locations. The office servicing the city's audit is out of the Denver area and the staff and partners are all from local offices. This reduces the carbon footprint because it uses local resources.
- **Social:** There are no direct social implications of accepting the firm of CliftonLarsonAllen as the city's auditors.

## **OTHER IMPACTS**

- **Fiscal** – The proposed fee by CliftonLarsonAllen for the 2019 audit is \$80,835 and has already been factored into the city budget.
- **Staff time** – Staff time for this process is included within the Finance Department's regular annual work plan.

## **BOARD AND COMMISSION FEEDBACK**

In 2015, after discussion and consideration of the proposals and input from the auditor interview committee, CliftonLarsonAllen was recommended as the city's independent auditors for the five year engagement ending December 31, 2019, subject to annual appropriation and approval.

The City Council Audit Committee for 2019 consists of Bob Yates, Sam Weaver, Cynthia Carlisle and University of Colorado Professor David Gross. The Council Audit Committee met with the auditors July 23, 2019 to review and discuss the 2018 audit for the year ended December 31, 2018. The City Council Audit Committee unanimously recommended the appointment of CliftonLarsonAllen as the city's independent auditors for the year ended December 31, 2019.

## **ANALYSIS**

CliftonLarsonAllen has performed the city's audit for the fiscal year ending December 31, 2018. During performance of those services, the audit firm has demonstrated a thorough understanding of governmental accounting and auditing standards. They have sought and provided appropriate communication with the City Council Audit Committee and have executed their duties in a responsible and professional manner.

During the July 23, 2019 City Council Audit Committee meeting and after considerable discussion, the City Council Audit Committee unanimously agreed to recommend that City Council officially appoint the firm of CliftonLarsonAllen as the city's independent auditors for the fiscal year ending December 31, 2019, the fifth year of the five-year audit services engagement ending December 31, 2019.

## **ATTACHMENTS**

**ATTACHMENT A**      Proposed Resolution 1264

**RESOLUTION 1264**

**A RESOLUTION APPOINTING THE FIRM OF  
CLIFTONLARSONALLEN TO EXAMINE THE  
FINANCIAL ACCOUNTS OF THE CITY OF BOULDER  
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2019.**

WHEREAS, Sections 12 and 105 of the Charter and Chapter 2-2-7 B.R.C., 1981, require the City Council, by resolution, to appoint an auditor, who is a certified public accountant licensed to practice in the State of Colorado and is well informed regarding governmental accounting and auditing; and

WHEREAS, the auditor is required to make a thorough and complete examination and audit of all the financial accounts of the city and report and make recommendations regarding the results of that examination; and

WHEREAS, the City Council Audit Committee has recommended the firm of CliftonLarsonAllen.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, HEREBY APPOINTS THE FIRM CLIFTONLARSONALLEN TO PERFORM THE ANNUAL AUDIT OF THE CITY RECORDS FOR THE 2019 FISCAL YEAR.**

APPROVED this 20<sup>th</sup> day of August 2019.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk on behalf of the  
Chief Financial Officer and Record





## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Consideration of a motion to adopt Resolution 1265 accepting the City of Boulder's 2018 Comprehensive Annual Financial Report and Independent Auditor's Report

### **PRIMARY STAFF CONTACT**

Anne Penney, Controller

### **REQUESTED ACTION OR MOTION LANGUAGE**

#### **ATTACHMENTS:**

##### **Description**

- ▣ **Item 3F- Res 1265 2018 CAFR**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE: Consideration of a motion to adopt Resolution 1265 accepting the City of Boulder's 2018 Comprehensive Annual Financial Report and Independent Auditor's Report**

**PRESENTERS**

Jane S. Brautigam, City Manager  
Tanya Ange, Deputy City Manager  
Cheryl Pattelli, Chief Financial Officer  
Anne Penney, Controller  
Ron Gilbert, Assistant Controller

**EXECUTIVE SUMMARY**

This agenda item provides council the ability to consider a motion to adopt Resolution 1265 (Attachment A) accepting the City of Boulder's 2018 Comprehensive Annual Financial Report (CAFR) and Independent Auditor's Report. As described below, the auditors expressed a clean opinion on the CAFR indicating that the financial statements accurately reported the financial position and operations of the city for the year ended December 31, 2018. There were no findings noted in the independent auditor's report. In addition, City Council's Audit Committee met with the Auditors on July 23, 2019 and forwarded the CAFR on to the full City Council for consideration. For ease of review of auditor comments, a single document has been compiled listing the entire comments and managements responses.

**STAFF RECOMMENDATION**

**Suggested Motion Language:**

The 2019 City Council Audit Committee recommended that the 2018 CAFR be forwarded to the full City Council for official consideration and acceptance in the form of the following motion:

Motion to adopt Resolution 1265 accepting the City of Boulder's 2018 Comprehensive Annual Financial Report and Independent Auditor's Report.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic:** The city is required by Sections 12 and 105 of the City Charter and Chapter 2-2-7 B.R.C., 1981, the city's bond ordinances and many different governmental agencies to have an annual audit of the city's financial statements and various grant programs. This audit is a combined "single audit" designed to satisfy all of those requirements. Failure to have an audit would be a violation of these requirements and can negatively impact future interest rates on city borrowings, as well as grant eligibility of the city.
- **Environmental:** Each year, the Finance Department encourages individuals and entities to access the CAFR through the city's web site and provides hard copies of the report only as needed. Over the last few years, this effort has succeeded in reducing the number of hard copy reports printed, saving thousands of sheets of paper. In addition, the actual bound financial report is prepared using recycled paper to help minimize the impact on the environment. There are no other direct environmental implications of accepting the CAFR and the auditor's reports.
- **Social:** The users of the financial statements of the city have a variety of purposes and needs. These users include the public, legislative and oversight bodies, grantor agencies, investors and creditors, and management. Because of the specialized needs of these report users, the financial statements include a variety of financial information and extensive note disclosures. This detailed information is provided to increase transparency of the use and stewardship of the financial resources of the city.

## **OTHER IMPACTS**

- **Fiscal:** The CliftonLarsonAllen fee for the 2018 audit was \$78,797. The appropriation for these costs is included within the annual operating budget of the Finance Department.
- **Staff time:** Staff time for this process is included within the Finance Department's regular annual work plan.

## **BOARD AND COMMISSION FEEDBACK**

The auditors met with the City Council Audit Committee on July 23, 2019. Present were committee members Sam Weaver, Bob Yates and University of Colorado Professor David Gross. The committee recommended that the 2018 Comprehensive Annual Financial Report and Independent Auditor's Reports be forwarded to full council.

## BACKGROUND

Based on the city charter City Council is required to appoint an independent auditor to make a thorough and complete annual examination and audit of all the financial accounts of the city, as summarized in the Comprehensive Annual Financial Report (CAFR). This independent auditor also reports and makes recommendations regarding the results of that examination, as communicated in the “Compliance Section” of the CAFR. The 2018 audit has been completed and the City Council Audit Committee met with the city’s independent auditors, CliftonLarsonAllen and city staff to discuss the CAFR.

This is the fourth year that CliftonLarsonAllen has performed the audit of the city. CliftonLarsonAllen was appointed by City Council on October 20, 2015, after a lengthy and detailed selection process, to perform the annual audit of the city records for the year ended December 31, 2015, with four optional renewals for subsequent years. The auditors expressed a clean opinion on the comprehensive annual financial report, indicating that the financial statements accurately reported the financial position and operations of the city for the year ended December 31, 2018. The auditors also issued reports on internal controls and compliance with laws and regulations as required by various grant programs, laws and regulations. These reports are found in the “Compliance Section” of the CAFR, starting on page 297.

## ANALYSIS

The CAFR is prepared annually to meet certain legal and regulatory requirements including the City Charter and various State Statutes. In order to satisfy these requirements, the document becomes rather long and very detailed.

The CAFR for fiscal year ending December 31, 2018 is 309 pages long and broken into five distinct sections. With such a large document, it can be difficult to know where to start. The following provides a brief overview of the sections and identifies areas of particular interest within each section the user may wish to review.

### Introductory Section:

The Introductory Section includes the Letter of Transmittal starting on page 5 which is a very useful document to read. This letter provides general information on the city as well as information useful in assessing the current and future financial position of the city. On page 8 of the letter March 2019 sales and use tax information is included. Due to the timing of the required reporting deadline for the CAFR we are unable to include more current data. The most recent sales and use tax revenue report can be found here: <https://bouldercolorado.gov/tax-license/revenue-reports>

### Financial Section:

The Financial Section includes the audit opinion, management’s discussion and analysis of the financial statements, the basic financial statements for the city, and the notes to the financial statements.

The Auditor's Opinion found on pages 17 to 19 is a "clean" opinion, indicating that the financial statements included in the 2018 CAFR are properly and fairly presented in all material respects.

Management's Discussion and Analysis, pages 21 to 34, provides a broad analysis of the city's finances. It includes discussion and analysis of changes from 2017 to 2018 for the government wide financial statements, as well as General Fund budgetary highlights, changes in capital assets and the debt of the city, and various other significant matters.

The basic financial statements, pages 37 to 67, provide information on specific funds or groups of funds. Budget to actual reports for the four largest governmental funds (General Fund, Open Space Fund, Transportation Fund and the Boulder Municipal Property Authority) are presented on pages 46 to 50. Budget to actual reports for the other governmental funds are included in a subsequent section.

The Proprietary Fund financial statements, including the utility funds, Downtown Commercial District (formerly CAGID), and other non-major enterprise funds are presented on pages 52 to 63.

The Pension Trust Fund financial statements which include the "Old Hire" Police Defined Benefit Plan and the "Old Hire" Fire Defined Benefit Plan are presented on pages 66 to 67. Details by individual plan are included in Note U in the Notes to the Financial Statements, pages 124 to 138. Additional information is included as required supplementary information on pages 175 to 181.

The Notes to the Financial Statements, pages 71 to 172, contain detailed information on the various accounts, activities, and policies of the city. Of particular interest is Note A – Summary of Significant Accounting Policies. This note includes a wealth of information about the city's reporting entity, why some organizations are included within the financial statements and others are not, various policies and practices used to account for city operations, and definitions for some of the accounting terms used within the report. The other notes provide additional disclosures about specific accounts or occurrences during the year. A table of contents for the notes is provided on page 70 for ease of reference.

*Combining and Individual Statements:*

This section provides detailed financial statements for funds not separately included within the Basic Financial Statements in the previous section. Balance sheets, operating statements and budget to actual statements are included on a fund by fund basis. Also included on pages 258 and 259 is a detailed schedule of the outstanding long-term debt of the city by governmental and business type activity.

Statistical Section:

The statistical section provides information on how the city's financial position has changed over time, the city's ability to generate its own revenues, the current debt burden and the ability to issue additional debt, various demographic and economic information and operating information to help assess the size of city operations. A detailed table of contents on page 263 further explains the schedules included in this section.

Compliance Section:

The final section of the CAFR starting on page 297 presents information on the city's federal grants and awards and the state highway finance report. Included within this section are the auditors' reports on internal controls and compliance with the various grant requirements.

By reading the Letter of Transmittal, Management's Discussion and Analysis, and Note A of the Notes to the Financial Statements, the user will have a good overview of city operations for 2018 and a basic understanding of the statements. The user can then delve more deeply into specific funds or operations as desired.

As part of the year end process, an audit is performed on the CAFR and city financial operations. The 2018 audit has been completed and the City Council Audit Committee has met with the city's independent auditor CliftonLarsonAllen, and city staff to discuss the CAFR, including the auditor compliance reports and management responses.

Representatives of CliftonLarsonAllen presented their audit results to the City Council Audit Committee. As noted in Attachment B there were no findings noted in the December 31, 2018 audited financial statements.

The auditor's included four best practice recommendations in the management letter (Attachment C). The recommendations were related to information technology (IT). The IT department is actively working on the recommendations.

After due discussion and consideration, the City Council Audit Committee forwarded the CAFR, including the compliance reports to the full City Council for consideration at the August 20, 2019 council meeting.

## **ATTACHMENTS**

<b>ATTACHMENT A</b>	Proposed Resolution 1265
<b>ATTACHMENT B</b>	2018 Independent Auditor's Report
<b>ATTACHMENT C</b>	2018 City of Boulder Management Letter
<b>ATTACHMENT D</b>	City of Boulder 5 Year Financial Summary
<b>ATTACHMENT E</b>	2018 Comprehensive Annual Financial Report (Available in City Council Office, Central Records, Central Library Reference Desk, and online at <a href="http://www.bouldercolorado.gov">www.bouldercolorado.gov</a> under Finance Department, Financial Reporting)

**RESOLUTION 1265****A RESOLUTION ACCEPTING THE CITY OF BOULDER'S 2018  
COMPREHENSIVE ANNUAL FINANCIAL REPORT AND  
INDEPENDENT AUDITOR'S REPORTS**

WHEREAS, Sections 12 and 105 of the Charter and Chapter 2-2-7 B.R.C., 1981, require the City Council, by resolution, to appoint an auditor, who is a certified public accountant licensed to practice in the State of Colorado and is well informed regarding governmental accounting and auditing; and

WHEREAS, the auditor is required to make a thorough and complete examination and audit of all the financial accounts of the City, report thereon and make recommendations regarding the results of that examination; and

WHEREAS, based upon review of the 2018 Comprehensive Annual Financial Report, Independent Auditor's Reports and discussions with city staff and CliftonLarsonAllen, the City's Independent Auditor, the City Council Audit Committee recommends that City Council officially accept the:

- 2018 Comprehensive Annual Financial Report, and
- 2018 Independent Auditor's Reports

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, HEREBY ACCEPTS THE 2018 COMPREHENSIVE ANNUAL FINANCIAL REPORT AND INDEPENDENT AUDITOR'S REPORTS.**

APPROVED this 20<sup>th</sup> day of August, 2019.

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Mayor

ATTEST:

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City Clerk on behalf of the  
Chief Financial Officer and Record





CliftonLarsonAllen LLP  
CLAconnect.com

Honorable Mayor and Members of City Council  
City of Boulder, Colorado  
Boulder, Colorado

We have audited the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Boulder, Colorado (the City) as of and for the year ended December 31, 2018, and have issued our report thereon dated June 24, 2019. We have previously communicated to you information about our responsibilities under auditing standards generally accepted in the United States of America, *Government Auditing Standards*, and Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), as well as certain information related to the planned scope and timing of our audit. Professional standards also require that we communicate to you the following information related to our audit.

## Significant audit findings

### ***Qualitative aspects of accounting practices***

#### Accounting policies

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the City are described in Note A to the financial statements.

As described in Note A, the City implemented GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*, by recognizing its OPEB liability related to its OPEB plans. Accordingly, the cumulative effect of the accounting change is recorded at the beginning of the year in the financial statements of the governmental activities and business-type activities.

We noted no transactions entered into by the entity during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

#### Accounting estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate(s) affecting the financial statements were:

- Capital assets of the governmental and business-type activities are depreciated using the straight-line method over their estimated useful lives, which range from three to seventy-five years.
- Management's estimate of the net OPEB liability related to its OPEB plans are based on actuarial assumptions and other inputs as described in Note W to the financial statements.

Honorable Mayor and Members of City Council  
 City of Boulder, Colorado  
 Page 2

- Management's estimate of the net pension liability related to its pension plans are based on actuarial assumptions and other inputs as described in Note U to the financial statements.
- The City's claim liabilities are based on estimates of the ultimate cost of claims (including unallocated loss adjustment expenses) that have been reported but not settled. Also included are estimates for claims incurred but not reported. The total projected claims liabilities are estimates provided by actuaries for the property and casualty and workers' compensation insurance programs. Such estimates consider the City's historical claims experience, effects of inflation, recent claim settlement trends and other economic and social factors.
- The City's pollution remediation and landfill closure liabilities are based on estimates of the cost for the site closure, including landfill closure, postclosure care, and remediation costs. These estimates are based on a third-party consultant's site assessments and professional experience in this subject matter.
- The City estimates a 10% salvage value on certain vehicles purchased prior to 2015.

We evaluated the key factors and assumptions used to develop these estimates in determining that they are reasonable in relation to the financial statements taken as a whole.

#### Financial statement disclosures

Certain financial statement disclosures are particularly sensitive because of their significance to financial statement users. There were no particularly sensitive financial statement disclosures.

The financial statement disclosures are neutral, consistent, and clear.

#### ***Difficulties encountered in performing the audit***

We encountered no significant difficulties in dealing with management in performing and completing our audit.

#### ***Uncorrected misstatements***

Professional standards require us to accumulate all misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. The attached schedule summarizes uncorrected misstatements of the financial statements. Management has determined that their effects are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

#### ***Corrected misstatements***

The attached schedule summarizes all misstatements (material and immaterial) detected as a result of audit procedures that were corrected by management.

#### ***Disagreements with management***

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditors' report. No such disagreements arose during our audit.

#### ***Management representations***

We have requested certain representations from management that are included in the attached management representation letter dated June 24, 2019.

***Management consultations with other independent accountants***

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the entity's financial statements or a determination of the type of auditors' opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

***Significant issues discussed with management prior to engagement***

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to engagement as the entity's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our engagement.

***Other audit findings or issues***

We have provided a separate letter to you dated June 24, 2019, communicating internal control related matters identified during the audit.

***Other information in documents containing audited financial statements***

With respect to the required supplementary information (RSI) accompanying the financial statements, we made certain inquiries of management about the methods of preparing the RSI, including whether the RSI has been measured and presented in accordance with prescribed guidelines, whether the methods of measurement and preparation have been changed from the prior period and the reasons for any such changes, and whether there were any significant assumptions or interpretations underlying the measurement or presentation of the RSI. We compared the RSI for consistency with management's responses to the foregoing inquiries, the basic financial statements, and other knowledge obtained during the audit of the basic financial statements. Because these limited procedures do not provide sufficient evidence, we did not express an opinion or provide any assurance on the RSI.

With respect to the schedule of expenditures of federal awards (SEFA) accompanying the financial statements, on which we were engaged to report in relation to the financial statements as a whole, we made certain inquiries of management and evaluated the form, content, and methods of preparing the SEFA to determine that the SEFA complies with the requirements of the Uniform Guidance, the method of preparing it has not changed from the prior period or the reasons for such changes, and the SEFA is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the SEFA to the underlying accounting records used to prepare the financial statements or to the financial statements themselves. We have issued our report thereon dated June 24, 2019.

With respect to the combining and individual fund financial statements and schedules and the local highway finance report (collectively, the supplementary information) accompanying the financial statements, on which we were engaged to report in relation to the financial statements as a whole, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period or the reasons for such changes, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves. We have issued our report thereon dated June 24, 2019.

Honorable Mayor and Members of City Council  
City of Boulder, Colorado  
Page 4

The introductory and statistical sections accompanying the financial statements, which are the responsibility of management, were prepared for purposes of additional analysis and are not a required part of the financial statements. Such information was not subjected to the auditing procedures applied in the audit of the financial statements, and, accordingly, we did not express an opinion or provide any assurance on them.

In connection with the City's Comprehensive Annual Financial Report (CAFR), we did not perform any procedures or corroborate other information included in the CAFR. Our responsibility for such other information does not extend beyond the financial information identified in our auditors' report. We have no responsibility for determining whether such other information is properly stated and do not have an obligation to perform any procedures to corroborate other information contained in such documents. However, as required by professional standards, we read management's discussion and analysis of financial conditions and results of operations and considered whether the information or the manner in which it was presented was materially inconsistent with information or the manner of presentation of the financial statements. We did not identify any material inconsistencies between the other information and the audited financial statements.

Our auditors' opinion, the audited financial statements, and the notes to financial statements should only be used in their entirety. Inclusion of the audited financial statements in a document you prepare, such as an annual report, should be done only with our prior approval and review of the document.

\* \* \*

This communication is intended solely for the information and use of the Honorable Mayor and Members of City Council and management of the City of Boulder, Colorado and is not intended to be, and should not be, used by anyone other than these specified parties.



**CliftonLarsonAllen LLP**

Broomfield, Colorado  
June 24, 2019

**CITY OF BOULDER, COLORADO**  
**SCHEDULE OF FINDINGS AND QUESTIONED COSTS**  
**YEAR ENDED DECEMBER 31, 2018**

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**Section I – Summary of Auditors' Results**

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**Financial Statements**

1. Type of auditors' report issued: Unmodified
2. Internal control over financial reporting:
- Material weakness(es) identified? \_\_\_\_\_ yes        x   no
  - Significant deficiency(ies) identified? \_\_\_\_\_ yes        x   none reported
3. Noncompliance material to financial statements noted? \_\_\_\_\_ yes        x   no

**Federal Awards**

1. Internal control over major federal programs:
- Material weakness(es) identified? \_\_\_\_\_ yes        x   no
  - Significant deficiency(ies) identified? \_\_\_\_\_ yes        x   none reported
2. Type of auditors' report issued on compliance for major federal programs: Unmodified
3. Any audit findings disclosed that are required to be reported in accordance with 2 CFR 200.516(a)? \_\_\_\_\_ yes        x   no

**Identification of Major Federal Programs****CFDA Number(s)**

14.239

**Name of Federal Program or Cluster**

Home Investment Partnerships Program

Dollar threshold used to distinguish between Type A and Type B programs:

\$   \$750,000  

Auditee qualified as low-risk auditee?

  x   yes      \_\_\_\_\_ no

**CITY OF BOULDER, COLORADO**  
**SCHEDULE OF FINDINGS AND QUESTIONED COSTS**  
**YEAR ENDED DECEMBER 31, 2018**

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***Section II – Financial Statement Findings***

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Our audit did not disclose any matters required to be reported in accordance with *Government Auditing Standards*.

**CITY OF BOULDER, COLORADO  
SCHEDULE OF FINDINGS AND QUESTIONED COSTS  
YEAR ENDED DECEMBER 31, 2018**

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***Section III – Findings and Questioned Costs – Major Federal Programs***

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Our audit did not disclose any matters required to be reported in accordance with 2 CFR 200.516(a).

**CITY OF BOULDER, COLORADO**  
**SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS**  
**YEAR ENDED DECEMBER 31, 2018**

The City of Boulder, Colorado respectfully submits the following summary schedule of prior audit findings for the year ended December 31, 2018.

Audit period: December 31, 2018

The findings from the prior audit's schedule of findings and questioned costs are discussed below. The findings are numbered consistently with the numbers assigned in the prior year.

**FINDINGS—FINANCIAL STATEMENT AUDIT**

**2017 – 001 Prior Period Adjustment**

**Condition:** The City should have controls in place to review joint project expenditures to ensure that amounts not eligible for reimbursement are excluded from receivable balances to prevent material misstatements in the financial statements.

**Status:** Corrective action was taken.

**2017 – 002 Federal Grants Receivable, Revenue, and Deferred Inflows of Resources**

**Condition:** The City should have controls in place to properly reconcile grant related balances throughout the duration of the year to prevent misstatements in the financial statements.

**Status:** Corrective action was taken.

If there are questions regarding this schedule, please call Anne Penney, Controller, at 303-441-1812.



**SUMMARY OF UNCORRECTED MISSTATEMENTS - AUDIT**  
**City of Boulder, Colorado**  
**Business-type Activities**  
**Year Ended December 31, 2018**

**UNCORRECTED ADJUSTMENTS****Effect of misstatements on:**

<b>Description</b>	<b>Assets</b>	<b>Liabilities</b>	<b>Beginning Net Position</b>	<b>Change in Net Position</b>
Capital Assets were migrated to the MUNIS system with an incorrect useful life, which resulted in depreciation calculations being lower and net capital assets being overstated. <i>(Water Utility, Wastewater Utility, Stormwater and Flood Management, and Downtown Commercial District Funds)</i>	\$ (2,084,941)		\$ 2,084,941	
Net current year misstatements (Iron Curtain Method)	(2,084,941)	-	2,084,941	-
Net prior year misstatements	-	-	-	-
Combined current and prior year misstatements (Rollover Method)	\$ (2,084,941)	\$ -	\$ 2,084,941	\$ -
Financial statement totals	<u>\$ 661,812,000</u>	<u>\$ (177,952,000)</u>	<u>\$ (463,277,000)</u>	<u>\$ (20,583,000)</u>
Current year misstatement as a % of financial statement totals (Iron Curtain Method)	0%		0%	
Current and prior year misstatement as a % of financial statement totals (Rollover Method)	0%		0%	

**INADEQUATE DISCLOSURES**

<b>Description</b>	<b>Amount (If Applicable)</b>
None.	

**SUMMARY OF UNCORRECTED MISSTATEMENTS - AUDIT**  
**City of Boulder, Colorado**  
**Water Utility Fund**  
**Year Ended December 31, 2018**

**UNCORRECTED ADJUSTMENTS****Effect of misstatements on:**

<b>Description</b>	<b>Assets</b>	<b>Liabilities</b>	<b>Beginning Net Position</b>	<b>Change in Net Position</b>
Capital Assets were migrated to the MUNIS system with an incorrect useful life, which resulted in depreciation calculations being lower and net capital assets being overstated.	\$ (1,150,572)		\$ 1,150,572	
Net current year misstatements (Iron Curtain Method)	(1,150,572)	-	1,150,572	-
Net prior year misstatements	-	-		-
Combined current and prior year misstatements (Rollover Method)	\$ (1,150,572)	\$ -	\$ 1,150,572	\$ -
Financial statement totals	<u>\$ 338,279,000</u>	<u>\$ (93,150,000)</u>	<u>\$ (236,481,000)</u>	<u>\$ (8,648,000)</u>
Current year misstatement as a % of financial statement totals (Iron Curtain Method)	0%		0%	
Current and prior year misstatement as a % of financial statement totals (Rollover Method)	0%		0%	

**INADEQUATE DISCLOSURES**

<b>Description</b>	<b>Amount (If Applicable)</b>
None.	

**SUMMARY OF UNCORRECTED MISSTATEMENTS - AUDIT**  
**City of Boulder, Colorado**  
**Wastewater Utility Fund**  
**Year Ended December 31, 2018**

**UNCORRECTED ADJUSTMENTS****Effect of misstatements on:**

<b>Description</b>	<b>Assets</b>	<b>Liabilities</b>	<b>Beginning Net Position</b>	<b>Change in Net Position</b>
Capital Assets were migrated to the MUNIS system with an incorrect useful life, which resulted in depreciation calculations being lower and net capital assets being overstated.	\$ (744,256)		\$ 744,256	
Net current year misstatements (Iron Curtain Method)	(744,256)	-	744,256	-
Net prior year misstatements	-	-		-
Combined current and prior year misstatements (Rollover Method)	\$ (744,256)	\$ -	\$ 744,256	\$ -
Financial statement totals	<u>\$ 140,408,000</u>	<u>\$ (52,803,000)</u>	<u>\$ (81,512,000)</u>	<u>\$ (6,093,000)</u>
Current year misstatement as a % of financial statement totals (Iron Curtain Method)	-1%		-1%	
Current and prior year misstatement as a % of financial statement totals (Rollover Method)	-1%		-1%	

**INADEQUATE DISCLOSURES**

<b>Description</b>	<b>Amount (If Applicable)</b>
None.	

**SUMMARY OF UNCORRECTED MISSTATEMENTS - AUDIT**

City of Boulder, Colorado

Stormwater and Flood Management Fund

Year Ended December 31, 2018

**UNCORRECTED ADJUSTMENTS****Effect of misstatements on:**

Description	Assets	Liabilities	Beginning Net Position	Change in Net Position
Grant receivable booked in FY17 to Stormwater Fund, but should have been in Affordable Housing Fund.	\$ 720,070		\$ (720,070)	
Grant revenue and receivable reversed in the Stormwater Fund in FY18 to correct prior year posting.	(720,070)			720,070
Capital Assets were migrated to the MUNIS system with an incorrect useful life, which resulted in depreciation calculations being lower and net capital assets being overstated.	(145,636)		145,636	
Net current year misstatements (Iron Curtain Method)	(145,636)	-	(574,434)	720,070
Net prior year misstatements	-	-		-
Combined current and prior year misstatements (Rollover Method)	\$ (145,636)	\$ -	\$ (574,434)	\$ 720,070
Financial statement totals	<u>\$ 139,671,000</u>	<u>\$ (27,208,000)</u>	<u>\$ (109,951,000)</u>	<u>\$ (2,512,000)</u>
Current year misstatement as a % of financial statement totals (Iron Curtain Method)	0%		1%	-29%
Current and prior year misstatement as a % of financial statement totals (Rollover Method)	0%		1%	-29%

**INADEQUATE DISCLOSURES**

Description	Amount (If Applicable)
None.	

**SUMMARY OF UNCORRECTED MISSTATEMENTS - AUDIT**

City of Boulder, Colorado

Downtown Commercial District

Year Ended December 31, 2018

**UNCORRECTED ADJUSTMENTS****Effect of misstatements on:**

Description	Assets	Liabilities	Beginning Net Position	Change in Net Position
Capital Assets were migrated to the MUNIS system with an incorrect useful life, which resulted in depreciation calculations being lower and net capital assets being overstated.	\$ (44,477)		\$ 44,477	
Net current year misstatements (Iron Curtain Method)	(44,477)	-	44,477	-
Net prior year misstatements	-	-		-
Combined current and prior year misstatements (Rollover Method)	\$ (44,477)	\$ -	\$ 44,477	\$ -
Financial statement totals	<u>\$ 39,430,000</u>	<u>\$ (8,526,000)</u>	<u>\$ (27,964,000)</u>	<u>\$ (2,940,000)</u>
Current year misstatement as a % of financial statement totals (Iron Curtain Method)	0%		0%	
Current and prior year misstatement as a % of financial statement totals (Rollover Method)	0%		0%	

**INADEQUATE DISCLOSURES**

Description	Amount (If Applicable)
None.	

**SUMMARY OF UNCORRECTED MISSTATEMENTS - AUDIT**

City of Boulder, Colorado

Open Space Fund

Year Ended December 31, 2018

**UNCORRECTED ADJUSTMENTS****Effect of misstatements on:**

Description	Assets	Liabilities	Beginning Fund Balance	Net Change in Fund Balance
City accrued 100% of PayApp to 2018, when it should have been split between 2018 and 2019, based on the service period on the PayApp.		\$ (162,468)		\$ 162,468
Net current year misstatements (Iron Curtain Method)	-	(162,468)	-	162,468
Net prior year misstatements	-	-		-
Combined current and prior year misstatements (Rollover Method)	\$ -	\$ (162,468)	\$ -	\$ 162,468
Financial statement totals	<u>\$ 29,366,000</u>	<u>\$ (4,734,000)</u>	<u>\$ (38,983,000)</u>	<u>\$ 14,351,000</u>
Current year misstatement as a % of financial statement totals (Iron Curtain Method)		3%		1%
Current and prior year misstatement as a % of financial statement totals (Rollover Method)		3%		1%

**INADEQUATE DISCLOSURES**

Description	Amount (If Applicable)
None.	

**SUMMARY OF UNCORRECTED MISSTATEMENTS - AUDIT**

City of Boulder, Colorado

Transportation Fund

Year Ended December 31, 2018

**UNCORRECTED ADJUSTMENTS****Effect of misstatements on:**

Description	Assets	Liabilities	Beginning Fund Balance	Net Change in Fund Balance
AR balance that was booked as of 12/31/16 was not reversed during 2017. Rather, it was reversed in 2018. Therefore, revenue was overstated in 2017, resulting in overstated fund balance as of 12/31/17. Also, revenue in 2018 was understated.			\$ (24,731)	\$ 24,731
Net current year misstatements (Iron Curtain Method)	-	-	(24,731)	24,731
Net prior year misstatements	-	-		-
Combined current and prior year misstatements (Rollover Method)	\$ -	\$ -	\$ (24,731)	\$ 24,731
Financial statement totals	<u>\$ 25,843,000</u>	<u>\$ (4,562,000)</u>	<u>\$ (17,277,000)</u>	<u>\$ (4,004,000)</u>
Current year misstatement as a % of financial statement totals (Iron Curtain Method)			0%	-1%
Current and prior year misstatement as a % of financial statement totals (Rollover Method)			0%	-1%

**INADEQUATE DISCLOSURES**

Description	Amount (If Applicable)
None.	

**City of Boulder, Colorado**  
**Exhibit B - Corrected Misstatements**  
**December 31, 2018**

**Boulder Municipal Property Authority Fund:**

<u>Account</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
General Government Expenditures	To record the acquisition of land	\$ 6,975,000	\$ -
Other Financing Sources - Financing of Capital	through a capital lease agreement.	-	6,975,000
<b>Total</b>		<b><u>\$ 6,975,000</u></b>	<b><u>\$ 6,975,000</u></b>

**Open Space and Mountain Parks Fund:**

<u>Account</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
Open Space and Mountain Parks Expenditures	To record the acquisition of land	\$ 2,750,000	\$ -
Other Financing Sources - Financing of Capital	through a capital lease agreement.	-	2,750,000
<b>Total</b>		<b><u>\$ 2,750,000</u></b>	<b><u>\$ 2,750,000</u></b>





# City of Boulder Finance

June 24, 2019

CliftonLarsonAllen LLP  
370 Interlocken Boulevard, Suite 500  
Broomfield, Colorado 80021

This representation letter is provided in connection with your audit of the financial statements of City of Boulder, Colorado (the City), which comprise the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information as of December 31, 2018, and the respective changes in financial position and, where applicable, cash flows for the year then ended, and the related notes to the financial statements, for the purpose of expressing opinions on whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, as of June 24, 2019, the following representations made to you during your audit.

## Financial Statements

1. We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated February 21, 2019, for the preparation and fair presentation of the financial statements in accordance with U.S. GAAP. The financial statements include all properly classified funds and other financial information of the primary government and all component units required by generally accepted accounting principles to be included in the financial reporting entity.
2. We acknowledge and have fulfilled our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
3. We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
4. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.

5. Significant estimates have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP. Significant estimates are estimates at the financial statement date that could change materially within the next year.
6. Related party relationships and transactions, including, but not limited to, revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
7. All events occurring subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
8. The effects of uncorrected misstatements are immaterial, both individually and in the aggregate, to the financial statements for each opinion unit. A list of the uncorrected misstatements is attached to the representation letter. In addition, you have proposed adjusting journal entries that have been posted to the entity's accounts. We have reviewed and approved those adjusting journal entries and understand the nature of the changes and their impact on the financial statements. We are in agreement with those adjustments and accept responsibility for them.
9. The effects of all known actual or possible litigation, claims, and assessments have been accounted for and disclosed in accordance with U.S. GAAP.
10. Arrangements with financial institutions involving repurchase, reverse repurchase, or securities lending agreements, compensating balances, or other arrangements involving restrictions on cash balances and line-of-credit or similar arrangements, have been properly recorded or disclosed in the financial statements.
11. Receivables recorded in the financial statements represent valid claims against debtors for transactions arising on or before the financial statement date and have been reduced to their estimated net realizable value.
12. The methods and significant assumptions used result in a measure of fair value appropriate for financial statement measurement and disclosure purposes.
13. We have no plans or intentions that may materially affect the carrying value or classification of assets, liabilities, or equity.
14. Capital assets have been evaluated for impairment as a result of significant and unexpected decline in service utility. Impairment loss and insurance recoveries have been properly recorded.
15. Provision has been made to reduce excess or obsolete inventories to their estimated net realizable value.
16. We believe that all material expenditures that have been deferred to future periods will be recoverable.

17. We believe that the actuarial assumptions and methods used to measure pension and other postemployment benefits (OPEB) liabilities and costs for financial accounting purposes are appropriate in the circumstances.
18. We do not plan to make frequent amendments to our pension or other postretirement benefit plans.
19. We have complied with all secondary reporting requirements under SEC Rule No. 240.15c2-12, as outlined in the covenants to our bond issues.
20. We understand TABOR (Section 20 to Article X of the Colorado Constitution) is complex and subject to interpretation and that many of the provisions will require judicial interpretation. We have reviewed the various provisions and interpretations and believe to the best of our knowledge at this time that the City is in compliance with TABOR.
21. We have informed all banking and savings and loan institutions that our deposits are subject to the respective Public Deposit Protection Act and have provided banking institutions with our assigned number.

#### Information Provided

1. We have provided you with:
  - a. Access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters.
  - b. Additional information that you have requested from us for the purpose of the audit.
  - c. Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
  - d. Complete minutes of the meetings of the governing board and related committees, or summaries of actions of recent meetings for which minutes have not yet been prepared.
  - e. All communications from regulatory agencies, grantors, lenders, and other funding sources concerning noncompliance with, or deficiencies in, financial reporting practices.
  - f. All communications from regulatory agencies, grantors, lenders, and other funding sources concerning noncompliance with the provisions of laws, regulations, contracts, and grant agreements.
  - g. Access to all audit or relevant monitoring reports, if any, received from funding sources.
2. All material transactions have been recorded in the accounting records and are reflected in the financial statements and the schedule of expenditures of federal awards.
3. We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.

4. We have no knowledge of any fraud or suspected fraud that affects the entity and involves:
  - a. Management;
  - b. Employees who have significant roles in internal control; or
  - c. Others when the fraud could have a material effect on the financial statements.
5. We have no knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, grantors, regulators, or others.
6. We have no knowledge of any instances of noncompliance or suspected noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse whose effects should be considered when preparing financial statements.
7. We have disclosed to you all known actual or possible litigation, claims, and assessments whose effects should be considered when preparing the financial statements.
8. There are no other material liabilities or gain or loss contingencies that are required to be accrued or disclosed in accordance with U.S. GAAP.
9. We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.
10. We have a process to track the status of audit findings and recommendations.
11. We have identified to you any previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.
12. We have provided our views on reported findings, conclusions, and recommendations, as well as our planned corrective actions, for the report.
13. We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to the City, including tax or debt limits and debt contracts; and we have identified and disclosed to you all laws, regulations, and provisions of contracts and grant agreements that we believe have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives, including legal and contractual provisions for reporting specific activities in separate funds.
14. There are no violations or possible violations of budget ordinances, laws and regulations (including those pertaining to adopting, approving, and amending budgets), provisions of contracts and grant agreements, tax or debt limits, and any related debt covenants whose effects should be considered for disclosure in the financial statements, or as a basis for recording a loss contingency, or for reporting on noncompliance.

15. The entity has complied with all aspects of contractual or grant agreements that would have a material effect on the financial statements in the event of noncompliance.
16. We have complied with all restrictions on resources (including donor restrictions) and all aspects of contractual and grant agreements that would have a material effect on the financial statements in the event of noncompliance. This includes complying with donor requirements to maintain a specific asset composition necessary to satisfy their restrictions.
17. We have followed all applicable laws and regulations in adopting, approving, and amending budgets.
18. The financial statements include all component units as well as joint ventures with an equity interest, and properly disclose all other joint ventures, jointly governed organizations, and other related organizations.
19. The financial statements properly classify all funds and activities.
20. All funds that meet the quantitative criteria in GASB Statement Nos. 34 and 37 for presentation as major are identified and presented as such and all other funds that are presented as major are particularly important to financial statement users.
21. Components of net position (net investment in capital assets; restricted; and unrestricted) and equity amounts are properly classified and, if applicable, approved.
22. Investments, derivative instruments, and land and other real estate held by endowments are properly valued.
23. Provisions for uncollectible receivables have been properly identified and recorded.
24. Expenses have been appropriately classified in or allocated to functions and programs in the statement of activities, and allocations have been made on a reasonable basis.
25. Revenues are appropriately classified in the statement of activities within program revenues, general revenues, contributions to term or permanent endowments, or contributions to permanent fund principal.
26. Interfund, internal, and intra-entity activity and balances have been appropriately classified and reported.
27. Deposits and investment securities and derivative instruments are properly classified as to risk and are properly valued and disclosed.
28. Capital assets, including infrastructure and intangible assets, are properly capitalized, reported, and, if applicable, depreciated.



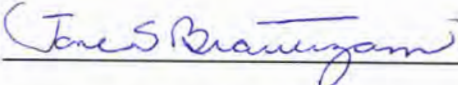
29. We have appropriately disclosed the entity's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position is available and have determined that net position is properly recognized under the policy.
30. We acknowledge our responsibility for the required supplementary information (RSI). The RSI is measured and presented within prescribed guidelines and the methods of measurement and presentation have not changed from those used in the prior period. We have disclosed to you any significant assumptions and interpretations underlying the measurement and presentation of the RSI.
31. We acknowledge our responsibility for presenting the combining fund financials and statements and the local highway finance report (the supplementary information) in accordance with U.S. GAAP, and we believe the supplementary information, including its form and content, is fairly presented in accordance with U.S. GAAP. The methods of measurement and presentation of the supplementary information have not changed from those used in the prior period, and we have disclosed to you any significant assumptions or interpretations underlying the measurement and presentation of the supplementary information. If the supplementary information is not presented with the audited financial statements, we will make the audited financial statements readily available to the intended users of the supplementary information no later than the date we issue the supplementary information and the auditors' report thereon.
32. In regards to the GASB Statement Nos. 68/71 and GASB Statement No. 75 preparation services (nonattest services) performed by you, we have:
  - a. Made all management judgments and decisions and assumed all management responsibilities.
  - b. Designated an individual who possesses suitable skill, knowledge, and/or experience to understand and oversee the services.
  - c. Evaluated the adequacy and results of the services performed.
  - d. Accepted responsibility for the results of the services.
33. With respect to federal award programs:
  - a. We are responsible for understanding and complying with, and have complied with the requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) including requirements relating to preparation of the schedule of expenditures of federal awards.

- b. We acknowledge our responsibility for presenting the schedule of expenditures of federal awards (SEFA) and related notes in accordance with the requirements of the Uniform Guidance, and we believe the SEFA, including its form and content, is fairly presented in accordance with the Uniform Guidance. The methods of measurement and presentation of the SEFA have not changed from those used in the prior period, and we have disclosed to you any significant assumptions and interpretations underlying the measurement and presentation of the SEFA.
- c. If the SEFA is not presented with the audited financial statements, we will make the audited financial statements readily available to the intended users of the SEFA no later than the date we issued the SEFA and the auditors' report thereon.
- d. We have identified and disclosed to you all of our government programs and related activities subject to the Uniform Guidance compliance audit, and included in the SEFA expenditures made during the audit period for all awards provided by federal agencies in the form of federal awards, federal cost-reimbursement contracts, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other direct assistance.
- e. We are responsible for understanding and complying with, and have complied with, the requirements of federal statutes, regulations, and the terms and conditions of federal awards related to each of our federal programs and have identified and disclosed to you the requirements of federal statutes, regulations, and the terms and conditions of federal awards that are considered to have a direct and material effect on each major program.
- f. We are responsible for establishing and maintaining, and have established and maintained, effective internal control over compliance for federal programs that provides reasonable assurance that we are managing our federal awards in compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a material effect on our federal programs. We believe the internal control system is adequate and is functioning as intended.
- g. We have made available to you all federal awards (including amendments, if any) and any other correspondence with federal agencies or pass-through entities relevant to federal programs and related activities.
- h. We have received no requests from a federal agency to audit one or more specific programs as a major program.
- i. We have complied with the direct and material compliance requirements, including when applicable, those set forth in the *OMB Compliance Supplement*, relating to federal awards and confirm that there were no amounts questioned and no known noncompliance with the direct and material compliance requirements of federal awards.

- j. We have disclosed to you any communications from federal awarding agencies and pass-through entities concerning possible noncompliance with the direct and material compliance requirements, including communications received from the end of the period covered by the compliance audit to the date of the auditors' report.
- k. We have disclosed to you the findings received and related corrective actions taken for previous audits, attestation engagements, and internal or external monitoring that directly relate to the objectives of the compliance audit, including findings received and corrective actions taken from the end of the period covered by the compliance audit to the date of the auditors' report.
- l. Amounts claimed or used for matching were determined in accordance with relevant guidelines in OMB's Uniform Guidance (2 CFR part 200, subpart E) and OMB Circular A-87, *Cost Principles State, Local, and Tribal Governments*, and OMB Circular A-102 *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*.
- m. We have disclosed to you our interpretation of compliance requirements that may have varying interpretations.
- n. We have made available to you all documentation related to compliance with the direct and material compliance requirements, including information related to federal program financial reports and claims for advances and reimbursements.
- o. We have disclosed to you the nature of any subsequent events that provide additional evidence about conditions that existed at the end of the reporting period affecting noncompliance during the reporting period.
- p. There are no known instances of noncompliance with direct and material compliance requirements that occurred subsequent to the period covered by the auditors' report.
- q. We have disclosed to you whether any changes in internal control over compliance or other factors that might significantly affect internal control, including any corrective action we have taken regarding significant deficiencies and/or material weaknesses in internal control over compliance, have occurred subsequent to the period covered by the auditors' report.
- r. Federal program financial reports and claims for advances and reimbursements are supported by the books and records from which the basic financial statements have been prepared.
- s. The copies of federal program financial reports provided to you are true copies of the reports submitted, or electronically transmitted, to the respective federal agency or pass-through entity, as applicable.
- t. We have monitored subrecipients, as necessary, to determine that they have expended subawards in compliance with federal statutes, regulations, and the terms and conditions of the subaward and have met the other pass-through entity requirements of the Uniform Guidance.



- u. We have issued management decisions for audit findings that relate to federal awards made to subrecipients and such management decisions have been issued within six months of acceptance of the audit report by the Federal Audit Clearinghouse. Additionally, we have followed-up ensuring that the subrecipient has taken timely and appropriate action on all deficiencies detected through audits, on-site reviews, and other means that pertain to the federal award provided to the subrecipient.
- v. We have considered the results of subrecipient audits and have made any necessary adjustments to our books and records.
- w. We have charged costs to federal awards in accordance with applicable cost principles.
- x. We are responsible for and have accurately prepared the summary schedule of prior audit findings to include all findings required to be included by the Uniform Guidance, and we have provided you with all information on the status of the follow-up on prior audit findings by federal awarding agencies and pass-through entities, including all management decisions.
- y. We are responsible for and have ensured the reporting package does not contain protected personally identifiable information.
- z. We are responsible for and have accurately prepared the auditee section of the Data Collection Form as required by the Uniform Guidance.
- aa. We are responsible for taking corrective action on each audit finding of the compliance audit and have developed a corrective action plan that meets the requirements of the Uniform Guidance.
- bb. We have disclosed to you all contracts or other agreements with service organizations, and we have disclosed to you all communications from the service organizations relating to noncompliance at the service organizations.

Signature:  Title: City Manager

Signature:  Title: Chief Financial Officer

Signature:  Title: Controller

APPROVED AS TO FORM  
OFFICE OF THE CITY ATTORNEY



CliftonLarsonAllen LLP  
CLAconnect.com

Honorable Mayor, Members of City Council and Management  
City of Boulder, Colorado  
Boulder, Colorado

In planning and performing our audit of the financial statements of the City of Boulder, Colorado (the City) as of and for the year ended December 31, 2018, in accordance with auditing standards generally accepted in the United States of America, we considered the entity's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we do not express an opinion on the effectiveness of the entity's internal control.

However, during our audit we became aware of deficiencies in internal control other than significant deficiencies and material weaknesses and other matters that are opportunities to strengthen your internal control and improve the efficiency of your operations. Our comments and suggestions regarding those matters are summarized below. A separate communication dated June 24, 2019, contains our written communication of significant deficiencies and/or material weaknesses in the County's internal control. This letter does not affect our communication dated June 24, 2019.

### **Information Technology Recommendations:**

#### **Organization & Management Controls**

1 – Critical policies, standards, guidelines and procedures have not been documented or updated to reflect the current operating environment as the foundation for protecting non-public information and information technology assets.

***Recommendation:*** *The City should establish or update policies that do not currently reflect the operating environment. These policies should be annually reviewed.*

- *Business Continuity Plan (establish)*
- *Data Classification Policy (establish)*

*Implementing these practices will reinforce consistent performance and establishing expectations to mitigate the risk of unacceptable use of technology, unauthorized disclosure, misuse, alteration, destruction or other compromise of data.*

***Management's Response:*** *Management acknowledges this finding and continues to look for opportunities to advance the recommended policy changes. The IT and Finance departments have started a project to establish a Munis Business Continuity Plan which will conclude in 2019. Several city working groups, including Central Records, the IT Transformation Program and the IT Security program are starting to collaborate on modernization of the City's data policies.*

### **Server Administration**

2 – The City is currently running Windows Server 2003 and Windows XP operating systems on its internal network. The business process owner utilizing unsupported operating systems is required to submit an IT Security Exception Request form that includes a justification and the form must be approved by the requestor, department head, department director, and IT director.

**Recommendation:** *The City should retire all unsupported operating systems. Microsoft no longer provides security updates, therefore, as new vulnerabilities are discovered the operating system will not be patched to protect against an exploit.*

*If upgrading is not possible in the near term due to software that doesn't work on a supported operating system the organization should consider the following:*

- *Consider transferring to another vendor*
- *If it's not required for day-to-day operations, shut it down and turn it on only as required*
- *If you cannot turn it off, ensure that it has up to date and supported security software installed.*
- *Disconnect or otherwise isolate it from the production network to avoid malware attacks.*
- *If it must remain connected to the network, prevent it from accessing the internet and other internal systems where not required.*
- *Consider configuring Windows firewall or a third party firewall to limit access as much as possible.*

**Management's Response:** *The IT Department acknowledges this finding and makes a continuous effort to document legacy systems, facilitate their replacement, and implement safeguards to protect the environment from the risks they introduce. The applicable systems are only tolerated because they contribute to a documented business requirement for the city had to remain operational in the current environment to sustain critical city services.*

- *Windows Server 2003 – 2 instances*
  - *PD-App – This server is managed by the Police Department. It supports a legacy police records system, retained for archival purposes. This server is network segregated, read only, and has access control safeguards. The estimated decommissioning schedule for this server has not been established.*
- *Windows XP – 1 \*new\* instance*
  - *An XP virtual machine, no network interfaces, runs only when in use. It generates a high value transportation safety report. An agreement is in place between IT and Public Works to use a different method to generate the report after September 2019. The XP instance will be deleted at that time.*

- *CentOS 5 – 3 instances*
  - *stxapp – This server hosts a sales tax application. It is being replaced by a new solution whose implementation is in-progress. The estimated decommissioning schedule for this server is dependent on the outcome of the FAST sales tax application project which will be active through 2020.*
  - *pdsftp – This server allows city GIS partners to exchange bulk mapping data. Its replacement is a milestone of an active IT project. The estimated decommissioning schedule for this server is fall 2019.*
  - *cvs – This server hosts legacy source control, retained for archival purposes. Its replacement is a milestone of an active IT project. The estimated decommissioning schedule for this server is fall 2019.*

### **User Account Administration**

3 – User Account Deprovisioning: For standard terminations, IT and application process owners are provided a list of bi-weekly terminations via email. The list does not include: interns, temporary, contract, or seasonal workers.

For high risk terminations the employee's direct supervisor and/or human resources will contact the IT Department on the date of termination to remove Active Directory access immediately. An IT Help Desk ticket is generated.

The human resources bi-weekly terminations are not a complete list.

Significant delays can result in the time a user is terminated and the time IT and application system owners are notified of the departure.

High risk termination communication is limited to the IT Department and not application process owners. Several application systems are not dependent on valid Windows Active Directory credentials.

***Recommendation:*** *The City should establish a structured process and procedure for timely and complete notification of terminations to IT and application process owners. This will reduce the risk of user accounts that are not disabled at the appropriate time from network resources and applications due to either voluntary resignation or involuntary termination resulting in unauthorized or inappropriate activity.*

***Management's Response:*** *The IT Department has implemented a nightly programmatic procedure for disabling employees in our Active Directory environment who have been marked as terminated or otherwise inactive in our Human Resources system of record. The IT Department and Human Resources have a manual, confidential procedure to address elevated risk terminations.*

*The improvements that have been implemented have not fully addressed the City's overall need for identity management. Long term project work is needed to implement robust processes for onboarding, termination, user provisioning, and access control.*

4 – User Account Provisioning: The City has a structured process and procedure through the use of a standard "New User Account Creation Form" that generates a help desk ticket for establishing new users.

Changes to existing accounts do not follow a structured process and procedure.

**Recommendation:** *The City should implement a structured process to change user accounts. This should include documented authorization from the respective supervisor or business process owner. The City should consider establishing a list of 'authorized approvers' by area that have the authority to approve such requests.*

**Management's Response:** *The IT Department has implemented a programmatic process to inherit changes to user accounts from our Human Resources system of record to our Active Directory environment. When an employee changes department, the IT Service Desk implements a manual process to review previous permissions and work with the employee's new supervisor to determine what the employee's new profile should be. This process is not automated and routinely results in errors and privilege creep.*

*The improvements that have been implemented have not fully addressed the City's overall need for identity management. Long term project work is needed to implement robust processes for onboarding, termination, user provisioning, and access control.*

We will review the status of these comments during our next audit engagement. We have already discussed many of these comments and suggestions with various entity personnel, and we will be pleased to discuss them in further detail at your convenience, to perform any additional study of these matters, or to assist you in implementing the recommendations.

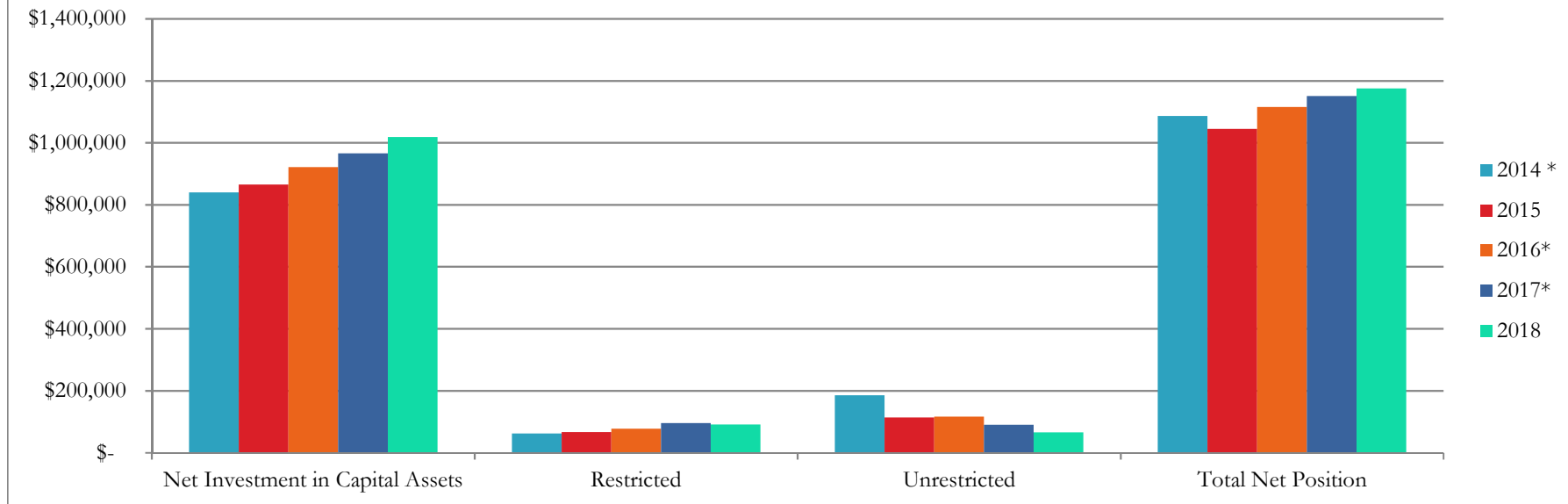
This communication is intended solely for the information and use of management, City Council, and others within the entity, and is not intended to be, and should not be, used by anyone other than these specified parties.



**CliftonLarsonAllen LLP**

Broomfield, Colorado  
June 24, 2019

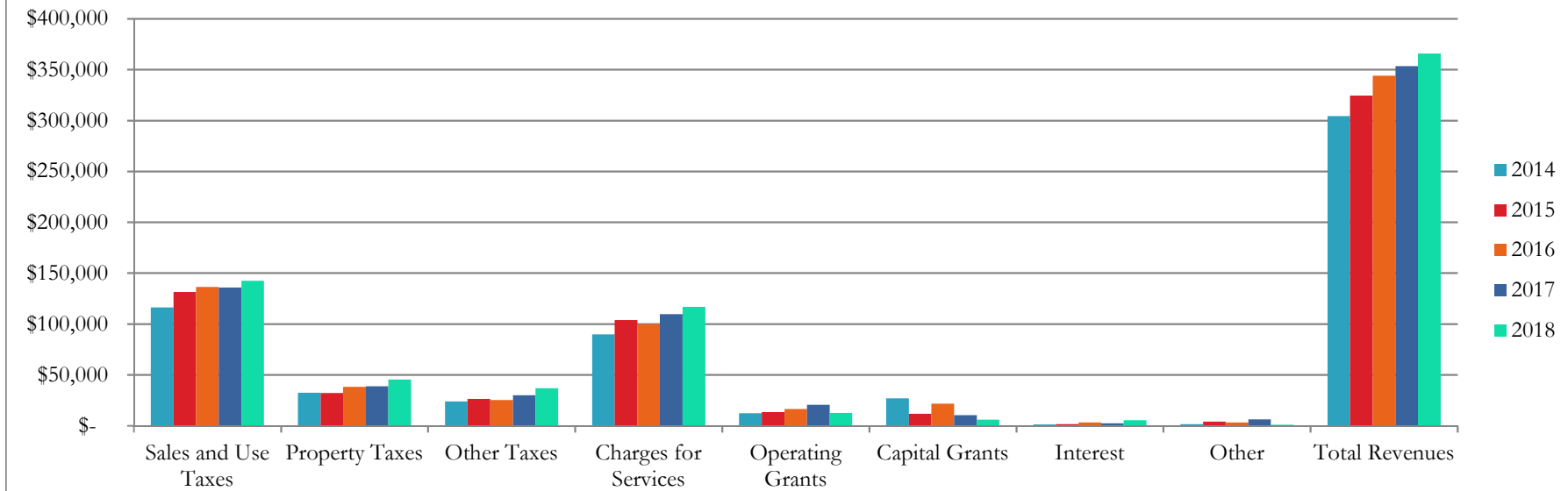
### Entity-wide Net Position at December 31, 20XX (in thousands)



Entity-wide Net Position at December 31, 20XX (in thousands)					
	2014 *	2015	2016*	2017*	2018
Net Investment in Capital Assets	\$ 839,358	\$ 864,957	\$ 921,454	\$ 965,721	\$ 1,018,331
Restricted	61,679	65,963	77,671	94,934	91,066
Unrestricted	185,407	113,665	115,990	89,627	65,283
<b>Total Net Position</b>	<b>\$ 1,086,444</b>	<b>\$ 1,044,585</b>	<b>\$ 1,115,115</b>	<b>\$ 1,150,282</b>	<b>\$ 1,174,680</b>

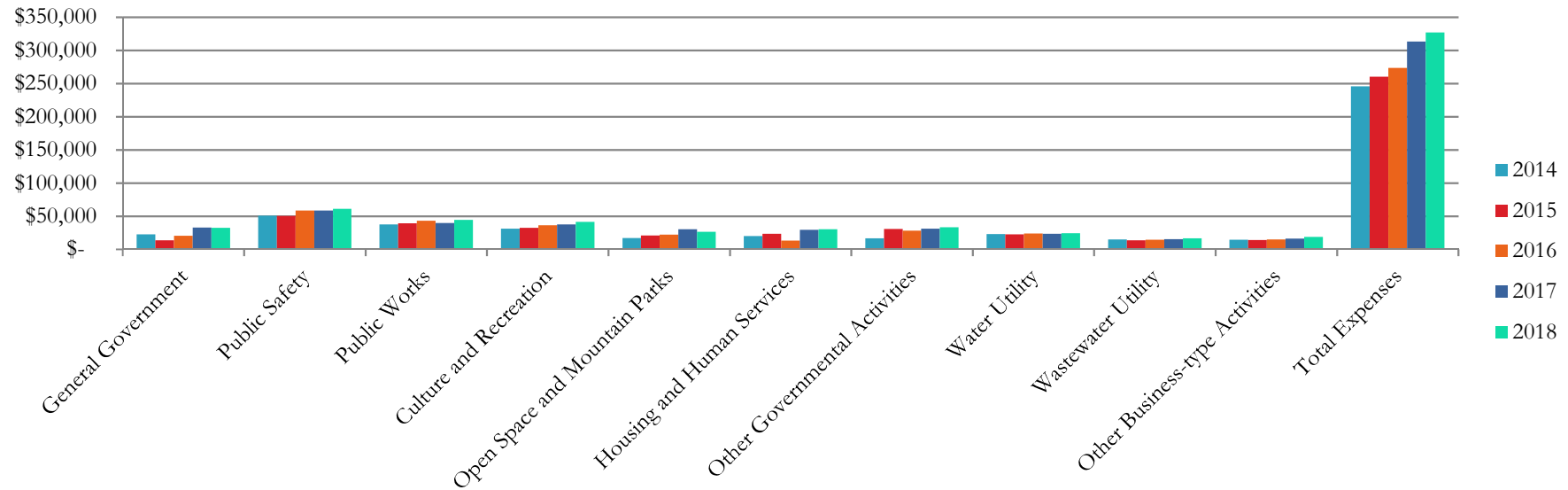
\*Amounts Not Restated

## Entity-wide Revenues by Source for the Year Ended December 31, 20XX (in thousands)



Entity-wide Revenues by Source for the Year Ended December 31, 20XX (in thousands)					
	2014	2015	2016	2017	2018
Sales and Use Taxes	\$ 116,316	\$ 131,323	\$ 136,269	\$ 135,913	\$ 142,344
Property Taxes	32,366	32,024	38,190	38,654	45,254
Other Taxes	23,924	26,427	25,207	29,950	36,672
Charges for Services	89,748	103,930	99,823	109,615	116,723
Operating Grants	12,213	13,331	16,520	20,564	12,645
Capital Grants	26,889	11,840	21,619	10,217	5,921
Interest	1,230	1,583	3,049	2,376	5,310
Other	1,601	3,928	3,189	6,195	1,027
<b>Total Revenues</b>	<b>\$ 304,287</b>	<b>\$ 324,386</b>	<b>\$ 343,866</b>	<b>\$ 353,484</b>	<b>\$ 365,896</b>

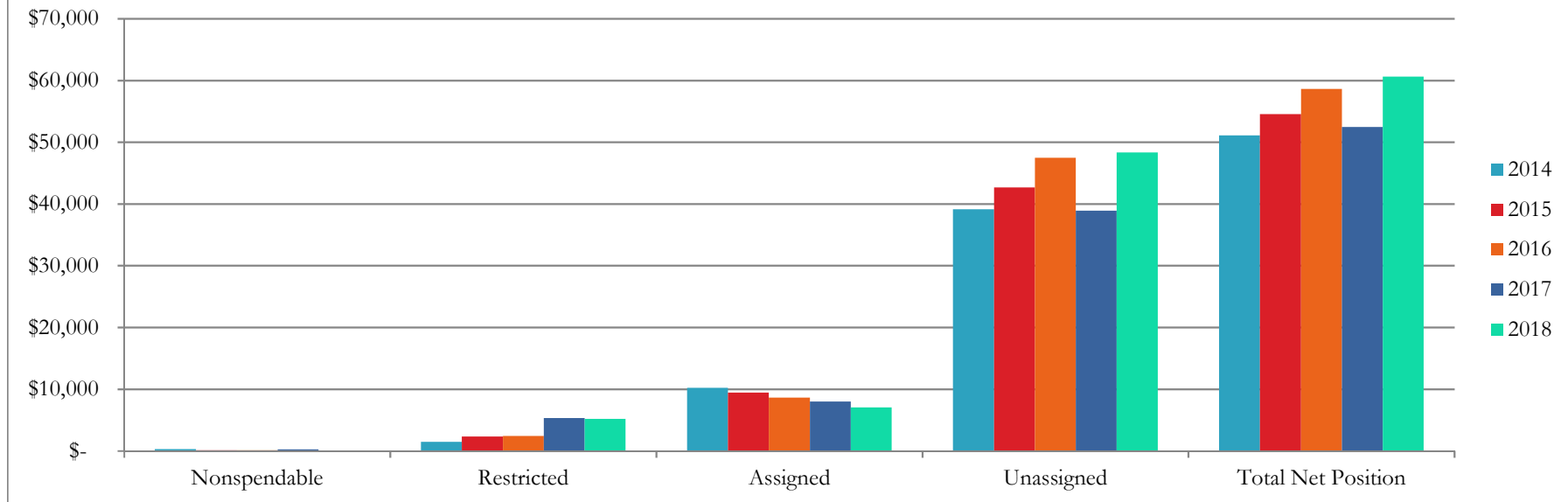
## Entity-wide Expenses by Function for the Year Ended December 31, 20XX (in thousands)



Entity-wide Expenses by Function for the Year Ended December 31, 20XX (in thousands)					
	2014	2015	2016	2017	2018
General Government	\$ 22,406	\$ 13,436	\$ 20,073	\$ 32,773	\$ 32,376
Public Safety	50,662	50,190	58,151	58,350	60,970
Public Works	37,406	39,117	43,112	39,571	44,305
Culture and Recreation	30,819	32,247	36,216	37,359	41,175
Open Space and Mountain Parks	16,774	20,922	22,010	30,110	26,200
Housing and Human Services	19,795	23,400	13,085	29,214	30,078
Other Governmental Activities	16,375	30,525	28,165	31,080	33,067
Water Utility	22,644	22,546	23,540	23,431	24,118
Wastewater Utility	14,703	13,550	14,309	15,125	16,270
Other Business-type Activities	14,167	14,074	14,675	15,978	18,425
<b>Total Expenses</b>	<b>\$ 245,751</b>	<b>\$ 260,007</b>	<b>\$ 273,336</b>	<b>\$ 312,991</b>	<b>\$ 326,984</b>

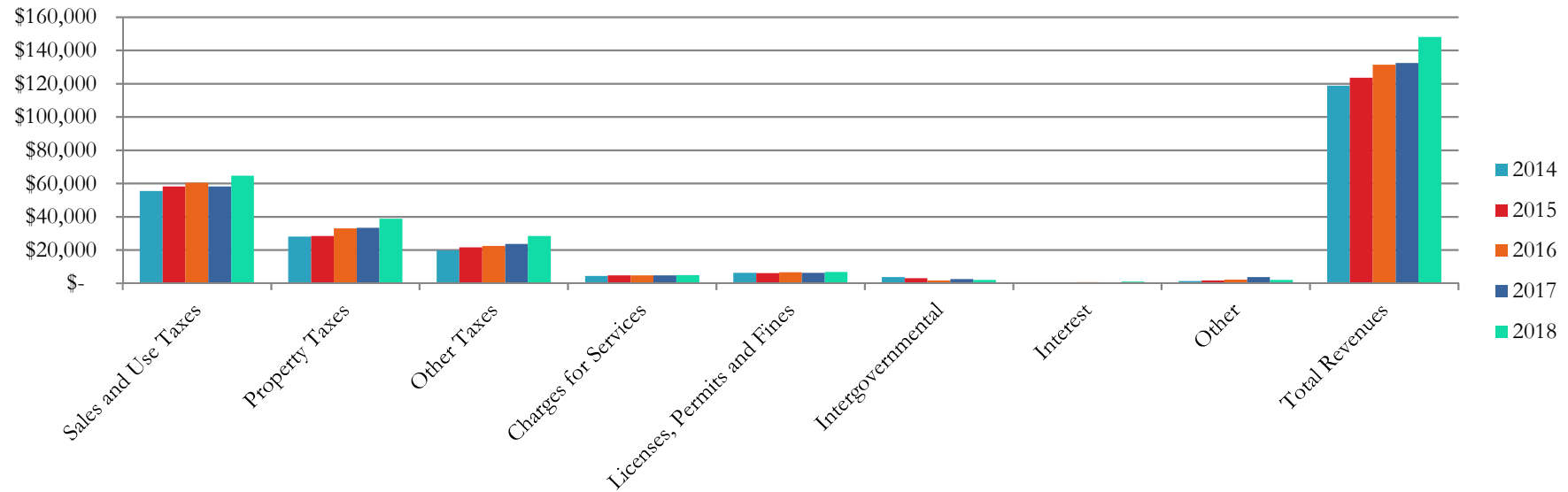


## General Fund Net Position at December 31, 20XX (in thousands)



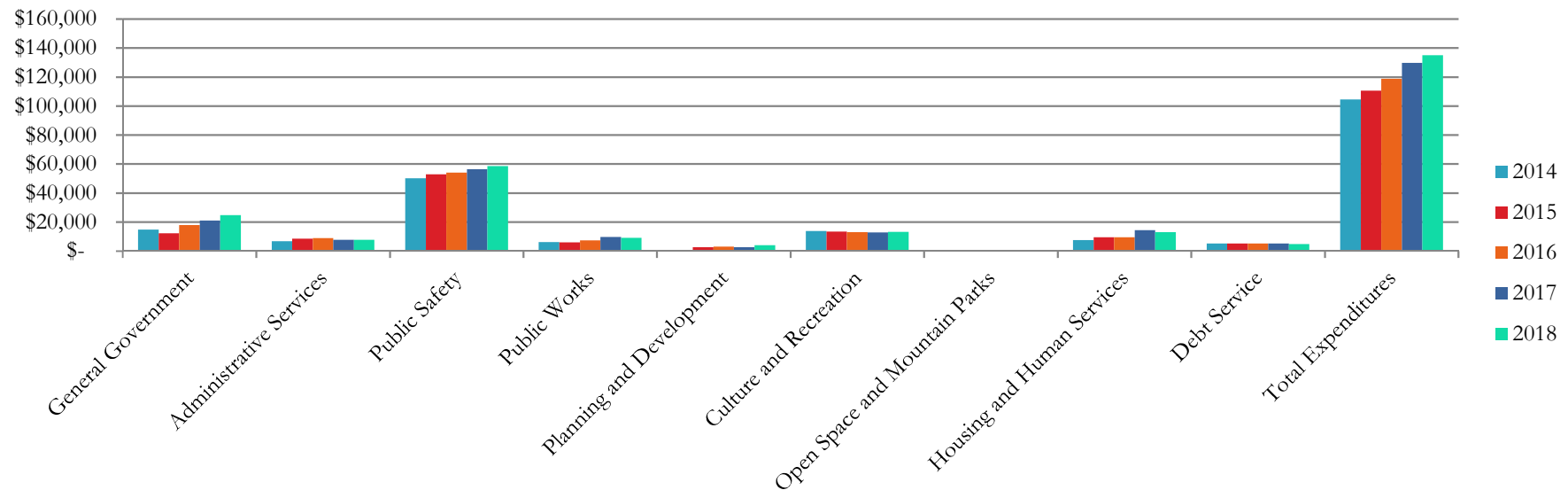
General Fund Net Position at December 31, 20XX (in thousands)					
	2014	2015	2016	2017	2018
Nonspendable	\$ 260	\$ 115	\$ 122	\$ 221	\$ 48
Restricted	1,481	2,315	2,394	5,306	5,192
Assigned	10,202	9,450	8,619	8,007	7,049
Unassigned	39,129	42,674	47,487	38,922	48,326
<b>Total Net Position</b>	<b>\$ 51,072</b>	<b>\$ 54,554</b>	<b>\$ 58,622</b>	<b>\$ 52,456</b>	<b>\$ 60,615</b>

## General Fund Revenues for the Year Ended December 31, 20XX (in thousands)



General Fund Revenues for the Year Ended December 31, 20XX (in thousands)					
	2014	2015	2016	2017	2018
Sales and Use Taxes	\$ 55,457	\$ 58,108	\$ 60,305	\$ 58,094	\$ 64,573
Property Taxes	28,041	28,394	33,005	33,218	38,789
Other Taxes	19,597	21,469	22,334	23,611	28,272
Charges for Services	4,374	4,743	4,735	4,703	4,869
Licenses, Permits and Fines	6,151	6,002	6,592	6,294	6,694
Intergovernmental	3,732	2,951	1,551	2,486	1,941
Interest	251	288	604	376	925
Other	1,252	1,657	2,176	3,671	1,978
<b>Total Revenues</b>	<b>\$ 118,855</b>	<b>\$ 123,612</b>	<b>\$ 131,302</b>	<b>\$ 132,453</b>	<b>\$ 148,041</b>

## General Fund Expenditures for the Year Ended December 31, 20XX (in thousands)



General Fund Expenditures for the Year Ended December 31, 20XX (in thousands)					
	2014	2015	2016	2017	2018
General Government	\$ 14,831	\$ 12,265	\$ 17,858	\$ 21,057	\$ 24,745
Administrative Services	6,773	8,480	8,836	7,643	7,678
Public Safety	50,196	52,789	54,092	56,301	58,619
Public Works	6,052	5,901	7,346	9,584	9,081
Planning and Development	58	2,701	2,948	2,627	4,033
Culture and Recreation	13,768	13,462	13,057	12,856	13,098
Open Space and Mountain Parks	90	189	80	80	82
Housing and Human Services	7,466	9,517	9,375	14,414	12,903
Debt Service	5,181	5,166	5,154	5,149	4,800
<b>Total Expenditures</b>	<b>\$ 104,415</b>	<b>\$ 110,470</b>	<b>\$ 118,746</b>	<b>\$ 129,711</b>	<b>\$ 135,039</b>



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Items related to a marijuana board and marijuana regulations: 1. Continued Second reading and consideration of a motion to adopt Ordinance 8338 amending Chapter 2-3, by adding a new Section 2-3-25, "Marijuana Licensing Authority," B.R.C. 1981, pertaining to the composition, duties and powers of a new city board related to marijuana issues; and 2. Continued Second Reading and consideration of a motion to adopt Ordinance 8345 amending Sections 6-14-3(e) "License Required" and 6-16-3(e) "License Required," B.R.C. 1981, creating an option to transfer a marijuana license if the purchase is an arms-length with a third party, resulting in a 100% change in ownership and management and setting forth related details.

### **PRIMARY STAFF CONTACT**

Sandra Llanes, Deputy City Attorney

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3G-Marijuana Matters (8338 & 8345)**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE**

Continued second reading and consideration of a motion to adopt Ordinance 8338 creating a Marijuana Licensing Authority; and Ordinance 8345 creating an option to transfer a marijuana license.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Thomas A. Carr, City Attorney  
Sandra Llanes, Deputy City Attorney  
Kathleen Haddock, Senior Counsel  
Mishawn Cook, Licensing Manager

**EXECUTIVE SUMMARY**

On May 21, 2018, city council directed staff to bring forward an ordinance with input from the Marijuana Advisory Panel to create a marijuana licensing authority; evaluate the marijuana penalty schedule for potential changes; and study whether violations should or should not carry over in marijuana license transfers. The purpose of this agenda item is for a continued second reading on a proposed ordinance that would create a marijuana licensing authority and a second proposed ordinance that would allow transfers when the transaction is an arms-length third party sale with 100% change in ownership and management. Violations would not carry over in marijuana license transfers when the transaction is an arms-length third party sale with 100% change in ownership and management as reflected in a city manager rule.

City council held a public hearing and discussion of these ordinances on August 13, 2019. Ordinance 8338 – Attachment A – has been updated to reflect some non-substantive, clerical changes as a result of council's input at the public hearing on August 13, 2019. Ordinance 8345 has no changes.

## STAFF RECOMMENDATION

### **Suggested Motion Language:**

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

Motion to adopt Ordinance 8338 amending Chapter 2-3, by adding a new Section 2-3-25, “Marijuana Licensing Authority,” B.R.C. 1981, pertaining to the composition, duties and powers of a new city board related to marijuana issues; and Ordinance 8345 amending Sections 6-14-3(e) “License Required” and 6-16-3(e) “License Required,” B.R.C. 1981, creating an option to transfer a marijuana license if the purchase is an arms-length with a third party, resulting in a 100% change in ownership and management and setting forth related details.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The marijuana industry is a part of the city’s economy. The proposed changes are intended to support a vital and well-regulated marijuana industry in Boulder.
- Environmental – none anticipated
- Social – Social impacts of recreational marijuana use are a matter of dispute. The proposed ordinances will continue the city’s practice of supporting a well-regulated marijuana industry.

## OTHER IMPACTS

- Fiscal - The formation of a new board will require additional staff resources and costs. Currently, the city code is structured so that marijuana licensing fees paid by marijuana businesses are set to cover all of the costs of licensing. Creating a board will require either increasing marijuana application fees, subsidization from the general fund of marijuana licensing, or relying on marijuana tax revenue.
- Staff times - Additional staff will be necessary to support the board and ongoing marijuana regulation changes. Depending on the authority provided to the board, the City Attorney’s Office may need an additional FTE to support the board and handle any other marijuana related matters. Licensing staff may need one additional FTE, with a second FTE possibly needed, depending on the additional work necessary for responsibilities of the board. Some additional non personnel expense may be necessary to outsource specialty research and/or forensic application review if such expertise cannot be found in house. While some of the work related to consideration of policy matters is included in existing work plans, extensive policy analysis and actions on individual licenses is not included in any existing work plans. The level of staff work required will depend upon the nature and extent of the authority with which council provides the board. A board with quasi-judicial authority to issue licenses and regulate businesses would require more staff support than a board that has only advisory authority.

## **BOARD AND COMMISSION FEEDBACK**

The Marijuana Advisory Panel (MAP) met on June 26, 2019, to discuss the formation of a Marijuana Licensing Authority, evaluate and propose changes to the Marijuana Penalty Schedule and address the question of whether violations should or should not carry over in license transfers.

## **BACKGROUND**

On May 21, 2019, council asked MAP to provide a recommendation as to whether the new marijuana board should include enforcement responsibilities along with licensing duties; to evaluate and propose potential changes to the Marijuana Penalty Schedule, and address the question of whether violations should/should not carry over in license transfers.

## **ANALYSIS**

Following is a summary of each issue addressed by MAP and their recommendations (**Attachment C**).

### Formation of a Marijuana Licensing Authority

MAP recommends that council create a Marijuana Licensing Authority (the “MLA” or “Authority”). MAP’s previous recommendation provided to council on May 21, 2019, remains the same with the exception of enforcement duties. The term “enforcement,” as used in this memorandum, means the administration of violations and imposition of penalties on marijuana licenses. MAP recommends that the structure remain the same in that the Authority’s duties would include policy and licensing but not include enforcement duties. The MAP recommends leaving enforcement responsibilities to be determined by the city manager .

### Recommended Structure

The MAP recommends that the MLA be both a policy and licensing board like the Beverage Licensing Authority (“BLA”). However, the BLA, which functions in a more settled regulatory environment, is roughly 80% licensing and 20% policy; the MLA would likely be 80% policy and 20% licensing. Initially, however, the MAP recommends that the MLA be limited to an advisory role. The licensing duties should be phased in over time. The MAP recommends that the phase in period be no less than six months and no longer than two years; the timing of the phasing to be determined by the MLA. The phasing period is intended to provide the MLA with an opportunity to address time-sensitive recommendations regarding policy and potential code changes and to ramp up on the quasi-judicial nature of its licensing role.

### Recommended MLA Mission/Charter

To promote the Boulder community’s interests and values in the local regulation of marijuana, while considering the downstream consequences of such regulations on the

community and on public health and safety, while supporting economic development and congruence between local ordinances and state laws.

### Advisory

In its policy capacity, MAP recommends the MLA address:

- Remaining topics from MAP's work including Title 9, state legislative issues and items listed in a letter to council from MAP dated December 18, 2017, for consideration at their January 2018 retreat (**Attachment D**).
- Questions of jurisdictional parity.
- Topics initiated by council, MLA itself, city staff, and topics initiated by community members.

### Licensing

MAP recommends the MLA begin as a board focused purely on policy and will phase in its licensing duties after no less than six months and no longer than two years. Like the BLA, the MLA will establish guidelines for determining what type of license matters will come before the board and which will be handled administratively by licensing staff (**Attachment E**). The MLA will determine the timing and scope of its licensing duties during this transition phase. All licensing duties will continue to be handled by city staff until the MLA determines otherwise.

Licensing Duties include:

- New applications.
- Renewals.
- Transfers.
- Major Modifications for licensed premises.
- Recreational Marijuana Conversions and Co-locations.
- License business entity ownership changes.
- Name change if public comment received

### Enforcement

All enforcement duties related to violations and penalty phase will continue to be administered by city staff. This function will not become a function of the new Authority, unless otherwise determined by council by ordinance. Council had previously requested research regarding how other jurisdictions structure licensing and enforcement duties. That research is included with this memo as **Attachment F**.

### MLA Members

MAP recommends seven members who are at least 21 years of age or older with the potential appointment of ex officio members at council's discretion. The ex-officio positions are intended for non-residents from the candidate pool, who would otherwise qualify under one of the recommended qualifications but are prohibited from being on a city board because of the resident status requirement.



It is recommended (but not required) that MLA members be selected from a pool of candidates with some of the following qualifications:

- Representation of the community at large.
- Diversity.
- Reflection of community values.
- Involvement in the education community.
- Involvement in the public/mental health communities.
- Involvement in the marijuana business.
- Knowledge of marijuana laws and regulations.
- Involvement in the business community (other than marijuana business).

Staff recommends that the council consider the number of industry representatives on the MLA. While such individuals can certainly contribute to the dialog, on a board with quasi-judicial powers, they can have an inherent conflict of interest. BLA generally has only one or two industry representatives on a board made up of five members.

#### Marijuana Penalty Schedule

MAP and city staff discussed potential changes to the Marijuana Penalty Schedule and created a new penalty schedule that will be implemented by city manager rule (**Attachment G**).

The BLA penalty schedule was used as a guide in making changes. In summary, violations were grouped as either egregious or non-egregious. Egregious violations typically involve major health and safety issues while non-egregious violations typically involve operational issues. The new penalty schedule removes revocation from the chart; however, it is understood that revocation is always an available option in particularly egregious situations. The former penalty schedule was comprised of mostly fines whereas the new penalty schedule is guided by suspensions days and days in abeyance for retail establishments. Suspension mean that a business must close and is not able to sell its product. In addition, it is required to post a sign that says it violated the law and as a result, is closed. This is the same process as the BLA penalty schedule.

The penalty for MIPs and grows are fines and not suspensions because a suspension (closure to the public) would have no effect on the business.

#### Violations dropping off or carrying over in license transfers

MAP and city staff had a robust discussion regarding whether violations should or should not carry over in license transfers. A summary of that June 26, 2019 discussion is included with this memo as **Attachment H**.

The MAP's recommendation is as follows:

- Violations will no longer be considered in the assessment of penalties five years after a final decision on the enforcement penalty, as is the case for liquor.
- Provide an option for applicants who want to transfer their license but also want violations to be dropped off of their license when transferred. This option would be available for an additional fee to cover the third party investigation cost necessary to verify that the applicant meets the city's criteria which would require: (a) 100% ownership change in an arms-length, third party transaction; (b) evidence of an adequate change in management and daily operational oversight of the licensed business; and (c) evidence of rehabilitation so that further violations do not occur. Businesses transferring licenses that want violations to drop off would pay the city for a third-party investigation to determine the validity of their transfer based on an average of the overall costs of those investigations. The applicant would have to pay for the investigation regardless of whether the transfer application was approved or not. Depending on the results of the investigation, violations could be wiped clean from a transferred license (if they meet the criteria described above), or a transfer could be approved without removing violations, or the transfer application could be rejected altogether. Those transferring licenses without violations or who do not want to pay for an investigation to clear their licenses of violations, would be exempt from the fee.
- Violations would not carry over in marijuana license transfers when the transaction is verified as an arms-length third party sale with 100% change in ownership and management as reflected in a city manager rule. *See Attachment G.*

## ATTACHMENTS

Attachment A – Proposed Ordinance (Creation of MLA)

Attachment B – Proposed Ordinance (Regarding License Transfers)

Attachment C – MAP recommendations for MLA

Attachment D – MAP letter to council dated December 18, 2017

Attachment E – Beverage Licensing Authority license application

Attachment F – Research on licensing and enforcement

Attachment G – Potential and/or new changes to the Marijuana Penalty Schedule

Attachment H – MAP June 26, 2019 Meeting Summary

ORDINANCE 8338

AN ORDINANCE AMENDING CHAPTER 2-3, BY ADDING A NEW SECTION 2-3-25, "MARIJUANA LICENSING AUTHORITY," B.R.C. 1981, PERTAINING TO THE COMPOSITION, DUTIES AND POWERS OF A NEW CITY BOARD RELATED TO MARIJUANA ISSUES, AND SETTING FORTH RELATED DETAILS.

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

Section 1. A new Section 2-3-25, "Marijuana Licensing Authority," B.R.C. 1981, is added as follows:

**2-3-25. - Marijuana Licensing Authority.**

- (a) The City of Boulder Marijuana Licensing Authority shall consist of seven members who are at least twenty-one years of age, all of whom are city residents, appointed by City Council for five-year terms. At the time of appointment, two members will be marijuana business owners or representatives of such owners and two members shall have a connection to the health or education field. The remaining members shall be at large. Up to two ex officio non-voting members may be appointed by the city council as provided below. The Authority members who are first appointed shall be designated to serve for staggered terms so that the term of one Authority member expires each year.
- (b) City council has discretion to appoint two non-voting ex officio members who will advise the Authority. These positions are intended for non-city residents from the candidate pool, who would otherwise qualify but are prohibited from appointment because of the resident status requirement.
- (c) The city manager serves as secretary to the Authority. The secretary may be known as the licensing clerk, and shall serve as the Authority's agent for all functions.
- (d) Four members shall constitute a quorum. An affirmative vote of a majority of the members present is necessary to authorize any action of the Authority.
- (e) The Authority shall be responsible for both advisory and licensing duties as set forth in this section. Initially the Authority's duties shall be limited to an advisory role.

- The licensing duties are to be phased in over time. The phase in period shall be no less than six months and no longer than two years from the date of the Authority's first meeting after formation. The timing of the phasing shall be determined by the Authority. The Authority will establish guidelines for determining what type of license matters will come before the Authority and which will be handled administratively by city staff. The Authority will determine the timing and scope of its licensing duties during this transition phase. All licensing duties will continue to be handled by the city manager until the Authority formally determines otherwise.
- (f) The Authority shall have the ability to issue subpoenas in quasi-judicial proceedings only.
  - (g) Prior to making any recommendation or taking action, the Authority shall hold a public hearing.
  - (h) The Authority's advisory functions are:
    - (1) Generally, to promote the Boulder community's interests and values in the local regulation of marijuana, while considering the downstream consequences of such regulations on the community and on public health and safety while supporting economic development and congruence between local ordinances and state laws.
    - (2) To advise the city council and city manager on marijuana issues, strategies, goals and policies;
    - (3) To study and make recommendations to council and the city manager regarding marijuana related issues raised by council, city manager, state legislative changes, the public, or the Authority;
    - (4) To prioritize and continue any outstanding work from the Marijuana Advisory Panel;
    - (5) To address issues related to jurisdictional parity; and
    - (6) To follow the purpose and intent in Chapters 6-14 and 6-16, B.R.C.
  - (i) The Authority's licensing functions may include:
    - (1) To grant or refuse applications for licenses to operate a medical or recreational marijuana business as prescribed by Chapter 6-14, "Medical Marijuana" and Chapter 6-16, "Recreational Marijuana," B.R.C. 1981. The Authority's responsibilities shall not include suspension, revocation, or imposition of fines as set forth in subsections 6-14-14 and 6-16-14 B.R.C. 1981. The city manager shall administer such matters;
    - (2) To perform licensing functions in a manner necessary to carry out the legislative purposes and requirements of the state and city marijuana licensing laws; and

(3) To perform all other responsibilities that the council may delegate to it.

(j) The city manager shall issue all licenses granted by the Authority upon receipt of the completed application and the operating fee, criminal background fee, annual license fee, and any other applicable fees, as required by Section 4-20-64 “Medical Marijuana Businesses” and 4-20-67 “Recreational Marijuana Businesses,” B.R.C. 1981, and meeting the requirements of 6-14-5(f) “Approval Requirements” or 6-16-6(f) “Approval Requirements” B.R.C. 1981.

(k) The Authority shall not perform any administrative functions unless expressly provided in this code.

(l) The Authority shall not involve itself in any review under the land use regulations, Title 9, “Land Use Code,” B.R.C. 1981, unless its opinion is requested by the city council or the planning board.

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

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

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 6th day of August, 2019.

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Suzanne Jones, Mayor

Attest:

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Lynnette Beck, City Clerk

1 READ ON SECOND READING, PASSED AND ADOPTED this 20th day of August,  
2 2019.

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Suzanne Jones, Mayor

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Lynnette Beck, City Clerk  
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ORDINANCE 8345

AN ORDINANCE AMENDING SECTIONS 6-14-3(e),  
“LICENSE REQUIRED,” AND 6-16-3(e), “LICENSE  
REQUIRED,” B.R.C. 1981, PERTAINING TO THE  
TRANSFERABILITY OF LICENSES TO TRANSFEREE  
WITHOUT A VIOLATION HISTORY IF THE TRANSACTION  
IS AN ARMS-LENGTH THIRD PARTY TRANSACTION WITH  
A ONE HUNDRED PERCENT CHANGE IN OWNERSHIP AND  
MANAGEMENT, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Section 6-14-3(e), “License Required,” B.R.C. 1981, is amended as follows:

**6-14-3. - License Required.**

...

(e) License Nontransferable; Exceptions. A medical marijuana business license is not transferable or assignable, including, without limitation, not transferable or assignable to a different premise, to a different type of business, or to a different owner or licensee. A medical marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a medical marijuana business license are only those persons disclosed in the application or subsequently disclosed to the city in accordance with this chapter. A transfer of a licensed medical marijuana business shall be permitted in the following circumstance:

- (1) The new owner and all licensees of the business have submitted completed applications and passed a background check by the city;
- (2) The new owner is not making changes to any of the plans or conditions that are part of the license; and
- (3) One of the following:
  - (A) The license transfer location is permitted without the exception of Subsection 6-14-7(c) of this chapter; or
  - (B) The license transfer is an arms-length third party transaction to one hundred percent new owners and managers.

Section 2. Section 6-16-3(e), "License Required," B.R.C. 1981, is amended as follows:

**6-16-3. - License Required.**

...

(e) License Nontransferable; Exceptions. A recreational marijuana business license is not transferable or assignable, including, without limitation, not transferable or assignable to a different premise, to a different type of business (including another marijuana business), or to a different owner or licensee. A recreational marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license, and the location for which the license is issued. The licensees of a recreational marijuana business license are only those persons disclosed in the application or subsequently disclosed to the city in accordance with this chapter. A transfer of a licensed recreational marijuana business shall be permitted in the following circumstance:

- (1) The new owner and all licensees of the business have submitted completed applications and passed a background check by the city;
- (2) The new owner is not making changes to any of the plans or conditions that are part of the license; and
- (3) One of the following:
  - (A) The license transfer location is permitted without the exception of Subsection 6-16-7(c) of this chapter; or
  - (B) The license transfer is an arms-length third party transaction to one hundred percent new owners and managers.

...

Section 3. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 4. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.



1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2 TITLE ONLY this 6th day of August, 2019.

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Suzanne Jones, Mayor

6 Attest:

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Lynnette Beck, City Clerk

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10 READ ON SECOND READING, PASSED AND ADOPTED this 20th day of August,  
11 2019.

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Suzanne Jones, Mayor

14 Attest:

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Lynnette Beck, City Clerk

**Marijuana Advisory Panel (MAP)  
Penalties and Transfers Subgroup Meeting  
May 17, 2019, 1:00 PM-3:00 PM  
Boulder Municipal Building  
Meeting Summary-FINAL**

*Attendance:* Heath Harmon, Sandra Llanes, Craig Small, Jane Theodore, and Kate Thomson

*Facilitation:* Heather Bergman and Dan Myers

**INITIAL DISCUSSION OF PENALTY AND TRANSFERS ISSUES**

Subgroup members began the meeting with a discussion of penalty and transfers issues raised by MAP members at their May 10 meeting. Their conversation is summarized below.

- MAP members have expressed concerns about the fairness of violations transferring with marijuana licenses purchased from previous owners. There have been suggestions that no violations should carry over after transfers.
- There have also been concerns about the potential for duplicity in license owners with violations transferring their licenses through shell companies to “clean” the license of violations under the proposed change. However, several MAP members stated that the State of Colorado’s Marijuana Enforcement Division (MED) already does enough due diligence on license transfers to mitigate those concerns. There were also suggestions at the May 10 meeting that the city of Boulder could hire a third-party investigator to ensure that license transfers are legitimate if the city decides to stop transferring violations with licenses.
- Several MAP members noted that bordering municipalities allow licenses to transfer without violations and that Boulder’s Beverage Licensing Authority (BLA) allows violations to expire from licenses five years from when they occur (which is not the case for marijuana).
- At the May 10 meeting, city staff explained that the BLA uses a combination of “days held in abeyance” and “days served” in administering suspensions for license violations. For example, a liquor license violation could involve a suspension of three days (“served”) and the possibility of another five days of suspension (“held in abeyance”) if there were another violation within a year of the first violation, plus the days served for the second violation. At times, the financial duress from an extended suspension causes businesses to surrender their licenses voluntarily. Having a revoked license on someone’s record makes it difficult for them to open a new business, which is another rationale behind surrendering a license before revocation.

**DISCUSSION OF QUESTIONS FROM COUNCIL**

Council asked MAP to discuss three questions related to penalties and transfers. Subgroup members discussed these questions and reviewed the penalty schedule created by MAP in 2017 and the current BLA penalty schedule. The questions from council were as follows:

1. Should violations assessed against a business carry over to an arm’s length purchaser?
2. Please provide input on what requirements should be imposed to avoid fraudulent transfers for the sole purpose of obtaining a clean slate. For example, what percentage of new owners and keyholders should be required to eliminate prior violations in a license transfer application?
3. Please provide input on whether suspensions for a third violation are still an appropriate sanction for the most serious offenses as outlined in the penalty table adopted by MAP?

***Violation Transfers***

- Subgroup members suggested that third part investigators could prevent bad actors from “cleaning” violations from licenses if violations were dropped from transferred licenses. MED could provide a template: it requires applicants to provide bank statements so that it can verify

that license sales are valid and that there are not any hidden parties with access to the bank account used in the transaction. Subgroup members noted that it would never be possible to prevent “handshake deals” around suspicious transfers; investigations would follow documented transactions.

- The city could assess a “transfer of ownership fee” in addition to the current license transfer fee because council has specified that the industry should pay for its own regulation, and the third-party investigations would involve additional cost. The fee would be required for all marijuana license transfers regardless of whether violations were involved. It was noted that businesses have few problems paying current transfer fees and that Boulder’s city code stipulates that Boulder cannot profit from fees, so the fee would be reasonable. However, some subgroup members were concerned that businesses without violations would be unhappy if they are required to pay an additional fee.
- Statewide, the business selling the license fills out a transfer form and the buyer completes the first four pages of a new license application (for which violations cannot carry over). Subgroup members did not know if this is the case in Boulder.
- Subgroup members stated that licenses at risk of revocation have a drastically reduced value.
- Some subgroup members stated that requiring a new license application for transfers was excessive and suggested that new license applications should be required only for businesses that make permanent modifications to their licenses or make any changes to their businesses that could impact public safety.
- Some subgroup members said that Boulder should stipulate that owners of licenses with violations who own a majority percentage of the license should be prevented from owning more than 49% of a marijuana license in Boulder again and that any stake smaller than 49% must be passive (i.e., the person would not be managing or governing the business). Accordingly, licenses would only have their violations removed in a transfer of 100% of ownership. Other subgroup members said that no other jurisdiction in Colorado reviews the percentage of ownership transferred because a minority owner seeking to escape a license of violations who applied for a new license would be subject to the same scrutiny as every other license applicant.
- Those who supported a percentage-ownership measure noted that it could prevent a bad actor from taking a managing role at a marijuana business again. However, others said that if that was the case, the city should investigate if former owners of licenses with violations were working in managerial roles regardless of their ownership status.
- Several subgroup members stated that their goal was to facilitate the transfer of licenses with violations from bad actors to good actors and that this meant that people with any percentage of stake in a license with violations should be prevented from owning any percentage of a license in the future. Others disagreed because those with small ownership stakes may not have been involved in the violations themselves.
- Subgroup members stated that while sales of alcohol licenses with violations happen frequently, there are significantly more alcohol licenses available without violations. Would-be marijuana license buyers have fewer options. While MAP and council have focused on regulating marijuana like alcohol in the past, it might be an unrealistic comparison.
- There were suggestions of leaving the percentage-ownership question to negotiations between businesses and the city in cases of license violations. However, there were also concerns that the city would be accused of being arbitrary if there were not set standards on this issue.
- The subgroup discussed what should happen to days held in abeyance for suspensions when licenses transfer. Some subgroup members suggested that businesses could pay to get the days in abeyance removed from the license. Others suggested that if there is a violation in the first year after the transfer, the days held in abeyance from the previous owner would be added to the penalty.

### ***Suspensions and Fines***

- The BLA has specific formulas for imposing fines in cases of violations. However, BLA typically uses suspensions instead of fines because their financial impact is a more effective deterrent to bad behavior. There are no formulas for marijuana license violation fines in Boulder now.
- It is unclear how fines would be calculated for marijuana testers (tests), marijuana-infused products (MIPs) businesses, and growing operations (grows) because, unlike retail businesses, their revenues cannot be neatly calculated on a day-by-day basis. There are similar issues with suspensions for these businesses: they create products that would not necessarily or cleanly result in a set daily financial loss during a suspension (for example, their plants may be unaffected by a three-day suspension). Subgroup members suggested calculating average daily sales from their annual sales and fining tests, MIPs, and grows 20% of a given number of average sales-days. The average sales-days could be used instead of days served or days held in abeyance for the suspensions that apply to retail businesses.
- Several subgroup members supported fining tests, MIPs, and grows only 20% of a given average sales-day because MED typically punishes businesses for breaking multiple rules through a single violation, which is very expensive.
- MAP's original penalty schedules included the following tiers of penalties, in ascending order of severity: operational infractions, impact on community or safety violations, and health, safety, and security violations.
- Several subgroup members suggested replacing revocation (which is always MAB's prerogative) with suspensions in the penalty schedule and setting specific fines for specific offenses. The liquor penalty schedule does not mention revocation and usually suggest suspension for fourth or fifth violations. Subgroup members suggested that replacing fines with suspension in places would be more likely to change behavior.
- It was suggested that specifying a penalty schedule for each type of infraction listed in the penalty schedule would take more time than the subgroup or the full MAP had available. Instead, subgroup members decided to identify which infractions were *most* egregious (acknowledging that they are all serious) and to create a separate, harsher penalty schedule for those violations. The new MAB would be asked to review the rest of the penalty schedule.

### **EGREGIOUS VIOLATIONS**

Subgroup members reviewed each operational infraction on the 2017 marijuana penalty schedule and discussed whether or not they were “egregious” (acknowledging that they are all serious) and deserving of inclusion in a separate, harsher penalty schedule. Their discussion is summarized below.

- It was suggested that the first offense for egregious violations should be suspension or revocation. The second offense would mean fines, the third more fines, the fourth suspension, and the fifth suspension with days in abeyance.
- Some subgroup members suggested that failing to validate an ID was egregious because it is a proxy for selling to minors.
- There were concerns about not having a city-approved keyholder or owner on site. However, it was noted that someone with years of experience could be on-site and not meet those criteria.
- There was discussion of the difference between “cooperating” with police inspections/investigations and “allowing access” to the site. Some subgroup members suggested that training staff to call managers if an inspector arrived was “allowing access,” even if access was not immediately granted. It was noted that not allowing inspectors immediate entry to a restaurant would be considered egregious. It was also noted that people have a right against self-incrimination, so they do not need to be cooperative.
- Making permanent modifications without city approval was deemed egregious because it posed a safety threat in fire situations.

- Subgroup members asked that the operational infraction reading “a person under the age of 21 in the licensed premises of a recreational marijuana business” be changed to “a person under the age of 21 in the restricted access area of a recreational marijuana business” because the business should not be responsible for stopping minors from standing on the property but not entering the store.

## **FINAL AGREEMENTS**

- The subgroup identified the following offenses as “egregious.” Operational infractions that are not listed were not deemed to be “egregious.” Operational infractions where there was disagreement or debate are discussed in further detail above.
  - Making sales of marijuana or a marijuana product to a person under 21 years of age.
  - Not making disposed-of marijuana unusable and unrecognizable or not locking disposal dumpsters.
  - Using unapproved locking storage that does not qualify as a safe.
  - Permitting marijuana or a marijuana product to be outside of a licensed premise.
  - Making a permanent modification of the licensed premises without prior city approval.
  - Consuming marijuana on-premises (employees, managers, or owners).
  - Refusing to allow city inspections or access to the premises.
- The subgroup posited the following penalty schedule for these egregious infractions (noting that revocation is always an option):
  - First count: five-day suspension with nine days held in abeyance.
  - Second count: ten-day suspension with 20 days held in abeyance.
  - Third count: 15-day suspension with 30 days held in abeyance.
  - Second offense within one year: ten-day suspension with nine days held in abeyance from first violation plus additional days in abeyance.
- It was suggested that the penalty schedule could include suspensions and days in abeyance not greater than their counterparts per count for alcohol violations.
- The subgroup recommended that fourth offenses for non-egregious violations would result in a suspension equivalent to that for an egregious violation. The first three offenses would be punished with fines.
- The subgroup recommended that violations should not carry over with license transfers.
- The subgroup recommended that transfers should be treated new license applications (as is the case in other jurisdictions). Members noted that efficiencies could be created by making the transfer application shorter in some specific cases (e.g., inspections that are still applicable from the license renewal process).
- The subgroup recommended that days in abeyance on a license from before a transfer would be added to the penalty if the new license-holder committed a violation in the first year after the transfer.
- The subgroup emphasized that it was recommending deviations from the penalty schedule for alcohol because the number of marijuana licenses in Boulder is capped at a much lower level by zoning laws than liquor licenses are. The subgroup’s primary interest is in moving bad actors out of ownership and management positions as quickly as possible; the new recommendations are designed to accomplish that.

## **NEXT STEPS**

- Peak Facilitation Group will send this summary and an outline of the subgroup’s recommendations to the subgroup and the city of Boulder’s Mishawn Cook for review before sending it to the full MAP.
- The full MAP will meet on Wednesday, June 26, from 1:00 PM to 4:00 PM in council chambers.

December 18, 2107

Dear City Council,

Thank you for your continued support in responsibly regulating the marijuana industry. In this regard, the Marijuana Advisory Panel (MAP) would like to take this opportunity to share with you a couple of our thoughts and experiences from the past year.

### **Prioritization of Marijuana-Related Tasks in the 2018 Staff Work Plan**

As many of you are aware, MAP members gave significant time to fully tackle City Council's charge of improving the City's code in a rapidly changing industry with evolving regulatory needs. At the end of the Panel's 2016 process we presented 44 consensus-based recommendations for protecting the interests and lives of a multitude of stakeholders. Many of these items were addressed by Council, and we thank you for being responsive and supportive of our recommendations. However, more work remains. Some of our recommendations require changes to Title 9 and could not be addressed within MAP's 2016 scope of work. We understand that Title 9 changes mean Council must find room in the annual work plan to accomplish these tasks, which takes place at the annual retreat. As a Panel, we unanimously recommend that Council prioritize these Title 9 recommendations in 2018.

### **Community Safety**

Boulder has a serious youth drug and alcohol problem. As the marijuana industry continues to evolve, it is imperative that industry, the community, and the City have a plan for ensuring public health. There needs to be a productive space for the necessary stakeholders to come together to discuss vital and timely issues such as parent education and prevention messaging. MAP's scope in 2016 and 2017 was focused solely on updating the existing City code. However, it is challenging to truly address the intersection of industry and public health with such a narrow focus. We agree that it is time for MAP to discuss this issue holistically in 2018 – with industry, public health officials, and community members. With this in mind, we recommend to City Council that MAP be encouraged to discuss this in 2018 with the addition of more community voices and perspectives.

### **Remaining Items to Discuss in 2018 and Beyond**

While evaluating and discussing the myriad of issues pertaining to the city of Boulder's marijuana code we found other topics worthy of discussion, particularly education and underage diversion. Boulder County Public Health, Boulder Valley School, District, and University of Colorado at Boulder have thorough but separate strategies in place to mitigate the impacts of legal marijuana use on minors, but we believe that the community-at-large would benefit from a City-led effort. In addition to education and underage diversion, we identified the following issues as ripe for community discussion, but outside the current scope or capacity of MAP and supporting staff:

- Major and minor modifications
- Incidental sponsorship (charity versus adult events)
- Promotional items
- Educational materials prepared by licensees
- Logos on on-premises signs
- Penny joints
- Social clubs
- Community message
- Community outreach
- Carbon offsets

MAP members want to express their understanding for your very full workloads, the simply overwhelming amount of important community items your face as a Council, and the limited time in which you have to work on them and choose priorities. In addition, we want to express to you how hard we worked, together as citizens, educators, protectors of youth and community, city staff, and industry to reach cohesive and comprehensive recommendations. These diverse perspectives shaped the consensus-based recommendations that we submit to you today.

Humbly and respectfully,

### **Marijuana Advisory Panel**

Leisha Connors-Bauer, University of Colorado at Boulder  
Heath Harmon, Boulder County Public Health Administration  
Travis Howard, Green Dream Cannabis  
Keenan Jones, Hoban Law Group  
Will Lukela, Marijuana Enforcement Division, Colorado Department of Revenue  
Alana Malone, Green Dot Labs  
Andrea Meneghel, Boulder Chamber  
Bill Rigler, Community Representative  
Teri Robnett, Cannabis Patients Alliance  
Loree Schwartz, Organic Wellness Dispensary  
Jane Theodore, Community Representative  
Kate Thomson, The Farm  
Andy Tucker, Boulder Valley School District (*Stepping down in 2018 due to job change.*)

Liquor Transfer Application Worksheet:

Business Name: \_\_\_\_\_

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

License Type: \_\_\_\_\_

If application is a license transfer, the below questions will determine whether a BLA hearing is required and needs to be later scheduled:

- 1) Is the transfer a transfer by operation of law with a court order? Yes \_\_\_\_ or No \_\_\_\_
- 2) Is the transfer a license transfer to a landlord of the licensed premises? Yes \_\_\_\_ or No \_\_\_\_
- 3) Is there enforcement history for license at transferred premise address in past 5 years? Yes \_\_\_\_ or No \_\_\_\_
- 4) Has City Licensing reviewed the seller's premise diagram in comparison with the buyer's premise diagram and as a result does staff believe that permanent modification will be required? Yes \_\_\_\_ or No \_\_\_\_
- 5) Has a zoning denial or additional review opinion related to local zoning laws been received?  
Yes \_\_\_\_ or No \_\_\_\_
- 6) Does any person involved with buyer's business have a background check or prior state liquor violations for other licenses held which should properly trigger a hearing? Yes \_\_\_\_ or No \_\_\_\_
- 7) Has, after poster has been provided and location has been posted for the required 10-day period, any public inquiry or other comment been received? Yes \_\_\_\_ or No \_\_\_\_
- 8) Have, after city staff license application email notice been sent (should be sent at the same time that poster is provided, city staff comments been received back with issues (PD, Fire, ST, Occ. Tax or Other)? Yes \_\_\_\_ or No \_\_\_\_

An answer "yes" to any of the above 8 questions for a license transfer application under review, indicates that a BLA hearing should be scheduled for the application.



<b>MUNICIPALITY</b> (by population size)	<b>LICENSING AUTHORITY</b>		<b>ENFORCEMENT AUTHORITY</b>	
	<b>LIQUOR</b>	<b>MARIJUANA</b>	<b>LIQUOR</b>	<b>MARIJUANA</b>
<b>Denver</b> (716,492)  Denver Excise & Licenses Hearing Policies and Procedures (Oct. 22, 2018).	<b>Hearing Officer</b>  The Executive Director of the Dept. of Excise & Licenses, or her designee.	<b>Hearing Officer</b>  The Executive Director of the Dept. of Excise & Licenses, or her designee.	<b>Hearing Officer</b>  The Executive Director of the Dept. of Excise & Licenses, or her designee.	<b>Hearing Officer</b>  The Executive Director of the Dept. of Excise & Licenses, or her designee.
<b>Colorado Springs</b> (472,688)  Colorado Springs City Code 2.5.104; 2.2.103.	<b>Bifurcated Duties</b>  (1) <b>Municipal Judge</b> serves as administrative Hearing Officer;  (2) <b>City Clerk</b> reviews and grants/denies all applications, renewals, and transfers.	<b>City Clerk</b>  Medical only. Effective May 25, 2017, the City Clerk shall not receive or act upon any new medical license applications.	<b>Bifurcated Duties</b>  (1) <b>Municipal Judge</b> serves as administrative Hearing Officer;  (2) <b>City Clerk</b> may suspend, revoke, or deny renewal after hearing. (and Municipal Judge may summarily suspend a license in her administrative capacity.)	<b>City Clerk</b>  Medical only. If licenses are revoked or surrendered, the cumulative cap on licensed medical marijuana locations shall be reduced accordingly.

<b>Aurora</b> (374,114)  Aurora Municipal Code 6-31; 6-304.	<b>Hearing Officer</b>  The Finance Director, or her designee.	<b>Hearing Officer</b>  The manager of the Aurora Marijuana Enforcement Division, or her designee.	<b>Hearing Officer</b>  The Finance Director, or her designee.	<b>Hearing Officer</b>  The Finance Director.
<b>Fort Collins</b> (167,830)  Fort Collins Municipal Code 3-32; 15-462.	<b>Hearing Officer</b>  The Municipal Judge.	<b>Hearing Officer</b>  A person appointed by the City Manager (referred to as Medical/ Recreational Marijuana Licensing Authority).	<b>Hearing Officer</b>  The Municipal Judge.	<b>Hearing Officer</b>  A person appointed by the City Manager (referred to as Medical/ Recreational Marijuana Licensing Authority).
<b>Lakewood</b> (156,798)  Lakewood Municipal Code 5.38.020; 5.51.120.	<b>Hearing Officer</b>  Appointed by the City Council from a list of qualified persons compiled by City Clerk.	<b>City Clerk</b>  Medical only.	<b>Hearing Officer</b>  Appointed by the City Council from a list of qualified persons compiled by City Clerk.	<b>City Manager</b>  Medical only.
<b>Thornton</b> (139,436)  Thornton City Code 42-57; 42-70.	<b>Board</b>  Nine at-large community members appointed by City Council.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>Board</b>  Nine at-large community members appointed by City Council.	<b>Hearing Officer</b>  Appointed by the City Council.
<b>Arvada</b> (120,492)  Arvada Municipal Code 6-62; 53-22; 53-42.	<b>Board</b>  Five at-large community members appointed by the City Council. Board members are modestly compensated.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Board</b>  Five at-large community members appointed by the City Council. Board members are modestly compensated.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.

<b>Westminster</b> (113,479)  Westminster Municipal Code 5-14-2; 2-5-1; 5-10-3.	<b>Board</b>  Seven at-large community members (and one alternate) appointed by City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Board</b>  Seven at-large community members (and one alternate) appointed by City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.
<b>Pueblo</b> (111,750)  Pueblo Municipal Code 11-3-5; 11-11-202.	<b>Board</b>  Five at-large community members appointed by the Mayor, subject to City Council approval.	<b>Board</b>  Five at-large community members appointed by the Mayor, subject to City Council approval.	<b>Board</b>  Five at-large community members appointed by the Mayor, subject to City Council approval.	<b>Board</b>  Five at-large community members appointed by the Mayor, subject to City Council approval.
<b>Centennial</b> (110,831)  Centennial Municipal Code 6-4-110; 6-6-110; 6-5-110.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.
<b>Greeley</b> (107,348)  Greeley Municipal Code 6.16.020; 18.46.135; 18.46.137.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.
<b>Longmont</b> (96,577)  Longmont Municipal Code 2.68.020; 6.70.040.	<b>Hearing Officer</b>  The Municipal Judge.	<b>Board</b>  Three-member board including: (1) Municipal Judge, (2) Chief of Public Safety, and (3) Director of Community Services, or their designees.	<b>Hearing Officer</b>  The Municipal Judge.	<b>Hearing Officer</b>  The Municipal Judge.

<b>Loveland</b> (77,446)  Loveland Municipal Code 8.04.010; 7.60.030; 7.65.020.	<b>Hearing Officer</b>  The Municipal Judge.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Hearing Officer</b>  The Municipal Judge.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.
<b>Broomfield</b> (69,267)  Broomfield Municipal Code 5-28-050; 17-02-090; 17-02-100.	<b>Board</b>  Five-member board including: two City Council members and three community members.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Board</b>  Five-member board including: two City Council members and three community members.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.
<b>Grand Junction</b> (63,374)  Grand Junction Municipal Code 5.12.110; 5.14.012; 5.15.012.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.
<b>Littleton</b> (48,007)  Littleton Municipal Code 2-2-1; 2-10-2; 3-20-5; 3-21-2.	<b>Board</b>  Five-member board (and two alternates) appointed by the City Council.	<b>Board</b>  Medical only. Five- member board (and two alternates) appointed by the City Council.	<b>Board</b>  Five-member board (and two alternates) appointed by the City Council.	<b>Board</b>  Medical only. Five- member board (and two alternates) appointed by the City Council.
<b>Brighton</b> (41,254)  Ord. No. 2209 (Brighton Municipal Code 5-8-50 reserved); 9-31-40; 9-30-20.	<b>Hearing Officer</b>  Appointed by the city council (recently changed from a board to a hearing officer, after struggling to reliably staff such a board).	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Hearing Officer</b>  Appointed by the city council (recently changed from a board to a hearing officer, after struggling to reliably staff such a board).	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.

<b>Erie</b> (25,447)  Erie Municipal Code 4-8-2; 4-9-4; 4-11-3.	<b>Hearing Officer</b>  The Municipal Judge.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Hearing Officer</b>  The Municipal Judge.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.
<b>Golden</b> (21,254)  Golden Municipal Code 4.84.010; 4.94.080; 4.98.030.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>Hearing Officer</b>  Medical only. Appointed by the City Council.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>Hearing Officer</b>  Medical only. Appointed by the City Council.
<b>Durango</b> (18,985)  Durango Municipal Code 5-133	<b>Board</b>  Three-member board including: City Manager and two community members appointed by the City Council.	<b>Board</b>  Three-member board including: City Manager and two community members appointed by the City Council.	<b>Board</b>  Three-member board including: City Manager and two community members appointed by the City Council.	<b>Board</b>  Three-member board including: City Manager and two community members appointed by the City Council.
<b>Lone Tree</b> (14,653)  Lone Tree Municipal Code 6-1-110; 6-3-130; 6-3-140.	<b>City Council</b>	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.	<b>Hearing Officer</b>  Appointed by the City Council.	<b>N/A</b>  Medical and recreational marijuana businesses are prohibited.
<b>Rifle</b> (9,732)  Rifle Municipal Code 6-5-30; 6-8-10.	<b>City Council</b>  The City Council may appoint a designated City Council member or the Municipal Judge to act as the Hearing Officer.	<b>City Manager</b>	<b>City Council</b>  The City Council may appoint a designated City Council member or the Municipal Judge to act as the Hearing Officer.	<b>City Manager</b>

<b>Breckenridge</b> (5,020)  Breckenridge Town Code 2-5-3.	<b>Board</b>  Five-member board appointed by Town Council.	<b>Board</b>  Five-member board appointed by Town Council.	<b>Board</b>  Five-member board appointed by Town Council.	<b>Board</b>  Five-member board appointed by Town Council.
<b>Idaho Springs</b> (1,794)  Idaho Springs Municipal Code 9-31; 9-153.	<b>City Clerk</b>	<b>City Council</b>	<b>City Council</b>	<b>City Council</b>

Attachment G – Potential and/or new changes to the Marijuana Penalty Schedule  
CITY OF BOULDER’S MARIJUANA LICENSING AUTHORITY MITIGATING AND  
AGGRAVATING FACTORS FOR VIOLATIONS AND PENALTY SCHEDULE GUIDELINES  
Effective \_\_\_\_\_ and last updated on July 17, 2019

This chart includes the most frequently occurring violations, but it is not an all-inclusive list of all possible violations of the Boulder Marijuana Codes. The Marijuana Licensing Authority MAY, in their discretion, consider the following mitigating and aggravating factor evidence in imposing penalties. **WRITTEN MITIGATING FACTOR EVIDENCE NEEDS TO BE SUBMITTED TO CITY LICENSING OFFICE NO LATER THAN 14 DAYS AFTER THE DATE OF THE VIOLATION.**

Mitigating Factors	Aggravating Factors
Training Programs- initial and on-going. Responsible Vendor Training and supplemental. Must be current.	Failure to submit Mitigating Factor evidence no later than 14 days after the violation date
Written Policies	Prior Offenses in the past five (5) Years
Supervision Procedures	Violation occurs outside of compliance checks (aka “Stings”)
Self-check programs	Lack of effective operational/training programs
Use of birth-date input cash registers	Multiple Police Contacts
Community Involvement	Failure to cooperate with marijuana enforcement representatives
Responsible advertising practices	Irresponsible advertising policies
The problem that led to the violation was outside of licensee’s control	A general pattern of negligence on the part of licensee
Active Responsible Association of Retailers (RAR) membership (4 out of 6 yearly meetings attendance)	Failure to Accept Responsibility for Violation
Other Pertinent Facts, including but not limited to, that the violation is a first offense with a single count	Other Pertinent Facts, including but not limited to, multiple counts or if the violation is a repeat offense or that violation occurs after legal requirement was explained to licensee

**These suspension penalties are guidelines only and are not binding on the Authority. The Authority reserves the right to impose any penalty authorized by law, up to and including license revocation, transfer denial, or non-renewal.**

Suspension dates are selected by the Authority, but generally start on Monday that is 10 days after penalty assessment date.

Also, Fines in lieu of suspension days served for retail, testing or manufacturing facilities are accepted at discretion of Authority. The Authority is not required to offer fines in lieu of suspension.

Note: pursuant to City Manager Rule adopted \_\_\_\_\_, 2019, violations for which the penalty is completed more than five years before the date of the violation are not considered in determining a penalty. Violations that occurred prior to a 100% arms-length third party transfer approved by the city pursuant to 6-14-3(e)(3)(B) or 6-16-3(e)(3)(B), BRC are not considered in determining a penalty.

Attachment G – Potential and/or new changes to the Marijuana Penalty Schedule

<b>EGREGIOUS COMMUNITY VIOLATIONS</b>				
<b>Code Violation</b>	<b>Dispensary/ Sales</b>	<b>Grow</b>	<b>MIP</b>	<b>Testing</b>
<u>Described Violations</u>  1) Making sales of marijuana or a marijuana product to a person under 21 years of age in a recreational marijuana businesses, or under 18 years of age without a guardian in a medical marijuana business. 2) Allowing a person under the age of 21 in the restricted area of a recreational marijuana business or under the age of 18 without a guardian in the restricted access area of a medical marijuana business. 3) Not making disposed-of marijuana unusable and unrecognizable, or within licensee's control, not locking disposal dumpsters. 4) Using unapproved locking storage that does not qualify as a safe or not locking finished product or cash in a safe for overnight storage 5) Permitting marijuana or a marijuana product to be outside of a licensed premise except for sales and transports. 6) Making a permanent modification of the licensed premises without prior city approval. 7) Permitting consumption of marijuana on-premises (customers, patients, employees, managers, or owners). 8) Refusing to allow city inspections or access to the premises, or refusing to provide city records. 9) Failing to have a licensee or keyholder on the premises and responsible for all activities within the premises during all times the business is open or in the possession of another person. 10) Ownership changes without disclosure to the city 11) Advertising that appeals to minors or is at a physical location that does not qualify as an Adult Event.  <u>Egregious Guideline Penalty</u>				
<b>1 Count (suspended/abeyance for 1 yr)</b>	<b>5/9</b>	5 day fine w. 9 day fine held in abeyance	5 day fine w. 9 day fine held in abeyance	5 day fine w. 9 day fine held in abeyance
<b>2 Counts (suspended/abeyance for 1 yr)</b>	<b>10/20</b>	10 day fine w. 20 day held in abeyance	10 day fine w. 20 day held in abeyance	10 day fine w. 20 day held in abeyance
<b>3+ Counts (suspended/abeyance for 1 yr)</b>	<b>15/30</b>	15 day fine w. 30 day held in abeyance	15 day fine w. 30 day held in abeyance	15 day fine w. 30 day held in abeyance
<b>2<sup>nd</sup> Offense in 1 yr (suspended/abeyance 1 yr)</b>	<b>10/9</b>	10 day fine w. 9 day held in abeyance	10 day fine w. 9 day held in abeyance	10 day fine w. 9 day held in abeyance



## Attachment G – Potential and/or new changes to the Marijuana Penalty Schedule

LICENSED OPERATIONAL VIOLATIONS				
Code Violation	Dispensary/Sales	Grow	MIP	Testing
<u>Described Violation</u> 1) For Medical Marijuana wellness centers only, not having a private consultation room or not offering other holistic offerings 2) Secure dispensing area not locked or restricted licensed location unlocked 3) MJ product transport details not completed, not emailed to BPD or resulting email bounce back not printed for product transport 4) Processing of MJ in violation of the Code (e.g. at store, at a grow or illegal processing at a MIP or Testing) 5) Failure to abide by neighborhood responsibility plan 6) Failure to address odor violations 7) Failure to operate business in compliance with the license or its operating plan or security plan 8) ID scanner not utilized and/or failure to properly verify ID for determination of age 9) Refusing to remove keyholder from management when city approval not obtained 10) Failure to obstruct view of MJ sales or storage from public view 11) Unapproved goods sold at licensed premises 12) Unsealed MJ possession by employees at licensed premise or acceptance of free samples by employees without payment of retail value city tax 13) MJ product or plants not properly packaged for removal/transport or MIP products not properly labeled 14) Video unavailable, cameras not working, or 40 days video off-site storage copy unavailable 15) Failure to timely provide financial records to assess fine or to timely pay assessed fine in certified funds 16) Failure to post premises during active suspension 17) Failure to pay taxes or fees due to the city or other governmental entity. 18) Advertising that is not permitted in City Code and not described as egregious above.  <u>Operational Guideline Penalty</u>				
1 Count (set fine)	\$1,000	\$1,000	\$1,000	\$1,000
2 Counts (set fine)	\$2,500	\$2,500	\$2,500	\$2,500
3 Counts (set fine)	\$3,000	\$3,000	\$3,000	\$3,000
4 + Counts ( <u>suspended</u> /abeyance for 1 yr)	5/9	5 day fine w. 9 day fine held in abeyance	5 day fine w. 9 day fine held in abeyance	5 day fine w. 9 day fine held in abeyance
2 <sup>nd</sup> Offense in 1 yr (set fine)	\$3,000	\$3,000	\$3,000	\$3,000

These charts are not intended to be a complete list of all circumstances that are a violation of the requirements of the City Code, but a guideline of the most common violations for the Marijuana Licensing Authority.

Fines will be calculated based on the gross revenue for the prior 3 full months (90 days) of METRC reports, sales reports, transport manifests and/or tax filing as requested by the City of Boulder, with a summary of such 90 days activity and a suggested daily business average calculated and provided by the Licensee. This information, along with the business's calculation of the daily fine, shall be provided to the City of Boulder's City Licensing office within 10 days of the assessment for verification by the city. The City will create a verified daily business average. The formula will be the verified daily business average multiplied by 20% of the verified daily business average, to then be multiplied by the number of days fine in lieu to be assessed.

Daily fine = Verified 90-day average daily gross revenue + 20% x number of days of suspension.

Fines will be paid in certified funds within 7 days of verification of the assessed amount by the City. For days of active suspension, posting of a conspicuous and publicly readable suspension poster (such as on the front door glass or window glass) by the licensee to be supplied by City Licensing is required. Failure to timely provide requested records for fine calculation or to failure to timely pay fines in certified funds will require service of suspended days rather than payment of a fine in lieu. Failure to post during active suspension days is considered a separate offense and will result in a separate Licensed Operational Violation being assessed.

In determining whether or not a second or subsequent violation occurred within a one-year period for abeyance suspension days or abeyance fine days, the Authority will use the date of conviction for the first violation (the date that the first penalty becomes final without appeal or the date of the appeal hearing where the Authority determines a conviction) to the actual date of the second violation. For example, if a licensee was "convicted" of their first violation occurring in January at a March 1, 2001 hearing and had ten days held in abeyance for one year and then they were cited on February 1, 2002, that would be considered a second violation within a year. The licensee would automatically have to serve the ten days held in abeyance from the first violation, plus their new suspension days determined by the Authority. If however, the licensee were cited on March 9, 2002, then it would not be considered a second violation within a year.

**Marijuana Advisory Panel (MAP)**  
**City Council Chambers, Municipal Building, Boulder, CO**  
**Wednesday, June 26, 2019, 1:00 PM-4:00 PM**  
**Meeting Summary – FINAL**

*Attendance:* Allison Bayley, Mishawn Cook, Kathy Haddock, Keith Kurelich, Sandra Llanes, Alana Malone, Loree Schwarz, Jane Theodore, and Kate Thomson

*Facilitation:* Heather Bergman and Dan Myers

**ACTION ITEMS**

<b>Mishawn Cook and Alana Malone</b>	Write the egregious and non-egregious violation penalty schedules based on this meeting summary
<b>Mishawn Cook/City Staff</b>	Request that the future Marijuana Licensing Authority revisit the question of egregious versus non-egregious violations as one of its first orders of business, particularly as pertains to the following two violations, which MAP members did not agree on as egregious or non-egregious: <ol style="list-style-type: none"> <li>1. <i>“Not making disposed-of marijuana unusable and unrecognizable or not locking disposal dumpsters.”</i></li> <li>2. <i>“Failing to have a licensee or keyholder on the premises and responsible for all activities within the premises during all times the business is open or in the possession of another person.”</i></li> </ol>

**MAP OPINION ON NEW MARIJUANA LICENSING AUTHORITY**

MAP members discussed questions and issues that arose at council’s discussion of a possible new Marijuana Licensing Authority (MLA) on May 21. Their comments are summarized below.

- At its May meeting, MAP recommended that council establish an MLA that addresses (a) licensing (b) enforcement responsibilities and (c) policy issues. Council asked staff to ensure that MAP members understood the differences between licensing and enforcement responsibilities and still agreed on its original recommendations for the scope of the MLA. City staff clarified that “enforcement” includes the Boulder Police Department’s enforcement of the law regarding marijuana license violations, but also the hearings and potential penalties for determined violations. “Licensing” issues include renewals, transfers, and new license applications. Those applications can be approved or denied.
- Some group members who watched the council meeting said that council did not sound supportive of the MLA handling enforcement decisions because the skillsets and expertise for people on boards handling policy and enforcement functions could be very different. Council supported MAP’s proposal that the MLA’s licensing function should be phased in as its members grow more familiar with their policy duties, but some council members expressed concerns about the MLA handling enforcement issues. Staff noted that MLA members should recuse themselves in conflict of interest situations if necessary.
- Several council members asked staff to do additional research on how other jurisdictions approach liquor policy, licensing, and enforcement functions. In some small towns in Colorado, enforcement hearings are conducted by a panel consisting of a municipal judge, licensing staff, and one or two other appointed citizens. Other jurisdictions hire hearing officers, and others ask their city councils to preside over the hearings.
- There was some support at the meeting for using a judge or hearing officer to address enforcement decisions rather than a city-appointed board of volunteers. It should be noted that under MAP’s recommendation of a city-appointed board of volunteers to address licensing, issues could be appealed to a higher court. If the board is quasi-judicial (meaning it handles both licensing and enforcement via quasi-trials), appeals would go to a district court. If the board did not have

enforcement responsibilities and those responsibilities remain with the city's licensing department, appeals of the staff-proposed enforcement penalty would go to district court.

- In the city's current marijuana licensing and enforcement system, city licensing staff make a recommendation on the penalty for a given violation based on the existing penalty schedule and sends a letter about the violation and proposed penalty to the licensee. The licensee has ten days to appeal for a new hearing in municipal court or pay the fine or surrender the license as a Rule 106 action. Decisions in municipal court hearings can then be appealed to district court. If no appeal is made, staff's recommendation is final.
- The record of a quasi-judicial decision by MLA would have to be sufficient to allow the district court to review the record to determine if the MLA decision was arbitrary or capricious or not.
- MAP members reiterated their support for the MLA addressing policy issues and for phasing in licensing functions at the MLA's discretion six months to two years into the MLA's existence
- In past discussions, MAP has treated enforcement and licensing as analogous. At this meeting, MAP discussed three options for handling the enforcement issue: keeping the current staff enforcement system, moving forward with the original recommendations (which presumes that the MLA would take on enforcement duties in addition to its other licensing duties six months to two years into its existence), or tasking a third party (i.e., hearing officer or municipal judge) with addressing enforcement issues as needed. Creating both an MLA and a marijuana board to address violations would require the city to hire two additional staff members to support the new panel. Any quasi-judicial option (i.e., any entity that deals with issues beyond policy) would require staffing support from the city attorney's office to ensure that the entity in question is complying with the law in its decisions.
- City licensing staff are capable of continuing with the current enforcement system, but their role in that system could perhaps be taken on by a hearing officer or municipal judge.
- Continuity in staff support would be key for non-affiliated citizen members of the MLA as they acclimate to their roles.
- Several MAP members emphasized their desire that the MLA focus on policy, which could mean city staff continuing to handle enforcement duties.
- ***Recommendation: MAP recommended no change in the current enforcement system but reiterated its existing recommendations on the MLA's role in licensing and policy issues. Those recommendations include the MLA being quasi-judicial (as it would still consider license applications, which can require hearings) and allowing an undetermined number of ex officio members as necessary to ensure that key perspectives are represented if local representatives of those perspectives cannot be found to serve on the board.***

#### ***Additional Details Provided by Staff After the Meeting***

- "Licensing issues" also include license modifications and ownership issues.
- A city-appointed board of volunteers considering licensing decisions would still be quasi-judicial, so its decisions could be appealed to a district court as a Rule 106 action.

#### **PROPOSED PENALTY SCHEDULE FOR MARIJUANA**

After the May 10 MAP meeting, a Penalties and Transfers Subgroup of MAP members met and created a series of recommendations on a revised penalty schedule for marijuana license violations in Boulder. City staff reviewed the document and wrote two documents in response: the first contained questions and comments concerning the subgroup's recommendations and the second contained a proposed penalty schedule. MAP members discussed these documents. Their comments are summarized below.

- Staff's proposed penalty guidelines include the same mitigating and aggravating factors considered in the penalty process as that used by the Beverage Licensing Authority (BLA).
- Staff recommended that fines for testing facilities ("tests"), growing operations ("grows"), and marijuana-infused product (MIPs) makers be calculated based on the previous 90 days of sales rather than the previous 365 because the latter could be extremely time-consuming for staff. It is

also the way that liquor license fines are calculated. The subgroup recommended 365 days because they were concerned that fines based on shorter time frames might miss the seasonal rises and drops in revenue for those businesses and so be less impactful than fines are for dispensaries, which make consistent daily sales. MAP members said that they did not have a strong preference on this issue.

- Staff also suggested that license violations no longer apply in penalty decisions five years after their occurrence, as is the case for liquor. A MAP member suggested the possibility of violations before 2016 (when the current penalty schedule was written) no longer applying in penalty decisions.
- Staff noted that fines are used almost exclusively as penalties for marijuana businesses' first, second, or third violations, although businesses are suspended occasionally by the municipal court.
- The subgroup recommended that the penalty schedule should depart from that used for liquor (the original model for the current penalty schedule) in some cases because the number of marijuana licenses in Boulder is capped at a much lower level by zoning laws than liquor licenses are. The subgroup's primary interest was in moving bad actors out of ownership and management positions as quickly as possible. Additionally, the cannabis industry is still much less normalized than liquor businesses are.
- The subgroup recommended dividing potential violations into "egregious" and "non-egregious" buckets to better apply proportionate penalties (and because they did not have time to consider adjustments to the penalty for every violation) while affirming that all violations are serious.

### **EGREGIOUS AND NON-EGREGIOUS COMMUNITY VIOLATIONS**

MAP members reviewed instances where the subgroup and staff list of egregious community violations differed or where MAP members had concerns. Their comments are summarized below.

*"Not making disposed-of marijuana unusable and unrecognizable or not locking disposal dumpsters."*

- The State of Colorado's Marijuana Enforcement Division (MED) requires businesses to make waste material unrecognizable and to place it in a locked dumpster but does not require that the dumpster be on the premises or under surveillance. Because the locks on these dumpsters are frequently cut and because the dumpsters are owned by the garbage service, some MAP members were concerned that making this violation egregious could lead to unfair penalties for something outside of businesses' control.
- There have been instances where people have cut dumpster locks and taken marijuana waste that a business owner doused in bleach and still used it. However, enforcement officials do not consider bleach to be a sufficient means of making marijuana unusable and unrecognizable and advise business owners only to take their waste out on the morning of a garbage pickup. Some group members stated that keeping waste on site for that long would be unsanitary.
- Most marijuana businesses in the city have cameras on their dumpsters, many have a fence around their dumpsters, and many shred leaves and mix them with dirt to make the product unusable and unrecognizable. The State disposal rules only apply to fan leaves, and garbage service providers have created direct pickup arrangements with businesses. Business owners are not held responsible for cut locks if they have disposed of their products properly. City enforcement staff could not think of a single marijuana business in the city without dumpsters on its cameras.
- Several MAP members emphasized the danger posed by marijuana waste being stolen and consumed and recommended tough enforcement for violations on this issue.
- Some MAP members expressed concerns about businesses being punished for stolen plant tags, which do not fall under MED's disposal rules.
- A group member proposed rewriting this violation as "Not making disposed of marijuana unusable or unrecognizable or (within licensee's control) not locking disposal dumpsters."
- City staff emphasized that they consider aggravating and mitigating factors when applying penalties for this violation.

- While there was some discussion of splitting this violation into separate violations for making waste unusable and unrecognizable versus locking dumpsters, this violation will remain as it is written in code.

***Additional Details Provided by Staff After the Meeting***

Boulder code (B.R.C. 6-14-10(a) and 6-16-10(a)) requires cameras to monitor and record all areas of the premises (except in restrooms), and where persons may gain or attempt to gain access to marijuana or cash maintained by the recreational/medical marijuana business.

*"Consuming marijuana on-premises (customers, patients, employees, managers, or owners)"*

- MAP members expressed concerns about making this violation egregious because a customer could eat or smoke marijuana before an employee could kick them out, making the immediate violation outside of the business's control. The customer could also continue smoking outside of a store without the business's knowledge and still be "on-premises."
- Staff noted that this was a City Manager's Rule that they had to follow.
- ***Recommended change: The group agreed to keep this violation in the egregious category but to rewrite it as "permitting on-premises consumption of marijuana."***

*"Using unapproved locking storage that does not qualify as a safe or not locking finished product or cash in a safe for overnight storage"*

- MAP members said that businesses should not be punished for break-ins to refrigerated storage or bakery cases.
- Staff noted that there is an exception to this rule for refrigerators and freezers if they have proper locks. They also noted that locking storage rules deter theft and prevent break-ins to dispensaries.
- The group agreed to leave this violation as written.

*"Failing to have a licensee or keyholder on the premises and responsible for all activities within the premises during all times the business is open or in the possession of another person."*

- MAP members noted that some businesses have two separate stores in the same building with a common waiting room that must each have their own keyholder on-site at all times. This creates staffing challenges, and some MAP members suggested that businesses in this situation should be allowed to have just one keyholder on-site rather than two (one for each business). They emphasized that this would only apply to businesses with two separate stores of the same license type that share a waiting room.
- Several MAP members emphasized the need to have responsible keyholders on-site at all times.
- Staff said that the current code (B.R.C. 6-18-8) requires two keyholders for co-located, physically separated businesses.
- Some group members stated that this violation should be non-egregious because it does not impact public health or safety (which the subgroup considered when deciding what was and what was not egregious). Other group members said the violation is egregious because business owners have attempted to avoid penalties in the past by claiming they could not be held responsible for violations that occur when there are no owners or keyholders on-site.
- Some group members supported making this violation non-egregious, but others disagreed. Group members were open to a solution involving the rewriting of ordinance language, but that scope of work was not made available to MAP by council, and the group was unable to agree on a change to the existing rule.
- ***Recommendation: Group members agreed to add "The problem that led to the violation was outside of the licensee's control" to the list of general mitigating factors in the penalty schedule and "A general pattern of negligence on the part of the licensee" to the list of general aggravating practices. They also agreed to keep the violation as egregious and recommended***

***that the MLA consider changing the ordinance language for this violation as one of its first orders of business.***

*"Advertising that appeals to minors or is in a place that is not an adult event"*

- Staff said that this violation was intended to address advertising health concerns. "Adult events" are defined as those in which 70% of attendants are over 21 and cannot be held on city property.
- Several MAP members requested that this violation be rewritten to reflect the advertising currently permitted by code. The group emphasized that some advertising in adult-focused (i.e., 70% or more of readers are over 21) publications is permitted in code.
- ***Recommended change: Rewrite this violation as "advertising that appeals to minors or is at a physical location that does not qualify as an adult event."***

*"Allowing a person under the age of 21 in the restricted area of a recreational marijuana business or under the age of 18 without a guardian in the restricted area of a medical marijuana business"*

- Staff clarified that they had rewritten the description of this violation slightly from the subgroup's recommendations to reflect what is written in code.
- The group agreed that this violation should still be considered egregious.

*"Video unavailable, cameras not working, or 40 days video off-site storage copy unavailable."*

- Several MAP members expressed concerns that businesses would be punished if there was a power outage that went beyond the battery life of backup cameras. The cameras that marijuana businesses use are very expensive and can take time to replace. Staff emphasized the fact that the city needs probable cause to ask for video footage and would consider downed cameras as a separate infraction unless it seemed like the business was not sharing video for nefarious reasons.
- Staff consider this violation egregious because businesses have impeded investigations of disturbances in dispensaries in the past by refusing to share video footage.
- Some group members requested adding situations in which enforcement personnel are concerned about another violation occurring when cameras were not working to the list of aggravating circumstances surrounding this violation.
- ***Recommended change: The group agreed to make this violation non-egregious. They also agreed to add "The problem that led to the violation was outside of the licensee's control" to the list of general mitigating factors in the penalty schedule and "A general pattern of negligence on the part of the licensee" to the list of general aggravating practices.***

## **OTHER STAFF PENALTY SCHEDULE CHANGES**

MAP members discussed other additions to the penalty schedule from staff. Their comments are summarized below.

- Staff added "failure to timely provide financial records to assess fine or to timely pay assessed fine in certified funds," "failure to post premises during active suspension," "failure to pay taxes or fees due to the city or other governmental entity," and "advertising that is not permitted in city code and not described as egregious above" to the list of non-egregious licensed operational violations. Staff clarified that businesses that agree to a payment plan with an auditor are still considered to be paying their taxes in a timely fashion.
- MAP members agreed with staff's recommendation to calculate fines for tests, grows, and MIPs based on a period of 90 days to avoid staff capacity issues. They also agreed on staff's proposal that fined businesses need to provide a record of their 90-day sales within ten days of being asked to do so. Businesses would then have ten days to appeal that fine. If they did not, they would need to pay the fine within seven days of when the city announces it.
- Subgroup members noted that they had not reached a decision during their meetings about specific changes to the penalty schedule for non-egregious operational violations and had recommended that non-egregious violations (for all types of marijuana business) should be fined for their first

three counts of violations in accordance with the penalty schedule. The fourth offense would be punishable by a suspension equivalent to that for an egregious violation. The subgroup (while recognizing that staff always have the prerogative to revoke licenses with cause) focused on replacing revocation with suspensions in the penalty schedule to provide staff with more penalty leeway.

- The group agreed that the MLA should take up the issue of how long of an exact time period to use to calculate penalties.
- ***Recommendation: Non-egregious violations will be calculated based on the existing penalty schedule up to the third count of a violation, with suspension equivalent to that for egregious offenses replacing revocation for the counts thereafter. There will be a separate penalty schedule for egregious violations (see above).***

#### **VIOLATION DROPPING OFF/CARRYING OVER IN LICENSE TRANSFERS**

MAP members discussed the question of whether violations should drop off or carry over with transferred licenses. Their conversation is summarized below.

- Staff did not agree with a suggestion recommending that violations that occurred before 2016 drop off because the current penalty schedule was not finalized until 2016. Staff noted that there was an appeal option for penalties (to a hearing officer in 2010-11, district court in 2012-14, and municipal court from 2014-16) before the penalty schedule was written. Staff reiterated their proposal that violations are not considered in penalty assessments five years after a violation, as is the case for liquor.
- The subgroup originally recommended that violations should not carry over with transfers regardless of the percentage of ownership change involved because MED's review of all transfers is robust enough to prevent licensees with violations from merely restructuring or disguising transfers to themselves or associates.
- MAP members expressed concerns that the current difficulty of transferring licenses with violations serves as a disincentive for bad actors to transition out of ownership. It makes it difficult for clean actors to buy and rehabilitate bad licenses. These group members proposed that the city could do its own investigations of transfers to ensure that they are legitimate transfers and not shams.
- Staff receive copies of state applications for transfers or license renewals but are not privy to MED's investigation results, background check results, tax records, etc. Staff said that the city might need to double transfer fees to pay a third-party to conduct the forensic evaluation necessary to determine if a transfer is an arms-length third party transfer if that is what MAP recommends. They expressed unease with asking businesses without violations to pay higher transfer fees to ensure that transfers are clean.
- MED representatives said that their investigations are in-depth (but not always as in-depth as municipal investigations) and can lead to transfer rejections for tax liens, unpaid child support or student loans, convictions of three years or more, etc. In instances where 100% of ownership transfers to new owners, compliance history and administrative action do not carry over, but they do for any transfer of ownership that is less than 100%. MED uses forensic accounting to determine what percentage of ownership is being transferred under different ownership types based on employment records and business history for the previous ten years. MED representatives confirmed that they may be able to share violation histories and the general components of investigations with city officials, but not specific financial records or criminal histories.
- Several group members expressed concerns that MED does not investigate whether licenses are being transferred and if violating keyholders will remain involved. MED representatives said that violations stay associated with keyholders and owners.
- Businesses could be required to provide the city with copies of all documents that they must submit to MED. Currently, the city only receives copies of MED license or approval letters. The city would outsource the investigation of anything not covered in MED's process to a third-party.



- ***Recommendation: The group agreed that violations would not be considered in the assessment of penalties five years after they take place, as is the case for liquor. They also recommended providing an option for applicants who want to transfer their license but also want violations to be dropped off for their license. This option would be available for an additional fee to cover the third party investigation cost necessary to verify that the applicant met the city's criteria which would require a 100% ownership change, evidence of an adequate change in management, daily operational oversight of the licensed business, and evidence of rehabilitation so that further violations do not occur. Businesses transferring licenses that want violations to drop off would pay the city for a third-party investigation to determine the validity of their transfer based on an average of the overall costs of those investigations. The applicant would have to pay for the investigation regardless of whether the transfer application was approved or not. Depending on the results of the investigation, violations could be wiped clean from a transferred license (if they meet the criteria described above), or a transfer could be approved without removing violations, or the transfer application could be rejected altogether. Those transferring licenses without violations or who do not want to pay for an investigation to clear their licenses of violations would be exempt from the fee. City staff reserved the right to research the legality of this recommendation. They will inform MAP if this recommendation is legally unimplementable.***

#### **NEXT STEPS**

- The public was given an opportunity to provide public comment, but none were provided at this meeting.
- This was MAP's last meeting. Group members thanked each other for their hard work on behalf of the city.
- The first council ordinance reading for the new MLA will be on August 6. A second reading (and public hearing) will be held on August 20.



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

Introduction and consideration of a motion to adopt by emergency measure and order published by title only, Ordinance 8339 adopting Supplement 140, which codifies previously adopted Ordinances 8304, 8323, and 8332 and other miscellaneous corrections and amendments, as an amendment to the Boulder Revised Code, 1981.

### **PRIMARY STAFF CONTACT**

Mary Wallace, Paralegal III

### **REQUESTED ACTION OR MOTION LANGUAGE**

### **ATTACHMENTS:**

#### **Description**

- ▣ **Agenda Memo & Proposed Ordinance 8339 (Supplement 140)**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE**

Introduction, first reading and consideration of a motion to order published by title only and adopt Emergency Ordinance 8339 adopting Supplement 140, which codifies previously adopted Ordinances 8304, 8323, and 8332 and other miscellaneous corrections and amendments, as an amendment to the Boulder Revised Code, 1981.

**PRESENTER:**

Office of the City Attorney  
Thomas A. Carr, City Attorney

**EXECUTIVE SUMMARY:**

The Boulder Revised Code (“B.R.C. 1981”) is the official book of laws of the City of Boulder. Four times a year (usually quarterly), the City Council is asked to adopt supplements to the B.R.C. 1981. An ordinance format is used to bring ordinances that the City Council adopted in the prior quarter, or effective prior to the upcoming supplement, into the B.R.C. 1981, and to ensure that there is no question regarding what constitutes the official laws of the City of Boulder. These supplement ordinances are approved as a matter of routine by the City Council.

In order to generate the printed supplements to the B.R.C. as soon as possible, council is asked to adopt the proposed ordinance at first reading as an emergency measure.

The text of Supplement 140 has been previously adopted by the following ordinances:

Ord #8304      AN ORDINANCE AMENDING THE SHORT-TERM RENTAL LICENSING REQUIREMENTS BY AMENDING CHAPTER 10-3 “RENTAL LICENSES,” B.R.C. 1981, TO ADD A REQUIREMENT THAT OPERATORS OF SHORT-TERM RENTALS ANNUALLY CERTIFY THAT THE PROPERTY IS THE OPERATOR’S PRINCIPAL RESIDENCE; ADDING AN ASSOCIATED FEE TO SECTION 4-20-18, “RENTAL LICENSE FEE,” B.R.C. 1981, AND SETTING FORTH RELATED DETAILS.

Ord #8323      AN ORDINANCE AMENDING CHAPTER 11-5, “STORMWATER AND FLOOD MANAGEMENT UTILITY,” AND CHAPTER 8-5, “WORK IN THE PUBLIC RIGHT OF WAY AND PUBLIC EASEMENTS,” B.R.C. 1981, TO IMPLEMENT STORMWATER QUALITY MANAGEMENT REQUIREMENTS

OF THE CITY'S STATE OF COLORADO MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT; AND SETTING FORTH RELATED DETAILS.

Ord #8332 AN ORDINANCE REPEALING ORDINANCE 7969, CHAPTER 11-7, B.R.C. 1981, "LIGHT AND POWER UTILITY," AND SECTION 2-2-23, B.R.C. 1981 "ELECTRIC UTILITY BOARD," AND SETTING FORTH DETAILS IN RELATION THERETO.

**STAFF RECOMMENDATION:**

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

**Suggested Motion Language:**

Motion to order published by title only and adopt Emergency Ordinance 8339 regarding Supplement 140.

**FISCAL IMPACTS:**

Budgetary: None

Staff Time: None beyond the time always allocated to code maintenance in the City Attorney's overall work plan.

Economic: None

**COUNCIL FILTER IMPACTS:**

Ongoing code maintenance is an essential and largely administrative obligation of the city.

**FORMAT NOTES:**

Code amendments (if any) may be reflected in strike out and double underline format along with a "Reason for Change" as part of this agenda item. Such amendments are intended to correct non-substantive errors discovered through review of these ordinances and/or which may have occurred in previously adopted ordinances already in the B.R.C. 1981. Major and/or substantive corrections or revisions are brought forward as a separate ordinance to City Council during the normal course of future City Council business.

**DISCUSSION:**

This supplement includes ordinances that were adopted by the City Council in the last supplement quarter, or are effective prior to the upcoming supplement. They are added to the official version of the B.R.C. 1981 by way of the attached supplement ordinance. The City Council adopts a quarterly supplement ordinance to ensure that a clearly identifiable version of the Boulder Revised Code is legislatively adopted.

The printed supplements to the B.R.C. may not be distributed until the proposed adopting ordinance is effective. The laws of the city should be current and available to the residents of the City of Boulder as soon as possible, therefore, council is asked to adopt the proposed ordinance at first reading as an emergency measure.

## AMENDMENTS

1. Section 7-3-5, "Visible Emissions Prohibited," B.R.C. 1981 is amended as follows:

### **7-3-5. - Visible Emissions Prohibited.**

(a) No driver and no owner of any motor vehicle, moped or diesel-fueled locomotive for switching and railroad yard use shall fail to prevent the emission into the atmosphere from such vehicle of any visible air pollutant in excess of that specified below:

- (1) Vehicles powered by any fuel except diesel: no emissions permitted.
- (2) Vehicles powered by diesel fuel: ten consecutive seconds at thirty percent opacity or greater.
- (3) Locomotives: ten consecutive seconds at forty percent opacity or greater.

(b) Visible air pollutants that are the direct result of cold engine startup are excepted from the prohibitions of this section.

(c) For the purposes of this section, the following terms have the meanings specified:

....

*Opacity* means the degree to which an air pollutant emission obscures the view of an observer or reduces the transmission of light. Any person certified by the Colorado Department of Health after completion of a course in observing and grading visible emissions in terms of opacity is competent to express an opinion on degree of opacity in any proceeding.

(d) Only one complaint may be filed under this section against a vehicle for any calendar day.

~~(e) Any person served with a summons and complaint for a violation of this section may, before the date set for arraignment, report to an environmental protection officer designated by the city manager and demonstrate that the engine in question is in compliance with this section. If the environmental protection officer finds such compliance, the officer shall direct the municipal court to dismiss the complaint. The environmental protection officer may, upon timely request in specific cases, continue the arraignment date by thirty days after notifying the municipal court if the officer finds that such time is necessary to achieve compliance and that compliance will probably be achieved within the thirty day period.~~

(ef) The penalty for violation of any provision of this section is a fine of no more than \$500.

2. Section 7-4-67, "Eluding," B.R.C. 1981 is amended as follows:

### **7-4-67. - Eluding.**

(a) No driver who has received or reasonably should have received a visual or audible signal, including, without limitation, a red light or siren from a peace officer driving a vehicle marked as a police, park ranger, ~~environmental protection officer~~, sheriff or Colorado State Patrol car or an order given by a police officer directing the driver to stop, shall knowingly increase speed, extinguish lights in an attempt to elude such peace officer, or knowingly attempt in any other manner to elude the peace officer.

(b) Any person who violates any provision of this section commits the offense of eluding, and upon conviction thereof shall be punished by a fine of no more than \$1,000, jail of no more than ninety days or both such fine and jail.

**Reason for changes 1 and 2 above:** The Environmental Protection Officer position has been eliminated and the duties of that position absorbed by any Boulder Police Department officer. Related revisions to Section 7-3-5 reflect the practice of the City Attorney's Office to consider evidence of compliance with the Visible Emissions Prohibited requirement up to and including dismissal of the case.

3. Section 9-2-1, "Types of Reviews," B.R.C. 1981, Table 2-1, column II. *Administrative Reviews-Conditional Uses* is amended as follows:

**TABLE 2-1: REVIEW PROCESSES SUMMARY CHART**

<b><i>I. ADMINISTRATIVE REVIEWS</i></b>	<b><i>II. ADMINISTRATIVE REVIEWS - CONDITIONAL USES</i></b>	<b><i>III. DEVELOPMENT REVIEW AND BOARD ACTION</i></b>
....	.... Recycling Facilities  Religious Assemblies  Residential Care, Custodial Care, and Congregate Care Facilities ....	....

**Reason for change:**

There are no longer conditional use standards in the land use code for religious assemblies and therefore no longer a need for a reference to this land use in the administrative review section of Table 2-1. The reference should have been removed previously with other land use code amendments.

4. Subsections 6-3-13(d) and 6-3-13(d), B.R.C. 1981 are amended as follows:

**6-3-13. - Property Owner Requirements for Recyclables and Compostables Collection.**

(d) Property owners or managers must maintain and make available upon request, to the city manager for inspection and copying during normal business hours, any reports, contracts and/or invoices for collection and disposition of recyclable and/or compostable materials for a period covering the most recent three years.

**6-3-14. - Business Owner Requirements for Recyclables and Compostables Collection.**

(d) Business owners or managers must maintain and make available upon request, to the city manager for inspection and copying during normal business hours, any reports, contracts and/or invoices for collection and disposition of recyclable and/or compostable materials for a period covering the most recent three years.

**Reason for change:**

These revisions allow the City to enforce the reporting requirements contained in the City Manager's Rule associated with the Universal Zero Waste requirements.

5. Subsection 6-3-17(a), B.R.C. 1981 is amended as follows:

**6-3-17. - Exemptions.**

(a) Applications for exemptions from complying with the requirements of Sections 6-3-13, "Property Owner Requirements for Recyclables and Compostables Collection," or 6-3-14, "Business Owner Requirements, must be made by the owner of the property or business. Any exemption shall be for a period of one year. Property or business owners may re-apply for one additional exemption at the expiration of the initial exemption period. City staff will review exemption applications and work with the applicants to bring the property owner or business owner into compliance. Applications must be received within sixty days of the start of the compliance period established in Section ~~6-3-17~~ 6-3-16, "Applicability." The city manager may issue additional rules that govern the conditions under which an application for an exemption may be submitted and granted. In order to be granted an exemption, applicants must demonstrate they have considered all reasonable options that would bring their business or property into compliance and must explain to the satisfaction of the city manager why none of these options are viable. The city manager shall determine whether an exemption will be granted. Applications for an exemption may require submission of an application processing fee.

**Reason for change:**

Correction of an incorrect cite in Ordinance 8045.

**ATTACHMENT:**

A - Proposed Emergency Ordinance 8339

ORDINANCE 8339

AN EMERGENCY ORDINANCE ADOPTING SUPPLEMENT 140, WHICH CODIFIES PREVIOUSLY ADOPTED ORDINANCES 8304, 8323, AND 8332, AND OTHER MISCELLANEOUS CORRECTIONS AND AMENDMENTS, AS AN AMENDMENT TO THE BOULDER REVISED CODE, 1981, AND SETTING FORTH RELATED DETAILS.

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

Section 1. Legislative Findings.

A. Supplement 140 amending the Boulder Revised Code 1981 ("B.R.C.") has been printed.

B. The City Council intends that this supplement be codified and published as a part of the B.R.C.

C. Supplement 140 to the B.R.C. is a part of this ordinance and contains all of the amendments to the B.R.C. enacted by the City Council in Ordinances 8304, 8323, and 8332. The City Council intends to adopt this supplement as an amendment to the B.R.C.

D. The ordinances contained in Supplement 140 are available in printed copy to each member of the City Council of the City of Boulder, Colorado, and the published text of the supplement, along with the text of those ordinances, is available for public inspection and acquisition in the office of the city clerk of the City of Boulder, in the Municipal Building, 1777 Broadway, Boulder, Colorado.

Section 2. The City Council adopts Supplement 140 by this reference.

Section 3. The City Council orders that a copy of Supplement 140 as proposed for adoption by reference herein be on file in the office of the city clerk of the City of Boulder, Colorado, Municipal Building, 1777 Broadway, City of Boulder, Boulder County, Colorado, and may be inspected by any person at any time during regular business hours pending of the adoption of this ordinance.

Section 4. The annotations, source notes, codifier's notes, and other editorial matter included in the printed B.R.C. are not part of the legislative text. These editorial provisions are provided to give the public additional information for added convenience. No implication or presumption of a legislative construction is to be drawn from these materials.



1        Section 5. The B.R.C., or any chapter or section of it, may be proved by a copy certified by the  
2 city clerk of the City of Boulder, under seal of the city; or, when printed in book or pamphlet form and  
3 purporting to be printed by authority of the city. It shall be received in evidence in all courts without  
4 further proof of the existence and regularity of the enactment of any particular ordinance of the B.R.C.  
5

6        Section 6. These provisions of the B.R.C. shall be given effect and interpreted as though a  
7 continuation of prior laws and not as new enactments.

8        Section 7. Unless expressly provided otherwise, any violation of the provisions of the B.R.C., as  
9 supplemented herein, shall be punishable by a fine of not more than one thousand dollars or  
10 incarceration for not more than ninety days in jail, or by both such fine and incarceration, as provided in  
11 section 5-2-4, "General Penalties," B.R.C. 1981.  
12

13        Section 8. Section 7-3-5, "Visible Emissions Prohibited," B.R.C. 1981 is amended as follows:

14 **7-3-5. - Visible Emissions Prohibited.**

15 (a) No driver and no owner of any motor vehicle, moped or diesel-fueled locomotive for switching and  
16 railroad yard use shall fail to prevent the emission into the atmosphere from such vehicle of any visible  
air pollutant in excess of that specified below:

- 17        (1) Vehicles powered by any fuel except diesel: no emissions permitted.  
18        (2) Vehicles powered by diesel fuel: ten consecutive seconds at thirty percent opacity or greater.  
19        (3) Locomotives: ten consecutive seconds at forty percent opacity or greater.

20 (b) Visible air pollutants that are the direct result of cold engine startup are excepted from the  
prohibitions of this section.

21 (c) For the purposes of this section, the following terms have the meanings specified:

22        ....

23        *Opacity* means the degree to which an air pollutant emission obscures the view of an observer or  
24 reduces the transmission of light. Any person certified by the Colorado Department of Health after  
completion of a course in observing and grading visible emissions in terms of opacity is competent to  
express an opinion on degree of opacity in any proceeding.

25 (d) Only one complaint may be filed under this section against a vehicle for any calendar day.

26 ~~(e) Any person served with a summons and complaint for a violation of this section may, before the~~  
27 ~~date set for arraignment, report to an environmental protection officer designated by the city manager~~  
28 ~~and demonstrate that the engine in question is in compliance with this section. If~~  
~~the environmental protection officer finds such compliance, the officer shall direct the municipal court~~  
~~to dismiss the complaint. The environmental protection officer may, upon timely request in specific~~  
~~cases, continue the arraignment date by thirty days after notifying the municipal court if~~

1 the officer finds that such time is necessary to achieve compliance and that compliance will probably  
2 be achieved within the thirty day period.

3 (e) The penalty for violation of any provision of this section is a fine of no more than \$500.

4 Section 9. Section 7-4-67, "Eluding," B.R.C. 1981 is amended as follows:

5 **7-4-67. - Eluding.**

6 (a) No driver who has received or reasonably should have received a visual or audible signal,  
7 including, without limitation, a red light or siren from a peace officer driving a vehicle marked as a  
8 police, park ranger, ~~environmental protection officer~~, sheriff or Colorado State Patrol car or an order  
9 given by a police officer directing the driver to stop, shall knowingly increase speed, extinguish lights in  
an attempt to elude such peace officer, or knowingly attempt in any other manner to elude the peace  
officer.

10 (b) Any person who violates any provision of this section commits the offense of eluding, and upon  
11 conviction thereof shall be punished by a fine of no more than \$1,000, jail of no more than ninety days  
or both such fine and jail.

12 Section 10. Section 9-2-1, "Types of Reviews," B.R.C. 1981, Table 2-1, column II. *Administrative*  
13 *Reviews-Conditional Uses* is amended as follows:

14 **TABLE 2-1: REVIEW PROCESSES SUMMARY CHART**

<b><i>I. ADMINISTRATIVE REVIEWS</i></b>	<b><i>II. ADMINISTRATIVE REVIEWS - CONDITIONAL USES</i></b>	<b><i>III. DEVELOPMENT REVIEW AND BOARD ACTION</i></b>
....	.... Recycling Facilities  Religious Assemblies  Residential Care, Custodial Care, and Congregate Care Facilities ....	....

21 Section 11. Subsections 6-3-13(d) and 6-3-13(d)," B.R.C. 1981 are amended as follows:

22 **6-3-13. - Property Owner Requirements for Recyclables and Compostables Collection.**

23 (d) Property owners or managers must maintain and make available upon request, to the city manager  
24 for inspection and copying during normal business hours, any reports, contracts and/or invoices for  
25 collection and disposition of recyclable and/or compostable materials for a period covering the most  
recent three years.

26 **6-3-14. - Business Owner Requirements for Recyclables and Compostables Collection.**

27 (d) Business owners or managers must maintain and make available upon request, to the city manager  
28 for inspection and copying during normal business hours, any reports, contracts and/or invoices for

1 collection and disposition of recyclable and/or compostable materials for a period covering the most  
2 recent three years.

3 Section 12. Subsection 6-3-17(a), B.R.C. 1981 is amended as follows:

4 **6-3-17. - Exemptions.**

5 (a) Applications for exemptions from complying with the requirements of Sections 6-3-13, "Property  
6 Owner Requirements for Recyclables and Compostables Collection," or 6-3-14, "Business Owner  
7 Requirements, must be made by the owner of the property or business. Any exemption shall be for a  
8 period of one year. Property or business owners may re-apply for one additional exemption at the  
9 expiration of the initial exemption period. City staff will review exemption applications and work with  
10 the applicants to bring the property owner or business owner into compliance. Applications must be  
11 received within sixty days of the start of the compliance period established in Section ~~6-3-17~~ 6-3-16,  
12 "Applicability." The city manager may issue additional rules that govern the conditions under which an  
13 application for an exemption may be submitted and granted. In order to be granted an exemption,  
14 applicants must demonstrate they have considered all reasonable options that would bring their business  
15 or property into compliance and must explain to the satisfaction of the city manager why none of these  
16 options are viable. The city manager shall determine whether an exemption will be granted. Applications  
17 for an exemption may require submission of an application processing fee.

13 Section 13. This ordinance is necessary to protect the public health, safety, and welfare of the  
14 residents of the city, and covers matters of local concern.

16 Section 14. The printed supplements cannot be distributed until the adopting ordinance is  
17 effective. The laws of the city should be current and available to the residents of the City of Boulder as  
18 soon as possible. On that basis, this ordinance is declared to be an emergency measure and shall be in  
19 full force and effect upon its final passage.

21 READ ON FIRST READING, PASSED, ADOPTED AS AN EMERGENCY MEASURE BY  
22 TWO-THIRDS COUNCILMEMBERS PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY  
23 this 20th day of August 2019.

25 \_\_\_\_\_  
Mayor

26 Attest:

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



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Introduction, first reading and consideration of a motion to order published by title only, Ordinance 8348 to annex approximately 28.67 acres of land generally including the Knollwood Subdivisions and the properties at 150 Green Rock Drive and 2285 Knollwood Drive with an initial zoning designation of Residential – Estate (RE) and setting forth related details (LUR2018-00048)

### **PRIMARY STAFF CONTACT**

Kathleen King, Senior Planner

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to introduce on first reading and to order published by title only Ordinance 8348 to annex approximately 28.67 acres of land generally including the Knollwood Subdivisions and the properties at 150 Green Rock Drive and 2285 Knollwood Drive with an initial zoning designation of Residential – Estate (RE) and setting forth related details.

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3J - First Reading Knollwood Annexation**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE**

Introduction, first reading and consideration of a motion to order published by title only, Ordinance 8348 to annex approximately 28.67 acres of land generally including the Knollwood Subdivisions and the properties at 150 Green Rock Drive and 2285 Knollwood Drive with an initial zoning designation of Residential – Estate (RE) and setting forth related details (LUR2018-00048).

**PRESENTERS**

Jane Brautigam, City Manager  
Thomas Carr, City Attorney  
Chris Meschuk, Assistant City Manager/Interim Planning Director  
Hella Pannewig, Assistant City Attorney (CAO)  
Kathleen King, Senior Planner (Planning)

**EXECUTIVE SUMMARY**

The purpose of this item is for City Council to consider the first reading of Ordinance 8348 finalizing and annexing the Knollwood neighborhood into the city. The second reading, public hearing, and consideration of resolutions related to the annexation will be held on Sept. 3, 2019.

In June 27 2018, a petition was filed asking the city council to annex the Knollwood area into the city using the annexation election procedures described in the Colorado Municipal Annexation Act of 1965 (Section 31-12-101 *et seq.* C.R.S.). The area proposed for annexation is approximately 28.674 acres in size and located on the western edge of the city. It generally includes the Knollwood Subdivision, Knollwood Subdivision First Addition, and Knollwood Subdivision Second Addition and the unplatted properties located at 150 Green Rock Drive and 2285 Knollwood Drive.

On March 19, 2019 council adopted Resolution 1256 finding that the area proposed to be annexed met applicable requirements of the State Constitution and that an annexation election was required; directed that the election be called; and determined that the annexation terms and conditions be imposed. The March 19 Council memo can be accessed [here](#). Council also

authorized the City Manager to execute an Intergovernmental Agreement (IGA) with the Knollwood Metropolitan District (the District) related to the annexation area.

On July 30, 2019 the District held an election at the Boulder Seventh-day Adventist Church. 87.5 percent of voters voted in favor of annexation. On August 1, 2019 the City received an order from the Boulder County District Court finding that the Knollwood area may be annexed to the City of Boulder subject to the terms and conditions established by Council in Resolution 1256. Per the State's annexation statutes, City Council may now annex the Knollwood area by ordinance and impose the terms and conditions of established in Resolution 1256. The proposed annexation ordinance is provided in **Attachment A**.

## **BACKGROUND**

The properties in the annexation area are all developed with one detached single-family dwelling unit. The properties are proposed to be annexed with an initial zoning classification of Residential Estate (RE) and without the ability to subdivide or add additional principal dwelling units.

The properties of the petitioners are currently served with water by the Knollwood Metropolitan District; with annexation, petitioners are seeking connection to city water. The properties are already served by city wastewater services. The terms and conditions of the annexation, voted on by eligible voters in Knollwood, outline the public improvements required for connection to the City's water utility. In order to connect, water mains must be constructed within the annexation area's rights-of-way, water meter meters must be moved into the rights-of-way or, if approved by the City Manager, into public easements, and the rights-of-way must be improved. The City is planning to install these improvements. The cost of construction of the public improvements is an obligation of the owners of the Knollwood properties, planned to be paid and financed through the District by certification of an annual mill levy.

As a requirement of annexation, the owners of district properties shall use their best efforts to obtain a court order pursuant to Section 32-1-707, C.R.S., dissolving the District within five years of the effective date of the annexation ordinance or within two years of the City's final acceptance of the district public improvements under the City's construction contract for the improvements, whichever occurs later. Such order of dissolution shall dissolve the District for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District.

Landowners and registered electors in the area proposed for annexation voted in the annexation election. The majority of votes cast in the election was in support of annexation, subject to the terms and conditions. Following the vote and court order, the council may, by ordinance, annex the area and impose the approved terms and conditions. Council may not impose new terms and conditions on the property owners that were not voted upon in the election.

On September 3, 2019 the ordinance will be presented to council for second reading. Should council adopt the ordinance at that time, the annexation will be considered effective on October 3, 2019. Additionally, at that time, council will be asked to consider two resolutions, the first

accepting designation of the city council as the approving authority for the Knollwood Metropolitan District pursuant to Colorado's Special District Act; and the second to approve a Second Amended Statement of Purposes to limit the District's services following annexation of the area to the City of Boulder.

## **ANALYSIS**

### **A. Annexation**

Staff has found the annexation to be consistent with State annexation laws in Colorado Revised Statutes (C.R.S.) 31-12-101 et seq., and the city's regulations, policies, and guidelines. A discussion of staff's analysis follows:

#### **1. Compliance with State Annexation Statutes**

Annexations must comply with C.R.S. 31-12-101 et seq. Staff has reviewed the annexation election procedures for compliance with (C.R.S.) 31-12-112, and finds that the annexation is consistent with this section, as affirmed by the criteria below:

- Council determined on March 19, 2019 that an annexation election was required under the provision of section 30(1)(a) of article II of the State Constitution and section 31-12-107 and passed Resolution 1256.
- The city petitioned the district court of the county to hold an election
- The court appointed three election commissioners, one nominated by the city; one nominated by the District; and the third acceptable to both the City and the District. All commissioners were residents of the state of Colorado and willing to serve.
- Commissioners called an election for July 30, 2019 to be held at the Boulder Seventh-day Adventist Church, a location adjacent to the area the area proposed to be annexed.
- Notice of the election was given by publication in the Daily Camera once a week for four weeks and a posting at both the polling place and the city of Boulder municipal building. The notice specified the time and place of the election, contained a description of the boundaries of the area proposed to be annexed, and stated that a map or plat thereof is on file in the office of the Clerk of the Boulder County District Court. Additional notice was mailed to landowners and registered electors in the area proposed to be annexed.
- Landowners and registered electors in the area proposed for annexation voted in the annexation election. Election results included 77 For Annexation with 10 Against Annexation; a total of 87 votes were cast.
- A report of the result of the voting was filed on July 31, 2019 with the Boulder County District Court.
- The District Court has ordered, adjudged and decreed that the area may be annexed to the city upon the terms and conditions established in Resolution 1256 and included in **Attachment F**.

## **2. Compliance with City Policies**

The annexation of land must be consistent with the Boulder Valley Comprehensive Plan. The annexation area may be considered for annexation due to its designation as Area II (Policy 1.12 Definition of Comprehensive Planning Areas I, II, and III). The Area II designation of the area refers to the planning area now under county jurisdiction where annexation to the city can be considered consistent with BVCP policies 1.07 Adapting to Limits on Physical Expansion, 1.09 Growth Requirements, and 1.16 Annexation.

Policy 1.16 (b) emphasizes the city's pursuit of annexations of county enclaves, substantially developed properties along the western boundary below the Blue Line and other substantially developed Area II properties. The annexation area is an unincorporated area of land entirely contained within the boundary of the city, is a substantially developed area in Area II and is located along the western boundary below the Blue Line.

Policy 1.17 indicates that the City will take all reasonable and legal steps to facilitate assimilation of facilities and services into the City upon annexation in cases, like in Knollwood, where the provider of the facilities and services are other than the City or County.

Policy 1.18 emphasizes that the provision of facilities and services by the City is preferable to the provision of such services by special districts because in part, municipalities have politically accountable leadership, general police power and the ability to coordinate provision of adequate urban facilities and services. The terms and conditions of the annexation as well as the Intergovernmental Agreement between the City and District are consistent with these policies by providing for the construction and financing of public improvements to connect the annexation area to the city's water utility and requiring the dissolution of the District.

Overall, the annexation was analyzed and found to be consistent with the following BVCP policies:

- 1.07 Adapting to Limits on Physical Expansion
- 1.09 Growth Requirements
- 1.12 Definition of Comprehensive Planning Areas I, II and III
- 1.16 Annexation

A complete analysis of the consistency with BVCP policies can be found [here](#).

## **3. Land Use Designation and Initial Zoning**

Initial zoning must be consistent with the BVCP and Section 9-2-18, "Zoning of Annexed Land," B.R.C. 1981. If a property is annexed, zoning will be established according to land use designation in the Land Use Map of the Boulder Valley. The proposed zoning (RE) is defined as: "Single-family detached residential dwelling units at low to very low residential densities" (Section 9-5-2(C)(1)(A), B.R.C. 1981). The property is designated as Very Low Density Residential on the BVCP land use map, which consists predominantly of single-family detached units and has a density of two dwelling units per acre or less. The Residential Estate (RE) zoning meets these criteria. The proposed zoning also allows for the greatest number of properties to be



in compliance with requirements of the Schedule of Form and Bulk Standards (Section 9-7-1, B.R.C. 1981) related to setbacks and the Intensity Standards (Section 9-8-1, B.R.C. 1981) related to minimum lot area.

On March 19, 2019 city council found an initial zoning of Residential Estate (RE) consistent with the BVCP land use map and incorporated RE as the initial zoning in the terms and conditions through Resolution 1256 (**Attachment F**).

#### **4. 150 Green Rock Drive Annexation Agreement**

With the exception of 150 Green Rock Drive, the properties proposed for annexation are in the Knollwood Metropolitan District (“District”) and are served by the District with water and a few other governmental services. As part of the annexation, the petitioners are seeking connection to the City’s water utility. The property at 150 Green Rock Drive is not part of the District and is already served by City water. Due to the different circumstances of this property, staff has negotiated a separate annexation agreement with Karin Budding, the property owner of 150 Green Rock Drive (see **Attachment I** for Annexation Agreement for 150 Green Rock Drive).

#### **5. Wetland Mapping**

The proposed annexation ordinance would adopt a wetland map and functional evaluation of the Sunshine Creek wetlands that will become subject to the City’s wetland regulations following annexation.

#### **B. Resolutions 1261 and 1262**

At the public hearing on September 3, along with the second reading of the annexation ordinance, Council will be asked to consider adoption of Resolutions 1261 and 1262. Resolutions 1261 and 1262 implement requirements of the Intergovernmental Agreement regarding Annexation and Transition of Municipal Services between the City and the District (IGA) and address municipal oversight of the Knollwood Metropolitan District and its powers to provide services following annexation. The following explains what is proposed in these Resolutions.

The Knollwood Water District (now known as the Knollwood Metropolitan District”) (hereafter referred to as “District”) was formed in 1965 to provide water services to the Knollwood area. In 2015, the District was converted to a metropolitan district to enlarge the service provided by the District, in particular, to provide street improvements and traffic and safety controls in addition to water services. The District is a discrete governmental entity with a separate governing body, and its own taxing, borrowing, and fee collection powers for the services it is authorized to provide.

##### **1. Resolution 1261**

Special districts are subject to approval authority from either the board of county commissioners of each county which has territory included within a special district or from a municipality if the

district is wholly contained within the boundaries of a municipality. The approval authority must consent to the formation of a special district and has influence over the creation of a district and the content of its service plan. A service plan is essentially a district's charter governing the facilities, service and financial arrangements of the district. Once a district is established, material modifications to the service plan require approval from the approving authority. For the Knollwood Metropolitan District its approved "Amended Statement of Purposes" functions as its service plan.

The Boulder County Board of County Commissioners have been the approval authority for the District's Statement of Purposes. With annexation of the Knollwood area (approval of Ordinance 8348), the District will become wholly contained within the boundaries of the City of Boulder. When that occurs, the City Council may become the approval authority for the special district, and the IGA required the District to petition City Council to become the designated approving authority of the District upon annexation of the Knollwood area. The District filed such petition which can be found in **Attachment G**. If the City Council accepts the designation as approval authority by adoption of Resolution 1261, any material modifications to the District's Statement of Purposes will require approval by the City Council instead of the Boulder County Board of County Commissioners.

## **2. Resolution 1262**

The IGA anticipates transition of the District's governmental services to the City over approximately the next five years and ultimately dissolution of the District. To accomplish that, the District was required to petition City Council to approve a Second Amended Statement of Purposes (see **Attachment H**). Approval of the Second Amended Statement of Purposes would limit the powers of the District while service provision is transferred to the City of Boulder. City Council can approve the Second Amended Statement of Purposes by adoption of Resolution 1262. The Second Amended Statement of Purposes would allow the District to construct and finance the water utility and street improvements anticipated in the IGA and continue covenant enforcement and snow removal for approximately the next 5 years. The District would no longer be allowed to provide general traffic enforcement services. In approximately 5 years, the District will have to discontinue all service provision except as it may relate to the payment of the remaining financial obligations of the District.

The Second Amended Statement of Purposes would reduce the level of service authorized to be provided by the District and would constitute a material modification of its Statement of Purposes. In reviewing the proposed Second Amended Statement of Purposes, the Council should consider whether the following criteria established under state law are met. While the following criteria address the creation of a special district, state law requires that the same criteria be analyzed when a Statement of Purposes is modified (see CRS 32-1-208(3), 32-1-207(2)(a), and 32-1-204.5(1)):

### **C.R.S. 32-1-203(2): Mandatory findings to approve:**

- (a) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.**

The proposed services of the District are (1) to provide water services, (2) to provide street improvements and safety protection through snow plowing, and (3) to enforce

recorded covenants for the Knollwood Subdivision, Knollwood Subdivision First Addition, and Knollwood Subdivision Second Addition. Until the anticipated water utility and street infrastructure has been improved, connected to the city's water utility system, and financed and the property owners have created a common interest community and unit owners association, there is a need for the services proposed in the Second Amended Statement of Purposes.

**(b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.**

Until connection to the city's water utility as anticipated in the IGA and creation of a common interest community and unit owners association, the District will be the sole provider of the proposed services in the area.

**(c) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.**

The District is capable of providing economical and sufficient service to the area within its boundaries. In 2016 and 2018, the District's electors have authorized an increased mill levy for the District services consistent with the Second Amended Statement of Purposes and the IGA for debt to be issued in the amount of \$500,000 (2016 vote) and \$2,750,000 (2018 vote).

**(d) The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.**

The District is substantially built out and the current Boulder County Assessor valuation of property within the District (48 properties) is \$9,010,153 (\$122,360,900 actual value).

Both Resolution 1261 and 1262 are conditioned upon annexation of the area and will take effect only upon the effective date of the annexation ordinance.

## STAFF RECOMMENDATION

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

***Suggested Motion Language:***

*Motion to introduce on first reading and to order published by title only Ordinance 8348 to annex approximately 28.67 acres of land generally including the Knollwood Subdivisions and the properties at 150 Green Rock Drive and 2285 Knollwood Drive with an initial zoning designation of Residential – Estate (RE) and setting forth related details.*

## NEXT STEPS

A public hearing will be held on September 3, 2019. At the hearing, council will be presented with a second reading and consideration of Ordinance 8348 for adoption. Additionally, council will be presented with two resolutions, the first (Resolution 1261) accepting designation of City Council as the approving authority for the Knollwood Metropolitan District and the second

(Resolution 1262) to approve a Second Amended Statement of Purposes pursuant to Colorado's Special District Act to limit the Knollwood Metropolitan District's services following annexation of the area to the City of Boulder. Should the ordinance be approved on September 3, the annexation will be effective October 3, 2019.

## **ATTACHMENTS**

- A. Ordinance 8348
- B. District Court Order
- C. Petition for Annexation Election
- D. Annexation Map
- E. Intergovernmental Agreement between the City of Boulder and the Knollwood Metropolitan District
- F. Resolution 1256
- G. Resolution 1261
- H. Resolution 1262
- I. Annexation Agreement for 150 Green Rock Drive
- J. KMD Petition for Boulder City Council to Accept Designation as the Approving Authority of the District
- K. KMD Request for Material Modification to Amended Statement of Purposes
- L. KMD Signed Statement of Purposes

## ORDINANCE 8348

AN ORDINANCE ANNEXING TO THE CITY OF BOULDER APPROXIMATELY 28.67 ACRES OF LAND GENERALLY INCLUDING THE KNOLLWOOD SUBDIVISIONS AND THE PROPERTIES AT 150 GREEN ROCK DRIVE AND 2285 KNOLLWOOD DRIVE, WITH AN INITIAL ZONING CLASSIFICATION OF RESIDENTIAL ESTATE (RE) AS DESCRIBED IN CHAPTER 9-5, "MODULAR ZONE SYSTEM," B.R.C. 1981; AMENDING THE ZONING DISTRICT MAP FORMING A PART OF SAID CHAPTER TO INCLUDE THE PROPERTY IN THE ABOVE-MENTIONED ZONING DISTRICT, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS:

A. A "Petition" for Annexation Election for the unincorporated territory in Boulder County generally including the Knollwood Subdivision, Knollwood Subdivision First Addition, Knollwood Subdivision Second Addition, and the properties generally known as 150 Green Rock Drive and 2285 Knollwood Drive and more particularly described in **Exhibit A** (the "Property"), attached hereto and incorporated herein, has been filed with the City Clerk, and said petition has been referred to the City Council.

B. By Resolution 1251, adopted February 5, 2019, the City Council of the City of Boulder, Colorado, found said Petition to be in substantial compliance with the applicable statutory requirements and set March 19, 2019, as the date for a public hearing to determine whether the territory proposed for annexation is eligible for annexation to the City of Boulder.

C. The Planning Board duly proposed that the Property be annexed to the City of Boulder and that the zoning district map adopted by the City Council be amended to zone and include the Property in the Residential Estate (RE) zoning district, as provided in Chapter 9-5, "Modular Zone System," B.R.C. 1981.

D. Pursuant to Resolution 1251 and after providing notice as required by law, a public hearing was duly held before the City Council on March 19, 2019, and the City Council considered the evidence presented at said hearing on the proposed annexation and initial zoning of the Property of Residential-Estate (RE).

E. Following said public hearing, City Council adopted Resolution 1256 finding that the Property proposed for annexation pursuant to the Petition for Annexation Election meets the applicable requirements of section 30 of article II of the state constitution and C.R.S. §§31-12-104 and 31-12-105, that the annexation terms and conditions contained in **Exhibit B**, attached hereto and incorporated herein, are to be imposed upon the Property and the landowners therein, and that an annexation election is required.

F. On May 7, 2019, the District Court for Boulder County, Colorado, appointed three election commissioners who called an election of all landowners and the registered electors of the Property.

1 G. An annexation election was duly held on July 30, 2019, at which a majority of the  
2 votes cast at such election were for annexation of the Property to the City of Boulder, subject to  
3 the annexation terms and conditions established by City Council in Resolution 1256 and  
4 contained in **Exhibit B**.

5 H. City Council hereby reaffirms the findings of Resolution 1256 and confirms that  
6 the factual determinations are still valid.

7 I. Annexation and an initial zoning designation of Residential Estate (RE) for the  
8 Property is consistent with the Boulder Valley Comprehensive Plan and bears a substantial  
9 relation to and will enhance the general welfare of the Property and of the residents of the City of  
10 Boulder.

11 J. A stream, wetland, water body and buffer area determination was completed for  
12 the Property and its vicinity in accordance with the standards and procedures of Subsection 9-3-  
13 9(k), "Stream, Wetland and Water Body Boundaries," B.R.C. 1981, and in accordance with the  
14 procedures specified in the 1987 Corps of Engineers Wetlands Delineation Manual and the  
15 definitions of a stream, wetland and water body as set forth in Subsection 9-16-1(c) "Stream,"  
16 "Wetland," or "Water Body," B.R.C. 1981. The City Council may adopt any wetlands mapped  
17 on the Property and its vicinity and the associated wetlands evaluations as part of this annexation  
18 ordinance to update the city's regulatory maps.

19 K. City Council has jurisdiction and the legal authority to annex and zone the  
20 Property and to adopt amendments to the city's stream, wetland, and water body boundary  
21 mapping and evaluations.

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

24 Section 1. The Property more particularly described in **Exhibit A** is hereby annexed to  
25 and included within the corporate boundaries of the City of Boulder.

Section 2. Chapter 9-5, "Modular Zone System," B.R.C. 1981, and the zoning district  
map forming a part thereof, be, and the same hereby are, amended to include the Property within  
the Residential Estate (RE) zoning district.

Section 3. The annexation of the Property is subject to the annexation terms and  
conditions set forth in **Exhibit B**.

1        Section 4. City Council hereby consents to the inclusion of each lot and parcel of the  
2 Property in the Northern Colorado Water Conservancy District (the “District”) and the Municipal  
3 Subdistrict of the Northern Colorado Water Conservancy District (the “Subdistrict”) pursuant to  
4 Section 37-45-136(3.6), C.R.S., to the extent such lots and parcels are not already included in  
5 said District, Subdistrict, or both. Upon inclusion into the District and Subdistrict, said Property  
6 shall be subject to the same mill levies and special assessments as are levied or will be levied on  
7 other similarly situated property in the District and Subdistrict, respectively.

8        Section 5. Section 9-3-9, “Stream, Wetland and Water Body Protection,” B.R.C. 1981,  
9 and the stream, wetland and water body maps adopted therein, and as amended from time to  
10 time, be, and hereby are, amended to include the mapping shown in **Exhibit C** attached hereto  
11 and incorporated herein.

12        Section 6. Section 9-3-9, “Stream, Wetland and Water Body Protection,” B.R.C. 1981,  
13 and the functional evaluations of all regulated stream, wetland and water bodies adopted therein,  
14 and as amended from time to time, be, and hereby are, amended to include the functional  
15 evaluation shown in **Exhibit D** attached hereto and incorporated herein.

16        Section 7. The City Council adopts the recitals in this ordinance and incorporates them  
17 herein by this reference.

18        Section 8. The City Council approves any variations or modifications to the Boulder  
19 Revised Code or other City ordinances that are in the annexation terms and conditions set forth  
20 in **Exhibit B** and any agreement associated with this annexation.

21        Section 9. The City Council authorizes the city manager to implement the annexation  
22 terms and conditions set forth in **Exhibit B** and terms of any agreements associated with this  
23 annexation.  
24  
25

Section 10. The annexation and zoning of the Property and adoption of the mapping and evaluation of the stream, wetland and water bodies on the Property and in its vicinity are necessary for the protection of the public health, safety, and welfare.

Section 11. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the City Clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 20th day of August 2019.

Suzanne Jones  
Mayor

Attest:

Lynnette Beck  
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED this 3rd day of September 2019.

Suzanne Jones  
Mayor

Attest:

Lynnette Beck  
City Clerk



## EXHIBIT A

## LEGAL DESCRIPTION

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF KNOLLWOOD SUBDIVISION ALSO BEING THE WESTERLY RIGHT OF WAY OF GREEN ROCK DRIVE; THENCE ALONG THE BOUNDARY OF SAID KNOLLWOOD SUBDIVISION THE FOLLOWING NINE (9) COURSES:

1. N76°00'00"E, A DISTANCE OF 189.13 FEET TO A POINT ON A CURVE;
2. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 569.71 FEET AND A CENTRAL ANGLE OF 17°30'01" (CHORD BEARS N84°45'00"E, 173.34 FEET), 174.01 FEET;
3. THENCE S86°30'00"E, A DISTANCE OF 200.00 FEET TO A POINT ON A CURVE;
4. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 1638.18 FEET AND A CENTRAL ANGLE OF 4°00'00" (CHORD BEARS S84°30'00"E, 114.34 FEET), 114.37 FEET;
5. THENCE S82°30'00"E, A DISTANCE OF 6.00 FEET;
6. THENCE N7°30'00"E, A DISTANCE OF 2.57 FEET;
7. THENCE S80°39'30"E, A DISTANCE OF 118.68 FEET;
8. THENCE S0°02'15"E, A DISTANCE OF 22.00 FEET;
9. THENCE S42°46'15"E, A DISTANCE OF 306.15 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD FIRST ADDITION THE FOLLOWING FIVE (5) COURSES:

1. S42°46'15"E, A DISTANCE OF 194.04 FEET;
2. THENCE N68°35'45"E, A DISTANCE OF 21.48 FEET;
3. THENCE S0°02'15"E, A DISTANCE OF 374.29 FEET;
4. THENCE S89°59'00"W, A DISTANCE OF 115.29 FEET;
5. THENCE S0°01'43"E, A DISTANCE OF 91.40 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD SECOND ADDITION THE FOLLOWING TWENTY TWO (22) COURSES:

1. N89°59'00"E, A DISTANCE OF 86.89 FEET;
2. THENCE S0°02'15"E, A DISTANCE OF 149.83 FEET;
3. THENCE S83°15'00"W, A DISTANCE OF 22.85 FEET;
4. THENCE S44°30'00"W, A DISTANCE OF 21.00 FEET;
5. THENCE S22°25'00"W, A DISTANCE OF 49.50 FEET;
6. THENCE S13°35'00"W, A DISTANCE OF 70.00 FEET;
7. THENCE S43°05'00"W, A DISTANCE OF 148.00 FEET;
8. THENCE S35°55'00"W, A DISTANCE OF 43.00 FEET;
9. THENCE S24°40'00"W, A DISTANCE OF 40.00 FEET;
10. THENCE S11°58'00"W, A DISTANCE OF 83.98 FEET;
11. THENCE S15°01'09"E, A DISTANCE OF 88.02 FEET TO A POINT ON A CURVE;
12. THENCE ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 97°44'21" (CHORD BEARS S64°21'34"W, 75.32 FEET), 85.29 FEET;
13. THENCE N83°49'10"W, A DISTANCE OF 13.89 FEET;
14. THENCE S28°00'00"W, A DISTANCE OF 1.50 FEET;

15. THENCE S40°30'00"W, A DISTANCE OF 139.00 FEET;
16. THENCE S27°27'00"W, A DISTANCE OF 22.15 FEET;
17. THENCE S70°09'35"W, A DISTANCE OF 11.78 FEET;
18. THENCE S22°00'00"W, A DISTANCE OF 126.79 FEET;
19. THENCE S37°24'30"W, A DISTANCE OF 142.69 FEET;
20. THENCE N2°05'50"E, A DISTANCE OF 655.94 FEET;
21. THENCE N57°58'20"W, A DISTANCE OF 392.20 FEET;
22. THENCE N10°39'05"W, A DISTANCE OF 159.39 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD FIRST ADDITION THE FOLLOWING THREE (3) COURSES:

1. N6°45'00"W, A DISTANCE OF 87.09 FEET;
2. THENCE N20°24'00"W, A DISTANCE OF 93.00 FEET;
3. THENCE N13°40'00"W, A DISTANCE OF 90.06 FEET;

THENCE ALONG THE BOUNDARY OF TRACT 3298 RECORDED AT RECEPTION NO. 1099939 DATED 04 / 29 /91 THE FOLLOWING TWO (2) COURSE:

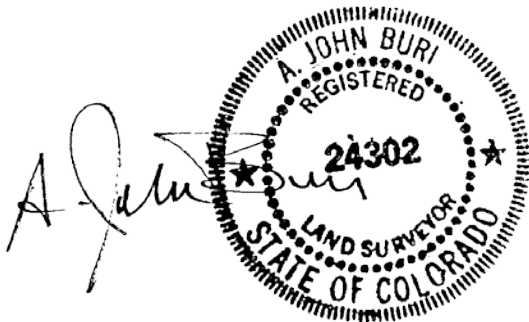
1. S85°00'00"W, A DISTANCE OF 200.00 FEET;
2. THENCE N0°04'20"W, A DISTANCE OF 135.25 FEET;

THENCE ALONG THE BOUNDARY OF A TRACT OF LAND RECORDED AT RECEPTION NO. 1949399 DATED 06 / 14 / 99 THE FOLLOWING TWO (2) COURSES:

1. N0°04'20"W, A DISTANCE OF 443.44 FEET;
2. THENCE N76°00'07"E, A DISTANCE OF 16.22 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 1,249,043 SQUARE FEET (28.674 ACRES).

**SCOTT, COX & ASSOCIATES, INC.**



A. John Buri, P.L.S. #24302  
Survey Manager  
SCOTT, COX AND ASSOCIATES, INC.  
1530 55th Street  
Boulder, CO 80303  
(303) 444-3051 ext. 26 Date: 01 / 25 / 19

**EXHIBIT B****ANNEXATION TERMS AND CONDITIONS****RECITALS**

A. Registered electors have petitioned the City of Boulder (“City”) to commence proceedings for the holding of an annexation election for an area generally including the Knollwood Subdivision, Knollwood Subdivision First Addition and Knollwood Subdivision Second Addition, plus two adjacent parcels at 150 Green Rock Drive and 2285 Knollwood Drive, and more particularly described on Exhibit A to Resolution 1256 (collectively, the “Annexation Area”).

B. With the exception of the property at 150 Green Rock Drive, the properties within the Annexation Area are located within the boundaries of the Knollwood Metropolitan District (“District”). Properties within the District are hereafter referred to as “District Properties”. Currently, the District provides water to District Properties, as well as some other governmental services. The property at 150 Green Rock Drive is connected to the City of Boulder’s water utility.

C. With annexation, petitioners are seeking to connect the District Properties to the City’s water utility.

D. To connect to the City’s water utility, water mains (“New Mains”) have to be constructed within the Annexation Area’s rights-of-way, water meters have to be moved into the rights-of-way or, if approved by the City Manager, into public easements and the rights-of-way have to be improved (“Street Improvements”). The New Mains, service lines to meter pits, and meter pits installed by the City, and Street Improvements are hereafter collectively referred to as “District Public Improvements”. The City is planning to install the District Public Improvements.

E. The cost of construction of the District Public Improvements will be an obligation of the owners of the District Properties, planned to be paid and financed through the District as set forth below, by certification of an annual mill levy. To allow for payment and financing of District Public Improvements through the District, the payment of costs for the construction of the District Public Improvements will be billed to the District Property owners only in the event and to the extent the District has not paid the construction costs of the District Public Improvements.

F. Pursuant to Section 9-2-17, “Annexation Requirements,” B.R.C. 1981, annexation of land to the City of Boulder shall not create an unreasonable burden on the physical, social, economic, or environmental resources of the City. To ensure this requirement is met terms and conditions (“Terms and Conditions”) shall be imposed on the individual property owners within the Annexation Area.

G. The Terms and Conditions create the obligations for individual property owners within the Annexation Area. A separate Intergovernmental Agreement (“IGA”) between the City and the District addresses obligations of the District in this annexation, the District’s governmental powers following annexation, and the process of dissolution of the District following connection of the District Properties to the City’s water utility.

NOW, THEREFORE, in consideration of the recitals, the following Terms and Conditions shall be imposed upon the annexation to the City of Boulder of the Annexation Area:

**EXHIBIT B****1. District Dissolution**

As a requirement of annexation, the owners of District Properties shall use their best efforts to obtain a court order pursuant to Section 32-1-707, C.R.S., dissolving the District within five years of the effective date of the annexation ordinance or within two years of the City's final acceptance of the District Public Improvements under the City's construction contract for the District Public Improvements, whichever occurs later. Such order of dissolution shall dissolve the District for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District. A plan for dissolution shall adequately provide for the payment of such financial obligations and debt.

**2. Intergovernmental Agreement**

The annexation shall be conditioned on the execution of an IGA between the City of Boulder and the District, to be executed by the District prior to a public hearing by the City Council to determine if the proposed annexation complies with the applicable state law and whether to impose terms and conditions on the annexation pursuant to Section 31-12-108, C.R.S. After approval by the District, any changes to the IGA would be subject to approval by the District Board. No changes will be made to the Terms and Conditions after the annexation election, unless approved by the voters in a new annexation election.

The IGA shall provide for (a) the services that may be provided by the District between the effective date of the annexation and District dissolution, (b) financing and payment of the District Public Improvements, and (c) the services provided by the District that may be assumed by a unit owners' association ("HOA") after dissolution. The IGA will also require the District to assist the property owners within the boundaries of the service area of the District in creating a common interest community and a unit owners' association consistent with Sections 38-33.3-101, *et seq.*, C.R.S. prior to dissolution of the District. If an HOA is formed, it may provide services consistent with Sections 38-33.3-101, *et seq.*, C.R.S., including covenant enforcement and snowplowing, and shall own and maintain any outlots within the Annexation Area that are currently owned by the District. If, at the time the District dissolves, any outlots owned by the District have not been conveyed to an HOA, then, prior to dissolution of the District, any such outlots shall be conveyed to the City.

**3. District Public Improvements**

a. **Construction of District Public Improvements.** Following annexation, the City plans to construct the New Mains and Street Improvements in the Annexation Area to serve District Properties. The Street Improvements are planned be constructed generally where the existing streets are located, over the area where the New Mains are being constructed, and as approximately 22-foot wide rural residential streets without curb, gutter, sidewalks, or streetlights.

As part of the District Public Improvements, the City will install water service lines from the New Mains to existing or new meter pits within the public right-of-way or, if approved by the City Manager, in a public easement.

b. **Construction of Service Lines to Homes.** Pursuant to the IGA, no later than thirty days following the City's construction and final acceptance of a New Main and service line from the New Main to the meter pit serving a property, the District shall obtain any permits required for work in the City's right-of-way or public easements and install, at its cost, a service line connection from any new meter pits to the existing meter pit and new pressure reducing valves on such property. The owners of the District Property shall provide the District with all necessary approvals and rights of access to perform this work. If the District does not complete this work within the thirty-day time frame, no later than within 60 days

**EXHIBIT B**

following the City's construction and final acceptance of the New Main and service line from the New Main to the meter pit serving the property, the individual property owners, at their cost, shall cause installation of such service line and pressure reducing valves and shall ensure completion and compatibility of the new service line with the City's water service. It is the individual property owners' responsibility to connect a service line from the meter pit serving the property to the structure on the property being served.

Upon completion of such work by the District or the property owners and acceptance thereof by the City, the City will install the existing meter in the meter pit and will connect the property to City water. The City will consider a pilot program for the District Properties to allow temporary electronic meter reading.

c. Connection to City Water System. Upon completion of the New Mains that will serve the Annexation Area, property owners within the Annexation Area shall not connect to or be served by any water system other than the City's and shall connect to the City water system when so required by the City Manager.

d. Payment if District Fails to Pay. In the event that the District has not paid for the construction of the District Public Improvements, within 180 days of the City's final acceptance of the District Public Improvements, each owner of a District Property shall pay the then-applicable water plant investment fees, installation charges and their share of the unpaid costs of constructing the District Public Improvements. The cost of the District Public Improvements shall be the original cost of design, purchase, construction, and installation, but excluding the cost of connecting the service line of 150 Green Rock Drive to the New Mains and excluding the cost of up-sizing a portion of the new main in Green Rock Drive from an 8-inch line to a 12-inch line, the total to be divided equally among the District Properties.

The property at 150 Green Rock Drive will not be responsible for a share of the costs of the District Public Improvements and associated fees as it is currently connected to the City's water utility.

For purposes of these Terms and Conditions, the cost of constructing the District Public Improvements shall include all applicable costs, fees, and charges associated with the design, purchase, construction and installation of the District Public Improvements, the management and supervision of the construction and installation of the District Public Improvements by City contractors, and the connection of District Properties to the New Mains. If not paid by the District, the City will, in good faith, consider creating a financing option to assist District Property owners in paying the amount owed by a District Property owner for the District Public Improvements to the City.

e. Vacant Property. Any property vacant (without a dwelling unit) at the time of construction of the District Public Improvements will be responsible for the full, then-applicable in-City plant investment fees, and tap, service line and meter charges, and its share of the District Public Improvement construction costs (unless paid by the District) at the time of issuance of a building permit to construct a new dwelling unit.

f. 150 Green Rock Drive. The owner of the property located at 150 Green Rock Drive currently served by City water shall connect to the New Mains at the time so required by the City Manager. The City shall pay the costs associated with connecting the existing service line for the 150 Green Rock Drive property to the New Mains.

**EXHIBIT B****4. Stormwater and Flood Plant Investment Fees**

a. Rate. The property owners in the Annexation Area shall pay the stormwater and flood plant investment fee (hereafter referred to as “Storm PIF”) at the rates applicable in 2018.

b. Payment. The Storm PIF will be charged to the property owners in a City of Boulder utility bill no earlier than 30 days following the effective date of the annexation. Within 10 days of a property owner’s receipt of that utility bill, the property owner shall pay the Storm PIF that is due pursuant to the Boulder Revised Code and at the rate applicable in 2018.

c. Payment Plan Option. Instead of payment-in-full at the time of receipt of the utility bill for this fee, a property owner may agree in writing to pay the Storm PIF in monthly installments over a period of 10 years from the date of the first bill for the Storm PIF. At the time payment is due for each monthly installment, in addition to the monthly installment, a payment plan charge shall be paid in the amount of 30 % of the monthly installment. There will be no penalty for prepayment of the remaining outstanding principal amount due, and no payment plan charge for prepayments. The first installment shall be paid within 10 days after the date of receipt of the first bill for the Storm PIF. For any property which participates in the phased repayment program, the property owner shall pay the entire outstanding obligation for the Storm PIF, including any payment plan charges that are due for missed monthly payments, and the full unpaid principal amount at such time as the property is sold. No penalty or payment plan charge will be imposed for pre-payment of the Storm PIF in whole or in part. The phased repayment program will be provided by the City only to those properties that will connect to City water at the time that it is first available.

d. Billing and Collection. The payment-in-full charge and the monthly installment due under the phased repayment plan may be included on the same bill that includes water, wastewater, or storm water and flood management services charges or may be included on a separate bill as provided in Title 11, “Utilities and Airport,” B.R.C. 1981. The billing, payment, and collection provisions of Sections 11-5-12, “Billing and Payment of Fees,” 11-5-13, “Certification of Unpaid Charges to County Assessor,” and 11-5-14, “Charges are Lien on Property,” B.R.C. 1981, shall apply to the billing, payment, and collection of the Storm PIF, including installments and payment plan charges due under the phased repayment program for the Storm PIF, and any interest on delinquent payments due thereon.

**5. Flood Control Easements**

Properties located within the conveyance zone, as delineated on the City’s regulatory floodplain mapping, will be required to dedicate to the City a flood control easement. This easement must be dedicated prior to issuance of a permit for work on the property under Title 10, “Structures,” B.R.C. 1981, or at such time as improvements to the Sunshine Creek and/or Sanitas Creek channel are proposed to be made by the City of Boulder and shall be based on the then-applicable floodplain mapping.

**6. Zoning**

The properties in the Annexation Area would initially be zoned Residential Estate (RE).

**7. Subject to City Codes and Policies**

Upon annexation, the properties in the Annexation Area will be subject to all laws, rules, regulations, and administrative orders of the City of Boulder except as expressly modified by these terms and conditions. Annexation in accordance with the terms and conditions contained herein shall in no manner

**EXHIBIT B**

waive the present or future applicability of said laws, rules, regulations and administrative orders. Existing legal nonconforming uses and nonstandard buildings and structures will be allowed to continue to exist. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, applies to changes to nonstandard buildings and nonconforming uses. It is understood that this section shall not be constructed to permit a property to constitute a nuisance or to cause a hazard under the City's life safety codes.

8. Water Rights

At the time of connection to the City's water system, but in no event later than issuance of a building permit for the property, any property owner with water or ditch rights used on or appurtenant to the property, shall sell or offer a right of first refusal to the City, consistent with Section 11-1-19, "Water and Ditch Rights," B.R.C. 1981, for any water rights appurtenant to the property, except that in the event a water or ditch rights owner has entered into an agreement with the City that contains provisions that are in conflict with Section 11-1-19, B.R.C 1981, such as the Settlement Agreement executed by the City and The Silver Lake Ditch & Reservoir Company recorded in the office of the Boulder County Clerk and Recorder's Office at Reception No. 03046201, such agreement shall control.

9. One Dwelling Unit per Lot or Parcel

Due to the area's topography and location on the western boundary of the City, no lot or parcel within the Annexation Area shall be developed with more than one principal dwelling unit.

10. No Subdivision

Due to the area's topography and location on the western boundary of the City, no lot or parcel within the Annexation Area shall be subdivided to create an additional lot following annexation to the City.

11. Wetland Mapping

Prior to annexation, all stream, wetland, water bodies and buffer areas on the properties in the Annexation Area will be mapped by the City after the fee prescribed in Section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, is paid. Pursuant to the IGA, this fee will be paid by the District. This mapping will include a functional evaluation of the stream, wetland or water body. The approved mapping and evaluation shall be adopted as an update to the regulatory maps as a part of the annexation ordinance.

12. Inclusion into the Municipal Subdistrict of the Northern Colorado Water Conservancy District

The properties in the Annexation Area shall be included in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to the process in Section 37-45-136(3.6), C.R.S.

13. Use of Existing Wells

The City will not prohibit a property owner from using existing, privately-owned wells for non-potable irrigation purposes on such property following annexation, even after a property is served by the City water utility. Existing wells that are used for irrigation purposes must be registered and permitted by the State Engineer's Office and operated in accordance with any augmentation and other requirements under Colorado water law. Existing wells shall not be used for domestic water purposes once the property is connected to the City's water utility. No person shall make any cross-connections to the City's municipal water supply system from any well on the property.

**EXHIBIT B****14. Historic Drainage**

Drainage from properties in the Annexation Area shall be conveyed in an historic manner that does not materially and adversely affect abutting properties.

**15. Wood Roofs**

Wood roof covering materials are prohibited in the City of Boulder. Immediate replacement shall not be required; however, no person owning a building with wood roof covering materials in the Annexation Area shall install any wood roof covering materials following annexation. Any installation, repair or replacement must utilize approved roof covering materials which conform to the applicable requirements of Title 10, "Structures," B.R.C. 1981. However, this section shall not be construed to permit a property to constitute a nuisance or to cause a hazard under the City's life safety codes.

**16. Rental Property Requirements**

If a property is used as rental property at the time of annexation, it shall be brought into compliance with Chapter 10-3, "Rental Licenses," B.R.C. 1981, within 90 days of the effective date of the annexation ordinance; for a rental license issued within 90 days of the effective date of the annexation ordinance the energy efficiency requirements of Chapter 10-2, "Property Maintenance Code, Appendix C – Energy Efficiency Requirements," B.R.C. 1981, shall be waived. Any subsequent application for a new or renewal of a license and any rental license for a new building or new dwelling unit on the property shall be subject to the energy efficiency requirements of Chapter 10-2, B.R.C. 1981.

**17. Breach**

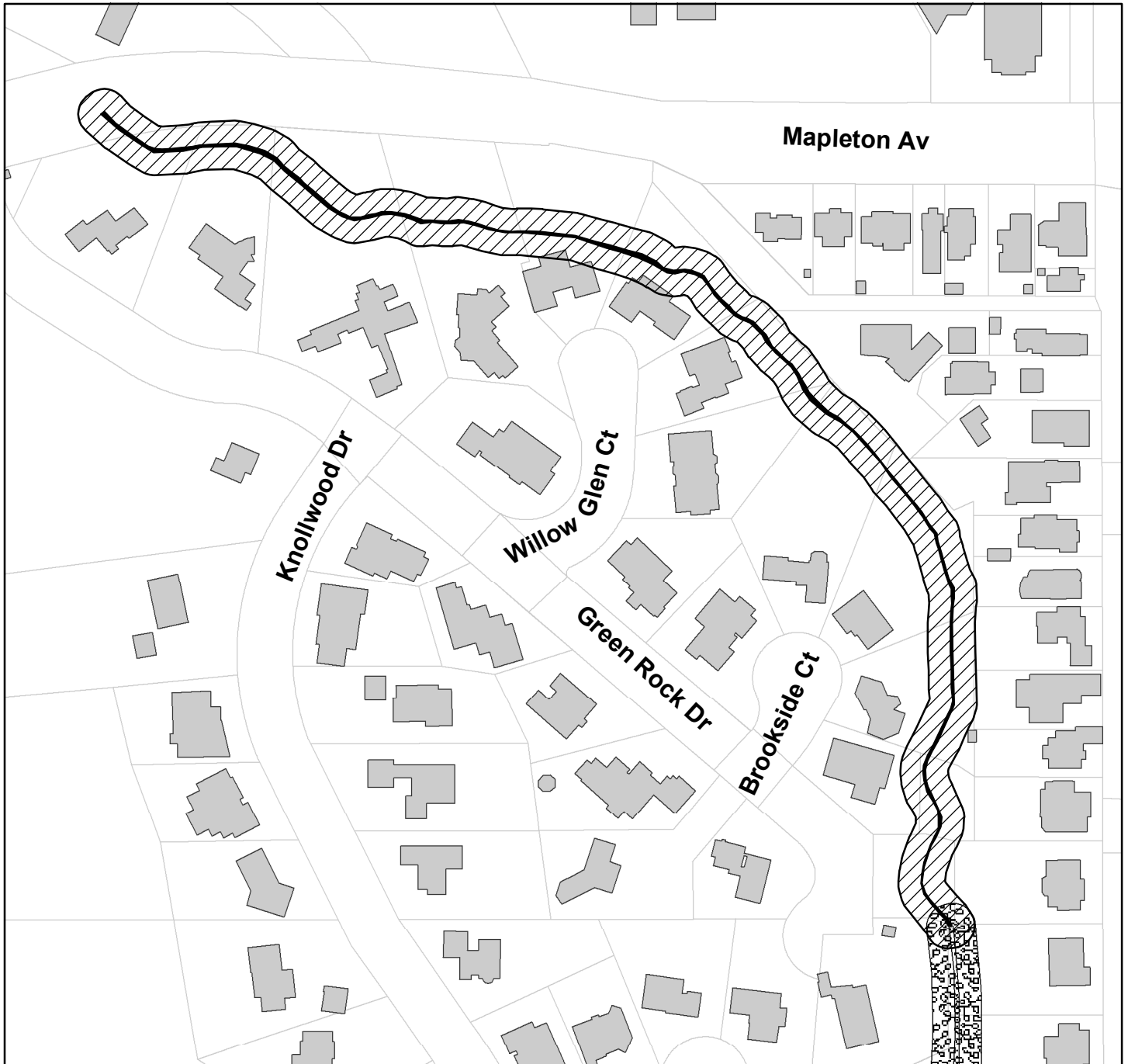
In the event a property owner fails to pay any monies due under these Terms and Conditions or fails to perform any affirmative obligation hereunder, the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, or the City may perform the obligation on behalf of the property owner, and collect its costs in the manner provided in these Terms and Conditions. The annexation ordinance shall be the enabling ordinance required under Section 31-20-105, C.R.S. authorizing the collection of those debts.

**18. Annexation Agreement**



Each property in the Annexation Area shall be subject to these Terms and Conditions unless a separate annexation agreement has been executed by the City and the property owner that modifies the Terms and Conditions.





EXHIBIT C

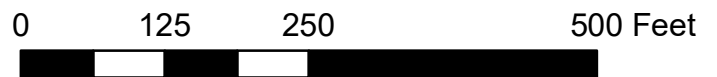


**Regulatory Wetlands**

-  Low Functioning Wetland
-  Low Functioning Buffer

**Proposed Wetlands**

-  Low Functioning Wetland
-  Low Functioning Buffer



**Knollwood Annexation  
Proposed Wetland Delineation**

Wetland Evaluation

STR: S25, T1N, R71W

**Investigator:** David Steinmann**Date of Visit:** 7/22/2019**Obs. Method:** Onsite**General Location:** Sunshine Creek from Green Rock Drive downstream to where the creek channel is west of 2137 4<sup>th</sup> Street.

**Description:** Sunshine Creek is a small intermittent drainage that flows from west to south/east from the edge of the City towards the confluence with Boulder Creek. Sunshine Creek has a defined channel with a bed and bank. The flow is intermittent flow and there is a dense riparian corridor vegetated with trees, shrubs, grasses and herbs. Plains cottonwood trees, ash trees and box elder trees are abundant. There is a lack of emergent wetlands vegetation and wetland grasses along the edges of the creek. The creek channel is mapped as wetlands where there is flowing water with a defined bed and bank. The creek runs through the backyards of several homes.

**Wetland Origin:** Natural**Primary Water Source:** Creek Flow**Hydro-period:** Seasonally flooded**Max Water Depth:** (ft): 1**Major Plant Communities Present:**

plains cottonwood, ash and box elder trees

**% of Wetland Area**

100 %

**% Vegetated:** 0**% Bare ground:** 0**% Water:** 100**FUNCTION AND VALUE ASSESSMENT**

Ratings: 5 = very high, 4 = high, 3 = medium, 2 = low, 1 = no Confidence in rating: c = high, b = medium, a = low

<b>Groundwater Recharge</b>	2	b	There is some groundwater recharge, especially during high flows, as the creek water infiltrates into the ground between Sunshine Canyon and Boulder Creek.
<b>Groundwater Discharge</b>	3	b	The creek is likely gaining water from the nearby geological rock formations, especially after storms, as the site is located where the foothills meet the plains.
<b>Flood Storage/Alteration</b>	2	c	Sunshine Creek is narrow and steep and does not store or hold much flood water.
<b>Shoreline Anchoring</b>	3	c	Trees and shrubs provide good shoreline stabilization along the creek banks.
<b>Sediment Trapping/Retention</b>	2	c	There is modest and temporary sediment trapping during low flows, high flows move sediment through the system for deposition further downstream towards Boulder Creek. Areas of sediment were observed along the creek edges.
<b>Nutrient Retention (short-term)</b>	2	b	Short term nutrient retention is expected in small pools and at the bases of trees and shrubs, with nutrient input coming from Sunshine Canyon.
<b>Nutrient Retention (long-term)</b>	2	b	There was some long-term woody debris accumulation observed, yet there are no emergent wetlands to trap nutrients along the creek channel.
<b>Food Chain Support (export)</b>	2	b	There are trees and shrubs that contribute to food chain support export.
<b>Food Chain Support (within basin)</b>	3	b	Riparian vegetation and instream aquatic invertebrates create food chain support.
<b>Fish Habitat/Aquatic Diversity</b>	1	c	The creek dries up frequently and there are no fish in Sunshine Creek.
<b>Wildlife Habitat</b>	3	b	Riparian trees, shrubs, grasses and flowers provide food and habitat for birds and wildlife, and Sunshine Creek serves as a wildlife corridor. Houses are nearby.
<b>Active Recreation</b>	1	c	Recreational use is low since the area is private property, used by property owners.
<b>Passive Recreation/Heritage Value</b>	2	c	The creek is used by residents for photography, relaxing and spending time outside.

Comments: Wetland boundaries along this section of Sunshine Creek are defined by the ordinary high water mark.

DISTRICT COURT, BOULDER COUNTY, COLORADO		DATE FILED: August 1, 2019 9:22 AM CASE NUMBER: 2019CV30440
Court Address: 1777 Sixth Street P.O. Box 4249, Boulder, CO, 80306-4249		
<b>Petitioner(s)</b> CITY OF BOULDER v. <b>Respondent(s)</b> VACANT		<div style="text-align: center;">△ COURT USE ONLY △</div>
		Case Number: 2019CV30440 Division: 5                      Courtroom:
<b>Order: Order Re Report of Election Results and Petition to Order That Area Proposed for Annexation  may be Annexed to the City of Boulder</b>		

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 8/1/2019



THOMAS FRANCIS MULVAHILL  
District Court Judge

DISTRICT COURT, BOULDER COUNTY, COLORADO Boulder County Justice Center 1777 6th Street Boulder, Colorado 80302	<div style="text-align: center;">▲ COURT USE ONLY ▲</div> <hr/> Case Number: 2019CV30440 Division: 5
<p style="text-align: center;"><b>ORDER RE: REPORT OF ELECTION RESULTS AND PETITION TO ORDER THAT AREA PROPOSED FOR ANNEXATION MAY BE ANNEXED TO THE CITY OF BOULDER</b></p>	

After consideration of the Report of Election Results and Petition to Order that Area Proposed For Annexation May Be Annexed to the City of Boulder (the "Report and Petition") filed by the City of Boulder and the Election Commissioners pursuant to C.R.S. § 31-12-112(7) and (9), as amended, it is hereby Ordered, Adjudged, and Decreed that:

The area generally known as Knollwood, Boulder County, Colorado, and more particularly described in **Exhibit A** of the Report and Petition, may be annexed to the City of Boulder upon the terms and conditions set forth by the City Council of the City of Boulder, Colorado, in Resolution No. 1256, attached as **Exhibit B** to the Report and Petition, and approved by the landowners and the registered electors.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
 District Court Judge

2018 DEC -6 PM 2:25

Size of property: \_\_\_\_\_ Requested Zoning: \_\_\_\_\_

☒ Boulder Valley School District
 ☐ Left Hand Water District  
☐ St. Vrain School District
 ☐ Other (list) \_\_\_\_\_  
☒ Boulder Rural Fire District
 \_\_\_\_\_  
☐ Rocky Mountain Fire District
 \_\_\_\_\_

1. See attached list provided by County Assessors Office
2. Karin Budding 150 Green Rock Drive, Boulder Colorado 80302
3. \_\_\_\_\_
4. \_\_\_\_\_

**Please Note:**

No person shall petition to the city of Boulder for annexation of any real property until he has first read and thereafter follows these instructions in the execution of the within petition:

1. Every person signing the within petition for annexation election must personally insert the information required on the signature page(s) attached to the petition.
2. The person or persons who circulate the within petition must witness the signatures of every person signing this petition and so certify by executing the affidavit attached on the last page of this petition.
3. The following definitions of terms shall be applicable throughout this petition and every subsequent step of the annexation proceeding commenced pursuant to this petition:

- a. Landowner: means the owner in fee of any undivided interest in a given parcel of land. If the mineral estate has been severed, the landowner is the owner in fee of an individual interest in the surface estate and not the owner in fee of an individual interest in the mineral estate. In the case of multiple landowners, such as tenants in common or joint tenants, only one such landowner need petition for annexation, and the signature of one such landowner shall be sufficient, provided however, that said signing landowner had become liable for taxes in the last preceding calendar year or is exempt by law from payment of taxes, and provided further, that no other owner in fee of an individual interest of the same property objects to the annexation of the said property within 14 days after the filing of the petition for annexation election by submitting a written statement of his objections to the City Council.

A purchaser of real property shall be deemed a landowner for the purpose of an petition for annexation election if:

- (1) The said purchaser is purchasing the land pursuant to a written contract duly recorded, and
  - (2) The said purchaser has paid the taxes thereon for the next preceding tax year.
- b. Nonresident Landowner: means any person owning property in the area proposed to be annexed, who is not a qualified elector as herein below defined, and who is at least eighteen (18) years of age as attested to by a sworn affidavit.
  - c. Identical Ownership: means a situation where each owner has exactly the same degree of interest in a separate parcel of two or more parcels of land.
  - d. Contiguous: means that one-sixth of the boundary of the territory proposed for annexation and the city limits must coincide. Contiguity as referred to in this petition or subsequent annexation proceedings is not affected by the existence of a platted street or alley, public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway between the city limits of the city of Boulder and the territory to be annexed.
  - e. Registered Elector: means a person who is legally qualified to vote in Colorado and who has complied with the registration provisions of the Uniform Election Code of 1992, adopted in Article 1 of Title 1 of Colorado Revised Statutes, and who resides within or is eligible to vote in the jurisdiction of the political subdivision calling the election. (see § 1-1-104(35), C.R.S.)

- f. Resident: means one who makes his primary dwelling place within the area proposed to be annexed.
- 4. This petition must be filed with the City Clerk of the city of Boulder.
- 5. This petition should be filed in the following manner:
  - a. All blanks herein contained should be filled out and completed.
  - b. Each signer shall, before signing said petition, carefully read the contents hereof.
  - c. The signatures attached to this petition must have been signed within 180 days immediately preceding the filing of the said petition with the City Clerk.
  - d. After filing of the petition, no person having signed said petition shall thereafter be permitted to withdraw his/her signature from said petition.
  - e. This petition shall be accompanied by at least four copies of an annexation map containing the following information:
    - 1. A written legal description of the boundaries of the area proposed to be annexed.
    - 2. A map showing the boundaries of the area proposed to be annexed.
    - 3. Within the boundaries of the area proposed to be annexed, the location of each ownership tract in unplatted land and, if part or all of the area has been platted, the boundaries and the plat numbers of the plots or of the lots and blocks shall be shown.
    - 4. The portion of the boundaries of the area proposed to be annexed which is contiguous to the city limits of the city of Boulder, as the same exist at the time this petition for annexation election is to be filed, must be shown and the dimensions thereof indicated.

**Submit with your application.**

**TO THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, GREETINGS:**

The undersigned hereby petition(s) the city of Boulder to commence proceedings for the holding of an annexation election in the area proposed to be annexed, in accordance with Section 30(a)(1) of Article 2 of the Colorado Constitution and § 31-12-107(2), C.R.S., for the territory shown on the map(s) attached hereto and described on the attachment hereto:

This Petition is signed by registered electors of the area proposed to be annexed. It is intended that this Petition be a petition for commencing proceedings to hold an annexation election for annexation of the above described territory into the city of Boulder.

In support of this petition, the undersigned state(s) and allege(s) as follows, to wit:

1. That it is desirable and necessary that the above described territory be annexed to the city of Boulder.
2. That petitioners are qualified electors resident in and landowners of the area proposed to be annexed to the city of Boulder.
3. That petitioners are at least 75 registered electors or 10 percent of registered electors, whichever is less, of the area to be annexed.
4. That no less than one-sixth of the aggregate external boundaries of the above described territory hereby petitioned to the city of Boulder is contiguous to the city limits of the city of Boulder.
5. That a community of interest exists between the above described territory and the city of Boulder, and that the same is urban, or will be urbanized in the near future, and further that the said territory is integrated or is capable of being integrated in the city of Boulder.
6. That in establishing the boundaries of the above described territory, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowner or landowners thereof, except and unless such tracts or parcels are already separated by a dedicated street, road or other public way.
7. That in establishing the boundaries of the above described territory, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate comprising twenty acres or more which, together with the buildings and improvements situated thereon, have an assessed valuation in excess of \$200,000 for ad valorem tax purposes for the year next preceding the filing of the within petition for annexation, has been included within the above described territory without the written consent of the landowners unless such tract or land is situated entirely within the outer boundaries of the city of Boulder. For this purpose, contiguity shall not be affected by a dedicated street, road or other public way.
8. That the above-described territory does not include any area which is the same or substantially the same area in which an election for an annexation to the city of Boulder was held within the twelve months preceding the filing of this petition.
9. That the above described territory does not include any area included in another annexation proceeding involving a city other than the city of Boulder.



10. That at least four copies of an annexation map setting forth with reasonable certainty a written legal description of the boundaries of the area proposed to be annexed, a delineation of the outer boundaries of the above described territory, and the location of each ownership, tract and/or the boundaries and the plat numbers of plats and lots and blocks, the portion of the boundary contiguous with the existing city limits of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, accompany, have been attached hereto and hereby constitute a part of this petition.
11. That the above described territory is not presently a part of any incorporated city, city and county, or town.
12. That the above area described will (not) result in the detachment of area from any school district and the attachment of the same to another school district (and the resolution of school board of the district to which the area will be attached approving this annexation request).
12. That the annexation may be subject to terms and conditions imposed upon the area to be annexed in accordance with § 31-12-112, C.R.S.

Account_no	Parcel_no	Prop_Type	Total_Actual_V	Taxable_Act_Va	Tot_Assesse	Value	sed_Value	Owner_Type	Owner_Name	ire	MailAddr1	#	Mail_City	Mail_State	Mail_Zip	LegalDesc
R0035007	146125307004	RESIDENTIAL	\$1,024,600	\$1,024,600	\$73,771	\$73,771	P	1	ESSON TIMOLYN C & JAMES A	1435 UPLAND AVE		BOULDER	CO	80304-0826	LOT 13 KNOLLWOOD 1	
R0035008	146125307005	RESIDENTIAL	\$1,350,000	\$1,350,000	\$97,200	\$97,200	P	1	VAN BUSSUM DAVID W & ELIZABETH F YURTH	285 BROOKSIDE CT		BOULDER	CO	80302	LOT 14 KNOLLWOOD 1	
R0035009	146125303007	RESIDENTIAL	\$4,500,000	\$4,500,000	\$324,000	\$324,000	P	1	VON ESCHEN ROBERT S	3445 PENROSE PL UNIT 230		BOULDER	CO	80301-1874	TRI SW COR OF LOT 6 & LOT 5 LESS STRIP 7 FT X	
R0035010	146125303007	RESIDENTIAL	\$2,345,900	\$2,345,900	\$168,905	\$168,905	P	1	ROMINE THOMAS & NATALIE	245 WILLOW GLEN		BOULDER	CO	80302	LOT 7 KNOLLWOOD	
R0035011	146125307002	RESIDENTIAL	\$2,261,100	\$2,261,100	\$162,799	\$162,799	P	1	KUNKEL DAVID L & GALE M	255 BROOKSIDE CT		BOULDER	CO	80302-4701	LOT 11 KNOLLWOOD 1	
R0035012	146125308004	RESIDENTIAL	\$2,474,100	\$2,474,100	\$178,135	\$178,135	P	1	LANGAN FRANK G & TRACY L MAYO	230 GREEN ROCK DR		BOULDER	CO	80302	LOT 19 KNOLLWOOD 1	
R0035013	146125308005	RESIDENTIAL	\$2,032,600	\$2,032,600	\$146,347	\$146,347	P	1	FRIEDMAN JOSHUA & ELAINE A BLECHMAN	220 GREEN ROCK DR		BOULDER	CO	80302	LOT 20 KNOLLWOOD 1	
R0035014	146125309001	RESIDENTIAL	\$1,815,200	\$1,815,200	\$130,694	\$130,694	P	1	DAVI HAROLD & PATRICIA LIVING TRUST	C/K 2205 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 26 KNOLLWOOD 1	
R0035015	146125323002	RESIDENT LAND	\$5,200	\$5,200	\$374	\$374	P	0.5	PHILLIPS STEVEN & TILA DUHAIME	2201 4TH ST		BOULDER	CO	80302	OUTLOT A KNOLLWOOD 1ST ADDITION REPLAT A	
R0035016	146125307001	RESIDENTIAL	\$2,600,000	\$2,600,000	\$187,200	\$187,200	P	0.5	ROZA ERIC S REV TRUST ET AL	235 GREEN ROCK DR		BOULDER	CO	80302	LOT 10 KNOLLWOOD 1	
R0035017	146125308003	RESIDENTIAL	\$3,012,300	\$3,012,300	\$216,886	\$216,886	P	1	GREEN ROCK DRIVE LLC	944 GRAND AVE		ST PAUL	MN	55105	LOT 18 KNOLLWOOD 1	
R0035018	146125308002	RESIDENTIAL	\$1,824,300	\$1,824,300	\$131,350	\$131,350	P	1	HIRSH DAVID I & NELDA	270 GREEN ROCK DR		BOULDER	CO	80302	LOT 17 KNOLLWOOD 1	
R0035019	146125309002	RESIDENTIAL	\$2,770,000	\$2,770,000	\$199,440	\$199,440	P	1	WYATT DAVID M & MARCIA G	2235 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 27 KNOLLWOOD 1	
R0035020	146125303002	RESIDENTIAL	\$2,628,300	\$2,628,300	\$189,238	\$189,238	P	1	LINEBERGER WILLIAM CARL ET AL	145 GREEN ROCK DR		BOULDER	CO	80302	LOT 2 KNOLLWOOD	
R0035021	146125303001	RESIDENTIAL	\$1,460,000	\$1,460,000	\$105,120	\$105,120	P	0.5	WALL LESTER ET AL	115 GREEN ROCK DR		BOULDER	CO	80302	LOT 1 KNOLLWOOD	
R0035022	146125308006	RESIDENTIAL	\$1,691,300	\$1,691,300	\$121,774	\$121,774	P	1	MOORE FRED G & MOLLY E	200 GREEN ROCK DR		BOULDER	CO	80302-4705	LOT 21 KNOLLWOOD 1	
R0035023	146125308010	RESIDENTIAL	\$1,931,400	\$1,931,400	\$139,061	\$139,061	P	1	WALKER MARILYN & PETER LUJENTIAL	2200 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 25 KNOLLWOOD 1	
R0035024	146125303003	RESIDENTIAL	\$2,917,600	\$2,917,600	\$210,067	\$210,067	P	0.5	HANSEN JULIA ERIK A HAHN	165 GREEN ROCK DR		BOULDER	CO	80302-4702	LOT 3 KNOLLWOOD	
R0035025	146125309003	RESIDENTIAL	\$2,177,000	\$2,177,000	\$156,744	\$156,744	P	0.5	BAER BARRY S LIVING TRUST ET AL	2265 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 28 KNOLLWOOD 1	
R0035026	146125303004	RESIDENTIAL	\$2,700,000	\$2,700,000	\$194,400	\$194,400	P	1	HALL TODD H & JEAN M	215 GREEN ROCK DR		BOULDER	CO	80302	LOT 4 KNOLLWOOD	
R0035027	146125307003	RESIDENTIAL	\$1,175,000	\$1,175,000	\$84,600	\$84,600	P	1	PHILLIPSON PAUL E & PATRICIA B	265 BROOKSIDE CT		BOULDER	CO	80302-4701	LOT 12 KNOLLWOOD 1	
R0035028	146125308009	RESIDENTIAL	\$1,980,300	\$1,980,300	\$142,582	\$142,582	P	1	MARTIN JANE D & DON R	2230 KNOLLWOOD DR		BOULDER	CO	80302	LOT 24 KNOLLWOOD 1	
R0035029	146125303009	RESIDENTIAL	\$2,702,200	\$2,702,200	\$194,558	\$194,558	P	1	JONES CRAIG A T & PAMELA A F	265 WILLOW GLEN		BOULDER	CO	80302	LOT 9 KNOLLWOOD	
R0035030	146125303008	RESIDENTIAL	\$2,196,000	\$2,196,000	\$158,112	\$158,112	P	1	LINFELD JAMES C & PATIENCE R	255 WILLOW GLEN		BOULDER	CO	80302	LOT 8 KNOLLWOOD	
R0035031	146125308008	RESIDENTIAL	\$1,572,000	\$1,572,000	\$113,184	\$113,184	P	1	BARBOUR WESLEY & MEGAN	2250 KNOLLWOOD DR		BOULDER	CO	80302	LOT 23 KNOLLWOOD 1	
R0035032	146125308001	RESIDENTIAL	\$1,200,000	\$1,200,000	\$86,400	\$86,400	P	1	SMITH ZDENKA A	290 GREEN ROCK DR		BOULDER	CO	80302-4705	LOT 16 KNOLLWOOD 1	
R0035033	146125308007	RESIDENTIAL	\$1,600,000	\$1,600,000	\$115,200	\$115,200	P	1	MANDEL JAN & IRENA MANDELOVA	2280 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 22 KNOLLWOOD 1	
R0035034	146125323001	RESIDENTIAL	\$1,524,700	\$1,524,700	\$109,778	\$109,778	P	1	WARWICK JUNE P	295 GREEN ROCK DR		BOULDER	CO	80302-4745	LOT 15A KNOLLWOOD 1ST ADDITION REPLAT A	
R0035035	146125303006	RESIDENTIAL	\$1,480,000	\$1,480,000	\$106,560	\$106,560	P	1	ZORICHAK JOSEPH J & JOYCE E	235 WILLOW GLEN		BOULDER	CO	80302-4709	7 FT X 48.93 FT M/L ON E & 13.05 X 50 X 5 X 62.05	
R0035036	146125310018	RESIDENTIAL	\$2,174,100	\$2,174,100	\$156,535	\$156,535	P	1	SCHOENHALS ROBERT MARK & MAGDALENA	2186 KNOLLWOOD DR		BOULDER	CO	80305	LOT 49 KNOLLWOOD 2	
R0035037	146125310014	RESIDENTIAL	\$1,353,600	\$1,353,600	\$97,459	\$97,459	P	1	SMYTHE WILLIAM RODMAN & JUDITH ANN	2106 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 45 KNOLLWOOD 2	
R0035038	146125310003	RESIDENTIAL	\$3,300,000	\$3,300,000	\$237,600	\$237,600	P	1	NICHOLAS AND MEGAN WILDER TRUST	2175 KNOLLWOOD DR		BOULDER	CO	80302	LOT 31 KNOLLWOOD 2	
R0035039	146125310016	RESIDENTIAL	\$1,820,000	\$1,820,000	\$131,040	\$131,040	P	1	TERAN ALAN A & JANET C	2126 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 47 KNOLLWOOD 2	
R0035040	146125310002	RESIDENTIAL	\$2,869,100	\$2,869,100	\$206,575	\$206,575	P	1	SQUIRES JOHN P & GAIL G	PO BOX 17998		BOULDER	CO	80308	LOT 30 KNOLLWOOD 2	
R0035041	146125310004	RESIDENTIAL	\$3,477,500	\$3,477,500	\$250,380	\$250,380	P	1	BOLL PAMELA T	32 EVERETT AVE		WINCHESTER	MA	01890	LOT 32 KNOLLWOOD 2	
R0035042	146125324001	RESIDENTIAL	\$1,446,300	\$1,446,300	\$104,134	\$104,134	P	1	LARSON BROOKE MAYER & GREGG B	259 SPRUCE ST		BOULDER	CO	80302	LOT 36A KNOLLWOOD 2ND ADDITION REPLAT A	
R0035043	146125310012	RESIDENTIAL	\$1,328,000	\$1,328,000	\$95,616	\$95,616	P	1	MERIGOLD CATHARINE M	2115 KNOLLWOOD DRIVE		BOULDER	CO	80302	LOT 40 KNOLLWOOD 2	
R0035044	146125310015	RESIDENTIAL	\$1,540,000	\$1,540,000	\$110,880	\$110,880	P	1	SPALDING ANNE R LIVING TRUST	2116 KNOLLWOOD DR		BOULDER	CO	80302	LOT 46 KNOLLWOOD 2	
R0035045	146125310006	RESIDENTIAL	\$1,723,100	\$1,723,100	\$124,063	\$124,063	P	1	MEYER KENNETH D & SYLVIA A	248 SPRUCE ST		BOULDER	CO	80302-4906	PT LOT 34 W OF FARMERS DITCH LESS EASEMENT TO	
R0035046	146125310011	RESIDENTIAL	\$2,049,900	\$2,049,900	\$147,593	\$147,593	P	1	ROSEN GARY B & AMY K LATIMER	2125 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 39 KNOLLWOOD 2	
R0035047	146125310010	RESIDENTIAL	\$3,102,600	\$3,102,600	\$223,387	\$223,387	P	0.5	MARTIN ANNETTE RAE REV TRUST	2125 KNOLLWOOD DR		BOULDER	CO	80302	LOT 38 KNOLLWOOD 2	
R0035048	146125310017	RESIDENTIAL	\$1,450,000	\$1,450,000	\$104,400	\$104,400	P	1	HILL J MURRAY & LATANE	2176 KNOLLWOOD DR		BOULDER	CO	80302	LOT 48 KNOLLWOOD 2	
R0035054	146125310001	RESIDENTIAL	\$2,254,900	\$2,254,900	\$162,353	\$162,353	P	1	DENNIS PAMELA T	2195 KNOLLWOOD DR		BOULDER	CO	80302-4706	LOT 29 KNOLLWOOD 2	
R0035055	146125310007	RESIDENTIAL	\$2,060,000	\$2,060,000	\$148,320	\$148,320	P	1	MAYNARD JOHN B & SUSAN P	258 SPRUCE ST		BOULDER	CO	80302-4906	PT LOT 35 W OF FARMERS DITCH LESS EASEMENT TO	
R0035056	146125310005	RESIDENTIAL	\$2,412,800	\$2,412,800	\$173,722	\$173,722	P	1	OLSEN KRISTINA MILLER & NICHOLAS KEIL OLSEN	249 SPRUCE ST		BOULDER	CO	80302	LOT 33 KNOLLWOOD 2	
R0035057	146125310013	RESIDENTIAL	\$1,970,500	\$1,970,500	\$141,876	\$141,876	P	1	QUERY DAVID & DANA FAULK	299 GREEN ROCK DR		BOULDER	CO	80302	LOT 44 & OUTLOT A LESS PT IN 3RD ST & VAC ST ADJ	
R0035058	146125324002	RESIDENTIAL	\$2,100,000	\$2,100,000	\$151,200	\$151,200	P	1	KRAMER ERIC J	1750 30TH ST #1-131		BOULDER	CO	80301-1029	LOT 37A KNOLLWOOD 2ND ADDITION REPLAT A	

77 eligible home owner voters

## ANNEXATION ELECTION PETITION

Signature of petitioners requesting annexation election for annexation of property to the city of Boulder, Colorado	Date of signature of each petitioner	Mailing address of each petitioner	Legal description of property included within the area proposed for annexation owned by each person signing this petition. (Attach separate sheet, if necessary).
<i>John B. Maynard</i>	<i>June 11, 2018</i>	<i>258 Spruce St, Boulder, CO</i>	<i>PT LOT 35 W OF FARMERS DITCH LESS EASEMENT TO</i>
<i>Simon R. Maynard</i>	<i>June 11, 2018</i>	<i>258 Spruce St, Boulder, CO</i>	<i>PT LOT 35 W OF FARMERS DITCH LESS EASEMENT TO</i>
<i>Jim Wain, trustee</i>	<i>6/11/18</i>	<i>2175 Knollwood Dr CO 80302</i>	<i>Lot 47 Knollwood</i>
<i>Robert D. Seland</i>	<i>6/11/18</i>	<i>2156 Knollwood Dr CO 80302</i>	<i>Lot 49 Knollwood #2</i>
<i>Neeraj Sharma</i>	<i>6/11/18</i>	<i>2186 Knollwood Dr, 80302</i>	<i>Lot 49-Knollwood #2</i>
<i>Tracy L. Mayo</i>	<i>6/15/18</i>	<i>230 Green Rock Dr. Boulder CO 80302</i>	<i>Lot 19 Knollwood #1</i>
<i>Steve G. Jones</i>	<i>6/15/18</i>	<i>230 Green Rock Rd Boulder CO 80302</i>	<i>Lot 19 Knollwood #1</i>
<i>Gained. Pedron</i>	<i>6/15/18</i>	<i>220 Green Rock Dr Boulder CO 80302</i>	<i>Lot 20 Knollwood #1</i>
<i>John G. Jones</i>	<i>6/18/2018</i>	<i>220 Green Rock Drive Boulder CO 80302</i>	<i>Lot 20 Knollwood #1</i>
<i>John G. Jones</i>	<i>18 JUN 18</i>	<i>2250 Knollwood Dr Boulder CO 80302</i>	<i>Lot 23 Knollwood 1</i>
<i>ALAN JONES</i>	<i>18 JUN 18</i>	<i>2126 Knollwood Dr Boulder, CO</i>	<i>Lot 47 Knollwood 2</i>
<i>Amelia Duran</i>	<i>19-June/18</i>	<i>2195 Knollwood Dr</i>	<i>Lot 29 Knollwood 2</i>
<i>Chris Hahn</i>	<i>22 June/18</i>	<i>165 Green Rock Dr.</i>	<i>Lot 3 Knollwood</i>

00173384-7

Item 3J - First Reading Knollwood Annexation

**CIRCULATOR'S AFFIDAVIT****CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO       )  
   ) ss.  
 COUNTY OF BOULDER       )

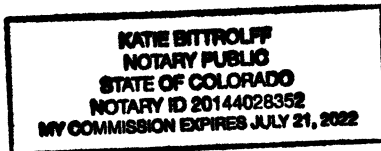
BARRY S BAER, being  
 first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing  
 petition and that the signatures on said petition are the signatures of the persons whose names they purport  
 to be.

Barry S Baer

\_\_\_\_\_  
 Circulator

Subscribed and sworn to before me this 27 day of June, A.D. 2018.

Witness my hand and official seal. My commission expires: July 21, 2022



Katie Bittrolff  
 Notary Public

**CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO       )  
   ) ss.  
 COUNTY OF BOULDER       )

\_\_\_\_\_, being  
 first duly sworn, upon oath deposes and says that she/he was the circulator of the above and foregoing  
 petition and that the signatures on said petition are the signatures of the persons whose names they purport  
 to be.

\_\_\_\_\_

\_\_\_\_\_  
 Circulator

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_.

Witness my hand and official seal. My commission expires: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

**SUPPLEMENT TO PETITION FOR ANNEXATION ELECTION FOR  
KNOLLWOOD Neighborhood  
June 27, 2018**

***Petition for Annexation Election:***

The Knollwood neighborhood, consisting of the Knollwood subdivision, Knollwood 1<sup>st</sup> Addition and Knollwood 2<sup>nd</sup> Addition, located on the Western edge of the City of Boulder (the “City”), contains 48 single family homes in unincorporated Boulder County (the “Knollwood Neighborhood”).

The petition for an annexation election submitted to the City of Boulder in June 25, 2018, is for all 48 homes. The home located at 150 Green Rock Drive is not included within the boundaries of the Knollwood Metropolitan District and already receives water service from the City, so would not be subject to a Water PIF. As of submission of this annexation petition, the City staff has indicated that it plans to hold discussions directly with the owner of 150 Green Rock Drive about any conditions of annexation and financing of the stormwater PIF, road improvements, and any water system improvements benefitting that property owner.

***Background:***

The Knollwood Neighborhood was originally located outside of the City’s Blue Line, so it developed with the Knollwood Water District (a special district of the state of Colorado) providing water services from community wells, with one exception. The home located at 150 Greenrock Drive receives water service from the City. The Knollwood Neighborhood receives sanitary sewer services from the City.

In December 2015, the Knollwood Water District was converted to the Knollwood Metropolitan District (“the District”), to allow the District to finance street improvements and provide traffic safety and covenant enforcement services. 46 of the 48 properties within the Knollwood Neighborhood are currently located within the District, and the owner of the property located at 2285 Knollwood Drive petition for inclusion was approved June 22, 2018. The property at 150 Greenrock Drive is outside the boundaries of the District.

In November 2016, Boulder voters passed a ballot item to clarify the location of the Blue Line in the City Charter. As a result, the Knollwood Neighborhood is now below the Blue Line and eligible for City water service. Then, in November 2017, the Boulder Valley Comprehensive Plan (“BVCP”) was amended to change the designation of the Knollwood Neighborhood from planning Area III to Area II.

Several residents of the Knollwood Neighborhood are interested in pursuing annexation into the City, if it can be done in an affordable manner, while preserving the existing character of the neighborhood. The Knollwood Neighborhood is more than one-sixth contiguous with City boundaries. Annexing this neighborhood would be mutually

beneficial. Benefits to the City would include additional fire protection on the Western edge of Boulder, fees from annexation and water service and taxes from high-value homes. Annexation would also be consistent with the City's policy, as articulated in the BVCP, that "[t]he city will actively pursue annexation of county enclaves, substantially developed properties along the western boundary below the Blue Line and other substantially developed Area II properties."

***Proposed Terms and Conditions for Annexation Agreement, based on discussions  
between City staff and representatives of the Knollwood Metropolitan District  
June 27, 2018***

*\*These terms have not been approved by all Knollwood residents, the City Council or the Board of Directors of the District. Any annexation would be subject to landowners' petition and election in accordance with state law. In addition, approval by the Knollwood Metropolitan District and/or voter approval of debt and taxes under TABOR may be required.*

- A. Roads Improvements: The District may agree to finance improvements to the roads within the District, as needed to restore the roads and bring them to full depth asphalt in accordance with the City's current road standards, meaning: 6 inches of asphalt with a 6-inch road base. The road work could be performed as part of the City's road maintenance contract, pursuant to a change order, or by separate contract. Currently, the District has sufficient funds for the estimated costs of the road improvements.

The Knollwood Neighborhood would be generally allowed to keep its rural character and feel, in accordance with Section 1.16 of the BVCP, which provides:

Annexation of existing substantially developed areas will be offered in a manner and on terms and conditions that respect existing lifestyles and densities. The city will expect these areas to be brought to city standards only where necessary to protect the health and safety of the residents of the subject area or of the city.

Per this standard and policy goal, the Knollwood Neighborhood will not be required to widen existing road or cul-de-sacs, install drainage improvements, curbs and gutters, shoulders, sidewalks, streetlights, or extra access points. This approach is also consistent with the City's annexation policy on streets, which states:

The city will permit flexibility in the design and improvements of local streets when desired by local residents. As a condition of annexation, the city shall require the improvement of streets to levels which will ensure that the city will not incur extraordinary maintenance costs as a result of new annexations. The city will consider petitions from property owners to initiate a street improvement project at any time after annexation, so long as such project will not conflict with other scheduled capital improvements.

Preliminary plans for the road improvements have been provided to City staff.

B. Water System Improvements and Connections:

If annexation occurs, it is proposed that the Knollwood Neighborhood would be connected to and begin receiving water service from the City. The District would continue to provide water service only until the connections to the City's system were completed. Following annexation, residents of the Knollwood Neighborhood would be charged in-City water rates.

It is proposed that the District's water system would be connected to the City's Water System at the locations shown in the attached ***Exhibit A***. Four properties within the District would be connected to the pressure zone 2 and the remainder would be connected to pressure zone 3.

The construction of the water system improvements may be financed through a 30 year mill levy on property within the District, to repay either debt issued by the City (pursuant to an IGA between the District and the City) or debt issued directly by the District. Voter approval of the debt and mill levy would be required under TABOR.

The following connections and improvements, including acquiring any needed easements, are proposed:

1. 8-inch connection of District's water line in Green Rock Drive to City's 30-inch main in Sunshine Canyon Creek (pressure zone 3).
2. 8-inch connection of the District's water main in Willow Glen Court to the City's 8-inch PVC main (pressure zone 3).
3. 8-inch loop connection between the District's water mains in the Green Rock Drive and Knollwood Drive.
4. Four service connections for properties on Spruce Street to connect into the City main in Spruce Street (pressure zone 2).
5. Installation of one new service line and connection to provide irrigation services to property at the entrance of the Knollwood Neighborhood on Green Rock Drive.
6. New 8-inch PVC water main lines to replace the existing water main lines located within the District.

It is proposed that the connections, main lines, and easements would be dedicated to the City after completion. Also, it is proposed that the District dedicate the existing water distribution tank, wells and storage tank to the City. If the City is not interested in use of the District's facilities, the District would pay for the decommissioning of its storage tanks, wells and well service lines.



The City is considering contributing to the water system project in order to oversize the lines from 8-inch mains to 12-inch mains to provide additional fire flow protection to the western border of the City. In that case, the City would contribute to the cost of the water system project, correspondingly to the increase.

- C. Water Rights. Pursuant to Section 11-1-9(b)(2) of the City Code, it is proposed that the District would offer for sale to the City all District-owned water and ditch rights used on or appurtenant to the property to be annexed at fair market value as determined by the City and agreed to by the District. In the event of privately-owned wells, the City may negotiate a right of first refusal from the relevant landowners, if desired.
- D. Wastewater service. The City will continue to provide wastewater collection and treatment services for the Knollwood Community, and the residents would be charged in-City service fees after annexation. No wastewater connection or plant investment fees will be due.
- E. Zoning. The annexation agreement will indicate the zoning to be imposed after annexation, consistent with the existing density and rural residential nature of the Knollwood Neighborhood. It is proposed that the zoning will be Residential Rural 1, but the zoning will be discussed after planning review.
- F. Parking. The Knollwood Neighborhood, in cooperation with Boulder County, currently prohibits trailhead parking for the Mount Sanitas trail across Sunshine Canyon Road. In the past, such parking has posed safety and use problems for the residents. In order to retain the existing character of the neighborhood, the residents would want to ensure that annexation would not open the streets to additional parking from non-residents. Therefore, it is proposed that the Annexation Agreement will include terms for placement of signs to prohibit street parking for trail use. In addition, it is proposed that the City research construction of additional parking, in cooperation with Boulder County, for the Mount Sanitas trailhead to reduce the likelihood of hikers parking in the Knollwood Neighborhood.
- G. Flood Control Easements. The City has indicated that property owners located along Sunshine Canyon may be required to dedicate flood control access easements to the City, as a condition of annexation. The City can discuss those particular requirements with the affected landowners. These discussions have not commenced.
- H. Future of the District.

It is proposed that the City and the District enter into an IGA, setting forth terms and conditions for future operation of the District, including the following terms.

1. Within 90 days of completion of the annexation, the District would petition the City to become the designated approving authority of the District, pursuant to § 32-1-204.7, C.R.S.
2. The District may issue additional debt (up to a limit included in the IGA) for the purposes of financing capital improvements, water plant investment fees, and costs associated with the annexation. It is proposed that the District could not issue additional debt, other than refinancings, without the prior approval of the City. Alternatively, the City could issue debt to finance some of the improvements, which would be loaned to the District and repaid over time via mill levy. Either approach would require TABOR approval with a District vote.
3. The District will continue to exist for as long as it has outstanding debt. The IGA could recite that it is the intent of the District to dissolve upon payment or defeasance of all debt incurred, or upon a court determination that adequate provision has been made for the payment of all debt, unless the City agrees to allow the District to continue for specific limited purposes.
4. As required by the Special District Act, while the District is in existence, the Board of Directors will consist of eligible electors, as defined by § 32-1-103(5), C.R.S.
5. The District may exercise the following powers:
  - a. Design, construct and finance road and water system improvements, consistent with the annexation agreement. Acquire easements or other real property interests in connection with same.
  - b. Issue general obligation debt to pay for road and water system improvements and plant investment fees, with a proposed term of not-to-exceed 30 years.
  - c. Impose a mill levy to pay for outstanding debt and operational costs.
  - d. Impose a fee on new construction to be used for any street repairs needed due to construction vehicle traffic and contract for such repairs.
  - e. Provide administrative services, including accounting and legal, needed to maintain the District's existence and compliance with Colorado law.
  - f. Provide snowplowing services and traffic control services.
  - g. Provide covenant enforcement services, if authorized by the Declaration of Covenants for the Knollwood Neighborhood.

- h. Maintain the entrance sign and provide landscaping and irrigation for property at the entrance to the Knollwood Neighborhood on Green Rock Drive.
- i. Provide water education, such as water efficiency training for residents.

I. Annexation Fees.

1. *Annexation and Election Fees and Costs.*

It is proposed that residents or the District would pay the annexation application fee and public hearing fee, in the combined amount of \$21,500, and the costs to produce a survey and annexation map. It is also proposed that the District pay the costs of the annexation election and a District TABOR election to approve any financing and the costs associated with issuance of any District bonds or debt.

2. *Road Improvements*

It is proposed that the District would pay the costs of the road improvements described above to bring the roads within the District up to City Code standards for asphalt depth.

3. *Water Plant Investment Fee*

It is proposed that the amount of the Water Plant Investment Fee be calculated for all of the properties that will receive new water service from the City, and that the District provide financing for that fee, to be repaid through taxes on the residents over 30 years. Credit may be applied toward required fees for facilities and water rights dedicated to the City, as negotiated by the Parties. This would require TABOR approval.

4. *Storm water Plant Investment Fee*

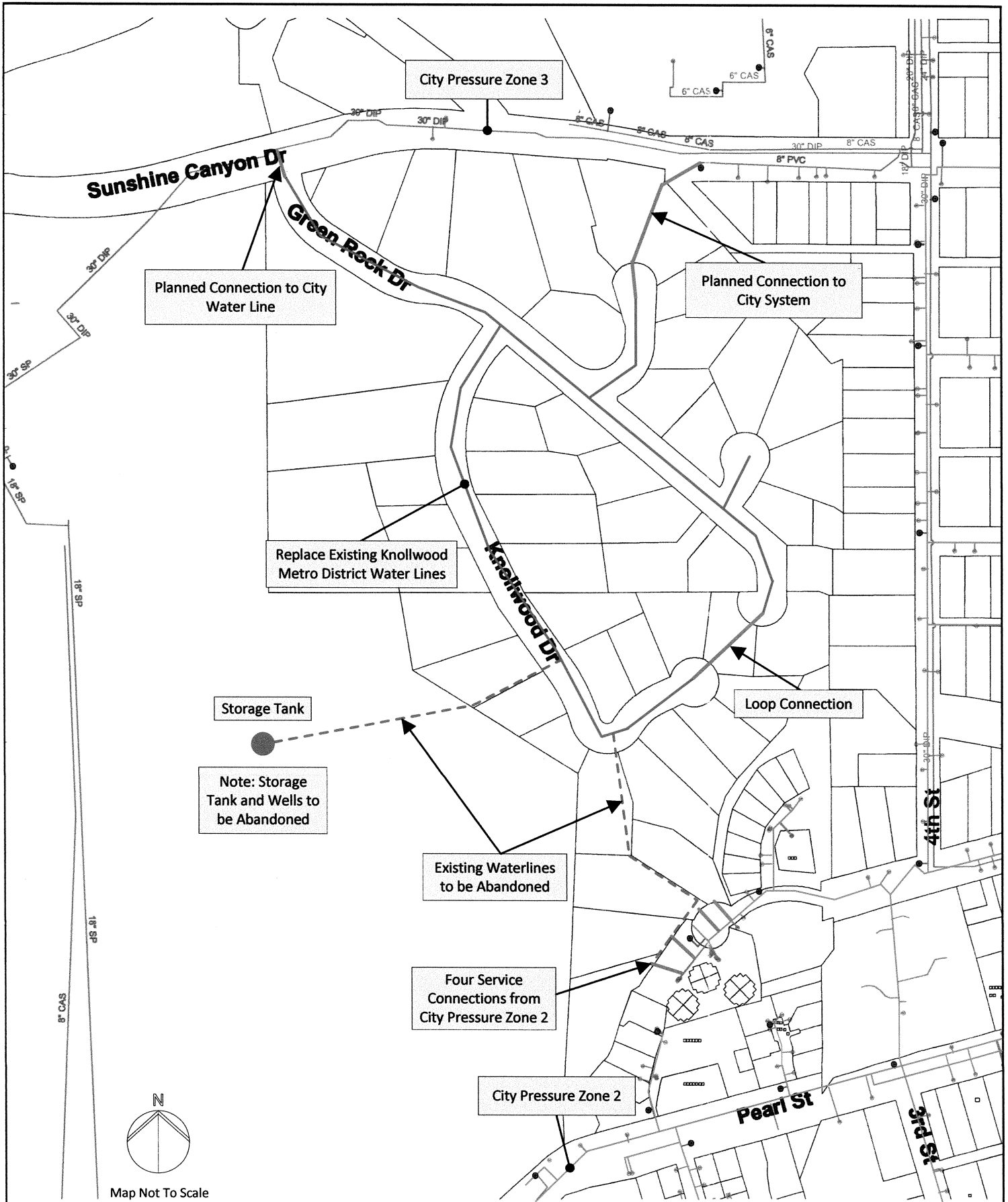
Pursuant to Section 11-5-11 of the City Code, developed property is generally required to pay a storm water and flood management utility plant investment fee prior to annexation. However, the annexation of the Knollwood Neighborhood poses a unique situation. The Knollwood Neighborhood is already developed and no additional storm water improvements are required to be constructed by the City. Therefore, it is proposed that the City would allow the Knollwood residents to pay this fee over time. The stormwater PIF would be fixed at the current rate for each home, divided by 30 years and 12 months, and then added to the water bill as a monthly fee for the next 30 years. The monthly stormwater fee would be applied as a credit toward the stormwater PIF payments.

5. *Other Fees.*

No any additional fees have been identified by the City that would be applicable to the annexation. The development housing excise taxes would not be imposed, since the Knollwood Neighborhood is fully built out. The annexation agreement would confirm that no other such fees will be applied. No environmental impact statement would be required.

# **Knollwood Metro District** **Water System/Annexation Evaluation**

January 2018

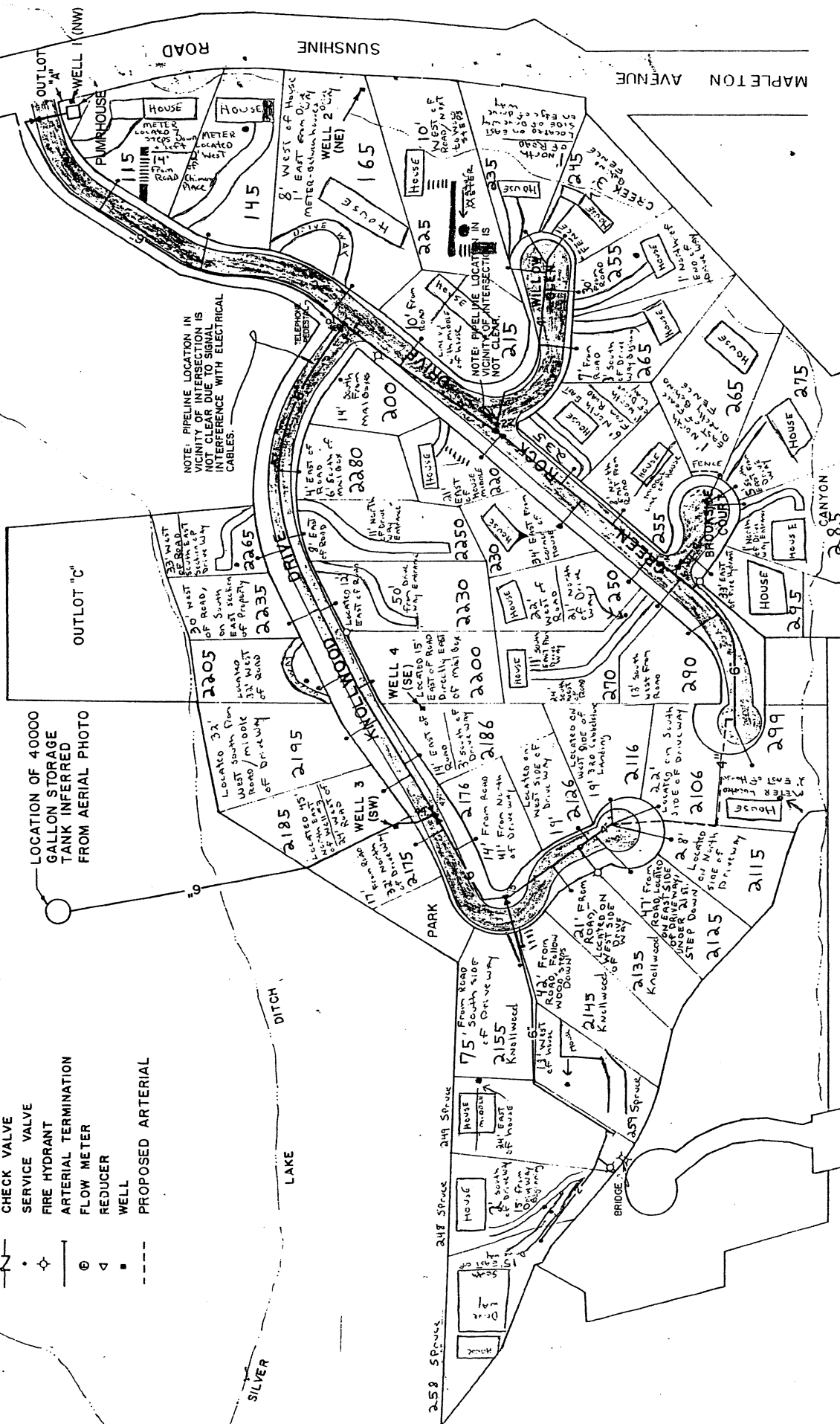


## CURRENT WATER SYSTEM MAP



## LEGEND

- 6" ARTERIAL LOCATION AND SIZE  
 ARTERIAL CONTROL GATE VALVE  
 CHECK VALVE  
 SERVICE VALVE  
 FIRE HYDRANT  
 ARTERIAL TERMINATION  
 FLOW METER  
 REDUCER  
 WELL  
 PROPOSED ARTERIAL

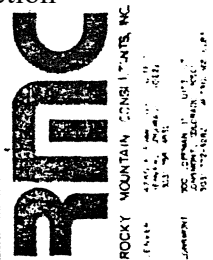


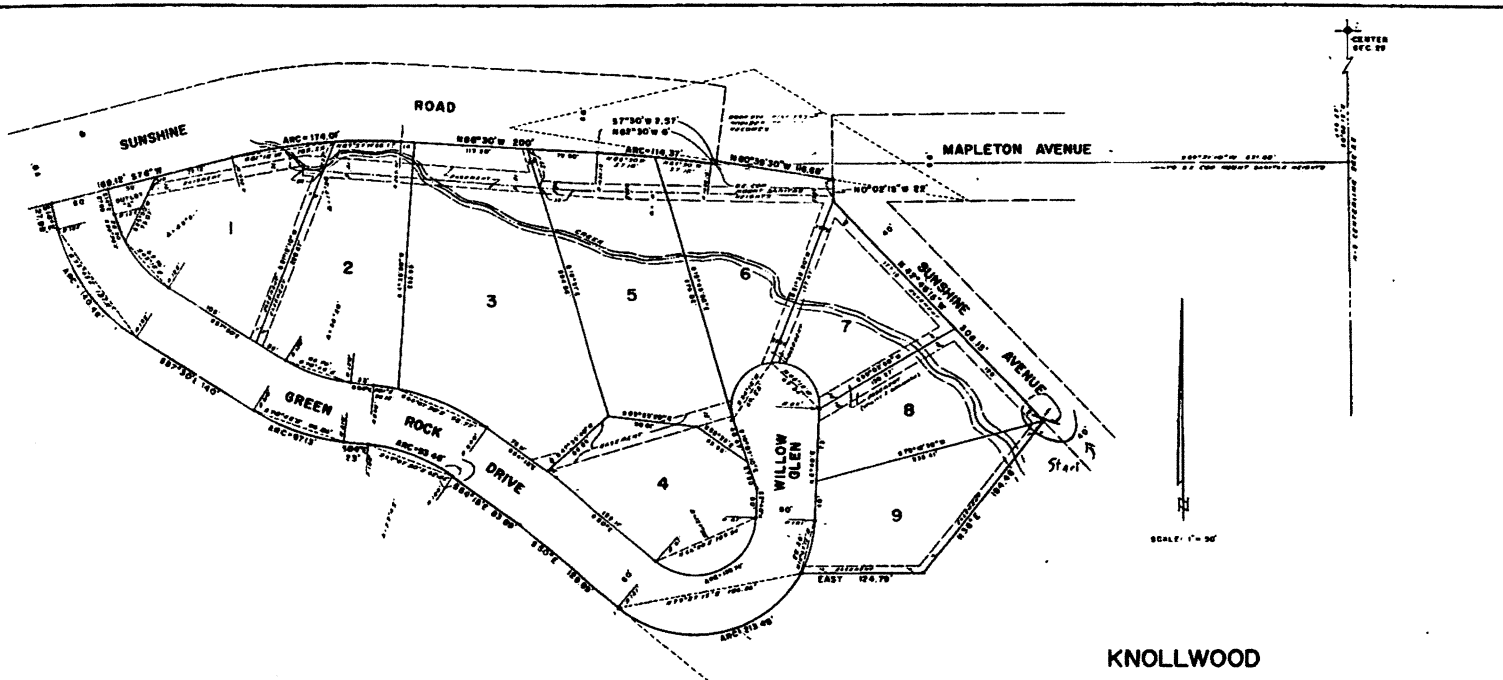
## NOTES

1. SYSTEM MAP REPRODUCED FROM SUBDIVISION MAPS BY:

- WILLIAM H. HERRIES
- CLARK & ENERSEN; OLSSON, BURROUGHS & THOMSEN
- FIELD SURVEY CONDUCTED JANUARY 29 & FEBRUARY 7, 1985

DATE	REVISION	BY	DESCRIPTION
7/30/85	1	DMT	LINE LOCATIONS BY FIELD SURVEY
2/7/85	2	DMT	ADDED VALVE ACROSS FROM PUMPHOUSE
PROJECT TITLE: KNOLLWOOD WATER SYSTEM			
SHEET TITLE: KNOLLWOOD WATER MAP			
CLIENT: KNOLLWOOD WATER DISTRICT			





**KNOLLWOOD**

A SUBDIVISION OF A PART OF SECTION 25, T1N, R71W,  
6TH PM, BOULDER COUNTY, COLORADO

## DEDICATION

ORDER ALL NEW BY PHONE ORDERS

THAT OF A DEVELOPMENT CORPORATION, A COLORADO CORPORATION, IS THE OWNER OF THE REAL PROPERTY SITUATED IN SULLY COUNTY, COLORADO AND LIES WITHIN THE EXTENSION OF HIGHWAY 2 A DIVISION OF SECTION 36, T1N, 37S E 1TH R, SULLY COUNTY, COLORADO, AS SHOWN ON THE MAPS ATTACHED AS THE ENDS

THAT IT HAS GRANTED SAID REAL PROPERTY TO BE Laid OUT AND CONVEYED AS FOLLOWED AND DOES HEREBY DESIGNATE AND SET APART ALL OF THE STREETS AS SHOWN ON THE ACCOMPANYING PLAT TO THE USE OF THE PUBLIC HIGHWAY, AND HEREBY DESIGNATES THESE PORTIONS OF SAID REAL PROPERTY WHICH ARE SHOWN AS EASEMENTS ON THE ACCOMPANYING PLAT, AS EASEMENTS FOR THE INSTALLATION AND MAINTENANCE OF ALL UTILITIES SERVING

AS ADVISED PREVIOUS, S & S DEVELOPMENT CORPORATION HAS CHANGED ITS NAME TO BE RESORTS SUGGESTED BY ITS  
MANAGEMENT, AND ITS COMMENTS DEAL TO BE REQUINQD AFFIRMED, AFFIRMED OF ITS SECRETARY, WHO BY DAY OF  
JAN 20 1966

### 2.1.2. DEVELOPMENT OF CONCENTRATION

ATTEST: Stacy A. Black SECRETARY

NY 62-100000 100000

STATE OF MISSISSIPPI:

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 1st DAY OF JUNE A.D. 1904 BY

NY 100-103949-1000 June 17, 1968

*Robert L. Kennedy*  
 001207 000102

**COMMISSIONER'S CERTIFICATE**

[illegible]

49787 Michael J. Kelly

Joe Smith

### CLERK AND RECORDER'S CERTIFICATE

STATE OF NEW YORK

STATE OF NEW YORK  
COUNTY OF NEW YORK

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED IN MY OFFICE AT 2:38 PM, JULY 2, 1968, AND WAS ASSIGNED TO CLERK FILE # 1-2-4

1994/95

Wilton E. Tachibana

Lena C. Davis

**PLANNING COMMISSION CERTIFICATE**

APPROVED THIS 15th DAY OF June 1967, COUNTY PLANNING COMMISSION, BOULDER COUNTY, COLORADO

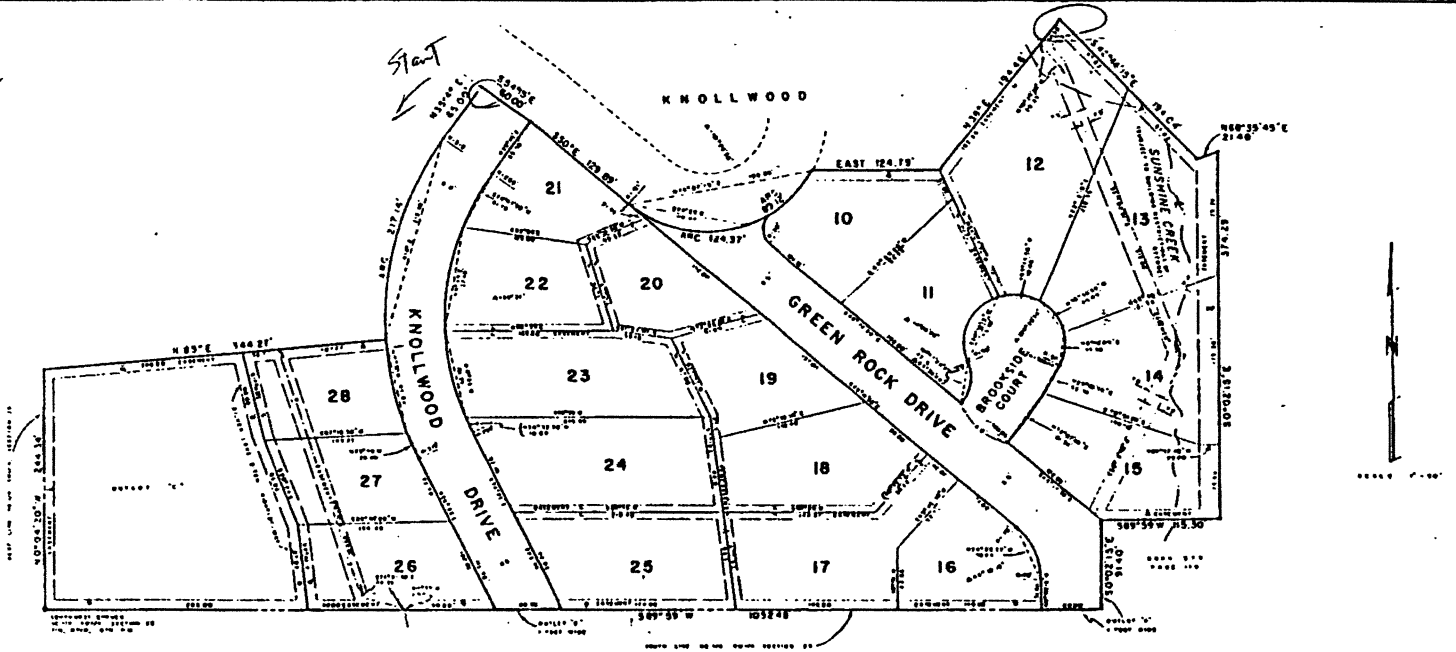
John C. Smith

### SURVEYOR'S CERTIFICATE

I, CHARL A. SWANSON, DO HEREBY CERTIFY THAT THE SURVEY SO FOLLOWED WAS MADE BY ME, AND THAT THE ABOVE-MENTIONED PLAT ACCURATELY REPRESENTS SAID SURVEY.

*Chas. F. Truitt*

Recorded Planfile R 1-3-79



**KNOLLWOOD FIRST ADDITION**  
A SUBDIVISION OF A PART OF SECTION 25, T1N, R71W,  
6TH PM, BOULDER COUNTY, COLORADO

**DEDICATION**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

My commission expires \_\_\_\_\_.

WITNESS my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for the State of Colorado

**COMMISSIONER'S CERTIFICATE**

I, the undersigned, am a duly qualified and sworn member of the Board of Commissioners of the County of \_\_\_\_\_, State of \_\_\_\_\_, and I hereby certify that the foregoing is a true and correct copy of the original instrument filed for record in my office on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_.

Notary Public for the State of Colorado

**CLERK AND RECORDER'S CERTIFICATE**

I, the undersigned, am a duly qualified and sworn member of the Board of Commissioners of the County of \_\_\_\_\_, State of \_\_\_\_\_, and I hereby certify that the foregoing is a true and correct copy of the original instrument filed for record in my office on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_.

Notary Public for the State of Colorado

**SURVEYOR'S CERTIFICATE**

I, the undersigned, am a duly qualified and sworn member of the Board of Commissioners of the County of \_\_\_\_\_, State of \_\_\_\_\_, and I hereby certify that the foregoing is a true and correct copy of the original instrument filed for record in my office on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_.

Notary Public for the State of Colorado

**PLANNING COMMISSION CERTIFICATE**

I, the undersigned, am a duly qualified and sworn member of the Board of Commissioners of the County of \_\_\_\_\_, State of \_\_\_\_\_, and I hereby certify that the foregoing is a true and correct copy of the original instrument filed for record in my office on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_.

Notary Public for the State of Colorado

**NOTARY PUBLIC CERTIFICATE**

I, the undersigned, am a duly qualified and sworn member of the Board of Commissioners of the County of \_\_\_\_\_, State of \_\_\_\_\_, and I hereby certify that the foregoing is a true and correct copy of the original instrument filed for record in my office on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires \_\_\_\_\_.

Notary Public for the State of Colorado

RECORDED-PLAN FILE R 2-1-25





# ANNEXATION MAP

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25,  
TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M.,  
COUNTY OF BOULDER, STATE OF COLORADO  
TOTAL AREA = 28.674 ACRES  
SHEET 1 OF 2

## LEGAL DESCRIPTION

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF KNOLLWOOD SUBDIVISION ALSO BEING THE WESTERLY RIGHT OF WAY OF GREEN ROCK DRIVE; THENCE ALONG THE BOUNDARY OF SAID KNOLLWOOD SUBDIVISION THE FOLLOWING NINE (9) COURSES:

1. N76°00'00"E, A DISTANCE OF 189.13 FEET TO A POINT ON A CURVE;
2. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 569.71 FEET AND A CENTRAL ANGLE OF 17°30'01" (CHORD BEARS N84°45'00"E, 173.34 FEET), 174.01 FEET;
3. THENCE S88°30'00"E, A DISTANCE OF 200.00 FEET TO A POINT ON A CURVE;
4. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 1638.18 FEET AND A CENTRAL ANGLE OF 4°00'00" (CHORD BEARS S84°30'00"E, 114.34 FEET), 114.371 FEET;
5. THENCE S82°30'00"E, A DISTANCE OF 6.00 FEET;
6. THENCE N7°30'00"E, A DISTANCE OF 2.57 FEET;
7. THENCE S80°39'30"E, A DISTANCE OF 118.68 FEET;
8. THENCE S0°02'15"E, A DISTANCE OF 22.00 FEET;
9. THENCE S42°46'15"E, A DISTANCE OF 306.15 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD FIRST ADDITION THE FOLLOWING FIVE (5) COURSES:

1. S42°46'15"E, A DISTANCE OF 194.04 FEET;
2. THENCE N68°35'45"E, A DISTANCE OF 21.48 FEET;
3. THENCE S0°02'15"E, A DISTANCE OF 374.29 FEET;
4. THENCE S89°59'00"W, A DISTANCE OF 115.29 FEET;
5. THENCE S0°01'43"E, A DISTANCE OF 91.40 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD SECOND ADDITION THE FOLLOWING TWENTY TWO (22) COURSES:

1. N89°59'00"E, A DISTANCE OF 86.89 FEET;
2. THENCE S0°02'15"E, A DISTANCE OF 149.83 FEET;
3. THENCE S83°15'00"W, A DISTANCE OF 22.85 FEET;
4. THENCE S44°30'00"W, A DISTANCE OF 21.00 FEET;
5. THENCE S22°25'00"W, A DISTANCE OF 49.50 FEET;
6. THENCE S13°35'00"W, A DISTANCE OF 70.00 FEET;
7. THENCE S43°05'00"W, A DISTANCE OF 148.00 FEET;
8. THENCE S35°55'00"W, A DISTANCE OF 43.00 FEET;
9. THENCE S24°40'00"W, A DISTANCE OF 40.00 FEET;
10. THENCE S11°58'00"W, A DISTANCE OF 83.98 FEET;
11. THENCE S15°01'09"E, A DISTANCE OF 88.02 FEET TO A POINT ON A CURVE;
12. THENCE ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 97°44'21" (CHORD BEARS S64°21'34"W, 75.32 FEET), 85.29 FEET;
13. THENCE N83°49'10"W, A DISTANCE OF 13.89 FEET;
14. THENCE S28°00'00"W, A DISTANCE OF 1.50 FEET;
15. THENCE S40°30'00"W, A DISTANCE OF 139.00 FEET;
16. THENCE S27°27'00"W, A DISTANCE OF 22.15 FEET;
17. THENCE S70°09'35"W, A DISTANCE OF 11.78 FEET;
18. THENCE S22°00'00"W, A DISTANCE OF 126.79 FEET;
19. THENCE S37°24'30"W, A DISTANCE OF 142.69 FEET;
20. THENCE N2°05'50"E, A DISTANCE OF 655.94 FEET;
21. THENCE N57°58'20"W, A DISTANCE OF 392.20 FEET;
22. THENCE N10°39'05"W, A DISTANCE OF 159.39 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD FIRST ADDITION THE FOLLOWING THREE (3) COURSES:

1. N6°45'00"W, A DISTANCE OF 87.09 FEET;
2. THENCE N20°24'00"W, A DISTANCE OF 93.00 FEET;
3. THENCE N13°40'00"W, A DISTANCE OF 90.06 FEET;

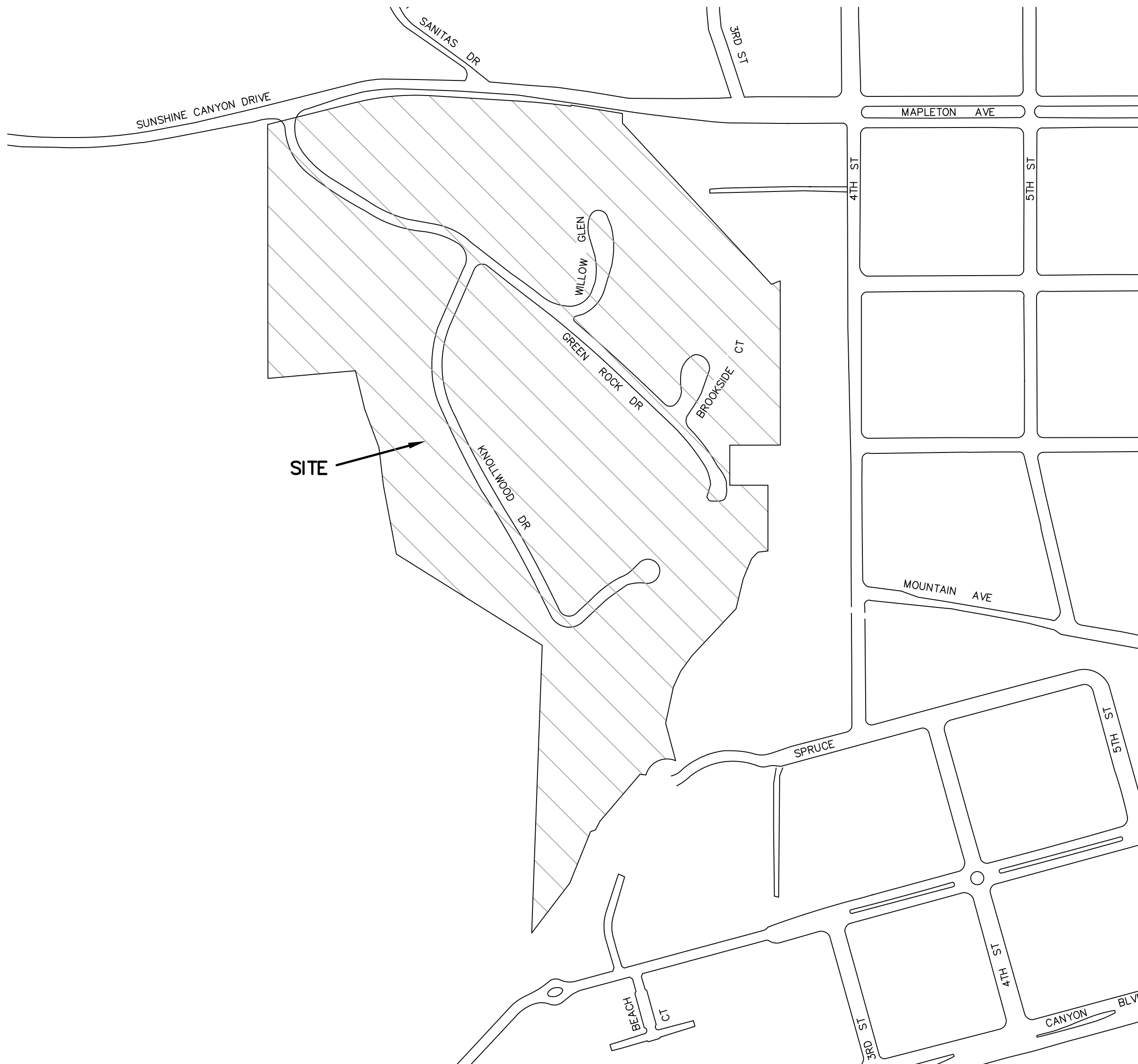
THENCE ALONG THE BOUNDARY OF TRACT 3298 RECORDED AT RECEPTION NO. 1099939 DATED 04/29/91 THE FOLLOWING TWO (2) COURSE:

1. S85°00'00"W, A DISTANCE OF 200.00 FEET;
2. THENCE N0°04'20"W, A DISTANCE OF 135.25 FEET;

THENCE ALONG THE BOUNDARY OF A TRACT OF LAND RECORDED AT RECEPTION NO. 1949399 DATED 06/14/99 THE FOLLOWING TWO (2) COURSES:

1. N0°04'20"W, A DISTANCE OF 443.44 FEET;
2. THENCE N76°00'07"E, A DISTANCE OF 16.22 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 1,249,043 SQUARE FEET (28.674 ACRES).



SITE

## VICINITY MAP

SCALE: 1" = 200'  
NOTE: FULL-SIZED MAP IS ON SHEET 2 OF 2

## LEGEND



PROPERTY CONTIGUOUS TO EXISTING CITY  
OF BOULDER LIMITS

TOTAL PERIMETER OF AREA TO BE ANNEXED = 5548.2 FEET  
ONE SIXTH OF TOTAL PERIMETER = 924.7 FEET  
PERIMETER CONTIGUOUS TO EXISTING CITY LIMITS = 5274.6 FEET

SURVEYOR: SCOTT, COX & ASSOCIATES, INC.  
1530 55TH STREET  
BOULDER, COLORADO 80303

## SURVEY NOTES

1. THIS MAP IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT. THE PURPOSE OF THIS MAP IS TO SHOW THE AREA TO BE ANNEXED TO THE CITY OF BOULDER, COLORADO.
2. THIS ANNEXATION IS BASED ON THE FOLLOWING PLATS: KNOLLWOOD, KNOLLWOOD FIRST ADDITION, KNOLLWOOD FIRST ADDITION REPLAT A, KNOLLWOOD SECOND ADDITION, KNOLLWOOD SECOND ADDITION REPLAT A, KNOLLWOOD VILLAGE.
3. NOTICE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVERED SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON. CRS-13-80-105 (3)(c).

## CERTIFICATION

THIS IS TO CERTIFY THAT THIS MAP WAS MADE UNDER MY DIRECT RESPONSIBILITY, SUPERVISION AND CHECKING AND THAT IT IS A TRUE AND CORRECT REPRESENTATION OF THE AREA TO BE ANNEXED TO THE CITY OF BOULDER, COLORADO, AND THAT AT LEAST ON SIXTH (1/6) OF THE BOUNDARY OF SAID PARCEL IS CONTIGUOUS TO THE PRESENT CITY OF BOULDER, COLORADO.

*A. John Buri*  
A. JOHN BURI  
24302  
PROFESSIONAL LAND SURVEYOR  
COLORADO REGISTERED

A. JOHN BURI, PLS 24302  
FOR AND ON BEHALF OF  
SCOTT, COX & ASSOCIATES, INC.

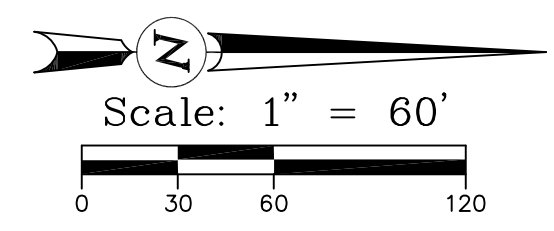
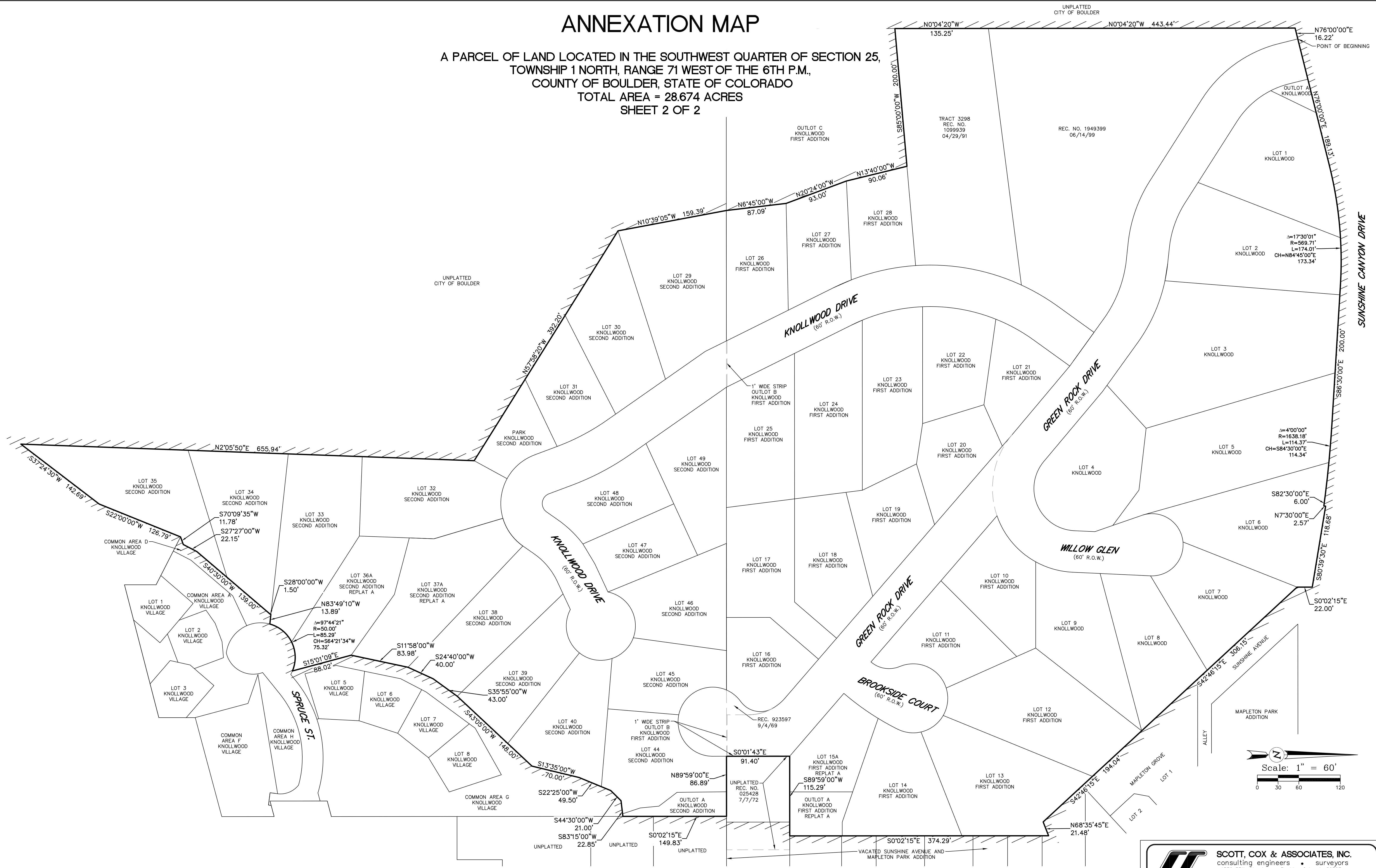


SCOTT, COX & ASSOCIATES, INC.  
consulting engineers • surveyors  
1530 55th Street • Boulder, Colorado 80303  
(303) 444 - 3051

Designed by	AJB	Date	01/25/19	Scale	AS SHOWN	Drawing no.	18313	Sheet	1
Drawn by	JAS	Revision		Description		Date		Project no.	18313
Checked by	AJB								

# ANNEXATION MAP

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25,  
TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M.,  
COUNTY OF BOULDER, STATE OF COLORADO  
TOTAL AREA = 28.674 ACRES  
SHEET 2 OF 2



**SCOTT, COX & ASSOCIATES, INC.**  
consulting engineers • surveyors  
1530 55th Street • Boulder, Colorado 80303  
(303) 444 - 3051

Designed by	AJB	Date	01/25/19	Scale	1"=60'	Drawing no.	18313	Sheet	2
Drawn by	JAS	Revision		Description		Date		Project no.	18313
Checked by	AJB								

## INTERGOVERNMENTAL AGREEMENT REGARDING ANNEXATION AND TRANSITION OF MUNICIPAL SERVICES

This INTERGOVERNMENTAL AGREEMENT REGARDING ANNEXATION AND TRANSITION OF MUNICIPAL SERVICES (the “IGA”) is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), by and between the City of Boulder, Colorado, a home rule municipality, (the “City”) and Knollwood Metropolitan District, a quasi-municipality and political subdivision of the State of Colorado (the “District”) (individually referred to herein as a “Party” and collectively as the “Parties”).

### RECITALS

WHEREAS, the District was formed in 1965 to provide the District’s residents with water services and was converted to a metropolitan district in 2015 to also provide street improvements and traffic and safety controls as provided in the Amended Statement of Purposes dated October 9, 2015, which conversion was approved by the Court on December 17, 2015, both attached as **Exhibit A**; and

WHEREAS, pursuant to Art. XIV, § 18(2)(a) of the Colorado Constitution, and § 29-1-203, C.R.S., as amended, the Parties may cooperate or contract with each other to provide any function or service lawfully authorized to each; and

WHEREAS, property owners within the District have petitioned the City for an annexation election on the question of annexation of all property within the District (the “District Property”) and 150 Green Rock Drive (collectively the “Annexation Area”) into the boundaries of the City. The Annexation Area is shown in **Exhibit B**. The “Annexation Petition” submitted is dated June 27, 2018; and

WHEREAS, on March 19, 2019, the City Council of the City of Boulder (the “City Council”) held a public hearing on the Annexation Petition and the Terms and Conditions contained in the “Annexation Resolution,” a copy of which is attached as **Exhibit C**; and

WHEREAS, the City and the District will coordinate in conducting an annexation election for the Annexation Area and wish to set forth the procedure to be followed for the election, and if approved by the voters, construction of public improvements and dissolution of the District. This IGA contains the obligations of the District only; obligations of individual properties within the Annexation Area are contained in the Annexation Resolution; and

WHEREAS, the Annexation Resolution requires *inter alia* (a) that the road and water system public improvements set forth in **Exhibit D** (the “District Public Improvements”) are to be constructed by the City up to the meter pits serving each District Property, (b) that the District Properties be connected to the City water system upon the City’s completion of installation of new water mains and service lines serving District Properties; (c) that the District or individual owners of District Properties install service lines from the structures being served to the meter pits and install pressure reducing valves on the District Properties compatible with the City’s water system public improvements, (d) and dissolution of the District within five years of the effective date of the Annexation Ordinance or within two years of the City’s final acceptance of the District Public Improvements under the City’s Construction Contract (as defined below), whichever occurs later,

for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District; and

WHEREAS, if a majority of eligible votes are in favor of annexation, the District wishes to provide financing for the required District Public Improvements and the City will design and, upon the District obtaining financing for the District Public Improvements, construct the District Public Improvements, as set forth herein; and

WHEREAS, until connection of a District Property to the city water system, the District shall provide water services to that property; upon completion of the water system improvements and connections, the District shall discontinue water service and abandon all of its water system improvements; and

WHEREAS, the District wishes to provide financing of the City fees related to the construction of facilities for connection of the District Properties to the City's water system (the "Water Plant Investment Fees") that are a condition of annexation; however other City fees, and any portion of the Water Plant Investment Fees not paid by the District, shall be the responsibility of each District Property owner for its property; and

WHEREAS, the City requires that (a) immediately upon annexation, the City Council become the approving authority for the District pursuant to Section 32-1-204.7 C.R.S., (b) the powers of the District be reduced as a condition of annexation as set forth herein, (c) the District be dissolved within five years of the effective date of the Annexation Ordinance or within two years of the City's final acceptance of the District Public Improvements under the City's Construction Contract, whichever occurs later, for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District, and (d) the City Council serve as the board of the District upon dissolution pursuant to Section 32-1-707(2)(c) C.R.S.; and

WHEREAS, the District has the authority to provide snow removal, maintain common areas, enforce covenants, and maintain the outlots in the District (the "Community Services"); which Community Services shall be discontinued and the outlots conveyed to the City within five years of the effective date of the Annexation Ordinance or within two years of the City's final acceptance of the District Public Improvements under the City's Construction Contract, whichever occurs later, unless the owners of the District Property establish a common interest community and unit owners' association (the "HOA") consistent with Sections 38-33.3-101, *et seq.* C.R.S. to provide the Community Services presently provided by the District; and

WHEREAS, after annexation of the District Property to the City and the District's financing and the City's construction of the District Public Improvements, there will be limited need for the District to provide public services, and the Parties wish to limit the District's powers in the future through approval of a Second Amended Statement of Purpose upon annexation, and dissolve the District within five years of the effective date of the Annexation Ordinance or within two years of the City's final acceptance of the District Public Improvements under the City's Construction Contract, whichever occurs later, for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District; and

WHEREAS, upon implementation of this IGA including approval of the vote to dissolve the District, the obligations of the property owners within the District under out-of-city wastewater service agreements between the City and the property owners will be satisfied.

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

## **I. ANNEXATION PROCEDURE**

1.1 The Parties agree to the following annexation procedure:

1.1.1 City Council Resolution. The City Council has approved the Annexation Resolution, with the terms and conditions set forth in **Exhibit C** (the “Annexation Terms”).

1.1.2 Annexation Election. After approval of the Annexation Resolution, the City will petition the District Court to call an election and will hold an election on the question on annexation in accordance with the Annexation Resolution. The District agrees to reimburse the City for up to and not to exceeding \$5,000 of election costs and expenses paid by the City pursuant to § 31-12-112(10) on the effective date of the Annexation Ordinance, but in no event later than the start of construction of the District Public Improvements.

1.1.3 Annexation Ordinance. If a majority of the valid votes in the election are in favor of annexation, the City Council shall consider adopting an Ordinance approving annexation (the “Annexation Ordinance”), pursuant to the terms of the Annexation Resolution. No additional terms or conditions of annexation will be added to the Annexation Resolution.

## **II. KNOLLWOOD PUBLIC IMPROVEMENT PROJECT**

2.1 Scope of Project. If voters approve annexation and the City adopts an Annexation Ordinance, the Parties agree that the District Public Improvements shall be completed by the City and financed by the District (except as set explicitly set forth herein), as a requirement of annexation. The District shall coordinate with the City for the construction of the District Public Improvements and pay for such improvements (except that the City shall pay the costs associated with the up-sizing of the line in Knollwood Drive from 8” to 12” and costs associated with connecting the service line for 150 Green Rock Drive to a new main to be constructed as part of the District Public Improvements, as set forth in **Exhibit D**).

2.2 Designated Representatives. The Parties designate the following representatives (hereafter referred to as “Representative(s)”), who are authorized to review and provide any required review, comment, approval or authorization regarding the design and construction of and District Property connection to the District Public Improvements (the “Project”) under this IGA, including bids, design plans and change orders. The Parties may appoint a replacement designated representative by written notice provided to the other Party.

For the District:

Barry Baer  
Treasurer  
Knollwood Metropolitan District  
2265 Knollwood Drive  
Boulder, CO 80302  
Telephone: 303-443-1118  
colonelbsb@aol.com

Jim Semborski  
Secretary  
Knollwood Metropolitan District  
2195 Knollwood Drive  
Boulder, CO 80302  
Telephone: 303-949-1651  
jimsemborski@comcast.net

For the City:

Dan Kvasnicka  
Project Manager for Boulder  
Telephone: 303-441-3201  
KvasnickaD@bouldercolorado.gov

Jeff Arthur  
Boulder Director of Public Works - Utilities  
Telephone: 303-441-4418  
ArthurJ@bouldercolorado.gov

## 2.3 Design of District Public Improvements.

2.3.1 Design Contract. The City has existing contracts for construction of public improvements and will establish a Scope(s) of Work for the design and engineering of the District Public Improvements (the "Design SOW") for a cost of not to exceed \$140,000. The City has provided the Design SOW to the District for review and comment. The District shall pay \$70,000 to the City for the design and engineering costs within 30 days of the Effective Date. The District shall pay the remaining amount due for design and engineering prior to commencement of construction of the District Public Improvements. The District shall make a second payment of \$70,000 to the City, within 15 days after the City has approved and provided the District with invoices for work costing \$70,000 or more. The cost of the design and engineering work for the Knollwood Public Improvements shall not exceed \$140,000, unless a change order is approved by the District and a City Representative. The District will not be charged for project management costs of City employees.

2.3.2 Change Orders / Amendments. In the event that there are any change orders to the Design SOW acceptable to the City, it will be provided to the District for review and approval by the District within five business days, which approval shall not be unreasonably withheld. Failure to present written reasons for objection within five business days of receipt of the change order shall be deemed approval by the District. The City shall consider the District's objections in good faith, and make appropriate adjustments to the change order, if any, within five business days of receipt of the objection. The District shall pay the amount of the change order to the City within fifteen calendar days of receipt of the change order from the City unless the District provided written reasons for objection within five business days of receipt from the City.

2.3.3 Design Plans. The City shall provide copies of the design of the District Public Improvements to the District's Representative at 30% completion, 90% completion and 100% completion. Within five business days of receipt of each design set, a City representative

will meet with a District representative, if requested by the District, to answer any questions. A representative of the District may attend any meetings between the Engineer and the City regarding the Knollwood Public Improvements. The District may object to the design to the extent that: 1) it includes improvements not set forth in **Exhibit D**, 2) it includes improvements to facilities other than District Public Improvements benefitting the City at large instead of the Annexation Area, or 3) it requires improvements at a higher standard or quality than required by City of Boulder Code and Regulations. If the District objects on one of the bases set forth above, the Parties shall follow the procedure set forth in Section 2.3.2 of this IGA. In the event that the annexation is not approved by the voters or by the City, the District shall be provided a copy of and shall own all design drawings, provided that the District has paid the engineer's costs associated therewith. The Design SOW will state that, if the annexation is not completed, the District will own the plans. If the plans are 100% complete, the District may use the plans to complete the District Public Improvements, but if the plans are used for other projects, such use shall be at the District's risk.

**2.3.4 Dedication of Easements.** The Parties recognize that rights-of-way within the Annexation Area are owned by the County and will become City rights-of-way upon annexation. However, easements and other property interests may be needed for the Knollwood Public Improvements. The District shall obtain all easements and property interests needed for the construction of the Knollwood Public Improvements, as identified in the design phase or construction phase. Prior to commencement of construction, the District (or the County, as the case may be) shall convey, assign or quit claim any easements and or other property interests needed for the District Public Improvements to the City.

**2.3.5 If Annexation is Not Approved.** If the annexation vote is against annexation, the District may require the City to suspend the work on design of the Knollwood Public Improvements and the District shall only be responsible for costs incurred or work performed by the Engineer prior to the date of such suspension.

## **2.4 Construction Contract.**

**2.4.1 Contract Terms and Procedure.** Following the completion of the design for the District Public Improvements and after the District obtains the funds to pay for the construction, the City shall secure a construction contract for the District Public Improvements consistent with the City's construction contract procurement policies. The City has existing contracts for construction of public improvements and may establish a Scope of Work for the construction of the District Public Improvements (the "Construction SOW") under such existing contract. If the City obtains one or more bid(s) for construction of the District Public Improvements (the "Project") and finds the bid(s) acceptable, the City shall present the bid(s) to the District for review. Within five business days of receipt of the bid(s) or Construction SOW, a City and Engineer representative will meet with a District representative, if requested by the District, to answer any questions. If the bid is higher than original City engineer estimates of \$1,529,432.04, and the District provides written objections to the bid to the City Representative, the City shall consider the objections in good faith and obtain revisions to the bid(s) or request a new bid(s), as the City deems appropriate. The City shall provide the District with a copy of the contract or Construction Scope of Work, as applicable, for the Project (the "Construction Contract") for review and comment, to ensure compliance with this IGA. The Construction Contract and all communications with the contractor shall be with and through the City. The Construction Contract shall require



the contractor to be responsible for the costs of any necessary repair of damages caused to the District's existing improvements during the course of the Project. The District may notify a city representative of any faulty work or damages caused by the contractor, and the City shall in good faith consider the information in the management of the Project and the Construction Contract, which may include enforcing the repairs. If it results in any cost savings on the Project, the District shall be credited.

2.4.2 Change Orders / Amendments. In the event that there are any change orders to the Construction Contract approved by the City, it will be provided to the District for review and comment by the District's Representative. The District's Representative shall provide written comments, if any, to the proposed change order within five business days of receipt. If requested by the District, within business five days of receipt of any written comments, the City shall meet with a District Representative to attempt to resolve any areas of disagreement. The District shall pay the amount of the change order, as revised through these discussions, to the City within fifteen calendar days of receipt of the change order.

2.4.3 Progress Payments. A City representative or the Engineer shall review monthly invoices from the Contractor and, following approval, shall forward the portion of monthly invoices for the District Public Improvements to the District's Representative. The District shall make payment to the City for the invoice within fifteen calendar days of receipt, unless the District Representative objects in writing on the basis that the invoice is for work outside the scope of the Construction Contract for which no change order has been approved, that the billed work has not been performed or completed, or that work completed is defective. In the event of such objection, City and District Representatives shall meet within five business days to resolve the issue. If the City and the District Representative cannot agree on the validity of the invoice, a City Representative shall determine that amount validly due for completed, non-defective work within the scope of the Construction Contract, and the District shall pay such amount to the City within five business days of the Project Manager's determination. The City shall pursue any remedies it deems appropriate against the contractor in the event of defective work. In the event that the District fails to make progress payments as set forth herein, the City may order the Contractor to suspend work on the District Public Improvements.

## 2.5 Construction Management and Contract Terms.

2.5.1 The District hereby authorizes the City to manage, advertise, contract and construct the Project pursuant to the City's standards and requirements. All District Public Improvement construction shall be in compliance with design plans reviewed by the District.

2.5.2 The District may inspect the final installation of all District Public Improvements during normal business hours in accordance with on-site safety protocols. The City shall provide the District notice 24-hours before backfilling. All communications from the District about construction shall be provided to a City Representative and the District shall not interfere with any contractors working on the District Public Improvements.

2.6 Ownership. During construction and following completion, the District Public Improvements shall be owned by the City. Following completion of the District Public Improvements and acceptance by the City, the District shall have no responsibility for costs

associated with operation, maintenance, repair, improvement or warranty defects to the District Public Improvements, other than those for which all property owners in the City are responsible.

### **III. FINANCING OF KNOLLWOOD PUBLIC IMPROVEMENTS**

3.1 District Debt. Pursuant to voter approval on November 8, 2016, the District issued debt in the amount of \$500,000, of which approximately \$461,000 remains outstanding for financing the cost of designing, constructing and installing street and water system improvements. At an election on November 6, 2018, a majority of the eligible electors of the District voting in such election voted in favor of a ballot issue authorizing the District to enter into, incur or issue up to \$2,750,000 principal amount of general obligation indebtedness for the purposes stated in the ballot issue, which includes all of the costs related to the District Public Improvements.

#### **3.2 District Financing**

3.2.1 2017 GO Loan. In 2017, the District entered into a general obligation Loan Agreement with Co-Biz Public Finance, Inc., pursuant to which the District borrowed \$500,000 (the “2017 Loan”), of which approximately \$461,000 remains outstanding.

3.2.2 2019 GO Financing. If the annexation is approved by the voters of the Annexation Area, the District intends to issue general obligation debt under the 2018 TABOR authorization to finance the District Public Improvements, payment of the water plant investment fees, described in section 3.4.1 below, and costs that are directly related to those improvements. The Parties agree that the 2019 debt will comply with the following parameters, unless the City and the District agree in writing to a different structure.

- The debt will be issued by the District, and the City shall have no obligation for payment thereof.
- The debt may be a loan or bond or other financing, including public or private placement.
- The debt may be wholly or partially tax-exempt, to the extent that a qualified bond attorney provides a legal opinion that the debt is eligible to be tax-exempt.
- The debt may be secured by a general obligation pledge and mill levy certification pledge for certification on the District Property.
- The debt shall be in accordance with the voter approved debt requirements

The debt issuance documents shall include provisions recognizing the terms of this IGA and support the dissolution of the District, for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District, as provided in the Dissolution Plan. All references to “dissolution of the District” herein refer to the dissolution subject to the outstanding debt in accordance with the Dissolution Plan and do not refer to final dissolution after all outstanding debt is paid. The District shall provide the City with drafts of the debt documents within five business days of receipt of each draft. The City shall provide written comments, if any, within five business days of receipt, which comments that are consistent with this IGA shall be considered by the District for incorporation into the final debt documents. The District will use its best efforts to issue a new general obligation loan, bond or other financing within 180 calendar days of the approval of the annexation ordinance.

3.3 Amendment to this IGA to Accommodate Financing. In the event that the District and the City agree that amendments to this IGA are necessary for the District to obtain the debt financing contemplated herein, the City Manager may approve such amendment on behalf of the City.

3.4 If Annexation Election Does Pass.

3.4.1 Water Plant Investment Fees. The District shall pay the City the total amount of \$875,136, as water plant investment fees for the entire Annexation Area, with fifty percent paid upon connection of the first property to the City's water system and the remaining amount paid prior to connection of the last property in the Annexation Area to the City's water system, and the District shall pay all other applicable fees and charges associated with service line connections to the City's water utility, including, but not limited to, all applicable water utility connection and inspection fees. These charges are hereafter collectively referred to as "Water Public Improvement Fees."

3.4.2 Wastewater Plant Investment Fees. The Parties recognize that the structures within the Annexation Area currently receive wastewater service from the City and no additional wastewater plant investment fees will be due upon annexation. Following annexation, the properties within the Annexation Area will be charged the in-City resident rate for wastewater treatment services.

3.4.3 Miscellaneous Costs. The District has paid an annexation application fee of \$20,000. The District agrees to pay any other direct costs or obligations not specified herein but necessary to accomplish annexation, including any costs incurred for the dissolution of the District, except that the District shall not be charged for City employee time spent on the annexation and implementation of this IGA for the City and shall not be responsible for election costs and expenses that exceed \$5,000.

3.4.4 Wetland Evaluation and Mapping. If a majority of votes casts in the annexation election by the voters of the Annexation Area is for annexation, within 10 business days of such vote, the District shall pay to the City the wetland mapping and evaluation fees applicable as of the Effective Date pursuant to Sections 9-3-9(k)(2) and 4-20-53, B.R.C. 1981. The City will perform a functional evaluation and map all stream, wetland, water bodies and buffer areas in the Annexation Area. The approved mapping and evaluation shall be adopted as part of the Annexation Ordinance.

#### **IV. WATER SERVICE**

4.1 District Water Service. The District will continue to provide domestic water supply to each property within the District until each property is connected to the District Public Improvements and begins receiving water service from the City. The District will send out its final water bill within 90 days of the connection of a property to the City.

4.2 Dedications / Conveyances to the City: Within 60 calendar days of the connection of the last home to the City's water system, or such earlier time as is agreed by the Parties:

4.2.1 The District shall dedicate to the City, at no cost to the City and by Bill of Sale: (a) the water meters for each connection within the District Property; (b) any water hydrants which are not replaced as part of the Project; and (c) such other water system improvements that are owned by the District and identified by the City. The District shall vacate or assign easements of the District as directed by the City. The District owns alluvial ground water rights decreed in Case No. W-6304. The City waives any right to purchase such water rights. The District shall abandon such rights in accordance with Colorado law. Immediately following connection of the last District Property to the City's water service, the District shall cease pumping and decommission the four Knollwood Water District wells decreed in Case No. W-6304 entered on April 8, 1976, (the "District Water Rights") in accordance with all state requirements. Within [90] days after connection of the last property within the District to the City's water system, in accordance with applicable law, except as specifically provided herein and at its expense, the District shall abandon all facilities it owns, the water mains, storage tank, pump house, and other structures, in accordance with applicable law, unless otherwise agreed by the District and the City. The City may remove any facilities abandoned by the District.

4.2.2 Outlots. The District owns outlots on the plats for the Annexation Area ("Outlots"). The Outlots owned by the District shall be dedicated to the City upon dissolution of the District unless the homeowners within the District have created a common interest community and unit owners' association in accordance with Colorado law, and the District conveys the Outlots to the homeowners association prior to dissolution.

4.2.3 City Water Service. Upon connection of each District Property to the City's water system, the terms conditions, limitations, restrictions, rights and remedies for such water service shall be as provided in the Boulder Revised Code and any rules adopted pursuant thereto.

4.2.4 Indemnification. To the maximum extent permitted by law, the District shall indemnify and hold harmless the City from any liability associated with the provision of water service by the District, including but not limited to any post-pumping depletions and replacement obligations related to the District Water Rights, except to the extent caused by the actions or inactions of the City or its agents. After connection to the City's water system, the District shall not be responsible for any costs associated with the City's provision of water service except as provided herein.

## **V. STREET, TRAFFIC CONTROL AND FIRE PROTECTION SERVICES**

5.1 Public Streets. The Parties hereby recognize that following completion of the annexation, Green Rock Drive, Knollwood Drive, Willow Glen Court and Brookside Court shall change from County right-of-way to City right-of-way. Thereafter, the City shall commence exercising governmental street and traffic and safety control powers as to all public streets within the District, and the District's street powers shall be limited to financing and contracting for the improvements required herein and obtaining permits and contracting for snowplowing until those duties are performed by an HOA or discontinued.

5.2 Fire Protection Services. Following completion of the annexation, the City will provide fire protection services to the Annexation Area. The City and the District will cooperate

to promptly process exclusion of the Annexation Area from the Boulder Rural Fire Protection District, pursuant to Section 32-1-502, C.R.S.

## **VI. LIMITATIONS ON DISTRICT POWER, DISSOLUTION, AND CONVEYANCE TO CITY AND HOA**

6.1 Designated Approving Authority. If the annexation is approved by the voters, immediately and prior to City Council's consideration of the Annexation Ordinance, the District shall petition the City to become the designated approving authority of the District pursuant to Section 32-1-204.7, C.R.S., conditioned upon the City Council's' approval of the Annexation Ordinance.

6.2 Post-annexation Powers. From and after the effective date of the Annexation Ordinance, the District may have and exercise only the following powers, powers necessarily implied to carry out such powers, or powers approved in writing by the City in advance at the expense of the District. Provided however, that the District's powers are further limited as set forth in Section 6.4, upon the later of: five years from the effective date of the Annexation Ordinance or until two years from the City's final acceptance of the District Public Improvements under the Construction Contract.

6.2.1 Incurring and paying financial obligations, in a form consistent with this IGA, to pay for:

- Design and construction of Knollwood Public Improvements described in **Exhibit D.**
- Design and installation of service line connections from existing meter pits to new meter pits and installation of pressure reducing valves.
- Costs associated with acquisition of easements.
- Payment of Water Public Improvement Fees.
- Costs related to annexation and this IGA, including without limitation costs required by the City; District or City contractor, attorneys, engineers and surveyor's fees and costs; and costs related to the annexation election and agreements and related steps, such as dissolution of the District and organization of an HOA.
- Costs of issuance of the financing.
- Payment of any obligation related to the District Water Rights.
- Other costs authorized by the eligible electors in the debt authorization.

6.2.2 Providing water supply, treatment and delivery services to the Annexation Area, until connection to the City's water system, and billing for fees, costs and charges associated therewith.

6.2.3 Operating and maintenance of the existing District water system until conveyance to the City or abandonment as provided in Section 4.2 of this IGA.

6.2.4 Abandoning District wells and property or conveying real and personal property to the HOA or the City as provided herein.

6.2.5 Conveying Outlots to the HOA or the City.

6.2.6 Contracting for construction or installation of improvements related to the District Public Improvements, which are necessary for the District Properties to receive water service from the City.

6.2.7 Performing obligations of the District required by Colorado law until dissolution, including budgeting and auditing, required elections, and obligations to accountants, auditors and attorneys.

6.2.8 Assessing a mill levy and any special assessments necessary to cover the costs of the District until the District has fully discharged all financial obligations.

6.2.9 Owning and maintaining the Outlots until conveyance as provided in the Dissolution Plan.

6.2.10 Acquisition of easements or other property interests needed for the District Public Improvements, provided that the City's prior approval is required before the District exercises its power of eminent domain.

6.2.11 Snow removal on streets within the Knollwood Subdivision, Knollwood First Addition, and Knollwood Second Addition (collectively the "Knollwood Subdivisions"), pursuant to an annual right-of-way permit and in compliance with all applicable city requirements, via contract with Boulder County or another contract provider.

6.2.12 Complying with and enforcing terms of this IGA and agreements with water users, including Section 4.2.4 regarding indemnification of the City from financial obligations related to the District Water Rights.

6.2.13 Enforcement of covenants not inconsistent with City regulations and requirements as contained in the Declarations of Covenants, Conditions and Restrictions, recorded in the real property records of the County Clerk and Recorder on July 23, 1965 for the Knollwood Subdivision at reception number 789376, on November 4, 1966 for the Knollwood Subdivision First Addition at reception number 831673, and on October 15, 1969 for the Knollwood Subdivision Second Addition at reception number 893916, as amended.

6.2.14 Cooperation and assistance to homeowners regarding organization of an HOA, amendment of covenants and conveyance of the Outlots to the HOA.

6.3 Dissolution of the District. The District shall be dissolved as provided in the "Dissolution Plan," attached hereto as **Exhibit E**. The Dissolution Plan shall provide for dissolution except for the payment of financial obligations and outstanding debt until paid in full consistent with Section 32-1-702(3)(c), C.R.S.

6.4 Future Limitation on Powers. If the District is not dissolved within five years of the effective date of the Annexation Ordinance or within two years of the City's final acceptance of the District Public Improvements under the City's Construction Contract, whichever occurs later, the District shall not exercise any power except as necessary to pay off the financial obligations and outstanding debt.

6.5 Statement of Purposes. If the voters in the Annexation Area approve the annexation, the District Board shall submit for City Council approval at the meeting where the City Council considers second reading of the Annexation Ordinance, the Second Amended Statement of Purposes, essentially in the form attached as Exhibit A to the Dissolution Plan (see **Exhibit E**). The City Council shall only consider such approval following: 1) approval of the Annexation Ordinance and 2) acceptance of designation as the approving authority for the District pursuant to Section 32-1-204.7 C.R.S.

6.6 HOA. In order to provide some of the non-essential services currently provided by the District and to own and maintain the Outlots presently owned by the District and provide snow removal, the property owners inside the District boundaries may form a common interest community and a unit owners' association. The City shall not contest the authority of the HOA to exercise the following powers:

- Enforce the covenants of the community, as they may be amended from time to time per Colorado law.
- Snow removal on streets within the Knollwood Subdivisions pursuant to an annual right-of-way permit issued by the City and in compliance with all applicable city requirements.
- Owning and maintaining the Outlots and other public or common areas, including the entrance sign to the Knollwood neighborhood.

## **VII. GENERAL TERMS AND CONDITION**

7.1 Defaults. A default shall exist if either Party fails to comply with the terms and conditions hereof and such failure shall continue for a period of thirty (30) days after notice thereof given by the other Party. In the event of a default, the non-defaulting Party may enforce its rights under this IGA by any remedy available at law or equity, including without limitation, specific performance. The Parties may agree to participate in mediation before proceeding to court or in lieu of litigation.

7.2 Non-Appropriation. The City understands, and the District agrees, that the District will use its best efforts to appropriate funds sufficient to make payment for all financial obligations as contemplated herein. In the event of non-appropriation, the City may enforce remedies set forth herein or remedies available against residents of Knollwood, if applicable. The Parties agree and acknowledge that because payments are subject to annual appropriation, this IGA does not constitute a multiple fiscal year debt or financial obligation of the District, under Colo. Const. Art. X, sec. 20.

7.3 No Partnership or Agency. Notwithstanding any language in this IGA, or any representation or warranty to the contrary, neither the District nor the City shall be deemed or constitute a partner, joint venture, or agent of the other. Any actions taken by the Parties pursuant to this IGA shall be deemed actions as an independent contractor of the other.

7.4 No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this IGA and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that

any person, other than the Parties, shall be deemed to be only an incidental beneficiary under this IGA.

7.5 Governing Law and Venue; Recovery of Costs. This IGA shall be governed by the laws of the State of Colorado, and venue shall be in Boulder County, Colorado. In the event legal action is brought to resolve any dispute among the Parties related to this IGA, the non-prevailing party shall pay the court costs and attorney fees of the prevailing party.

7.6 Governmental Immunity. No term or condition of this IGA shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.* as it applies to either Party.

7.7 Authority. The Parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this IGA on behalf of the Parties and to bind the Parties to its terms.

7.8 Entire Agreement. This IGA contains the entire agreement of the Parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of both Parties.

7.9 Counterparts. This IGA may be executed in counterparts, each of which shall constitute one and the same instrument.

7.10 Binding Effect. This IGA can be assigned only with the consent of the other Party. This IGA shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, personal representatives and successors and permitted assigns.

7.11 Recitals and Exhibits. All recitals and exhibits referred to in this IGA are incorporated herein for all purposes.

7.12 Severability. In the event a court of competent jurisdiction holds any provision of this IGA invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this IGA.

7.13 Written Notices. Written notices required under this IGA and formal correspondence among the Parties shall be directed to the following and shall be deemed received as of the date of hand-delivery, or as of the date indicated on the return receipt request of a certified mailing:

If to the City:

Boulder City Manager  
P.O. Box 791  
Boulder, CO 80306

With a copy to:  
Boulder City Attorney



P.O. Box 791  
Boulder, CO 80306

If to the District:

Colonel Barry S Baer US Army (Retired)  
Treasurer, Knollwood Metropolitan District  
2265 Knollwood Drive  
Boulder, CO 80302


With a copy to:

Carolyn R. Steffl, Esq.  
Moses, Wittemyer, Harrison and Woodruff, P.C.  
2595 Canyon Boulevard, Suite 300  
Boulder, CO 80302

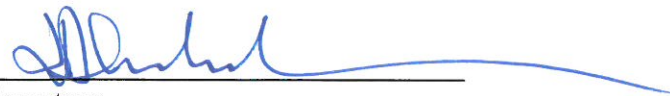
7.5 If the annexation is not approved by the voters in the annexation election, or the Annexation Ordinance is not approved by the City Council, this Agreement shall be null and void, except for the financial obligations of the District to the City for actual expenses by the City for the design of the District Public Improvements incurred prior to the date upon which this IGA is voided.

IN WITNESS WHEREOF, the Parties have caused this IGA to be executed as of the Effective Date.

**KNOLLWOOD METROPOLITAN DISTRICT**

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

ATTEST:

  
\_\_\_\_\_  
Secretary

**CITY OF BOULDER**

\_\_\_\_\_  
City Manager

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney’s Office

Date: \_\_\_\_\_

**AMENDED STATEMENT OF PURPOSES  
KNOLLWOOD METROPOLITAN DISTRICT  
(FORMERLY KNOWN AS KNOLLWOOD WATER DISTRICT)**

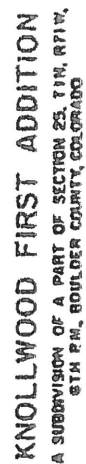
Knollwood Metropolitan District (the "*District*") (formerly known as Knollwood Water District) hereby files the following Amended Statement of Purposes with the Board of County Commissioners of the County of Boulder, State of Colorado, pursuant to C.R.S. § 32-1-208(3), and requests approval contingent on receipt of a court order approving conversion of the District to a metropolitan district at which time this Amended Statement of Purposes would take effect.

1. **Purposes for which the District was organized.** The purposes for which the Knollwood Water District was organized are 1) to supply water for domestic purposes by any available means, and 2) other purposes determined by the Board Members of the District in accordance with C.R.S. § 32-1-101, *et. seq.*
2. **Conversion to Metropolitan District.** Knollwood Water District has submitted a petition for conversion to a metropolitan district to the District Court of Boulder County pursuant to C.R.S. § 32-1-1006(2)(b), which has been referred to a vote of the eligible electors on November 3, 2015. If a majority of the eligible electors vote in favor of conversion and the court issues an order approving conversion of the District to a Metropolitan District, the District shall henceforth be named the Knollwood Metropolitan District, with powers and duties of a metropolitan district under C.R.S. § 32-1-1004.
3. **Services and facilities provided or to be provided by the District.** The services and facilities provided or to be provided by the District are: 1) the provision of water for domestic purposes, including but not limited to monitoring and maintaining water quantity and quality, and following conversion to a metropolitan district, 2) street improvements, through the construction and installation of curbs, gutters, culverts, and other drainage facilities and sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements, provided that the Boulder County Engineer has approved a construction permit or other permit as required by the Boulder County Code, and 3) safety protection through traffic and safety controls and devices on streets and highways and at railroad crossings, provided that the Boulder County Engineer has approved the District's exercise of the safety protection power.
4. **The areas served or to be served by the District.** The areas served or to be served by the District are those areas within the boundaries of the District or that will be subsequently included within the boundaries of the District, with current boundaries shown in the attached Exhibit, and those areas outside the boundaries of the District that the District chooses to serve by contract.

Respectfully submitted this 9<sup>th</sup> day of October, 2015.

**KNOLLWOOD WATER DISTRICT**

By: Barry S. Baer  
Barry S. Baer, Treasurer



**09274269**

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William C. Apple

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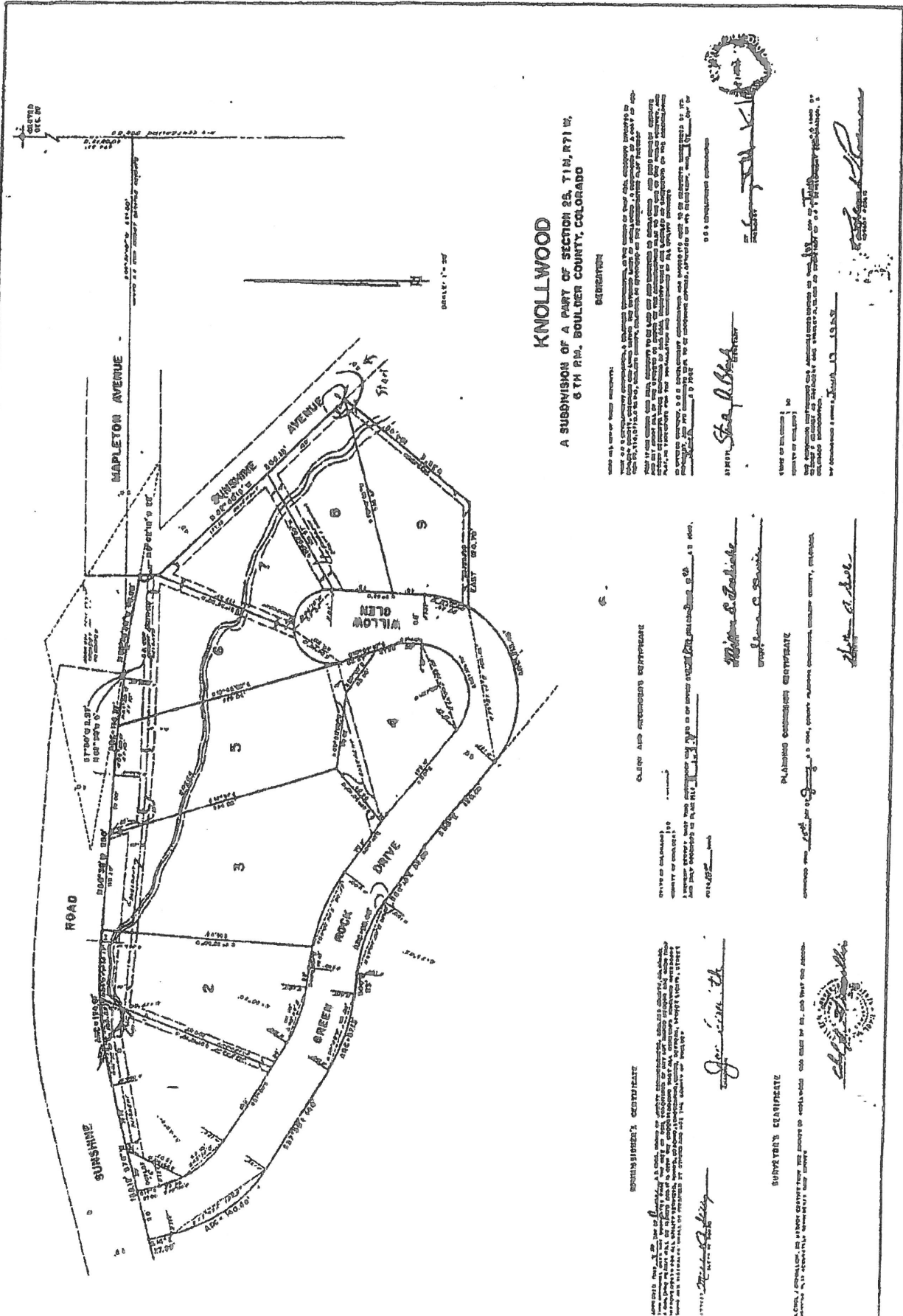
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UNITED STATES OF AMERICA

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Chaitin G. J.

RECORDED-PLAN FILE R 2-1-25



**KNOLLWOOD SECOND ADDITION**  
A SUBDIVISION OF A PART OF SECTION 25, T.1N., R.7E  
6TH P.M., BOULDER COUNTY, COLORADO

## DISCUSSION

1. The first of these is the fact that the Government has been unable to secure the necessary funds to carry out its policy. This is due to the fact that the Government has been unable to secure the necessary funds to carry out its policy.

MARL, LTD. A CO. PATENT OFFICE

10. PARITER

STATE OF COLORADO

1. 4. 1971

the following information was furnished at a telephone interview on 10/25/68 by the following:

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—مکتبہ اسلامیہ، لاہور—

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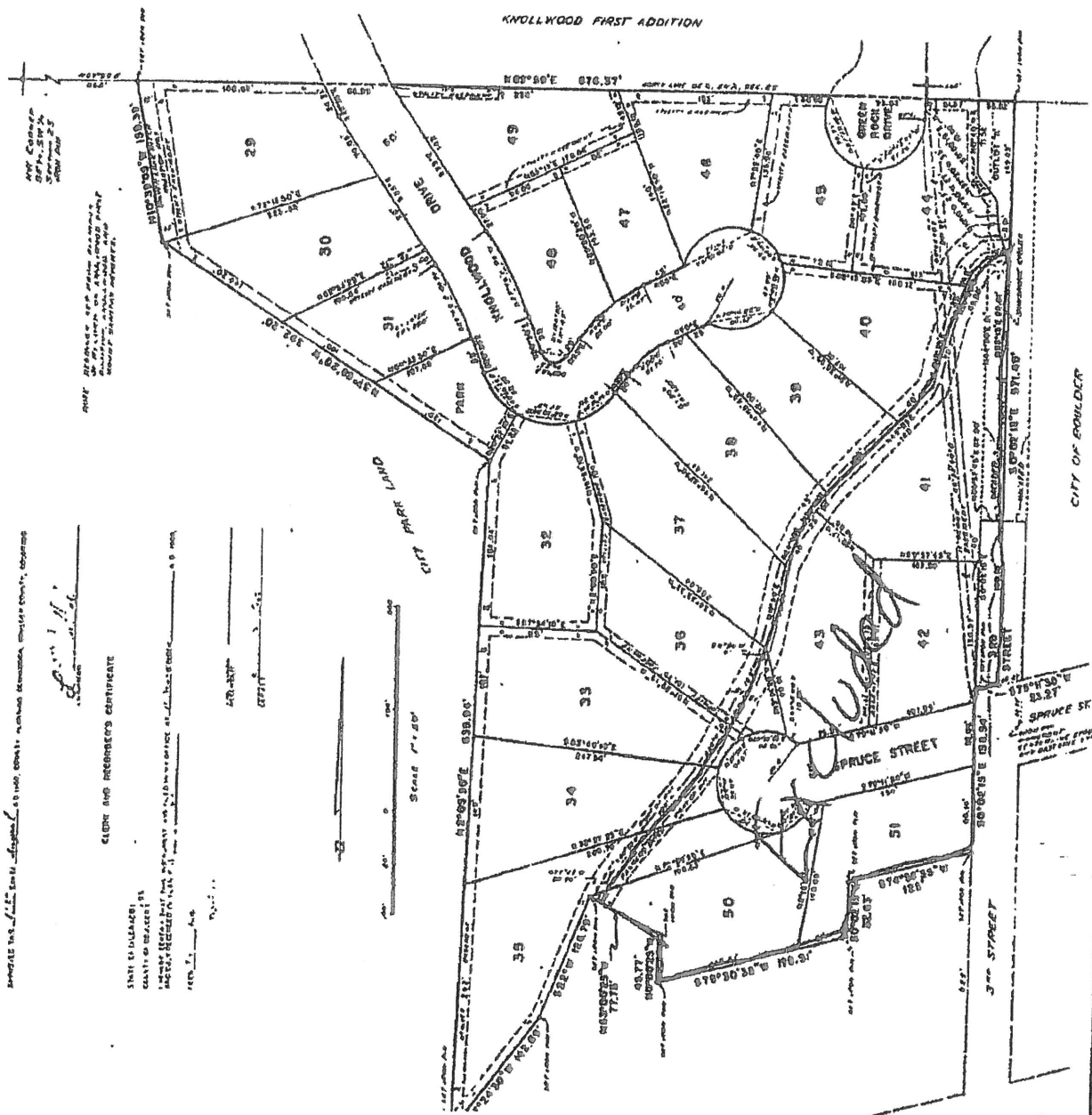
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ಶಿವಮೊಗ್ಗ ಜಿಲ್ಲಾ ಪಂಚಾಯತ್ ರಾಜ್, ಕೆ.ಆರ್.ನಗರ

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a very important document, as it sets out the President's policy on the secession of the Southern States. The President states that he is bound to maintain the Union, and that he will use all the power at his disposal to do so. He also states that he will not recognize the secession of any State, and that he will treat all the States as equal.

*Chap. R. J. Brown*

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RECORDED PLAN FILE R 2-7-4

Attachment E - Intergovernmental Agreement between the City of Boulder and the Knollwood Metropolitan District  
**EXHIBIT A**

|  |  |
|--|--|
| DISTRICT COURT, BOULDER COUNTY, COLORADO<br>Court Address:<br>1777 Sixth Street P.O. Box 4249, Boulder, CO, 80306-4249 | DATE FILED: December 17, 2015 5:13 PM<br>CASE NUMBER: 1965CV18489                    |
| In the Matter of: KNOLLWOOD WATER DISTRICT   | <b>⚠ COURT USE ONLY ⚠</b><br>Case Number: 1965CV18489<br>Division: 3      Courtroom: |
| <b>Order on Petition for Conversion to a Metropolitan District for Knollwood Water District</b>                        |  |

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 12/17/2015



NORMA ANGELICA SIERRA  
District Court Judge

|   |  |
|---|--|
| DISTRICT COURT, BOULDER COUNTY,<br>COLORADO<br>Court Address: 1777 6 <sup>th</sup> Street<br>Boulder, Colorado 80302<br>Telephone: 303-441-3750 | ▲ COURT USE ONLY ▲                           |
| IN THE MATTER OF KNOLLWOOD WATER<br>DISTRICT  | Case Number: 1965CV018489<br><br>Division: 3 |
| <b>[PROPOSED] ORDER ON PETITION FOR CONVERSION TO A METROPOLITAN<br/>DISTRICT FOR KNOLLWOOD WATER DISTRICT</b>                                  |  |

THIS MATTER comes before the Court on the filing of a Motion for Order on Petition for Conversion (“Petition”) filed by the Petitioner for the conversion of the Knollwood Water District (“District”) in Boulder County, Colorado to a metropolitan district. This Court, being fully advised in the premises, hereby FINDS and ORDERS:

1. The Court has jurisdiction over this matter pursuant to §32-1-1006(2), C.R.S.
2. The District’s Board of Directors (“Board”) adopted a Resolution authorizing conversion to a metropolitan district (“Resolution”). That Resolution was filed with the Court as an exhibit to the District’s Petition, pursuant to §32-1-1006(2), on July 31, 2015.
3. The Court held a hearing on the Resolution on September 3, 2015.
4. After the hearing, on September 3, 2015, the Court ordered that the question of conversion be submitted to the eligible voters of the District. The Court appointed the Secretary of the District as the designated election official.
5. A ballot question on the conversion was referred to the eligible electors of the District at the November 3, 2015 coordinated election, and a majority of the votes cast were in favor of conversion to a metropolitan district. The electors passed the ballot measure by a vote of 52 to 28.
6. The November 3, 2015 election was duly held in accordance with Articles 1 to 13 of Title 1, C.R.S.
7. On December 8, 2015, the Boulder County Board of County Commissioners approved the District’s amended Statement of Purposes, reflecting the proposed change from a water district to a metropolitan district.
8. There is not another water and sanitation district or metropolitan district existing partially or wholly within the boundaries of the District or a pending petition for organization of a



water and sanitation district or metropolitan district existing partially or wholly within the boundaries of the District.

9. The Court hereby finds that the District has complied with the applicable statutes and, therefore, the conversion should be granted.

IT IS THEREFORE ORDERED that pursuant to §32-1-1006(2), C.R.S., the District is hereby converted to a metropolitan district, possessing all of the rights, powers, and authority of a metropolitan district under the Special District Act, including without limitation, §32-1-1004, C.R.S., and other Colorado Law, as they may be amended from time to time, and henceforth shall be known as “Knollwood Metropolitan District.”

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

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District Court Judge

X:\DRAWINGS\2018 PROJECT FOLDER\18313 Knollwood Annex\18313.dwg, 1/25/2019 10:45:45 AM

# ANNEXATION MAP

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25,  
TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M.,  
COUNTY OF BOULDER, STATE OF COLORADO  
TOTAL AREA = 28.674 ACRES  
SHEET 1 OF 2

## LEGAL DESCRIPTION

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF KNOLLWOOD SUBDIVISION ALSO BEING THE WESTERLY RIGHT OF WAY OF GREEN ROCK DRIVE; THENCE ALONG THE BOUNDARY OF SAID KNOLLWOOD SUBDIVISION THE FOLLOWING NINE (9) COURSES:

1. N76°00'00"E, A DISTANCE OF 189.13 FEET TO A POINT ON A CURVE;
2. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 569.71 FEET AND A CENTRAL ANGLE OF 17°30'01" (CHORD BEARS N84°45'00"E, 173.34 FEET), 174.01 FEET;
3. THENCE S88°30'00"E, A DISTANCE OF 200.00 FEET TO A POINT ON A CURVE;
4. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 1638.18 FEET AND A CENTRAL ANGLE OF 4°00'00" (CHORD BEARS S84°30'00"E, 114.34 FEET), 114.371 FEET;
5. THENCE S82°30'00"E, A DISTANCE OF 6.00 FEET;
6. THENCE N7°30'00"E, A DISTANCE OF 2.57 FEET;
7. THENCE S80°39'30"E, A DISTANCE OF 118.68 FEET;
8. THENCE S0°02'15"E, A DISTANCE OF 22.00 FEET;
9. THENCE S42°46'15"E, A DISTANCE OF 306.15 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD FIRST ADDITION THE FOLLOWING FIVE (5) COURSES:

1. S42°46'15"E, A DISTANCE OF 194.04 FEET;
2. THENCE N68°35'45"E, A DISTANCE OF 21.48 FEET;
3. THENCE S0°02'15"E, A DISTANCE OF 374.29 FEET;
4. THENCE S89°59'00"W, A DISTANCE OF 115.29 FEET;
5. THENCE S0°01'43"E, A DISTANCE OF 91.40 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD SECOND ADDITION THE FOLLOWING TWENTY TWO (22) COURSES:

1. N89°59'00"E, A DISTANCE OF 86.89 FEET;
2. THENCE S0°02'15"E, A DISTANCE OF 149.83 FEET;
3. THENCE S83°15'00"W, A DISTANCE OF 22.85 FEET;
4. THENCE S44°30'00"W, A DISTANCE OF 21.00 FEET;
5. THENCE S22°25'00"W, A DISTANCE OF 49.50 FEET;
6. THENCE S13°35'00"W, A DISTANCE OF 70.00 FEET;
7. THENCE S43°05'00"W, A DISTANCE OF 148.00 FEET;
8. THENCE S35°55'00"W, A DISTANCE OF 43.00 FEET;
9. THENCE S24°40'00"W, A DISTANCE OF 40.00 FEET;
10. THENCE S11°58'00"W, A DISTANCE OF 83.98 FEET;
11. THENCE S15°01'09"E, A DISTANCE OF 88.02 FEET TO A POINT ON A CURVE;
12. THENCE ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 97°44'21" (CHORD BEARS S64°21'34"W, 75.32 FEET), 85.29 FEET;
13. THENCE N83°49'10"W, A DISTANCE OF 13.89 FEET;
14. THENCE S28°00'00"W, A DISTANCE OF 1.50 FEET;
15. THENCE S40°30'00"W, A DISTANCE OF 139.00 FEET;
16. THENCE S27°27'00"W, A DISTANCE OF 22.15 FEET;
17. THENCE S70°09'35"W, A DISTANCE OF 11.78 FEET;
18. THENCE S22°00'00"W, A DISTANCE OF 126.79 FEET;
19. THENCE S37°24'30"W, A DISTANCE OF 142.69 FEET;
20. THENCE N2°05'50"E, A DISTANCE OF 655.94 FEET;
21. THENCE N57°58'20"W, A DISTANCE OF 392.20 FEET;
22. THENCE N10°39'05"W, A DISTANCE OF 159.39 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD FIRST ADDITION THE FOLLOWING THREE (3) COURSES:

1. N6°45'00"W, A DISTANCE OF 87.09 FEET;
2. THENCE N20°24'00"W, A DISTANCE OF 93.00 FEET;
3. THENCE N13°40'00"W, A DISTANCE OF 90.06 FEET;

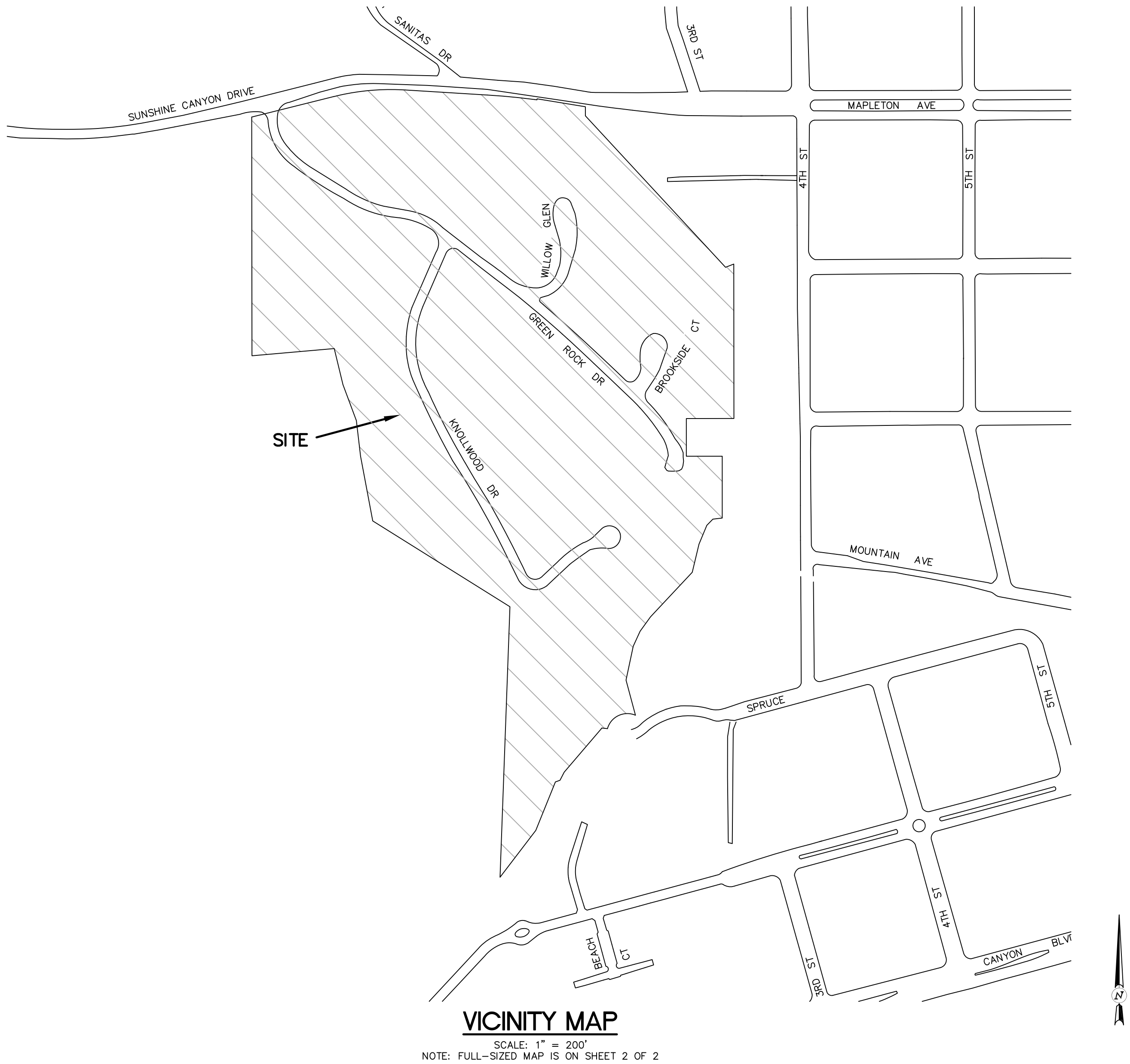
THENCE ALONG THE BOUNDARY OF TRACT 3298 RECORDED AT RECEPTION NO. 1099939 DATED 04/29/91 THE FOLLOWING TWO (2) COURSE:

1. S85°00'00"W, A DISTANCE OF 200.00 FEET;
2. THENCE N0°04'20"W, A DISTANCE OF 135.25 FEET;

THENCE ALONG THE BOUNDARY OF A TRACT OF LAND RECORDED AT RECEPTION NO. 1949399 DATED 06/14/99 THE FOLLOWING TWO (2) COURSES:

1. N0°04'20"W, A DISTANCE OF 443.44 FEET;
2. THENCE N76°00'07"E, A DISTANCE OF 16.22 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 1,249,043 SQUARE FEET (28.674 ACRES).



## LEGEND



PROPERTY CONTIGUOUS TO EXISTING CITY  
OF BOULDER LIMITS

TOTAL PERIMETER OF AREA TO BE ANNEXED = 5548.2 FEET  
ONE SIXTH OF TOTAL PERIMETER = 924.7 FEET  
PERIMETER CONTIGUOUS TO EXISTING CITY LIMITS = 5274.6 FEET

SURVEYOR: SCOTT, COX & ASSOCIATES, INC.  
1530 55TH STREET  
BOULDER, COLORADO 80303

## SURVEY NOTES

1. THIS MAP IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT. THE PURPOSE OF THIS MAP IS TO SHOW THE AREA TO BE ANNEXED TO THE CITY OF BOULDER, COLORADO.
2. THIS ANNEXATION IS BASED ON THE FOLLOWING PLATS: KNOLLWOOD, KNOLLWOOD FIRST ADDITION, KNOLLWOOD FIRST ADDITION REPLAT A, KNOLLWOOD SECOND ADDITION, KNOLLWOOD SECOND ADDITION REPLAT A, KNOLLWOOD VILLAGE.
3. NOTICE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVERED SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON. CRS-13-80-105 (3)(c).

## CERTIFICATION

THIS IS TO CERTIFY THAT THIS MAP WAS MADE UNDER MY DIRECT RESPONSIBILITY, SUPERVISION AND CHECKING AND THAT IT IS A TRUE AND CORRECT REPRESENTATION OF THE AREA TO BE ANNEXED TO THE CITY OF BOULDER, COLORADO, AND THAT AT LEAST ON SIXTH (1/6) OF THE BOUNDARY OF SAID PARCEL IS CONTIGUOUS TO THE PRESENT CITY OF BOULDER, COLORADO.

*A. John Buri*  
A. JOHN BURI  
24302  
PROFESSIONAL LAND SURVEYOR  
COLORADO REGISTERED

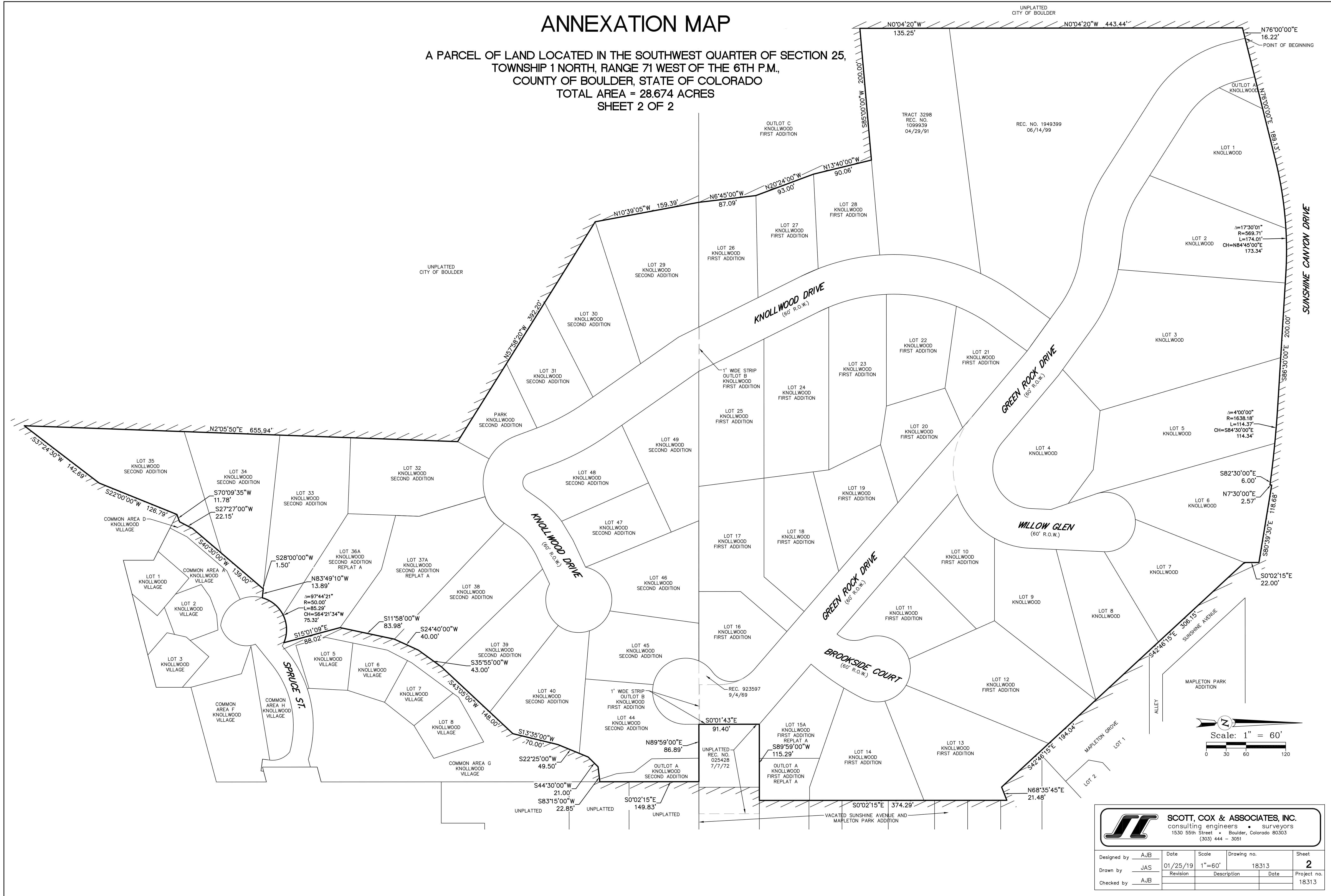
A. JOHN BURI, PLS 24302  
FOR AND ON BEHALF OF  
SCOTT, COX & ASSOCIATES, INC.



SCOTT, COX & ASSOCIATES, INC.  
consulting engineers • surveyors  
1530 55th Street • Boulder, Colorado 80303  
(303) 444 - 3051

|             |     |          |          |             |          |             |       |             |       |
|-------------|-----|----------|----------|-------------|----------|-------------|-------|-------------|-------|
| Designed by | AJB | Date     | 01/25/19 | Scale       | AS SHOWN | Drawing no. | 18313 | Sheet       | 1     |
| Drawn by    | JAS | Revision |          | Description |          | Date        |       | Project no. | 18313 |
| Checked by  | AJB |          |          |             |          |             |       |             |       |

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 25,  
TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M.,  
COUNTY OF BOULDER, STATE OF COLORADO  
TOTAL AREA = 28.674 ACRES  
SHEET 2 OF 2



## **EXHIBIT C**

### **ANNEXATION TERMS AND CONDITIONS**

#### **RECITALS**

A. Registered electors have petitioned the City of Boulder (“City”) to commence proceedings for the holding of an annexation election for an area generally including the Knollwood Subdivision, Knollwood Subdivision First Addition and Knollwood Subdivision Second Addition, plus two adjacent parcels at 150 Green Rock Drive and 2285 Knollwood Drive, and more particularly described on Exhibit A to Resolution 1256 (collectively, the “Annexation Area”).

B. With the exception of the property at 150 Green Rock Drive, the properties within the Annexation Area are located within the boundaries of the Knollwood Metropolitan District (“District”). Properties within the District are hereafter referred to as “District Properties”. Currently, the District provides water to District Properties, as well as some other governmental services. The property at 150 Green Rock Drive is connected to the City of Boulder’s water utility.

C. With annexation, petitioners are seeking to connect the District Properties to the City’s water utility.

D. To connect to the City’s water utility, water mains (“New Mains”) have to be constructed within the Annexation Area’s rights-of-way, water meters have to be moved into the rights-of-way or, if approved by the City Manager, into public easements and the rights-of-way have to be improved (“Street Improvements”). The New Mains, service lines to meter pits, and meter pits installed by the City, and Street Improvements are hereafter collectively referred to as “District Public Improvements”. The City is planning to install the District Public Improvements.

E. The cost of construction of the District Public Improvements will be an obligation of the owners of the District Properties, planned to be paid and financed through the District as set forth below, by certification of an annual mill levy. To allow for payment and financing of District Public Improvements through the District, the payment of costs for the construction of the District Public Improvements will be billed to the District Property owners only in the event and to the extent the District has not paid the construction costs of the District Public Improvements.

F. Pursuant to Section 9-2-17, “Annexation Requirements,” B.R.C. 1981, annexation of land to the City of Boulder shall not create an unreasonable burden on the physical, social, economic, or environmental resources of the City. To ensure this requirement is met terms and conditions (“Terms and Conditions”) shall be imposed on the individual property owners within the Annexation Area.

G. The Terms and Conditions create the obligations for individual property owners within the Annexation Area. A separate Intergovernmental Agreement (“IGA”) between the City and the District addresses obligations of the District in this annexation, the District’s governmental powers following annexation, and the process of dissolution of the District following connection of the District Properties to the City’s water utility.

NOW, THEREFORE, in consideration of the recitals, the following Terms and Conditions shall be imposed upon the annexation to the City of Boulder of the Annexation Area:

## EXHIBIT C

### 1. District Dissolution

As a requirement of annexation, the owners of District Properties shall use their best efforts to obtain a court order pursuant to Section 32-1-707, C.R.S., dissolving the District within five years of the effective date of the annexation ordinance or within two years of the City's final acceptance of the District Public Improvements under the City's construction contract for the District Public Improvements, whichever occurs later. Such order of dissolution shall dissolve the District for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District. A plan for dissolution shall adequately provide for the payment of such financial obligations and debt.

### 2. Intergovernmental Agreement

The annexation shall be conditioned on the execution of an IGA between the City of Boulder and the District, to be executed by the District prior to a public hearing by the City Council to determine if the proposed annexation complies with the applicable state law and whether to impose terms and conditions on the annexation pursuant to Section 31-12-108, C.R.S. After approval by the District, any changes to the IGA would be subject to approval by the District Board. No changes will be made to the Terms and Conditions after the annexation election, unless approved by the voters in a new annexation election.

The IGA shall provide for (a) the services that may be provided by the District between the effective date of the annexation and District dissolution, (b) financing and payment of the District Public Improvements, and (c) the services provided by the District that may be assumed by a unit owners' association ("HOA") after dissolution. The IGA will also require the District to assist the property owners within the boundaries of the service area of the District in creating a common interest community and a unit owners' association consistent with Sections 38-33.3-101, *et seq.*, C.R.S. prior to dissolution of the District. If an HOA is formed, it may provide services consistent with Sections 38-33.3-101, *et seq.*, C.R.S., including covenant enforcement and snowplowing, and shall own and maintain any outlots within the Annexation Area that are currently owned by the District. If, at the time the District dissolves, any outlots owned by the District have not been conveyed to an HOA, then, prior to dissolution of the District, any such outlots shall be conveyed to the City.

### 3. District Public Improvements

a. Construction of District Public Improvements. Following annexation, the City plans to construct the New Mains and Street Improvements in the Annexation Area to serve District Properties. The Street Improvements are planned be constructed generally where the existing streets are located, over the area where the New Mains are being constructed, and as approximately 22-foot wide rural residential streets without curb, gutter, sidewalks, or streetlights.

As part of the District Public Improvements, the City will install water service lines from the New Mains to existing or new meter pits within the public right-of-way or, if approved by the City Manager, in a public easement.

b. Construction of Service Lines to Homes. Pursuant to the IGA, no later than thirty days following the City's construction and final acceptance of a New Main and service line from the New Main to the meter pit serving a property, the District shall obtain any permits required for work in the City's right-of-way or public easements and install, at its cost, a service line connection from any new meter pits to the existing meter pit and new pressure reducing valves on such property. The owners of the District Property shall provide the District with all necessary approvals and rights of access to perform this work. If the District does not complete this work within the thirty-day time frame, no later than within 60 days

## EXHIBIT C

following the City's construction and final acceptance of the New Main and service line from the New Main to the meter pit serving the property, the individual property owners, at their cost, shall cause installation of such service line and pressure reducing valves and shall ensure completion and compatibility of the new service line with the City's water service. It is the individual property owners' responsibility to connect a service line from the meter pit serving the property to the structure on the property being served.

Upon completion of such work by the District or the property owners and acceptance thereof by the City, the City will install the existing meter in the meter pit and will connect the property to City water. The City will consider a pilot program for the District Properties to allow temporary electronic meter reading.

c. Connection to City Water System. Upon completion of the New Mains that will serve the Annexation Area, property owners within the Annexation Area shall not connect to or be served by any water system other than the City's and shall connect to the City water system when so required by the City Manager.

d. Payment if District Fails to Pay. In the event that the District has not paid for the construction of the District Public Improvements, within 180 days of the City's final acceptance of the District Public Improvements, each owner of a District Property shall pay the then-applicable water plant investment fees, installation charges and their share of the unpaid costs of constructing the District Public Improvements. The cost of the District Public Improvements shall be the original cost of design, purchase, construction, and installation, but excluding the cost of connecting the service line of 150 Green Rock Drive to the New Mains and excluding the cost of up-sizing a portion of the new main in Green Rock Drive from an 8-inch line to a 12-inch line, the total to be divided equally among the District Properties.

The property at 150 Green Rock Drive will not be responsible for a share of the costs of the District Public Improvements and associated fees as it is currently connected to the City's water utility.

For purposes of these Terms and Conditions, the cost of constructing the District Public Improvements shall include all applicable costs, fees, and charges associated with the design, purchase, construction and installation of the District Public Improvements, the management and supervision of the construction and installation of the District Public Improvements by City contractors, and the connection of District Properties to the New Mains. If not paid by the District, the City will, in good faith, consider creating a financing option to assist District Property owners in paying the amount owed by a District Property owner for the District Public Improvements to the City.

e. Vacant Property. Any property vacant (without a dwelling unit) at the time of construction of the District Public Improvements will be responsible for the full, then-applicable in-City plant investment fees, and tap, service line and meter charges, and its share of the District Public Improvement construction costs (unless paid by the District) at the time of issuance of a building permit to construct a new dwelling unit.

f. 150 Green Rock Drive. The owner of the property located at 150 Green Rock Drive currently served by City water shall connect to the New Mains at the time so required by the City Manager. The City shall pay the costs associated with connecting the existing service line for the 150 Green Rock Drive property to the New Mains.

## EXHIBIT C

### 4. Stormwater and Flood Plant Investment Fees

a. Rate. The property owners in the Annexation Area shall pay the stormwater and flood plant investment fee (hereafter referred to as “Storm PIF”) at the rates applicable in 2018.

b. Payment. The Storm PIF will be charged to the property owners in a City of Boulder utility bill no earlier than 30 days following the effective date of the annexation. Within 10 days of a property owner’s receipt of that utility bill, the property owner shall pay the Storm PIF that is due pursuant to the Boulder Revised Code and at the rate applicable in 2018.

c. Payment Plan Option. Instead of payment-in-full at the time of receipt of the utility bill for this fee, a property owner may agree in writing to pay the Storm PIF in monthly installments over a period of 10 years from the date of the first bill for the Storm PIF. At the time payment is due for each monthly installment, in addition to the monthly installment, a payment plan charge shall be paid in the amount of 30 % of the monthly installment. There will be no penalty for prepayment of the remaining outstanding principal amount due, and no payment plan charge for prepayments. The first installment shall be paid within 10 days after the date of receipt of the first bill for the Storm PIF. For any property which participates in the phased repayment program, the property owner shall pay the entire outstanding obligation for the Storm PIF, including any payment plan charges that are due for missed monthly payments, and the full unpaid principal amount at such time as the property is sold. No penalty or payment plan charge will be imposed for pre-payment of the Storm PIF in whole or in part. The phased repayment program will be provided by the City only to those properties that will connect to City water at the time that it is first available.

d. Billing and Collection. The payment-in-full charge and the monthly installment due under the phased repayment plan may be included on the same bill that includes water, wastewater, or storm water and flood management services charges or may be included on a separate bill as provided in Title 11, “Utilities and Airport,” B.R.C. 1981. The billing, payment, and collection provisions of Sections 11-5-12, “Billing and Payment of Fees,” 11-5-13, “Certification of Unpaid Charges to County Assessor,” and 11-5-14, “Charges are Lien on Property,” B.R.C. 1981, shall apply to the billing, payment, and collection of the Storm PIF, including installments and payment plan charges due under the phased repayment program for the Storm PIF, and any interest on delinquent payments due thereon.

### 5. Flood Control Easements

Properties located within the conveyance zone, as delineated on the City’s regulatory floodplain mapping, will be required to dedicate to the City a flood control easement. This easement must be dedicated prior to issuance of a permit for work on the property under Title 10, “Structures,” B.R.C. 1981, or at such time as improvements to the Sunshine Creek and/or Sanitas Creek channel are proposed to be made by the City of Boulder and shall be based on the then-applicable floodplain mapping.

### 6. Zoning

The properties in the Annexation Area would initially be zoned Residential Estate (RE).

### 7. Subject to City Codes and Policies

Upon annexation, the properties in the Annexation Area will be subject to all laws, rules, regulations, and administrative orders of the City of Boulder except as expressly modified by these terms and conditions. Annexation in accordance with the terms and conditions contained herein shall in no manner

## EXHIBIT C

waive the present or future applicability of said laws, rules, regulations and administrative orders. Existing legal nonconforming uses and nonstandard buildings and structures will be allowed to continue to exist. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, applies to changes to nonstandard buildings and nonconforming uses. It is understood that this section shall not be constructed to permit a property to constitute a nuisance or to cause a hazard under the City's life safety codes.

### 8. Water Rights

At the time of connection to the City's water system, but in no event later than issuance of a building permit for the property, any property owner with water or ditch rights used on or appurtenant to the property, shall sell or offer a right of first refusal to the City, consistent with Section 11-1-19, "Water and Ditch Rights," B.R.C. 1981, for any water rights appurtenant to the property, except that in the event a water or ditch rights owner has entered into an agreement with the City that contains provisions that are in conflict with Section 11-1-19, B.R.C 1981, such as the Settlement Agreement executed by the City and The Silver Lake Ditch & Reservoir Company recorded in the office of the Boulder County Clerk and Recorder's Office at Reception No. 03046201, such agreement shall control.

### 9. One Dwelling Unit per Lot or Parcel

Due to the area's topography and location on the western boundary of the City, no lot or parcel within the Annexation Area shall be developed with more than one principal dwelling unit.

### 10. No Subdivision

Due to the area's topography and location on the western boundary of the City, no lot or parcel within the Annexation Area shall be subdivided to create an additional lot following annexation to the City.

### 11. Wetland Mapping

Prior to annexation, all stream, wetland, water bodies and buffer areas on the properties in the Annexation Area will be mapped by the City after the fee prescribed in Section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, is paid. Pursuant to the IGA, this fee will be paid by the District. This mapping will include a functional evaluation of the stream, wetland or water body. The approved mapping and evaluation shall be adopted as an update to the regulatory maps as a part of the annexation ordinance.

### 12. Inclusion into the Municipal Subdistrict of the Northern Colorado Water Conservancy District

The properties in the Annexation Area shall be included in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to the process in Section 37-45-136(3.6), C.R.S.

### 13. Use of Existing Wells

The City will not prohibit a property owner from using existing, privately-owned wells for non-potable irrigation purposes on such property following annexation, even after a property is served by the City water utility. Existing wells that are used for irrigation purposes must be registered and permitted by the State Engineer's Office and operated in accordance with any augmentation and other requirements under Colorado water law. Existing wells shall not be used for domestic water purposes once the property is connected to the City's water utility. No person shall make any cross-connections to the City's municipal water supply system from any well on the property.



## **EXHIBIT C**

### **14. Historic Drainage**

Drainage from properties in the Annexation Area shall be conveyed in an historic manner that does not materially and adversely affect abutting properties.

### **15. Wood Roofs**

Wood roof covering materials are prohibited in the City of Boulder. Immediate replacement shall not be required; however, no person owning a building with wood roof covering materials in the Annexation Area shall install any wood roof covering materials following annexation. Any installation, repair or replacement must utilize approved roof covering materials which conform to the applicable requirements of Title 10, "Structures," B.R.C. 1981. However, this section shall not be construed to permit a property to constitute a nuisance or to cause a hazard under the City's life safety codes.

### **16. Rental Property Requirements**

If a property is used as rental property at the time of annexation, it shall be brought into compliance with Chapter 10-3, "Rental Licenses," B.R.C. 1981, within 90 days of the effective date of the annexation ordinance; for a rental license issued within 90 days of the effective date of the annexation ordinance the energy efficiency requirements of Chapter 10-2, "Property Maintenance Code, Appendix C – Energy Efficiency Requirements," B.R.C. 1981, shall be waived. Any subsequent application for a new or renewal of a license and any rental license for a new building or new dwelling unit on the property shall be subject to the energy efficiency requirements of Chapter 10-2, B.R.C. 1981.

### **17. Breach**

In the event a property owner fails to pay any monies due under these Terms and Conditions or fails to perform any affirmative obligation hereunder, the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, or the City may perform the obligation on behalf of the property owner, and collect its costs in the manner provided in these Terms and Conditions. The annexation ordinance shall be the enabling ordinance required under Section 31-20-105, C.R.S. authorizing the collection of those debts.

### **18. Annexation Agreement**

Each property in the Annexation Area shall be subject to these Terms and Conditions unless a separate annexation agreement has been executed by the City and the property owner that modifies the Terms and Conditions.

## EXHIBIT D

### District Public Improvements

The District Public Improvements, as set forth below, shall be constructed by the City and paid for by the District, except as set forth below or in the IGA.

1) Installation of new water 8-inch PVC water mains in Green Rock Drive, Knollwood Drive, Willow Glen Court and Brookside Court, except that 12-inch water mains shall be installed from the connection into the City's main in Sunshine Canyon Drive to the intersection of Green Rock Drive and Knollwood Drive (*the City shall pay for the difference in cost between an 8 inch main and the 12 inch main*);

2) Construction of a connection of the new main in Green Rock Drive to City's 30-inch main in Sunshine Canyon Drive;

3) Construction of an 8-inch connection of the new water main in Willow Glen Court to the City's 8-inch PVC main.

4) Construction of four service connections for properties located on Spruce Street.

5) Installation of new 8-inch PVC pipeline to create a loop connection between the new water mains in the Green Rock Drive and Knollwood Drive.

6) Connection of service lines from a meter pit for each home within the District and 150 Green Rock Drive into the new mains; provided the City shall pay for the connection and service line for 150 Green Rock Drive. The District and individual property owners in the District shall be responsible for funding, constructing and connecting a compatible service line from the meter pit to the structure to be served and pressure reducing valve.

7) Connection of one irrigation tap (to be owned by the District and then the HOA) at Outlot A, 101 Green Rock Drive, Knollwood Subdivision recorded in the records of Boulder County at Planfile R. 1-3-9, for irrigation of common improvements.

8) Installation of 10 new fire hydrants and removal of existing hydrants.

9) Full depth asphalt (6-inch asphalt with a 6-inch road base) to replace existing roads (not to exceed 22 feet in width) on Green Rock Drive, Knollwood Drive, Willow Glen Court and Brookside Court. No widening of existing streets, curbs, or gutters shall be required.

## **EXHIBIT E**

### **PLAN FOR DISSOLUTION OF KNOLLWOOD METROPOLITAN DISTRICT**

This Plan for Dissolution of Knollwood Metropolitan District (the “District”) describes how the District’s existing services will be continued and details the plan for adequately covering the District’s financial obligations and outstanding bonds.

#### **I. Background**

The District was formed as the Knollwood Water District in 1965 to provide water service to the District’s residents and was converted to a metropolitan district in 2015 to also provide street improvements and traffic and safety controls. The Second Amended Statement of Purposes attached as Exhibit A was approved as a condition of the annexation pursuant to the IGA described below.

The District and the City of Boulder (“Boulder”) entered into an Intergovernmental Agreement Regarding Annexation and Transition of Municipal Services with an effective date of \_\_\_\_\_, 2019 (the “IGA”), incorporated herein by this reference. The IGA sets forth details regarding the District’s powers after annexation, dissolution of the District for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District, construction of water and street infrastructure for the District, Boulder’s provision of the District’s essential services following the District’s dissolution, acquisition of the District’s infrastructure and facilities by Boulder, provisions for Boulder to fix rates, tolls, fees, or charges for services provided, and provisions regarding contract modification. By Ordinance No. \_\_\_\_, the Boulder City Council annexed the entire District into Boulder’s municipal boundaries effective \_\_\_\_\_. Following annexation and connection to Boulder’s water system, Boulder will provide the District’s residents with water services and manage the public streets as part of the Boulder municipal systems, which are the essential services provided by the District.

#### **II. Dissolution**

By Resolution No. \_\_\_\_, dated \_\_\_\_\_, the Board of Directors of the District (the “Board”) determined that it was in the best interest of the District to dissolve in accordance with this Plan of Dissolution to adequately provide for payment of existing financial obligations and outstanding debt. This Plan for Dissolution provides for dissolution of the District for all purposes except for the limited powers reserved herein and to the extent necessary to fulfill the District’s financial obligations and outstanding debt. This Plan will be attached to the petition for dissolution filed with the court. The District will comply with the requirements of §§ 32-1-701 to 710, C.R.S., including holding a dissolution election and seeking a court order dissolving the District for all purposes except those reserved herein in accordance with then-applicable law (“Limited Dissolution Order”).

Following the Limited Dissolution Order, the Boulder City Council shall serve as the Board of the District and effectuate this Plan of Dissolution (the “Limited-Purpose Board of Directors”). The Limited-Purpose Board of Directors will have the authority to adequately provide for the full

**EXHIBIT E**

payment, satisfaction, and discharge of the Outstanding Debt as described in Section IV as provided in this Plan for Dissolution.

**III. Continued Provision of the District’s Services**

**A. Water Service**

Boulder has been providing water services within the District as provided in the IGA. The District has abandoned or conveyed all of its wells, water rights, and other water infrastructure as provided in the IGA. As the sole water service provider, Boulder is responsible for operating and maintaining all facilities and infrastructure necessary to provide water service to the District’s residents, consistent with its provision of water to other Boulder water customers. Boulder will continue to provide water service within the District to provide one of the two essential services of the District after dissolution.

**B. Boulder to Provide Street Improvements and Traffic and Safety Control**

Upon annexation, the public streets within the District became public streets within Boulder, and Boulder has been providing street improvements and traffic and safety controls in the District consistent with its provision of street services to other Boulder streets (“Street Services”). Upon dissolution, Boulder will continue to provide street service within the District as the other essential service of the District.

**C. HOA to Provide Community Services**

The District has also provided other non-essential services to residents, including contracting for snowplowing of the public streets within the District boundaries and operation and maintenance of the outlots shown on recorded plats for the area within the boundaries of the District that are owned by the District (collectively referred to herein as the “Outlots”) (“Community Services”). The residents of the District had the right to organize a unit owners’ association to provide these Community Services.

**IV. Existing Financial Obligations and Outstanding Debt**

The District will continue in existence to the extent necessary to adequately provide for payment of the District’s financial obligations and outstanding debt. The District’s “Outstanding Debt” is set forth in the following table:

| <b>Name</b>  | <b>Date Issued</b> | <b>Loan Amount</b> | <b>Interest Rate</b> | <b>Maturity Date</b> | <b>Balance Outstanding</b> |
|--|--------------------|--------------------|----------------------|----------------------|----------------------------|
| General Obligation Loan Series 2017: 2017 Draw and 2018 Draw | February 8, 2017   | \$ 500,000         | 4%                   | December 1, 2031     |                            |
| General Obligation Loan Series 2019                          |                    |                    |                      |                      |                            |

## **EXHIBIT E**

### **A. Continuing Powers for the Limited-Purpose Board of Directors**

Following the Limited Dissolution Order, the Limited-Purpose Board of Directors will have the authority to exercise the following powers until all principal and interest payments on the Outstanding Debt are fully paid, satisfied, and discharged:

1. Keep and maintain records and books of account in accordance with generally recognized principles of accounting.
2. Prepare an annual budget and appropriate funds.
3. Prepare or contract for the preparation of an annual audit, if required by law or contract.
4. Open, manage, and maintain the necessary bank accounts to comply with the terms of the Outstanding Debt, including, but not limited to, holding reserve funds.
5. Adjust and certify a mill levy to the Board of County Commissioners of Boulder County in an amount sufficient to pay the total interest and principal payments due in the following year for the Outstanding Debt.
6. Collect the mill levy from the Board of County Commissioners and appropriate those funds to cover principal and interest payments for the Outstanding Debt due each year.
7. Enforce collection of any taxes certified and assessed by the District, at the time and in the form and manner as other general taxes, and with like interest and penalties.
8. Prepay, in whole or in part, the Outstanding Debt.
9. Maintain proper insurance.
10. Comply with all terms and conditions, covenants, or reporting requirements contained in the Loan Agreements or Bond Resolutions for the Outstanding Debt.

In addition to the authority described above, the Limited-Purpose Board of Directors will have any necessary or implied authority required to ensure full payment, satisfaction, and discharge of the Outstanding Debt. The Limited-Purpose Board of Directors shall act in good faith and will be subject to limitations contained in the voter authorization pursuant to Art. X, Sec. 20 of the Colorado Constitution.

The Limited-Purpose Board of Directors will also have the authority to ensure that any outstanding balances or excess District funds not required for payment of the Outstanding Debt are applied to reduce the rates, tolls, fees, and charges fixed by Boulder for providing water service, street improvements, and traffic and safety controls consistent with § 32-1-708(1), C.R.S.

## **EXHIBIT E**

### **V. Completion of Plan for Dissolution**

This Plan for Dissolution provides for the adequate satisfaction of the District's financial obligations and outstanding debt and covers the continued provision of the District's essential services. When the Outstanding Debt is fully paid, satisfied, and discharged, the District will be completely dissolved and have no continuing authority or powers. Boulder or the Board of Directors of the District will petition for a final court order of dissolution at that time.

## EXHIBIT A TO EXHIBIT E

### SECOND AMENDED STATEMENT OF PURPOSES KNOLLWOOD METROPOLITAN DISTRICT (FORMERLY KNOWN AS KNOLLWOOD WATER DISTRICT)

Knollwood Metropolitan District (the “District”) (formerly known as the Knollwood Water District) hereby files the following Second Amended Statement of Purposes with the City Council of the City of Boulder, State of Colorado, (the “City”) pursuant to C.R.S. § 32-1-208(3), and requests approval.

#### RECITALS

WHEREAS, the Knollwood Water District was originally organized for the following purposes: 1) to supply water for domestic purposes by any available means, and 2) other purposes determined by the Board Members of the District in accordance with §§ 32-1-101, *et. seq.*, C.R.S.

WHEREAS, the Knollwood Water District converted to a Metropolitan District by order of the District Court of Boulder County dated December 17, 2015 in Case No. 1965CV018489. The Board of County Commissioners of Boulder County approved an Amended Statement of Purposes for the District by Resolution 2015-126 dated December 10, 2015, *nunc pro tunc* December 8, 2015, which added street improvements and safety protection through traffic and safety controls and devices to the types of services and facilities to be provided by the District.

WHEREAS, on \_\_\_\_\_, 2019, the City Council of the City passed Ordinance \_\_\_\_\_, approving annexation of certain property, including all of the property within the boundaries of the District.

WHEREAS, on \_\_\_\_\_, 2019, the City Council passed Resolution No. \_\_\_\_\_, accepting designation as the approving authority for the District.

WHEREAS, the District and the City entered into an Intergovernmental Agreement Regarding Annexation and Transition of Municipal Services dated \_\_\_\_\_, 2019 (the “IGA”), pursuant to which the City agreed to construct and the District agreed to finance certain water and street improvements to enable the City to provide water for domestic purposes to the properties within the boundaries of the District. The District further agreed in the IGA to submit this Second Amended Statement of Purposes to the City to delineate the District’s powers and agreed to a dissolution plan.

NOW, THEREFORE, the District files with the City Council the following Second Amended Statement of Purposes and requests approval thereof:

1. **Purposes for which the District is organized.** The purposes for which the Knollwood Metropolitan District is organized are, to the extent consistent with the IGA, 1) to provide water services, 2) to provide street improvements and safety protection through snow plowing, and 3) to enforce recorded covenants for the Knollwood Subdivision, Knollwood Subdivision First Addition, and Knollwood Subdivision Second Addition.

**EXHIBIT A TO EXHIBIT E**

2. **Services and facilities provided or to be provided by the District.** Subject to the provisions of this Section 2 and Section 3, below, and to the extent consistent with the IGA, the facilities and services to be provided by the District are: 1) the provision of water for domestic purposes, 2) financing and construction of water improvements, 3) payment of water plant investment fees, annexation-related fees and other fees required for connection to the City's water system, 4) financing of and contracting for street improvements, 5) obtaining permits and contracting for snowplowing, and 6) enforcement of recorded covenants for the Knollwood Subdivision, Knollwood Subdivision First Addition, and Knollwood Subdivision Second Addition.

Pursuant to the IGA, the District is limited to exercising the following powers in connection with provision of these services:

- A. Incurring and paying financial obligations, consistent with the IGA.
- B. Assessing a mill levy, fees, and any special assessments necessary to pay operating costs and any debt of the District and cover the costs of the District until the District has fully discharged all financial obligations.
- C. Providing water supply, treatment and delivery services within the District, until connection to the City's water system, and billing for fees, costs and charges associated therewith.
- D. Operating and maintaining the District water system until conveyance to the City or abandonment per the IGA.
- E. Operating and maintaining outlots owned by the District, until conveyance to an HOA or the City.
- F. Abandoning District wells and property and/or conveying real and personal property to the HOA or the City.
- G. Contracting for construction or installation of water system and street improvements, which are related to or necessary for: a) water service by the District until connection to the City, b) properties within the District to receive water service from the City; c) completion of annexation; or d) fulfillment of District duties under the IGA.
- H. Acquisition of easements or other property interests needed for the District public improvements, set forth in Section G above, provided that the City's prior approval is required before the District exercises its power of eminent domain.
- I. Snow removal on streets within the District.
- J. Complying with and enforcing terms of the IGA and agreements with water users.
- K. Enforcement of covenants not inconsistent with City regulations and requirements as contained in the Declarations of Covenants, Conditions and Restrictions, recorded in the real property records of the County Clerk and Recorder of Boulder County on July



**EXHIBIT A TO EXHIBIT E**

23, 1965 for the Knollwood Subdivision at reception number 789376, on November 4, 1966 for the Knollwood Subdivision First Addition at reception number 831673, and on October 15, 1969 for the Knollwood Subdivision Second Addition at reception number 893916, as amended.

- L. Cooperation and assistance to homeowners regarding organization of an HOA and amendment of covenants.
- M. Performing obligations of the District required by Colorado law, including budgeting and auditing, required elections, and obligations to accountants, auditors and attorneys.
- N. All powers set forth in paragraph 3 below.
- O. Any additional necessary powers or implied authority required to provide water service and satisfy the terms of the IGA.
- P. Other powers approved by the City in advance in writing.

3. **Future Dissolution and Limitation of Powers**. Upon the later of: a) \_\_\_\_\_, 2024 (five years after the effective date of the Annexation Ordinance); or b) two years after the City's final acceptance of the water system and street improvements necessary to provide water service to the properties within the District (the District Public Improvements), the District may only exercise the following powers necessary to adequately provide for the payment of all remaining financial obligations or outstanding debt of the District at such time (the "Outstanding Debt") or powers expressly approved by the City in writing in advance:

- A. If an Order of Dissolution of the District has been entered by the District Court of Boulder County, all powers listed in the Order of Dissolution; or
- B. If no Order of Dissolution has been entered, the District's Powers will be limited to the following powers:
  - 1. Keeping and maintaining records and books of account in accordance with generally recognized principles of accounting.
  - 2. Preparing an annual budget and appropriating funds.
  - 3. Preparing or contracting for the preparation of an annual audit, if required by law or contract.
  - 4. Opening, managing, and maintaining the necessary bank accounts to comply with the terms of any Outstanding Debt, including, but not limited to, holding reserve funds.
  - 5. Adjusting and certifying a mill levy to the Board of County Commissioners of Boulder County in an amount sufficient to pay the total interest and

**EXHIBIT A TO EXHIBIT E**

principal payments and any fees due in the following year for all Outstanding Debt.

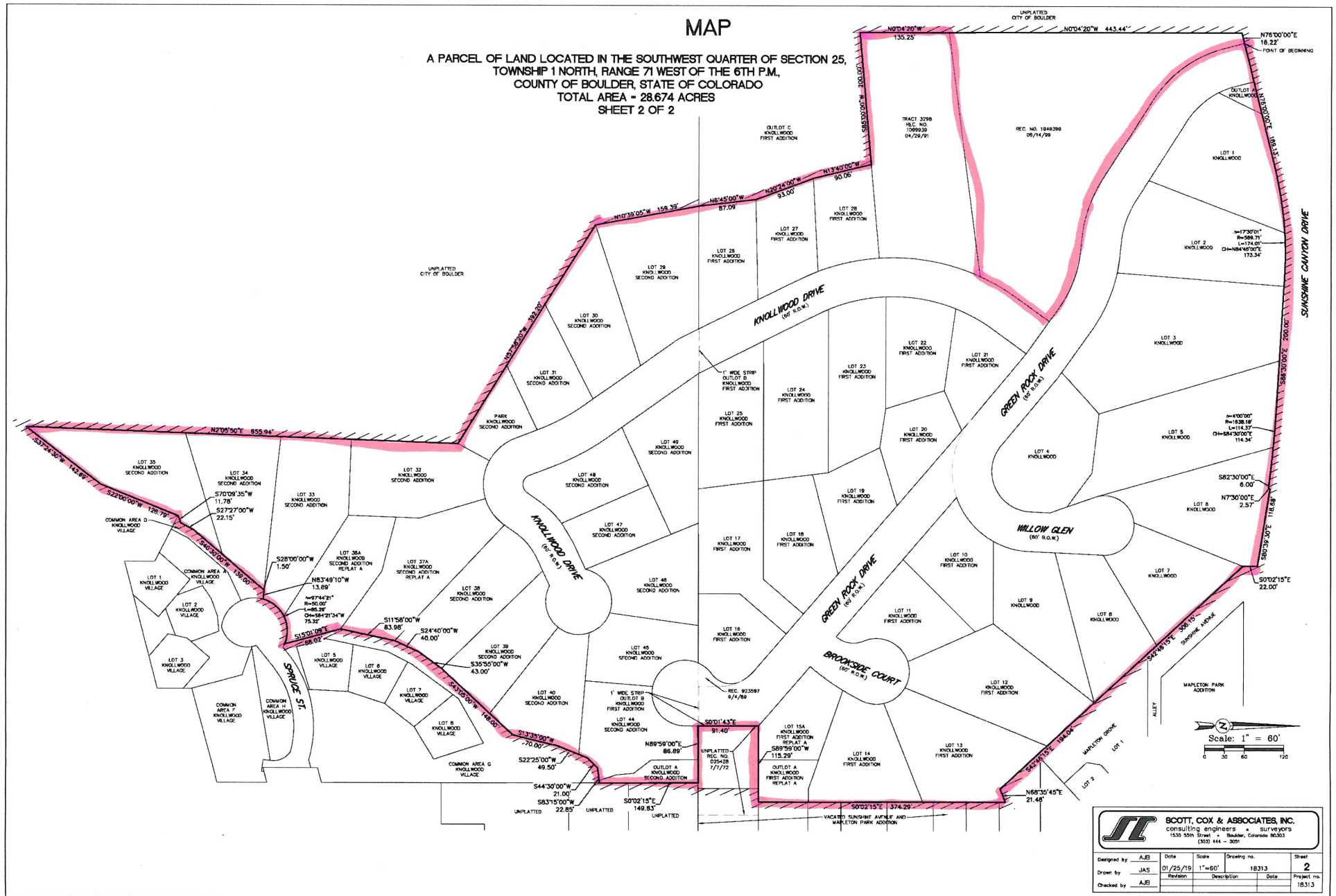
6. Collecting the mill levy from the Board of County Commissioners and appropriating funds to cover principal, interest and fee payments for the Outstanding Debt due each year.
  7. Enforcing collection of any taxes certified and assessed by the District, at the time and in the form and manner as other general taxes, and with like interest and penalties.
  8. Prepaying, in whole or in part, the Outstanding Debt.
  9. Maintaining proper insurance.
  10. Complying with all terms and conditions, covenants, or reporting requirements contained in any loan agreements, bond resolutions or other agreements for the Outstanding Debt.
  11. Any additional necessary powers or implied authority required to ensure full payment, satisfaction, and discharge of the Outstanding Debt.
  12. Ensuring that any outstanding balances or excess District funds not required for payment of the Outstanding Debt are applied to reduce the rates, tolls, fees, and charges fixed by the City for providing water service, street improvements, and traffic and safety controls consistent with § 32-1-708(1), C.R.S.
4. **The areas served or to be served by the District.** The areas served or to be served by the District are those areas within the boundaries of the District or that will be subsequently included within the boundaries of the District, with current boundaries shown in the attached Exhibit.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2019.

**KNOLLWOOD WATER DISTRICT**

By: \_\_\_\_\_  
Alan Teran, President

Attachment E - Intergovernmental Agreement between the City of Boulder and the Knollwood Metropolitan District  
EXHIBIT - DISTRICT BOUNDARY MAP



## RESOLUTION 1256

A RESOLUTION REGARDING A PROPOSED ANNEXATION BY ELECTION OF APPROXIMATELY 28.674 ACRES OF LAND GENERALLY INCLUDING THE KNOLLWOOD SUBDIVISIONS AND THE PROPERTIES AT 150 GREEN ROCK DRIVE AND 2285 KNOLLWOOD DRIVE; FINDING THAT THE AREA PROPOSED TO BE ANNEXED MEETS APPLICABLE REQUIREMENTS OF SECTION 30 OF ARTICLE II OF THE STATE CONSTITUTION AND C.R.S. 1973, §§31-12-104 AND 105 AND THAT AN ANNEXATION ELECTION IS REQUIRED; DIRECTING THAT AN ELECTION BE CALLED; DETERMINING THE ANNEXATION TERMS AND CONDITIONS TO BE IMPOSED; AND SETTING FORTH RELATED DETAILS.

A. A “Petition” for Annexation Election for the unincorporated territory in Boulder County generally including the Knollwood Subdivision, Knollwood Subdivision First Addition, Knollwood Subdivision Second Addition, and the properties generally known as 150 Green Rock Drive and 2285 Knollwood Drive and more particularly described in **Exhibit A** (the “Property”), attached hereto and incorporated herein, has been filed with the City Clerk;

B. By Resolution 1251, adopted February 5, 2019, the City Council of the City of Boulder Colorado found said Petition to be in substantial compliance with the applicable statutory requirements and set March 19, 2019, as the date for a public hearing to determine whether the territory proposed for annexation is eligible for annexation to the City of Boulder;

C. The Planning Board duly proposed that the Property be annexed to the City of Boulder and that the zoning district map adopted by the City Council be amended to zone and include the Property in the Residential Estate (RE) zoning district; as provided in Chapter 9-5, “Modular Zone System,” B.R.C. 1981.

D. Pursuant to Resolution 1251 and after providing notice as required by law, a public hearing was duly held before the City Council on March 19, 2019, and the City Council considered the evidence presented at said hearing on the proposed annexation and initial zoning of the Property;

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

Section 1. The City Council finds that the territory proposed for annexation pursuant to the above-described Petition for Annexation Election meets the applicable requirements of section 30 of article II of the state constitution and C.R.S. §§31-12-104 and 31-12-105, and that specifically:

- (a) Not less than seventy-five registered electors or ten percent of said electors, whichever is less, have signed the Petition.

- (b) The signers of the Petition are qualified electors resident in and landowners of the area proposed to be annexed.
- (c) The Property is not embraced within any city, city and county, or incorporated town.
- (d) The Property abuts, and is contiguous to, the City of Boulder by at least one-sixth of its perimeter.
- (e) A community of interest exists between the Property proposed for annexation and the City of Boulder, the Property is urban or will be urbanized in the near future, and the Property is capable of being integrated into the City of Boulder.
- (f) The Property does not include any area included in another annexation proceeding involving a city other than the City of Boulder.
- (g) The annexation will not result in the detachment of the area from one school district and the attachment of the same to another school district.
- (h) The Property does not include any area which is the same or substantially the same area in which an election for the annexation to the City of Boulder was held within twelve months preceding the filing of the above Petition.
- (i) In establishing the boundaries of the Property proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcels of real estate, or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowners thereof, unless such tracts or parcels are separated by a dedicated street, road, or other public way.
- (j) In establishing the boundaries of the Property proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more which, together with buildings and improvements situated thereon, has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the year next preceding the filing of the petition, has been included within the Property with the written consent of the landowner.
- (k) The annexation will not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing city boundaries.

Section 2. The City Council further finds that inasmuch as the present proceedings are pursuant to a Petition for Annexation Election and additional terms and conditions are to be imposed, an annexation election is required. The City Council directs that an election be called as provided in C.R.S. §§31-12-112, nominates Lynette Beck to be the election commissioner nominated by the City, authorizes the City Manager, in her discretion, to nominate a different election commissioner as may be necessary, and directs the City Attorney to forthwith petition the District Court in and for the County of Boulder to hold said election.

Section 3. The City Council determines that the annexation terms and conditions contained in **Exhibit B**, attached hereto and incorporated herein, are to be imposed upon the Property and the landowners therein, and accordingly shall be submitted to the voters in the annexation election.

INTRODUCED, READ, PASSED, AND ADOPTED this 19th day of March 2019.

---

Suzanne Jones  
Mayor

Attest:

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Lynnette Beck  
City Clerk

## EXHIBIT A

## LEGAL DESCRIPTION

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF KNOLLWOOD SUBDIVISION ALSO BEING THE WESTERLY RIGHT OF WAY OF GREEN ROCK DRIVE; THENCE ALONG THE BOUNDARY OF SAID KNOLLWOOD SUBDIVISION THE FOLLOWING NINE (9) COURSES:

1. N76°00'00"E, A DISTANCE OF 189.13 FEET TO A POINT ON A CURVE;
2. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 569.71 FEET AND A CENTRAL ANGLE OF 17°30'01" (CHORD BEARS N84°45'00"E, 173.34 FEET), 174.01 FEET;
3. THENCE S86°30'00"E, A DISTANCE OF 200.00 FEET TO A POINT ON A CURVE;
4. THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 1638.18 FEET AND A CENTRAL ANGLE OF 4°00'00" (CHORD BEARS S84°30'00"E, 114.34 FEET), 114.37 FEET;
5. THENCE S82°30'00"E, A DISTANCE OF 6.00 FEET;
6. THENCE N7°30'00"E, A DISTANCE OF 2.57 FEET;
7. THENCE S80°39'30"E, A DISTANCE OF 118.68 FEET;
8. THENCE S0°02'15"E, A DISTANCE OF 22.00 FEET;
9. THENCE S42°46'15"E, A DISTANCE OF 306.15 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD FIRST ADDITION THE FOLLOWING FIVE (5) COURSES:

1. S42°46'15"E, A DISTANCE OF 194.04 FEET;
2. THENCE N68°35'45"E, A DISTANCE OF 21.48 FEET;
3. THENCE S0°02'15"E, A DISTANCE OF 374.29 FEET;
4. THENCE S89°59'00"W, A DISTANCE OF 115.29 FEET;
5. THENCE S0°01'43"E, A DISTANCE OF 91.40 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD SECOND ADDITION THE FOLLOWING TWENTY TWO (22) COURSES:

1. N89°59'00"E, A DISTANCE OF 86.89 FEET;
2. THENCE S0°02'15"E, A DISTANCE OF 149.83 FEET;
3. THENCE S83°15'00"W, A DISTANCE OF 22.85 FEET;
4. THENCE S44°30'00"W, A DISTANCE OF 21.00 FEET;
5. THENCE S22°25'00"W, A DISTANCE OF 49.50 FEET;
6. THENCE S13°35'00"W, A DISTANCE OF 70.00 FEET;
7. THENCE S43°05'00"W, A DISTANCE OF 148.00 FEET;
8. THENCE S35°55'00"W, A DISTANCE OF 43.00 FEET;
9. THENCE S24°40'00"W, A DISTANCE OF 40.00 FEET;
10. THENCE S11°58'00"W, A DISTANCE OF 83.98 FEET;
11. THENCE S15°01'09"E, A DISTANCE OF 88.02 FEET TO A POINT ON A CURVE;
12. THENCE ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE TO THE SOUTH, HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 97°44'21" (CHORD BEARS S64°21'34"W, 75.32 FEET), 85.29 FEET;
13. THENCE N83°49'10"W, A DISTANCE OF 13.89 FEET;
14. THENCE S28°00'00"W, A DISTANCE OF 1.50 FEET;

15. THENCE S40°30'00"W, A DISTANCE OF 139.00 FEET;
16. THENCE S27°27'00"W, A DISTANCE OF 22.15 FEET;
17. THENCE S70°09'35"W, A DISTANCE OF 11.78 FEET;
18. THENCE S22°00'00"W, A DISTANCE OF 126.79 FEET;
19. THENCE S37°24'30"W, A DISTANCE OF 142.69 FEET;
20. THENCE N2°05'50"E, A DISTANCE OF 655.94 FEET;
21. THENCE N57°58'20"W, A DISTANCE OF 392.20 FEET;
22. THENCE N10°39'05"W, A DISTANCE OF 159.39 FEET;

THENCE ALONG THE BOUNDARY OF KNOLLWOOD FIRST ADDITION THE FOLLOWING THREE (3) COURSES:

1. N6°45'00"W, A DISTANCE OF 87.09 FEET;
2. THENCE N20°24'00"W, A DISTANCE OF 93.00 FEET;
3. THENCE N13°40'00"W, A DISTANCE OF 90.06 FEET;

THENCE ALONG THE BOUNDARY OF TRACT 3298 RECORDED AT RECEPTION NO. 1099939 DATED 04 / 29 /91 THE FOLLOWING TWO (2) COURSE:

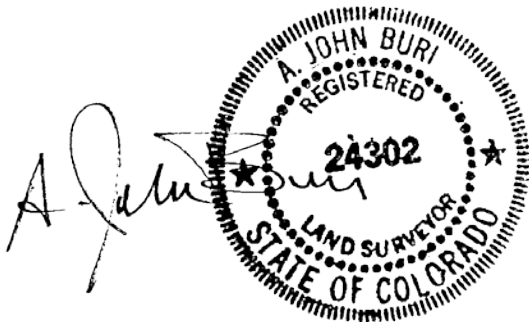
1. S85°00'00"W, A DISTANCE OF 200.00 FEET;
2. THENCE N0°04'20"W, A DISTANCE OF 135.25 FEET;

THENCE ALONG THE BOUNDARY OF A TRACT OF LAND RECORDED AT RECEPTION NO. 1949399 DATED 06 / 14 / 99 THE FOLLOWING TWO (2) COURSES:

1. N0°04'20"W, A DISTANCE OF 443.44 FEET;
2. THENCE N76°00'07"E, A DISTANCE OF 16.22 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 1,249,043 SQUARE FEET (28.674 ACRES).

**SCOTT, COX & ASSOCIATES, INC.**



A. John Buri, P.L.S. #24302  
 Survey Manager  
 SCOTT, COX AND ASSOCIATES, INC.  
 1530 55th Street  
 Boulder, CO 80303  
 (303) 444-3051 ext. 26 Date: 01 / 25 / 19



**EXHIBIT B****ANNEXATION TERMS AND CONDITIONS****RECITALS**

A. Registered electors have petitioned the City of Boulder (“City”) to commence proceedings for the holding of an annexation election for an area generally including the Knollwood Subdivision, Knollwood Subdivision First Addition and Knollwood Subdivision Second Addition, plus two adjacent parcels at 150 Green Rock Drive and 2285 Knollwood Drive, and more particularly described on Exhibit A to Resolution 1256 (collectively, the “Annexation Area”).

B. With the exception of the property at 150 Green Rock Drive, the properties within the Annexation Area are located within the boundaries of the Knollwood Metropolitan District (“District”). Properties within the District are hereafter referred to as “District Properties”. Currently, the District provides water to District Properties, as well as some other governmental services. The property at 150 Green Rock Drive is connected to the City of Boulder’s water utility.

C. With annexation, petitioners are seeking to connect the District Properties to the City’s water utility.

D. To connect to the City’s water utility, water mains (“New Mains”) have to be constructed within the Annexation Area’s rights-of-way, water meters have to be moved into the rights-of-way or, if approved by the City Manager, into public easements and the rights-of-way have to be improved (“Street Improvements”). The New Mains, service lines to meter pits, and meter pits installed by the City, and Street Improvements are hereafter collectively referred to as “District Public Improvements”. The City is planning to install the District Public Improvements.

E. The cost of construction of the District Public Improvements will be an obligation of the owners of the District Properties, planned to be paid and financed through the District as set forth below, by certification of an annual mill levy. To allow for payment and financing of District Public Improvements through the District, the payment of costs for the construction of the District Public Improvements will be billed to the District Property owners only in the event and to the extent the District has not paid the construction costs of the District Public Improvements.

F. Pursuant to Section 9-2-17, “Annexation Requirements,” B.R.C. 1981, annexation of land to the City of Boulder shall not create an unreasonable burden on the physical, social, economic, or environmental resources of the City. To ensure this requirement is met terms and conditions (“Terms and Conditions”) shall be imposed on the individual property owners within the Annexation Area.

G. The Terms and Conditions create the obligations for individual property owners within the Annexation Area. A separate Intergovernmental Agreement (“IGA”) between the City and the District addresses obligations of the District in this annexation, the District’s governmental powers following annexation, and the process of dissolution of the District following connection of the District Properties to the City’s water utility.

NOW, THEREFORE, in consideration of the recitals, the following Terms and Conditions shall be imposed upon the annexation to the City of Boulder of the Annexation Area:

## **EXHIBIT B**

### **1. District Dissolution**

As a requirement of annexation, the owners of District Properties shall use their best efforts to obtain a court order pursuant to Section 32-1-707, C.R.S., dissolving the District within five years of the effective date of the annexation ordinance or within two years of the City's final acceptance of the District Public Improvements under the City's construction contract for the District Public Improvements, whichever occurs later. Such order of dissolution shall dissolve the District for all purposes except as necessary to adequately provide for the payment of remaining financial obligations or outstanding debt of the District. A plan for dissolution shall adequately provide for the payment of such financial obligations and debt.

### **2. Intergovernmental Agreement**

The annexation shall be conditioned on the execution of an IGA between the City of Boulder and the District, to be executed by the District prior to a public hearing by the City Council to determine if the proposed annexation complies with the applicable state law and whether to impose terms and conditions on the annexation pursuant to Section 31-12-108, C.R.S. After approval by the District, any changes to the IGA would be subject to approval by the District Board. No changes will be made to the Terms and Conditions after the annexation election, unless approved by the voters in a new annexation election.

The IGA shall provide for (a) the services that may be provided by the District between the effective date of the annexation and District dissolution, (b) financing and payment of the District Public Improvements, and (c) the services provided by the District that may be assumed by a unit owners' association ("HOA") after dissolution. The IGA will also require the District to assist the property owners within the boundaries of the service area of the District in creating a common interest community and a unit owners' association consistent with Sections 38-33.3-101, *et seq.*, C.R.S. prior to dissolution of the District. If an HOA is formed, it may provide services consistent with Sections 38-33.3-101, *et seq.*, C.R.S., including covenant enforcement and snowplowing, and shall own and maintain any outlots within the Annexation Area that are currently owned by the District. If, at the time the District dissolves, any outlots owned by the District have not been conveyed to an HOA, then, prior to dissolution of the District, any such outlots shall be conveyed to the City.

### **3. District Public Improvements**

a. **Construction of District Public Improvements.** Following annexation, the City plans to construct the New Mains and Street Improvements in the Annexation Area to serve District Properties. The Street Improvements are planned be constructed generally where the existing streets are located, over the area where the New Mains are being constructed, and as approximately 22-foot wide rural residential streets without curb, gutter, sidewalks, or streetlights.

As part of the District Public Improvements, the City will install water service lines from the New Mains to existing or new meter pits within the public right-of-way or, if approved by the City Manager, in a public easement.

b. **Construction of Service Lines to Homes.** Pursuant to the IGA, no later than thirty days following the City's construction and final acceptance of a New Main and service line from the New Main to the meter pit serving a property, the District shall obtain any permits required for work in the City's right-of-way or public easements and install, at its cost, a service line connection from any new meter pits to the existing meter pit and new pressure reducing valves on such property. The owners of the District Property shall provide the District with all necessary approvals and rights of access to perform this work. If the District does not complete this work within the thirty-day time frame, no later than within 60 days

**EXHIBIT B**

following the City's construction and final acceptance of the New Main and service line from the New Main to the meter pit serving the property, the individual property owners, at their cost, shall cause installation of such service line and pressure reducing valves and shall ensure completion and compatibility of the new service line with the City's water service. It is the individual property owners' responsibility to connect a service line from the meter pit serving the property to the structure on the property being served.

Upon completion of such work by the District or the property owners and acceptance thereof by the City, the City will install the existing meter in the meter pit and will connect the property to City water. The City will consider a pilot program for the District Properties to allow temporary electronic meter reading.

c. Connection to City Water System. Upon completion of the New Mains that will serve the Annexation Area, property owners within the Annexation Area shall not connect to or be served by any water system other than the City's and shall connect to the City water system when so required by the City Manager.

d. Payment if District Fails to Pay. In the event that the District has not paid for the construction of the District Public Improvements, within 180 days of the City's final acceptance of the District Public Improvements, each owner of a District Property shall pay the then-applicable water plant investment fees, installation charges and their share of the unpaid costs of constructing the District Public Improvements. The cost of the District Public Improvements shall be the original cost of design, purchase, construction, and installation, but excluding the cost of connecting the service line of 150 Green Rock Drive to the New Mains and excluding the cost of up-sizing a portion of the new main in Green Rock Drive from an 8-inch line to a 12-inch line, the total to be divided equally among the District Properties.

The property at 150 Green Rock Drive will not be responsible for a share of the costs of the District Public Improvements and associated fees as it is currently connected to the City's water utility.

For purposes of these Terms and Conditions, the cost of constructing the District Public Improvements shall include all applicable costs, fees, and charges associated with the design, purchase, construction and installation of the District Public Improvements, the management and supervision of the construction and installation of the District Public Improvements by City contractors, and the connection of District Properties to the New Mains. If not paid by the District, the City will, in good faith, consider creating a financing option to assist District Property owners in paying the amount owed by a District Property owner for the District Public Improvements to the City.

e. Vacant Property. Any property vacant (without a dwelling unit) at the time of construction of the District Public Improvements will be responsible for the full, then-applicable in-City plant investment fees, and tap, service line and meter charges, and its share of the District Public Improvement construction costs (unless paid by the District) at the time of issuance of a building permit to construct a new dwelling unit.

f. 150 Green Rock Drive. The owner of the property located at 150 Green Rock Drive currently served by City water shall connect to the New Mains at the time so required by the City Manager. The City shall pay the costs associated with connecting the existing service line for the 150 Green Rock Drive property to the New Mains.

**EXHIBIT B****4. Stormwater and Flood Plant Investment Fees**

a. Rate. The property owners in the Annexation Area shall pay the stormwater and flood plant investment fee (hereafter referred to as “Storm PIF”) at the rates applicable in 2018.

b. Payment. The Storm PIF will be charged to the property owners in a City of Boulder utility bill no earlier than 30 days following the effective date of the annexation. Within 10 days of a property owner’s receipt of that utility bill, the property owner shall pay the Storm PIF that is due pursuant to the Boulder Revised Code and at the rate applicable in 2018.

c. Payment Plan Option. Instead of payment-in-full at the time of receipt of the utility bill for this fee, a property owner may agree in writing to pay the Storm PIF in monthly installments over a period of 10 years from the date of the first bill for the Storm PIF. At the time payment is due for each monthly installment, in addition to the monthly installment, a payment plan charge shall be paid in the amount of 30 % of the monthly installment. There will be no penalty for prepayment of the remaining outstanding principal amount due, and no payment plan charge for prepayments. The first installment shall be paid within 10 days after the date of receipt of the first bill for the Storm PIF. For any property which participates in the phased repayment program, the property owner shall pay the entire outstanding obligation for the Storm PIF, including any payment plan charges that are due for missed monthly payments, and the full unpaid principal amount at such time as the property is sold. No penalty or payment plan charge will be imposed for pre-payment of the Storm PIF in whole or in part. The phased repayment program will be provided by the City only to those properties that will connect to City water at the time that it is first available.

d. Billing and Collection. The payment-in-full charge and the monthly installment due under the phased repayment plan may be included on the same bill that includes water, wastewater, or storm water and flood management services charges or may be included on a separate bill as provided in Title 11, “Utilities and Airport,” B.R.C. 1981. The billing, payment, and collection provisions of Sections 11-5-12, “Billing and Payment of Fees,” 11-5-13, “Certification of Unpaid Charges to County Assessor,” and 11-5-14, “Charges are Lien on Property,” B.R.C. 1981, shall apply to the billing, payment, and collection of the Storm PIF, including installments and payment plan charges due under the phased repayment program for the Storm PIF, and any interest on delinquent payments due thereon.

**5. Flood Control Easements**

Properties located within the conveyance zone, as delineated on the City’s regulatory floodplain mapping, will be required to dedicate to the City a flood control easement. This easement must be dedicated prior to issuance of a permit for work on the property under Title 10, “Structures,” B.R.C. 1981, or at such time as improvements to the Sunshine Creek and/or Sanitas Creek channel are proposed to be made by the City of Boulder and shall be based on the then-applicable floodplain mapping.

**6. Zoning**

The properties in the Annexation Area would initially be zoned Residential Estate (RE).

**7. Subject to City Codes and Policies**

Upon annexation, the properties in the Annexation Area will be subject to all laws, rules, regulations, and administrative orders of the City of Boulder except as expressly modified by these terms and conditions. Annexation in accordance with the terms and conditions contained herein shall in no manner

**EXHIBIT B**

waive the present or future applicability of said laws, rules, regulations and administrative orders. Existing legal nonconforming uses and nonstandard buildings and structures will be allowed to continue to exist. Section 9-10-3, "Changes to Nonstandard Buildings, Structures, and Lots and Nonconforming Uses," B.R.C. 1981, applies to changes to nonstandard buildings and nonconforming uses. It is understood that this section shall not be constructed to permit a property to constitute a nuisance or to cause a hazard under the City's life safety codes.

8. Water Rights

At the time of connection to the City's water system, but in no event later than issuance of a building permit for the property, any property owner with water or ditch rights used on or appurtenant to the property, shall sell or offer a right of first refusal to the City, consistent with Section 11-1-19, "Water and Ditch Rights," B.R.C. 1981, for any water rights appurtenant to the property, except that in the event a water or ditch rights owner has entered into an agreement with the City that contains provisions that are in conflict with Section 11-1-19, B.R.C 1981, such as the Settlement Agreement executed by the City and The Silver Lake Ditch & Reservoir Company recorded in the office of the Boulder County Clerk and Recorder's Office at Reception No. 03046201, such agreement shall control.

9. One Dwelling Unit per Lot or Parcel

Due to the area's topography and location on the western boundary of the City, no lot or parcel within the Annexation Area shall be developed with more than one principal dwelling unit.

10. No Subdivision

Due to the area's topography and location on the western boundary of the City, no lot or parcel within the Annexation Area shall be subdivided to create an additional lot following annexation to the City.

11. Wetland Mapping

Prior to annexation, all stream, wetland, water bodies and buffer areas on the properties in the Annexation Area will be mapped by the City after the fee prescribed in Section 4-20-53, "Stream, Wetland and Water Body Permit and Map Revision Fees," B.R.C. 1981, is paid. Pursuant to the IGA, this fee will be paid by the District. This mapping will include a functional evaluation of the stream, wetland or water body. The approved mapping and evaluation shall be adopted as an update to the regulatory maps as a part of the annexation ordinance.

12. Inclusion into the Municipal Subdistrict of the Northern Colorado Water Conservancy District

The properties in the Annexation Area shall be included in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to the process in Section 37-45-136(3.6), C.R.S.

13. Use of Existing Wells

The City will not prohibit a property owner from using existing, privately-owned wells for non-potable irrigation purposes on such property following annexation, even after a property is served by the City water utility. Existing wells that are used for irrigation purposes must be registered and permitted by the State Engineer's Office and operated in accordance with any augmentation and other requirements under Colorado water law. Existing wells shall not be used for domestic water purposes once the property is connected to the City's water utility. No person shall make any cross-connections to the City's municipal water supply system from any well on the property.

**EXHIBIT B****14. Historic Drainage**

Drainage from properties in the Annexation Area shall be conveyed in an historic manner that does not materially and adversely affect abutting properties.

**15. Wood Roofs**

Wood roof covering materials are prohibited in the City of Boulder. Immediate replacement shall not be required; however, no person owning a building with wood roof covering materials in the Annexation Area shall install any wood roof covering materials following annexation. Any installation, repair or replacement must utilize approved roof covering materials which conform to the applicable requirements of Title 10, "Structures," B.R.C. 1981. However, this section shall not be construed to permit a property to constitute a nuisance or to cause a hazard under the City's life safety codes.

**16. Rental Property Requirements**

If a property is used as rental property at the time of annexation, it shall be brought into compliance with Chapter 10-3, "Rental Licenses," B.R.C. 1981, within 90 days of the effective date of the annexation ordinance; for a rental license issued within 90 days of the effective date of the annexation ordinance the energy efficiency requirements of Chapter 10-2, "Property Maintenance Code, Appendix C – Energy Efficiency Requirements," B.R.C. 1981, shall be waived. Any subsequent application for a new or renewal of a license and any rental license for a new building or new dwelling unit on the property shall be subject to the energy efficiency requirements of Chapter 10-2, B.R.C. 1981.

**17. Breach**

In the event a property owner fails to pay any monies due under these Terms and Conditions or fails to perform any affirmative obligation hereunder, the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, or the City may perform the obligation on behalf of the property owner, and collect its costs in the manner provided in these Terms and Conditions. The annexation ordinance shall be the enabling ordinance required under Section 31-20-105, C.R.S. authorizing the collection of those debts.

**18. Annexation Agreement**

Each property in the Annexation Area shall be subject to these Terms and Conditions unless a separate annexation agreement has been executed by the City and the property owner that modifies the Terms and Conditions.

RESOLUTION 1261

A RESOLUTION BY CITY COUNCIL TO ACCEPT A DESIGNATION AS THE APPROVING AUTHORITY FOR THE KNOLLWOOD METROPOLITAN DISTRICT (FORMERLY KNOWN AS KNOLLWOOD WATER DISTRICT), AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, HEREBY FINDS AND RECITES THAT:

A. On September 3, 2019, the City Council of the City of Boulder finally passed Ordinance 8348 (the “Annexation Ordinance”) annexing all of the property within the Knollwood Metropolitan District (formerly known as Knollwood Water District and hereafter referred to as the “District”) to the City of Boulder;

B. The Annexation Ordinance is anticipated to take effect thirty days following its final passage, on October 3, 2019 (the “Effective Date”);

C. Upon the Effective Date of the Annexation Ordinance, the District becomes wholly contained within the boundaries of a municipality by annexation; and

D. The governing body of the District has petitioned the City Council to accept a designation as the approving authority for the District pursuant to Section 32-1-204.7(1), C.R.S. and consistent with the Intergovernmental Agreement Regarding Annexation and Transaction of Municipal Services between the City of Boulder and the Knollwood Metropolitan District dated April 15, 2019.

BASED ON THE FINDINGS MADE IN THIS RESOLUTION, ABOVE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

1. The City Council hereby accepts the designation as the approving authority for the District as of the Effective Date of the Annexation Ordinance and conditioned upon effectiveness of the Annexation Ordinance, pursuant to Section 32-1-204.7 C.R.S.

2. With effectiveness of and as of the Effective Date of the Annexation Ordinance, all powers and authority vested in the board of county commissioners pursuant to Article 1 of Title 32, “Special Districts,” C.R.S. regarding the District shall be transferred to the City Council as the governing body of the City of Boulder. The City Council shall constitute the approving authority for the District for all purposes under Article 1 of Title 32, “Special Districts,” C.R.S.

INTRODUCED, READ, PASSED, AND ADOPTED this 3rd day of September 2019.

---

Suzanne Jones  
Mayor

Attest:

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Lynnette Beck  
City Clerk



**Certificate of Transmittal to Petitioner and County of Boulder**

I hereby certify that a true and correct copy of the foregoing Resolution 1261 was transmitted to the Petitioner and the County of Boulder by placing it in the U.S. Mail, first-class postage prepaid, addressed as follows:

Colonel Barry S. Baer US Army (Retired)  
Treasurer, Knollwood Metropolitan District  
2265 Knollwood Drive  
Boulder, CO 80302

With a copy to:

Carolyn R. Steffl, Esq.  
Moses, Wittemyer, Harrison & Woodruff, P.C.  
2595 Canyon Boulevard, Suite 300  
Boulder, CO 80302

Board of County Commissioners of Boulder County  
P.O. Box 471  
Boulder, CO 80306

## RESOLUTION 1262

A RESOLUTION APPROVING A PETITION OF THE KNOLLWOOD METROPOLITAN DISTRICT (FORMERLY KNOWN AS KNOLLWOOD WATER DISTRICT) FOR APPROVAL OF A SECOND AMENDED STATEMENT OF PURPOSES PURSUANT TO COLORADO'S SPECIAL DISTRICT ACT, PART 2 OF ARTICLE 1 OF TITLE 32, C.R.S., AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, HEREBY FINDS AND RECITES THAT:

A. The Knollwood Metropolitan District (the "District") was originally organized as the Knollwood Water District for the following purposes: 1) to supply water for domestic purposes by any available means, and 2) other purposes determined by the Board Members of the District in accordance with §§ 32-1-101, *et. seq.*, C.R.S.

B. The Knollwood Water District converted to a Metropolitan District by order of the District Court of Boulder County dated December 17, 2015 in Case No. 1965CV018489. The Board of County Commissioners of Boulder County approved an Amended Statement of Purposes for the District by Resolution 2015-126 dated December 10, 2015, *nunc pro tunc* December 8, 2015, which added street improvements and safety protection through traffic and safety controls and devices to the types of services and facilities to be provided by the District.

C. On September 3, 2019, the City Council of the City of Boulder (the "City") passed Ordinance 8348, approving annexation of certain property, including all of the property within the boundaries of the District (the "Annexation Ordinance"). The Annexation Ordinance is anticipated to take effect thirty days following its final passage, on October 3, 2019 (the "Effective Date").

D. On September 3, 2019, the City Council passed Resolution 1261, accepting designation as the approving authority for the District.

E. Prior to the annexation, on April 15, 2019, the City of Boulder and the District entered into an Intergovernmental Agreement Regarding Annexation and Transition of Municipal Services (the "IGA") to coordinate in conducting the annexation election and, if the annexation was approved by the voters, to establish procedures for the construction of public improvements to enable the City to provide water for domestic purposes to the properties within the boundaries of the District, to delineate the District's powers following annexation, and to establish a procedure for dissolution of the District.

F. The IGA required that the District Board submit to City Council for approval a Second Amended Statement of Purposes to limit the District's powers following annexation.

G. The District submitted on August 5, 2019 a Second Amended Statement of Purposes, attached hereto as **Exhibit A** and hereby incorporated herein, conditioned upon the effectiveness of the annexation ordinance.

H. The Second Amended Statement of Purposes seeks to limit the District's powers in the future until dissolution of the District as set forth in the IGA.

I. A public hearing was set for September 3, 2019, and public notice was given by publication in the Boulder Daily Camera of the date, time, location and purpose of the hearing at least twenty days prior to the hearing date.

J. Not more than thirty days nor less than twenty days prior to the public hearing, written notice of the date, time, and location of the public hearing was provided to the property owners within the District.

K. Referrals and notices of the public hearing were sent to the governing bodies of special districts which have levied an ad valorem tax within the next preceding tax year and have the boundaries within a radius of three miles of the District.

L. On September 3, 2019, the City Council held a public hearing at which all interested parties as defined in Section 32-1-204, C.R.S. were given an opportunity to present their views to the City Council, and the City Council considered all evidence presented.

M. The City Council hereby determines that the petition complied with the requirements of and meets the applicable criteria of approval for the District's Second Amended Statement of Purposes pursuant to Part 2 of Article 1 of Title 32, C.R.S.

BASED ON THE FINDINGS MADE IN THIS RESOLUTION, ABOVE, AND SUPPORTED BY THE RECORD, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, THAT:

1. The Second Amended Statement of Purposes attached hereto as **Exhibit A** and incorporated herein is hereby approved.

2. The effectiveness of this Resolution shall be conditioned upon effectiveness of and be effective as of the Effective Date of the Annexation Ordinance and Resolution 1261.

INTRODUCED, READ, PASSED, AND ADOPTED this 3rd day of September 2019.

---

Suzanne Jones  
Mayor

Attest:

---

Lynnette Beck  
City Clerk

**Certificate of Transmittal to Petitioner and County of Boulder**

I hereby certify that a true and correct copy of the foregoing Resolution 1262 was transmitted to the Petitioner and the County of Boulder on September \_\_, 2019, within twenty days of its adoption consistent with C.R.S. 32-10204(4) by placing it in the U.S. Mail, first-class postage prepaid, addressed as follows:

Colonel Barry S. Baer US Army (Retired)  
Treasurer, Knollwood Metropolitan District  
2265 Knollwood Drive  
Boulder, CO 80302

With a copy to:

Carolyn R. Steffl, Esq.  
Moses, Wittemyer, Harrison & Woodruff, P.C.  
2595 Canyon Boulevard, Suite 300  
Boulder, CO 80302

Board of County Commissioners of Boulder County  
P.O. Box 471  
Boulder, CO 80306

## EXHIBIT A

**SECOND AMENDED STATEMENT OF PURPOSES  
KNOLLWOOD METROPOLITAN DISTRICT  
(FORMERLY KNOWN AS KNOLLWOOD WATER DISTRICT)**

Knollwood Metropolitan District (the "District") (formerly known as the Knollwood Water District) hereby files the following Second Amended Statement of Purposes with the City Council of the City of Boulder, State of Colorado, (the "City") pursuant to C.R.S. § 32-1-208(3), and requests approval.

**RECITALS**

WHEREAS, the Knollwood Water District was originally organized for the following purposes: 1) to supply water for domestic purposes by any available means, and 2) other purposes determined by the Board Members of the District in accordance with §§ 32-1-101, *et. seq.*, C.R.S.

WHEREAS, the Knollwood Water District converted to a Metropolitan District by order of the District Court of Boulder County dated December 17, 2015 in Case No. 1965CV018489. The Board of County Commissioners of Boulder County approved an Amended Statement of Purposes for the District by Resolution 2015-126 dated December 10, 2015, *nunc pro tunc* December 8, 2015, which added street improvements and safety protection through traffic and safety controls and devices to the types of services and facilities to be provided by the District.

WHEREAS, on September 3, 2019, the City Council of the City passed Ordinance No. 8348, approving annexation of certain property, including all of the property within the boundaries of the District.

WHEREAS, on September 3, 2019, the City Council passed Resolution No. 1261, accepting designation as the approving authority for the District, effective on the effective date of the annexation ordinance.

WHEREAS, the District and the City entered into an Intergovernmental Agreement Regarding Annexation and Transition of Municipal Services dated April 15, 2019 (the "IGA"), pursuant to which the City agreed to construct and the District agreed to finance certain water and street improvements to enable the City to provide water for domestic purposes to the properties within the boundaries of the District. The District further agreed in the IGA to submit this Second Amended Statement of Purposes to the City to delineate the District's powers and agreed to a dissolution plan.

NOW, THEREFORE, the District files with the City Council the following Second Amended Statement of Purposes and requests approval thereof:

1. **Purposes for which the District is organized.** The purposes for which the Knollwood Metropolitan District is organized are, to the extent consistent with the IGA, 1) to provide water services, 2) to provide street improvements and safety protection through snow plowing, and 3) to enforce recorded covenants for property within the District, including

## EXHIBIT A

the Knollwood Subdivision, Knollwood Subdivision First Addition, and Knollwood Subdivision Second Addition.

2. **Services and facilities provided or to be provided by the District.** Subject to the provisions of this Section 2 and Section 3, below, and to the extent consistent with the IGA, the facilities and services to be provided by the District are: 1) the provision of water for domestic purposes, 2) financing and construction of water improvements, 3) payment of water plant investment fees, annexation-related fees and other fees required for connection to the City's water system, 4) financing of and contracting for street improvements, 5) obtaining permits and contracting for snowplowing, and 6) enforcement of recorded covenants for property within the District, including the Knollwood Subdivision, Knollwood Subdivision First Addition, and Knollwood Subdivision Second Addition.

Pursuant to the IGA, the District is limited to exercising the following powers in connection with provision of these services:

- A. Incurring and paying financial obligations, consistent with the IGA.
- B. Assessing a mill levy, fees, and any special assessments necessary to pay operating costs and any debt of the District and cover the costs of the District until the District has fully discharged all financial obligations.
- C. Providing water supply, treatment and delivery services within the District, until connection to the City's water system, and billing for fees, costs and charges associated therewith.
- D. Operating and maintaining the District water system until conveyance to the City or abandonment per the IGA.
- E. Operating and maintaining outlots owned by the District, until conveyance to an HOA or the City.
- F. Abandoning District wells and property and/or conveying real and personal property to the HOA or the City.
- G. Contracting for construction or installation of water system and street improvements, which are related to or necessary for: a) water service by the District until connection to the City, b) properties within the District to receive water service from the City; c) completion of annexation; or d) fulfillment of District duties under the IGA.
- H. Acquisition of easements or other property interests needed for the District public improvements, set forth in Section G above, provided that the City's prior approval is required before the District exercises its power of eminent domain.
- I. Snow removal on streets within the District.
- J. Complying with and enforcing terms of the IGA and agreements with water users.



## EXHIBIT A

- K. Enforcement of covenants on property within the boundaries of the District not inconsistent with City regulations and requirements as contained in the Declarations of Covenants, Conditions and Restrictions, recorded in the real property records of the County Clerk and Recorder of Boulder County on July 23, 1965 for the Knollwood Subdivision at reception number 789376, on November 4, 1966 for the Knollwood Subdivision First Addition at reception number 831673, and on October 15, 1969 for the Knollwood Subdivision Second Addition at reception number 893916, as amended, if permitted by the covenants.
  - L. Cooperation and assistance to homeowners regarding organization of an HOA and amendment of covenants.
  - M. Performing obligations of the District required by Colorado law, including budgeting and auditing, required elections, and obligations to accountants, auditors and attorneys.
  - N. All powers set forth in paragraph 3 below.
  - O. Any additional necessary powers or implied authority required to provide water service and satisfy the terms of the IGA.
  - P. Other powers approved by the City in advance in writing.
3. **Future Dissolution and Limitation of Powers.** Upon the later of: a) October 3, 2024 (five years after the effective date of the Annexation Ordinance); or b) two years after the City's final acceptance of the water system and street improvements necessary to provide water service to the properties within the District (the District Public Improvements), the District may only exercise the following powers necessary to adequately provide for the payment of all remaining financial obligations or outstanding debt of the District at such time (the "Outstanding Debt") or powers expressly approved by the City in writing in advance:
- A. If an Order of Dissolution of the District has been entered by the District Court of Boulder County, all powers listed in the Order of Dissolution; or
  - B. If no Order of Dissolution has been entered, the District's Powers will be limited to the following powers:
    - 1. Keeping and maintaining records and books of account in accordance with generally recognized principles of accounting.
    - 2. Preparing an annual budget and appropriating funds.
    - 3. Preparing or contracting for the preparation of an annual audit, if required by law or contract.
    - 4. Opening, managing, and maintaining the necessary bank accounts to comply with the terms of any Outstanding Debt, including, but not limited to, holding reserve funds.

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## EXHIBIT A

5. Adjusting and certifying a mill levy to the Board of County Commissioners of Boulder County in an amount sufficient to pay the total interest and principal payments and any fees due in the following year for all Outstanding Debt.
  6. Collecting the mill levy from the Board of County Commissioners and appropriating funds to cover principal, interest and fee payments for the Outstanding Debt due each year.
  7. Enforcing collection of any taxes certified and assessed by the District, at the time and in the form and manner as other general taxes, and with like interest and penalties.
  8. Prepaying, in whole or in part, the Outstanding Debt.
  9. Maintaining proper insurance.
  10. Complying with all terms and conditions, covenants, or reporting requirements contained in any loan agreements, bond resolutions or other agreements for the Outstanding Debt.
  11. Any additional necessary powers or implied authority required to ensure full payment, satisfaction, and discharge of the Outstanding Debt.
  12. Ensuring that any outstanding balances or excess District funds not required for payment of the Outstanding Debt are applied to reduce the rates, tolls, fees, and charges fixed by the City for providing water service, street improvements, and traffic and safety controls consistent with § 32-1-708(1), C.R.S.
4. **The areas served or to be served by the District.** The areas served or to be served by the District are those areas within the boundaries of the District or that will be subsequently included within the boundaries of the District, with current boundaries shown in the attached Exhibit.

Respectfully submitted this 5th day of August, 2019.

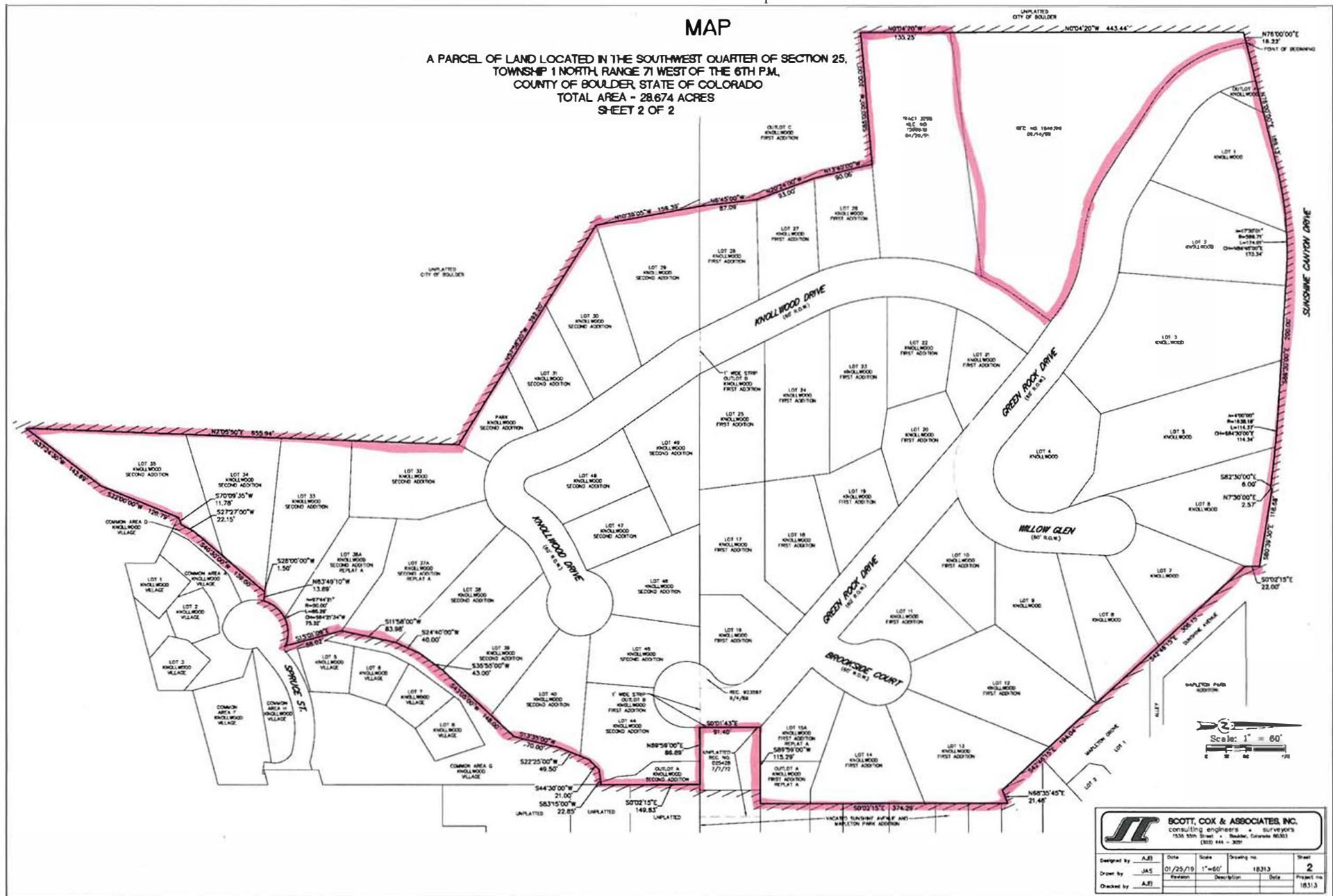
## KNOLLWOOD WATER DISTRICT

By: Barry S. Baer  
Barry S. Baer, Treasurer



## EXHIBIT A

Exhibit to Second Amended Statement of Purposes



For Administrative Use Only

Grantor: City of Boulder and Karin Elisabeth Budding

Grantee: Karin Elisabeth Budding and City of Boulder

Case No. LUR2018-00048

ANNEXATION AGREEMENT

This "Agreement," made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Boulder, a Colorado home rule city, hereinafter referred to as "City," and Karin Elisabeth Budding, hereinafter referred to as "Applicant."

RECITALS

The Applicant is the owner of the real property generally described as 150 Green Rock Drive and more particularly described on Exhibit A, included by reference and hereby made a part of this Agreement (the "Property");

The Property is included in a petition for annexation by election for an area that generally includes properties part of the Knollwood Metropolitan District (the "District") and the Property (LUR2018-00048) (the "Annexation Petition");

The District currently provides water to properties within the District and with the petition for annexation connection of the area to the City's water utility is desired;

The Property is not part of the District and is already connected to the City's water utility;

In the event a majority of votes cast in the annexation election are for annexation and the Property is annexed by the City, the Applicant accepts annexation pursuant to the following terms and conditions regarding the Property and with an initial zoning designation of Residential Estate (RE); and

The City is interested in insuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

COVENANTS

NOW, THEREFORE, in consideration of the recitals, promises and covenants herein set forth and other good and valuable consideration herein receipted for, the parties agree as follows:

1. Terms and Conditions of Annexation Ordinance. This Agreement shall modify the Terms and Conditions imposed in the annexation ordinance for this Property to the extent that the following covenants are inconsistent therewith.

2. Requirements. Prior to first reading of the annexation ordinance before City Council, the Applicant shall be required to do the following:
  - a. Provide title work current to within 30 days of first reading of the annexation ordinance.
  - b. Pay the Storm Water and Flood Management Plant Investment Fee of \$8,783.00 (the "Storm PIF").
3. Payment Option Storm PIF. Instead of payment-in-full of the Storm PIF, prior to first reading of the annexation ordinance, the Applicant may agree in writing to pay the Storm PIF in monthly installments over a period of 10 years from the date of the first bill for the Storm PIF. The first Storm PIF bill shall be due at least 30 days following the effective date of the annexation ordinance. At the time payment is due for each monthly installment, in addition to the monthly installment, a payment plan charge shall be paid in the amount of 30 % of the monthly installment. There will be no penalty for prepayment of the remaining outstanding principal Storm PIF amount due. If such phased payment agreement is signed, the City may include the monthly installments on the same bill that includes water, wastewater, or storm water and flood management services charges or charge it in a separate bill as provided in Title 11, "Utilities and Airport," B.R.C. 1981. The billing, payment, and collection provisions of Sections 11-5-12, "Billing and Payment of Fees," 11-5-3, "Certification of Unpaid Charges to County Assessor," and 11-5-14, "Charges are Lien on Property," B.R.C. 1981, shall apply to billing, payment, and collection of the Storm PIF, installments and payment plan charges due under the phased repayment program for the Storm PIF, and any interest due thereon. However, the Applicant shall pay the entire outstanding obligation for the Storm PIF and any payment plan charges due and unpaid at the time the Property is sold. No penalty will be imposed for pre-payment of the principal amount of the Storm PIF in whole or in part. The Applicant waives any rights she may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing collection of this specific debt, or acknowledges the annexation ordinances as such enabling ordinance.
4. Water Connection Requirement. The City plans to construct a new water main in Green Rock Drive (the "New Main") and with the construction of a such water main, the City will install, at the City's expense, a new water meter pit to serve the Property at 150 Green Rock Drive. Upon completion of construction of the New Main and the installation of a new water meter pit to serve the Property, the Applicant agrees to connect the Property's water service line to the New Main and to abandon the existing connection to the City's water main in Sunshine Canyon Drive and any portion of the existing service line that is no longer used to serve the Property with City water following connection to the new water main. The Applicant agrees to cooperate in good faith and facilitate the City's work to connect the existing service line to the New Main.

5. Release of Easement. Within 90 days of connection of the Property to the New Main but in no event later than issuance of any permit for work on the Property under Title 10, "Structures," B.R.C. 1981, following connection of the Property to the New Main, the Applicant shall quitclaim any rights in any easements for the existing water service line connecting the Property to the City's water main in Sunshine Canyon Drive to the owners of the properties burdened by such easements.
6. Water Main Costs. The Applicant shall not be responsible to the City for any costs associated with the initial design and construction of the New Main, the connection of the Property's existing water service line to the New Main, or the installation of the new water meter pit to serve the Property.
7. Conveyance of Drainage. The Applicant shall convey drainage from the Property in a historic manner that does not materially and adversely affect abutting property owners.
8. Waiver of Vested Rights. The Applicant waives any vested property rights that may have arisen under Boulder County jurisdiction. This Agreement shall replace any such rights that may have arisen under Boulder County jurisdiction. The Applicant acknowledges that nothing contained herein may be construed as a waiver of the City's police powers or the power to zone and regulate land uses for the benefit of the general public.
9. Existing Nonstandard Buildings and/or Nonconforming Uses. The Applicant agrees that, at the time of annexation, there are no nonconforming uses and nonstandard buildings and structures on the Property.
10. New Construction. All new construction commenced on the Property after annexation shall comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.
11. Dedications. The Applicant acknowledges that dedications and public improvements or payments therefore required herein and with this annexation are rationally related and reasonably proportionate to the impact of the development of the Property as set forth in this Agreement.
12. Original Instruments and Payments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by the Applicant, along with any instruments required in this Agreement. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant and any payments made prior to first reading of the annexation ordinance pursuant to this Agreement. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.

13. No Encumbrances. The Applicant agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicant shall neither convey ownership nor further encumber the Applicant's Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicant agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.
14. Breach of Agreement. In the event that the Applicant breaches or fails to perform any required action under or fails to pay any fee specified under the covenants of this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for specific performance of the obligations herein described. In the event the Applicant fails to pay any monies due under this Agreement or fails to perform any affirmative obligation hereunder, the Applicant agrees that the City may collect the monies due in the manner provided for in Section 2-2-12, B.R.C. 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or the City may perform the obligation on behalf of the Applicant, and collect its costs in the manner herein provided. The Applicant agrees to waive any rights she may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing the collection of this specific debt, or acknowledges that the adopting of the annexation ordinance is such enabling ordinance.
15. Additional Documents. The Owner agrees to execute and deliver any additional documents and perform any additional acts reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement when requested by the City.
16. Binding Agreement. The Agreement and covenants as set forth herein shall run with the land and shall be binding upon the Applicant, his/her heirs, successors, representatives and assigns, and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement creates an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus twenty years and three hundred and sixty-four days.
17. Null and Void. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Property is not annexed to the City.
18. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's successors and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.

19. Zoning. The Property shall be annexed to the City with a Residential Estate (E) zoning classification, and except as set forth herein, shall be subject to all of the rights and restrictions associated with that zoning.
20. Water Rights. If the Applicant votes against annexation in the election for the Annexation Petition and the Applicant notifies the City in writing of such vote against annexation within seven days of casting the vote, the Property shall be considered "Non-Voluntarily Annexed" under the Settlement Agreement of December 1, 2009 between the City of Boulder and the Silver Lake Ditch & Reservoir Company, recorded at Reception No. 03046201 in Boulder County, Colorado (the "Settlement Agreement"). Absent such notification of a vote against annexation, the Applicant shall be deemed to have voted in favor of annexation. If the Applicant is deemed to have voted in favor of annexation, then prior to first reading of the annexation ordinance, the Applicant shall grant to the City an option in the form attached as Exhibit B to purchase certain interests in Silver Lake Ditch and Reservoir Company Shares associated with the Property pursuant to the Settlement Agreement.
21. One Dwelling Unit. Due to the area's topography and location on the western boundary of the City, the Property shall not be developed with more than one principal dwelling unit.
22. No Subdivision. Due to the area's topography and location on the western boundary of the City, the Property shall not be subdivided to create an additional lot following annexation to the City.
23. Inclusion in the Northern Colorado Water Conservancy District. If not already included, the Property shall be included in the Northern Colorado Water Conservancy District and the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to the process in Section 37-45-136(3.6), C.R.S.
24. Existing Wells. The City will not prohibit the Applicant from using existing, privately-owned wells for non-potable irrigation purposes on the Property. Existing wells that are used for irrigation purposes must be registered and permitted by the State Engineer's Office and operated in accordance with any augmentation and other requirements under Colorado water law. Existing wells shall not be used for domestic water purposes. No person shall make any cross-connections to the City's municipal water supply system from any well on the Property.
25. Rental Property Requirements. If the Property is used as rental property at the time of annexation, it shall be brought into compliance with Chapter 10-3, "Rental Licenses," B.R.C. 1981, within 90 days of the effective date of the annexation ordinance; for a rental license issued within 90 days of the effective date of the annexation ordinance the energy efficiency requirements of Chapter 10-2, "Property Maintenance Code, Appendix C – Energy Efficiency Requirements," B.R.C. 1981, shall be waived. Any subsequent

application for a new or renewal of a license and any rental license for a new building or new dwelling unit on the Property shall be subject to the energy efficiency requirements of Chapter 10-2, B.R.C. 1981.

EXECUTED on the day and year first above written.

APPLICANT

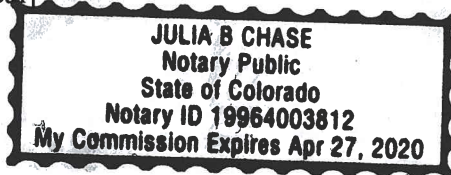
Karin Elisabeth Budding  
Karin Elisabeth Budding

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of August, 2019, by Karin Elisabeth Budding.

Witness my hand and official seal.  
My commission expires: 4-27-2020

[Seal]



Julia B. Chase  
Notary Public


CITY OF BOULDER, COLORADO

By: \_\_\_\_\_  
Jane S. Brautigam,  
City Manager

Attest:

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

Approved as to form:

  
City Attorney's Office

Date: 8-2-2019

**EXHIBITS**

- A: Legal Description
- B: Silver Lake Ditch Option Agreement



## EXHIBIT A

A TRACT OF LAND SITUATED IN THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., THENCE SOUTH  $0^{\circ}02'15''$  EAST 479.57 FEET TO A POINT ON THE NORTH-SOUTH CENTER LINE OF SAID SECTION 25;

THENCE SOUTH  $65^{\circ}11'45''$  WEST, 1046.84 FEET TO A POINT OF THE ARC OF A CURVE CONCAVE TO THE EAST, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH  $83^{\circ}$  WEST A DISTANCE OF 374.34 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 25;

THENCE NORTH  $0^{\circ}04'20''$  WEST ALONG THE WEST LINE OF SAID SECTION 25 A DISTANCE OF 441.76 FEET, MORE OR LESS, TO THE SOUTH RIGHT OF WAY LINE OF SUNSHINE ROAD AS SHOWN ON THE PLAT OF MOUNT SANITAS HEIGHTS;

THENCE NORTH  $76^{\circ}$  EAST A DISTANCE OF 15.47 FEET;

THENCE SOUTH  $14^{\circ}$  EAST A DISTANCE OF 27.99 FEET TO A POINT OF CURVE TO THE LEFT;

THENCE SOUTHERLY 140.46 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT TO A POINT OF TANGENT, SAID ARC HAVING A RADIUS OF 185.00 FEET AND A DELTA ANGLE OF  $43^{\circ}30'$  LEFT; THENCE SOUTH  $57^{\circ}30'$  EAST, 140.00 FEET TO A POINT OF CURVE TO THE LEFT;

THENCE SOUTHEASTERLY 97.13 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT TO A POINT TANGENT, SAID ARC HAVING A RADIUS OF 210.00 FEET AND DELTA ANGLE OF  $26^{\circ}30'$  LEFT;

THENCE SOUTH  $84^{\circ}$  EAST 23.00 FEET TO A POINT OF CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 93.46 FEET ALONG THE

ARC OF SAID CURVE TO THE RIGHT TO A POINT TANGENT, SAID CURVE HAVING A RADIUS OF 180.00 FEET AND A DELTA ANGLE OF  $29^{\circ}45'$  RIGHT;

THENCE SOUTH  $54^{\circ}15'$  EAST A DISTANCE OF 25.00 FEET;

THENCE SOUTH  $35^{\circ}45'$  WEST A DISTANCE OF 65.00 FEET TO A POINT OF CURVE TO THE LEFT;

THENCE SOUTHWESTERLY A DISTANCE OF 60.09 FEET ALONG THE ARC OF SAID CURVE, SAID CURVE HAVING A RADIUS OF 315.00 FEET AND A DELTA ANGLE OF  $10^{\circ}15'50''$  LEFT, TO THE TRUE POINT OF BEGINNING, TOGETHER WITH A NON-EXCLUSIVE EASEMENT OVER AND ACROSS THE FOLLOWING DESCRIBED ROAD RIGHT OF WAY IN THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., AND BEING 30 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED

## CENTERLINE:

COMMENCING AT THE CENTER OF SAID SECTION 25,  
 THENCE SOUTH  $0^{\circ}02'15''$  EAST, 479.57 FEET ALONG THE  
 NORTH-SOUTH CENTERLINE OF SAID SECTION 25;  
 THENCE SOUTH  $89^{\circ}51'10''$  WEST,  
 631.88 FEET TO THE SOUTHEAST CORNER OF MOUNT SANITAS HEIGHTS  
 A SUBDIVISION OF A PART OF THE CITY OF BOULDER IN THE  
 SOUTH  $1/2$  OF NORTHWEST  $1/4$  AND THE NORTH  $1/2$  OF THE  
 SOUTHWEST  $1/4$  OF SECTION 25, TOWNSHIP 1 NORTH,  
 RANGE 71 WEST OF THE 6TH P.M., BOULDER COUNTY, COLORADO,  
 ACCORDING TO THE RECORDED PLAT THEREOF;  
 (THE FOLLOWING COURSES AND DISTANCES ARE WESTERLY ALONG THE  
 SOUTH RIGHT OF WAY LINE OF SUNSHINE ROAD ACCORDING TO THE  
 RECORDED PLAT OF SAID MOUNT SANITAS HEIGHTS);  
 THENCE NORTH  $82^{\circ}30'$  WEST, 6.00 FEET TO A POINT OF CURVE  
 LEFT;

THENCE NORTHERLY 114.37 FEET ALONG THE ARC OF SAID CURVE  
 TO THE LEFT TO A POINT TANGENT, SAID ARC HAVING A RADIUS OF  
 1638.18 FEET AND DELTA ANGLE OF  $4^{\circ}$  LEFT;  
 THENCE NORTH  $86^{\circ}30'$  WEST, 200.00 FEET TO A POINT OF  
 CURVE LEFT;  
 THENCE SOUTHERLY 174.01 FEET ALONG THE ARC OF SAID CURVE  
 TO THE LEFT TO A POINT TANGENT, SAID ARC HAVING A RADIUS  
 OF 569.71 FEET AND A DELTA ANGLE OF  $17^{\circ}30'$  LEFT;  
 THENCE SOUTH  $76^{\circ}$  WEST, 159.12 FEET TO A POINT ON THE SOUTH  
 RIGHT OF WAY LINE OF SUNSHINE ROAD. SAID POINT BEING  
 THE TRUE POINT OF BEGINNING;  
 THENCE LEAVING SAID SOUTH LINE OF SUNSHINE ROAD;  
 THENCE SOUTH  $14^{\circ}$  EAST, 27.99 FEET TO A POINT OF CURVE TO  
 THE LEFT;  
 THENCE SOUTHERLY 117.68 FEET ALONG THE ARC OF SAID CURVE  
 TO A POINT TANGENT, SAID CURVE HAVING A RADIUS OF 155.00  
 FEET AND A DELTA ANGLE OF  $43^{\circ}30'$  LEFT;  
 THENCE SOUTH  $57^{\circ}30'$  EAST, 140.00 FEET TO A POINT OF  
 CURVE TO THE LEFT;  
 THENCE SOUTHERLY 83.25 FEET ALONG THE ARC OF SAID CURVE TO  
 A POINT TANGENT, SAID CURVE HAVING A RADIUS OF 180.00 FEET  
 AND A DELTA ANGLE OF  $26^{\circ}30'$  LEFT;  
 THENCE SOUTH  $84^{\circ}$  EAST, 23.00 FEET TO A POINT OF  
 CURVE TO THE RIGHT;  
 THENCE SOUTHERLY 109.04 FEET ALONG THE ARC OF SAID CURVE  
 TO THE RIGHT TO A POINT TANGENT SAID CURVE HAVING A RADIUS  
 OF 210.00 FEET AND A DELTA ANGLE OF  $29^{\circ}45'$  RIGHT;  
 THENCE SOUTH  $54^{\circ}15'$  EAST, 55.00 FEET; THENCE SOUTH  $35^{\circ}45'$   
 WEST, 95.00 FEET TO A POINT OF CURVE TO THE LEFT; THENCE  
 SOUTHERLY 54.37 FEET ALONG THE ARC OF SAID CURVE TO THE  
 LEFT, SAID CURVE HAVING A RADIUS OF 285.00 FEET AND A DELTA  
 ANGLE OF  $10^{\circ}55'50''$  LEFT SAID POINT BEING THE POINT OF  
 TERMINATION,  
 COUNTY OF BOULDER  
 STATE OF COLORADO

**EXHIBIT B**

**OPTION TO PURCHASE  
SLD&RC SHARE ASSOCIATED WITH  
VOLUNTARILY ANNEXED SLD IRRIGATED PROPERTY  
PARCEL NO. 348, 150 GREEN ROCK DRIVE**

Karin Elisabeth Budding, as "Property Owner" of Silver Lake Ditch ("SLD") Irrigated Property Parcel No. 348, 150 Green Rock Drive, Boulder, Colorado, legally described on Exhibit A attached hereto and incorporated by reference herein, does provide this Option to Purchase to the City of Boulder, Colorado, a home rule city of the State of Colorado ("City"), in accordance with the terms of Section II, Voluntary Annexation, of the Settlement Agreement of December 1, 2009 between the City and The Silver Lake Ditch & Reservoir Company ("SLD&RC"), recorded at Reception No. 03046201 in Boulder County, Colorado ("Settlement Agreement"), this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, as follows:

1. The City shall have the Option to Purchase 1 SLD&RC Share associated with SLD Irrigated Property Parcel No. 348, along with the rights, and only the rights, represented by such SLD&RC Share to receive a certain amount of water from the Reserved Storage Rights.
2. The City shall have the right to exercise this Option to Purchase within 60 calendar days immediately after receiving a Transfer Notice from SLD&RC of a Non-Nuclear Transfer ("Initial Option Exercise Period") or confirmation of a Non-Nuclear Transfer through means other than receipt of a Transfer Notice from SLD&RC ("Alternative Initial Option Exercise Period"), as the case may be, in accordance with the terms of the Settlement Agreement.
3. If the City determines not to exercise the Option to Purchase during the Initial Option Exercise Period or Alternative Initial Option Exercise Period, as the case may be, the City may subsequently exercise this Option to Purchase within 60 days immediately following each annual anniversary of receipt by the City of the Transfer Notice from SLD&RC or of the City's receipt of confirmation of a Non-Nuclear Transfer of SLD Irrigated Property through means other than a Transfer Notice from SLD&RC.
4. This Option to Purchase shall be recorded with the Boulder County Clerk and Recorder.
5. If the City does exercise this Option to Purchase, the then current owner(s) of the SLD Irrigated Property may lease water to the extent such lease is authorized in paragraph 6.B.viii of the Settlement Agreement.

The Parcel is currently known as 150 Green Rock Drive. This Option to Purchase shall run with the land associated with SLD Irrigated Property Parcel No. 348 regardless of any change of



## KNOLLWOOD METROPOLITAN DISTRICT

August 4, 2019

Mayor Suzanne Jones and City Council  
City of Boulder  
1739 Broadway  
Boulder, CO 80306

**Re: Knollwood Metropolitan District – Petition for Boulder City Council to Accept Designation as the Approving Authority of the District**

Dear Mayor Jones and City Council members:

At the annexation election held on July 30, 2019, 87.5% of participating electors voted in favor of annexing property, including all of the property within the boundaries of the Knollwood Metropolitan District ("District"), into the City of Boulder. The City Council will be considering, on second reading, approval of an annexation ordinance at its meeting on September 3, 2019.

The District hereby petitions City Council to accept designation as the approving authority for the District pursuant to § 32-1-204.7, C.R.S., by adopting a resolution following and contingent upon completion of the annexation. This petition was approved by the Board of Directors of the District at a regular Board meeting on July 9, 2019. In support of this petition, the District states:

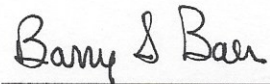
1. The District is a special district and political subdivision of the state of Colorado, operating pursuant to the "Special District Act," §§ 32-1-101, *et seq.*, C.R.S. Before annexation, the District was located in unincorporated Boulder County with the Board of County Commissioners of Boulder County as its approving authority. Following annexation, the District will be wholly contained within the boundaries of the City of Boulder.
2. "If a special district that was originally approved by a board of county commissioners becomes wholly contained within the boundaries of a municipality or municipalities by annexation or boundary adjustment, the governing body of the special district may petition the governing body of any such municipality to accept a designation as the approving authority for the special district." § 32-1-204.7 C.R.S.
3. In Section 6.1 of the Intergovernmental Agreement Regarding Annexation and Transition of Municipal Services dated April 15, 2019, the District agreed to submit a petition designating City Council as the approving authority for the District immediately after a majority of the qualified electors within the District voted to approve Annexation. The District intends for this petition to satisfy that requirement.

Contingent on the completion of the annexation and adoption of a resolution by City Council accepting the designation, all powers and authorities vested in the Board of County Commissioners under the Special District Act will transfer to City Council. Thereafter, City Council will be the approving authority for the District for all purposes under the Special District Act.



August 4, 2019  
Page 2

Sincerely,



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Barry S Baer, Treasurer

Cc: Board of Directors, Knollwood Metropolitan District  
Carolyn R. Steffl, Esq., attorney for the District

## KNOLLWOOD METROPOLITAN DISTRICT

August 4, 2019

Mayor Suzanne Jones and City Council  
City of Boulder  
1739 Broadway  
Boulder, CO 80306

**Re: Knollwood Metropolitan District – Request for Material Modification to Amended Statement of Purposes**

Dear Mayor Jones and City Council members:

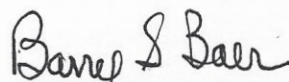
As you know, at the annexation election held on July 30, 2019, a majority of the qualified electors in the Knollwood Metropolitan District ("District") voted in favor of annexing all of the property within the boundaries of the District into the City of Boulder. The City Council of the City of Boulder ("City Council") will consider approval of an ordinance annexing the Knollwood property at the City Council meeting on September 3, 2019. At the same meeting, the City Council will consider a resolution accepting designation as the approving authority for the District pursuant to § 32-1-204.7, C.R.S.

In accordance with the terms of the Intergovernmental Agreement Regarding Annexation and Transition of Municipal Services, dated April 15, 2019 ("IGA"), the District hereby submits a Second Amended Statement of Purposes to the City Council. The District requests that City Council approve the Second Amended Statement of Purposes as a material modification to the District's Amended Statement of Purposes pursuant to § 32-1-207, C.R.S., contingent on completion of the annexation and City Council accepting designation as the approving authority for the District. The proposed modifications would limit the District's powers, consistent with the terms of the IGA.

The Statement of Purposes, Amended Statement of Purposes and Second Amended Statement of Purposes are enclosed.

Please contact me with any questions.

Sincerely,



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Barry S. Baer, Treasurer

Cc: Board of Directors, Knollwood Metropolitan District  
Carolyn R. Steffl, Esq., attorney for the District

Enclosures

**STATEMENT OF PURPOSES  
KNOLLWOOD WATER DISTRICT**

Knollwood Water District (the "*District*") hereby files the following Statement of Purposes with the Board of County Commissioners of the County of Boulder, State of Colorado, pursuant to C.R.S. § 32-1-208:

1. **Purposes for which the District was organized.** The purposes for which the District was organized are 1) to supply water for domestic purposes by any available means, and 2) other purposes determined by the Board Members of the District in accordance with C.R.S. § 32-1-101, *et. seq.*
2. **Services and facilities provided or to be provided by the District.** The services and facilities provided or to be provided by the District are the provision of water for domestic purposes, including but not limited to monitoring and maintaining water quantity and quality.
3. **The areas served or to be served by the District.** The areas served or to be served by the District are those areas within the boundaries of the District or that will be subsequently included within the boundaries of the District, and those areas outside the boundaries of the District that the District chooses to serve by contract.

Respectfully submitted this 7<sup>th</sup> day of April, 2015.

**KNOLLWOOD WATER DISTRICT**

By: Barry S. Baer  
Barry S. Baer, Treasurer



**AMENDED STATEMENT OF PURPOSES  
KNOLLWOOD METROPOLITAN DISTRICT  
(FORMERLY KNOWN AS KNOLLWOOD WATER DISTRICT)**

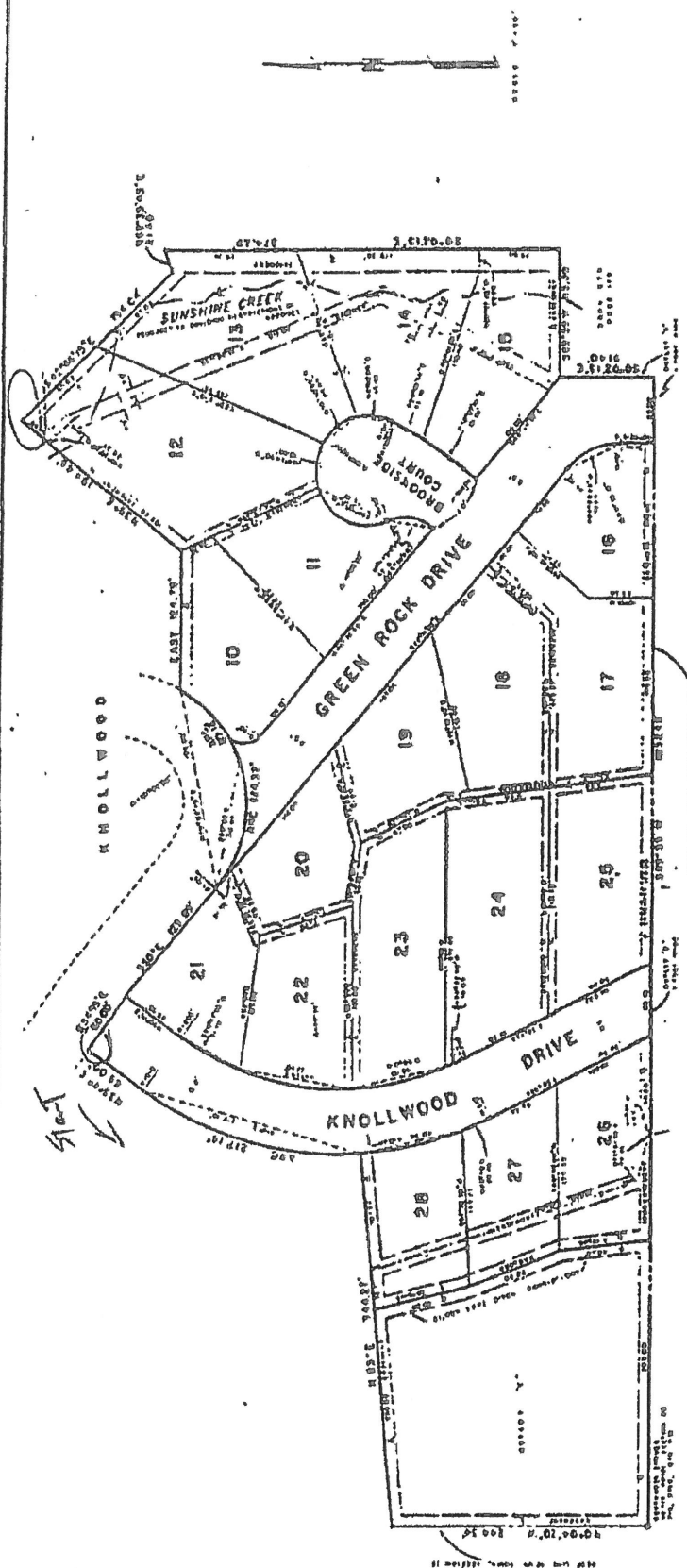
Knollwood Metropolitan District (the "*District*") (formerly known as Knollwood Water District) hereby files the following Amended Statement of Purposes with the Board of County Commissioners of the County of Boulder, State of Colorado, pursuant to C.R.S. § 32-1-208(3), and requests approval contingent on receipt of a court order approving conversion of the District to a metropolitan district at which time this Amended Statement of Purposes would take effect.

1. **Purposes for which the District was organized.** The purposes for which the Knollwood Water District was organized are 1) to supply water for domestic purposes by any available means, and 2) other purposes determined by the Board Members of the District in accordance with C.R.S. § 32-1-101, *et. seq.*
2. **Conversion to Metropolitan District.** Knollwood Water District has submitted a petition for conversion to a metropolitan district to the District Court of Boulder County pursuant to C.R.S. § 32-1-1006(2)(b), which has been referred to a vote of the eligible electors on November 3, 2015. If a majority of the eligible electors vote in favor of conversion and the court issues an order approving conversion of the District to a Metropolitan District, the District shall henceforth be named the Knollwood Metropolitan District, with powers and duties of a metropolitan district under C.R.S. § 32-1-1004.
3. **Services and facilities provided or to be provided by the District.** The services and facilities provided or to be provided by the District are: 1) the provision of water for domestic purposes, including but not limited to monitoring and maintaining water quantity and quality, and following conversion to a metropolitan district, 2) street improvements, through the construction and installation of curbs, gutters, culverts, and other drainage facilities and sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements, provided that the Boulder County Engineer has approved a construction permit or other permit as required by the Boulder County Code, and 3) safety protection through traffic and safety controls and devices on streets and highways and at railroad crossings, provided that the Boulder County Engineer has approved the District's exercise of the safety protection power.
4. **The areas served or to be served by the District.** The areas served or to be served by the District are those areas within the boundaries of the District or that will be subsequently included within the boundaries of the District, with current boundaries shown in the attached Exhibit, and those areas outside the boundaries of the District that the District chooses to serve by contract.

Respectfully submitted this 9<sup>th</sup> day of October, 2015.

**KNOLLWOOD WATER DISTRICT**

By: Barry S. Baer  
Barry S. Baer, Treasurer



**KNOLLWOOD FIRST ADDITION**  
A SUBDIVISION OF A PART OF SECTION 25, T1N, R11W,  
61A PM, BOULDER COUNTY, COLORADO

**DESCRIPTION**  
BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.



*[Signature]*  
Notary Public

WITNESSES my hand and the seal of said office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CLAIMS AND INTERESTS OF OTHERS**

There are no claims or interests of others in the land described in the foregoing instrument.

*[Signature]*  
Notary Public

WITNESSES my hand and the seal of said office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**RECOMMENDATION OF THE BOARD**

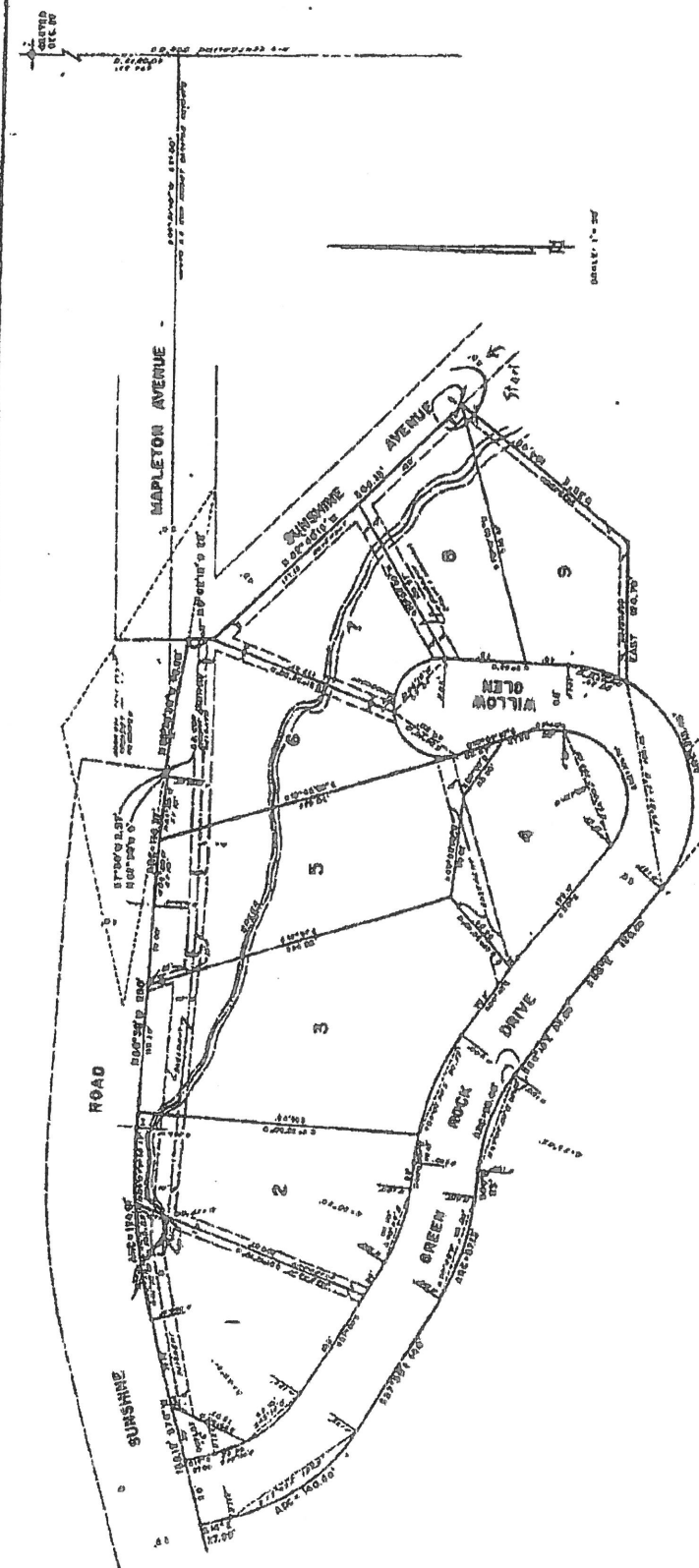
I, the undersigned, being a duly qualified and authorized member of the Board of Commissioners of the City and County of Boulder, Colorado, do hereby recommend the foregoing instrument.

*[Signature]*  
Board of Commissioners

WITNESSES my hand and the seal of said office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*[Signature]*  
Notary Public

RECORDED-PLAN FILE R 2-1-25



KNOLLWOOD

A SUBDIVISION OF A PART OF SECTION 25, T1N, R71W,  
6TH PM, BOULDER COUNTY, COLORADO

## NOTES

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William S. Tealick  
William C. Swine

**71 VESTAL RD TOWNSHIP DEPT OF PUBLIC WORKS**

For the purpose of this study, the following definitions were used:

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THE UNIVERSITY OF CHICAGO PRESS

Recorded - Planfile R 1-3-84

## DISCUSSION

WARR, LTB, a CO. PAKISTAN

PAINTER, C. J. 10/12/23

STATE OF COLORADO)

THE FUNDAMENTAL PRINCIPLES OF THE SCIENCE OF THE SOILS  
OF THE UNITED STATES OF AMERICA  
BY J. H. HARRIS, M. A., F. R. S. E.  
LONDON: J. H. KEMP, 1881.

Copyright © 2004 by The McGraw-Hill Companies, Inc.

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2019-2020 6,400,000

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

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**SECOND AMENDED STATEMENT OF PURPOSES  
KNOLLWOOD METROPOLITAN DISTRICT  
(FORMERLY KNOWN AS KNOLLWOOD WATER DISTRICT)**

Knollwood Metropolitan District (the “District”) (formerly known as the Knollwood Water District) hereby files the following Second Amended Statement of Purposes with the City Council of the City of Boulder, State of Colorado, (the “City”) pursuant to C.R.S. § 32-1-208(3), and requests approval.

**RECITALS**

WHEREAS, the Knollwood Water District was originally organized for the following purposes: 1) to supply water for domestic purposes by any available means, and 2) other purposes determined by the Board Members of the District in accordance with §§ 32-1-101, *et. seq.*, C.R.S.

WHEREAS, the Knollwood Water District converted to a Metropolitan District by order of the District Court of Boulder County dated December 17, 2015 in Case No. 1965CV018489. The Board of County Commissioners of Boulder County approved an Amended Statement of Purposes for the District by Resolution 2015-126 dated December 10, 2015, *nunc pro tunc* December 8, 2015, which added street improvements and safety protection through traffic and safety controls and devices to the types of services and facilities to be provided by the District.

WHEREAS, on September 3, 2019, the City Council of the City passed Ordinance No. 8348, approving annexation of certain property, including all of the property within the boundaries of the District.

WHEREAS, on September 3, 2019, the City Council passed Resolution No. 1261, accepting designation as the approving authority for the District, effective on the effective date of the annexation ordinance.

WHEREAS, the District and the City entered into an Intergovernmental Agreement Regarding Annexation and Transition of Municipal Services dated April 15, 2019 (the “IGA”), pursuant to which the City agreed to construct and the District agreed to finance certain water and street improvements to enable the City to provide water for domestic purposes to the properties within the boundaries of the District. The District further agreed in the IGA to submit this Second Amended Statement of Purposes to the City to delineate the District’s powers and agreed to a dissolution plan.

NOW, THEREFORE, the District files with the City Council the following Second Amended Statement of Purposes and requests approval thereof:

1. **Purposes for which the District is organized.** The purposes for which the Knollwood Metropolitan District is organized are, to the extent consistent with the IGA, 1) to provide water services, 2) to provide street improvements and safety protection through snow plowing, and 3) to enforce recorded covenants for property within the District, including

the Knollwood Subdivision, Knollwood Subdivision First Addition, and Knollwood Subdivision Second Addition.

2. **Services and facilities provided or to be provided by the District.** Subject to the provisions of this Section 2 and Section 3, below, and to the extent consistent with the IGA, the facilities and services to be provided by the District are: 1) the provision of water for domestic purposes, 2) financing and construction of water improvements, 3) payment of water plant investment fees, annexation-related fees and other fees required for connection to the City's water system, 4) financing of and contracting for street improvements, 5) obtaining permits and contracting for snowplowing, and 6) enforcement of recorded covenants for property within the District, including the Knollwood Subdivision, Knollwood Subdivision First Addition, and Knollwood Subdivision Second Addition.

Pursuant to the IGA, the District is limited to exercising the following powers in connection with provision of these services:

- A. Incurring and paying financial obligations, consistent with the IGA.
- B. Assessing a mill levy, fees, and any special assessments necessary to pay operating costs and any debt of the District and cover the costs of the District until the District has fully discharged all financial obligations.
- C. Providing water supply, treatment and delivery services within the District, until connection to the City's water system, and billing for fees, costs and charges associated therewith.
- D. Operating and maintaining the District water system until conveyance to the City or abandonment per the IGA.
- E. Operating and maintaining outlots owned by the District, until conveyance to an HOA or the City.
- F. Abandoning District wells and property and/or conveying real and personal property to the HOA or the City.
- G. Contracting for construction or installation of water system and street improvements, which are related to or necessary for: a) water service by the District until connection to the City, b) properties within the District to receive water service from the City; c) completion of annexation; or d) fulfillment of District duties under the IGA.
- H. Acquisition of easements or other property interests needed for the District public improvements, set forth in Section G above, provided that the City's prior approval is required before the District exercises its power of eminent domain.
- I. Snow removal on streets within the District.
- J. Complying with and enforcing terms of the IGA and agreements with water users.

- K. Enforcement of covenants on property within the boundaries of the District not inconsistent with City regulations and requirements as contained in the Declarations of Covenants, Conditions and Restrictions, recorded in the real property records of the County Clerk and Recorder of Boulder County on July 23, 1965 for the Knollwood Subdivision at reception number 789376, on November 4, 1966 for the Knollwood Subdivision First Addition at reception number 831673, and on October 15, 1969 for the Knollwood Subdivision Second Addition at reception number 893916, as amended, if permitted by the covenants.
  - L. Cooperation and assistance to homeowners regarding organization of an HOA and amendment of covenants.
  - M. Performing obligations of the District required by Colorado law, including budgeting and auditing, required elections, and obligations to accountants, auditors and attorneys.
  - N. All powers set forth in paragraph 3 below.
  - O. Any additional necessary powers or implied authority required to provide water service and satisfy the terms of the IGA.
  - P. Other powers approved by the City in advance in writing.
3. **Future Dissolution and Limitation of Powers.** Upon the later of: a) October 3, 2024 (five years after the effective date of the Annexation Ordinance); or b) two years after the City's final acceptance of the water system and street improvements necessary to provide water service to the properties within the District (the District Public Improvements), the District may only exercise the following powers necessary to adequately provide for the payment of all remaining financial obligations or outstanding debt of the District at such time (the "Outstanding Debt") or powers expressly approved by the City in writing in advance:
- A. If an Order of Dissolution of the District has been entered by the District Court of Boulder County, all powers listed in the Order of Dissolution; or
  - B. If no Order of Dissolution has been entered, the District's Powers will be limited to the following powers:
    - 1. Keeping and maintaining records and books of account in accordance with generally recognized principles of accounting.
    - 2. Preparing an annual budget and appropriating funds.
    - 3. Preparing or contracting for the preparation of an annual audit, if required by law or contract.
    - 4. Opening, managing, and maintaining the necessary bank accounts to comply with the terms of any Outstanding Debt, including, but not limited to, holding reserve funds.

5. Adjusting and certifying a mill levy to the Board of County Commissioners of Boulder County in an amount sufficient to pay the total interest and principal payments and any fees due in the following year for all Outstanding Debt.
  6. Collecting the mill levy from the Board of County Commissioners and appropriating funds to cover principal, interest and fee payments for the Outstanding Debt due each year.
  7. Enforcing collection of any taxes certified and assessed by the District, at the time and in the form and manner as other general taxes, and with like interest and penalties.
  8. Prepaying, in whole or in part, the Outstanding Debt.
  9. Maintaining proper insurance.
  10. Complying with all terms and conditions, covenants, or reporting requirements contained in any loan agreements, bond resolutions or other agreements for the Outstanding Debt.
  11. Any additional necessary powers or implied authority required to ensure full payment, satisfaction, and discharge of the Outstanding Debt.
  12. Ensuring that any outstanding balances or excess District funds not required for payment of the Outstanding Debt are applied to reduce the rates, tolls, fees, and charges fixed by the City for providing water service, street improvements, and traffic and safety controls consistent with § 32-1-708(1), C.R.S.
4. **The areas served or to be served by the District.** The areas served or to be served by the District are those areas within the boundaries of the District or that will be subsequently included within the boundaries of the District, with current boundaries shown in the attached Exhibit.

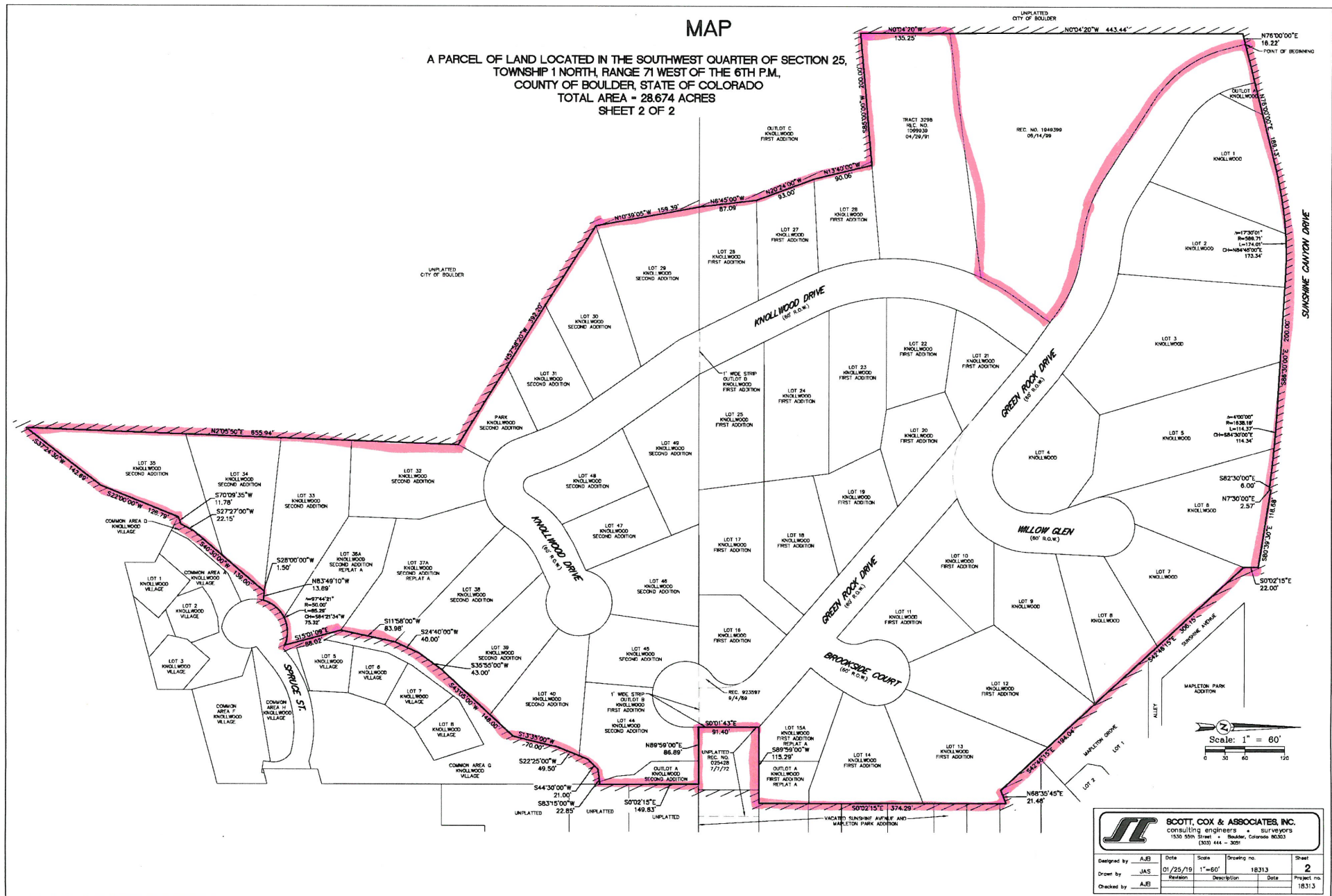
Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2019.

**KNOLLWOOD WATER DISTRICT**

By: \_\_\_\_\_  
Alan Teran, President



Exhibit – District Boundary Map



**SECOND AMENDED STATEMENT OF PURPOSES  
KNOLLWOOD METROPOLITAN DISTRICT  
(FORMERLY KNOWN AS KNOLLWOOD WATER DISTRICT)**

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WHEREAS, the District and the City entered into an Intergovernmental Agreement Regarding Annexation and Transition of Municipal Services dated April 15, 2019 (the "IGA"), pursuant to which the City agreed to construct and the District agreed to finance certain water and street improvements to enable the City to provide water for domestic purposes to the properties within the boundaries of the District. The District further agreed in the IGA to submit this Second Amended Statement of Purposes to the City to delineate the District's powers and agreed to a dissolution plan.

NOW, THEREFORE, the District files with the City Council the following Second Amended Statement of Purposes and requests approval thereof:

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- B. Assessing a mill levy, fees, and any special assessments necessary to pay operating costs and any debt of the District and cover the costs of the District until the District has fully discharged all financial obligations.
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- D. Operating and maintaining the District water system until conveyance to the City or abandonment per the IGA.
- E. Operating and maintaining outlots owned by the District, until conveyance to an HOA or the City.
- F. Abandoning District wells and property and/or conveying real and personal property to the HOA or the City.
- G. Contracting for construction or installation of water system and street improvements, which are related to or necessary for: a) water service by the District until connection to the City, b) properties within the District to receive water service from the City; c) completion of annexation; or d) fulfillment of District duties under the IGA.
- H. Acquisition of easements or other property interests needed for the District public improvements, set forth in Section G above, provided that the City's prior approval is required before the District exercises its power of eminent domain.
- I. Snow removal on streets within the District.
- J. Complying with and enforcing terms of the IGA and agreements with water users.

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- K. Enforcement of covenants on property within the boundaries of the District not inconsistent with City regulations and requirements as contained in the Declarations of Covenants, Conditions and Restrictions, recorded in the real property records of the County Clerk and Recorder of Boulder County on July 23, 1965 for the Knollwood Subdivision at reception number 789376, on November 4, 1966 for the Knollwood Subdivision First Addition at reception number 831673, and on October 15, 1969 for the Knollwood Subdivision Second Addition at reception number 893916, as amended, if permitted by the covenants.
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- M. Performing obligations of the District required by Colorado law, including budgeting and auditing, required elections, and obligations to accountants, auditors and attorneys.
- N. All powers set forth in paragraph 3 below.
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- P. Other powers approved by the City in advance in writing.
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    - 2. Preparing an annual budget and appropriating funds.
    - 3. Preparing or contracting for the preparation of an annual audit, if required by law or contract.
    - 4. Opening, managing, and maintaining the necessary bank accounts to comply with the terms of any Outstanding Debt, including, but not limited to, holding reserve funds.

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5. Adjusting and certifying a mill levy to the Board of County Commissioners of Boulder County in an amount sufficient to pay the total interest and principal payments and any fees due in the following year for all Outstanding Debt.
  6. Collecting the mill levy from the Board of County Commissioners and appropriating funds to cover principal, interest and fee payments for the Outstanding Debt due each year.
  7. Enforcing collection of any taxes certified and assessed by the District, at the time and in the form and manner as other general taxes, and with like interest and penalties.
  8. Prepaying, in whole or in part, the Outstanding Debt.
  9. Maintaining proper insurance.
  10. Complying with all terms and conditions, covenants, or reporting requirements contained in any loan agreements, bond resolutions or other agreements for the Outstanding Debt.
  11. Any additional necessary powers or implied authority required to ensure full payment, satisfaction, and discharge of the Outstanding Debt.
  12. Ensuring that any outstanding balances or excess District funds not required for payment of the Outstanding Debt are applied to reduce the rates, tolls, fees, and charges fixed by the City for providing water service, street improvements, and traffic and safety controls consistent with § 32-1-708(1), C.R.S.
4. **The areas served or to be served by the District.** The areas served or to be served by the District are those areas within the boundaries of the District or that will be subsequently included within the boundaries of the District, with current boundaries shown in the attached Exhibit.

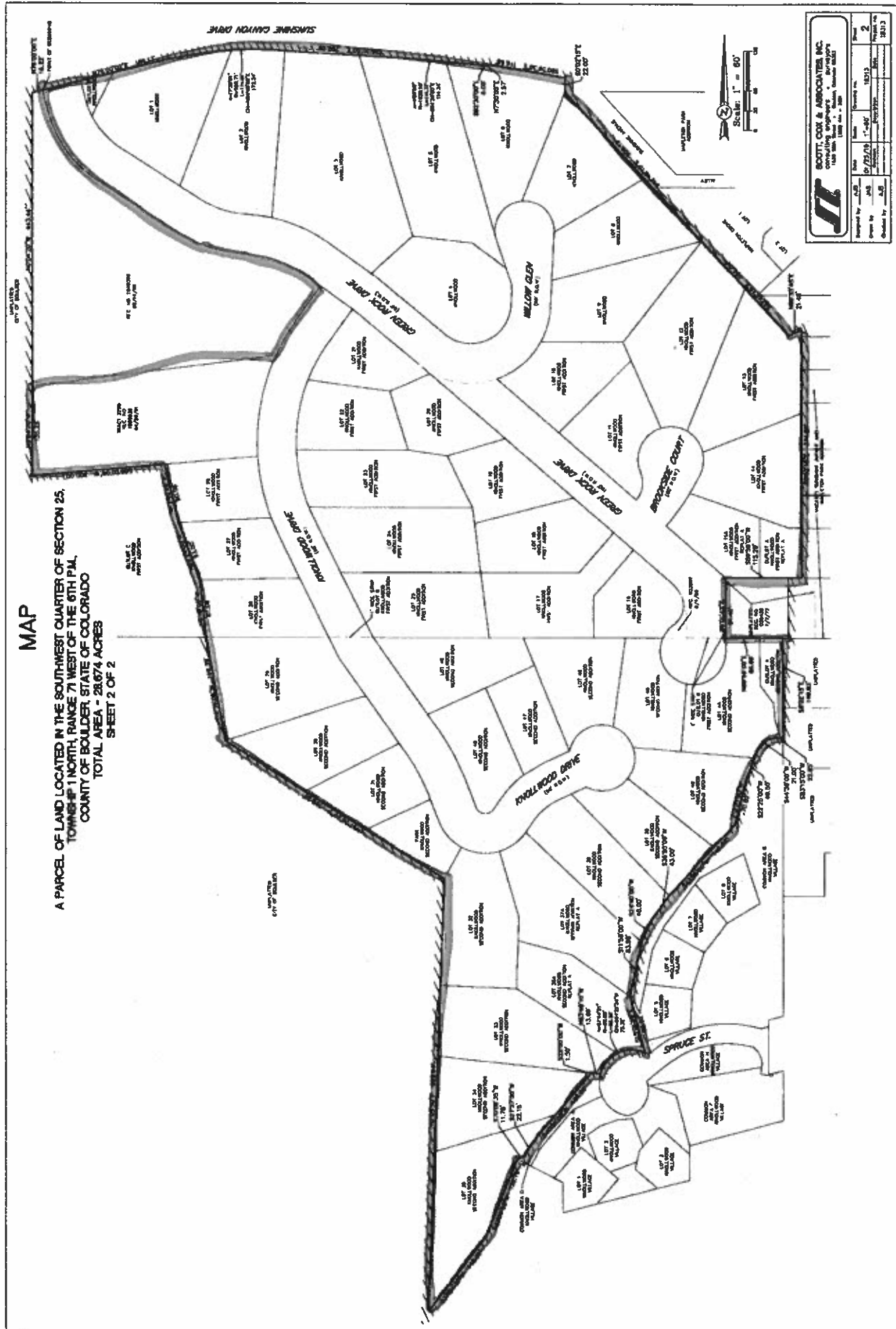
Respectfully submitted this 5th day of August, 2019.

**KNOLLWOOD WATER DISTRICT**

By: Barry S. Baer  
Barry S. Baer, Treasurer

00133829-9







## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Consideration of a motion authorizing the city manager to enter into a settlement agreement in the claim filed against the city by Luis Chavez

### **PRIMARY STAFF CONTACT**

Luis Toro, 303-441-3093

### **REQUESTED ACTION OR MOTION LANGUAGE**

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3K- Chavez Settlement**





**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE:** Consideration of a motion authorizing the city manager to enter into a settlement agreement in the property damage claim brought against the city by Luis Chavez

**PRESENTERS**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
Luis Toro, Senior Assistant City Attorney  
James Brown, Risk Manager

**EXECUTIVE SUMMARY**

This matter arises out of a claim filed against the city by Luis Chavez.

If City Council approves, the parties have agreed to settle the property damage claim for a proposed payment of the actual current value of the vehicle, \$27,979.17, minus an agreed-upon salvage value of \$2,241.80, for a total settlement payment of \$25,737.37 to the claimant. The city manager and city attorney recommend approval of the settlement.

Because the amount of the proposed settlement exceeds \$10,000, City Council approval of the proposed settlement is necessary pursuant to section 2-2-14(c) B.R.C., 1981.

**STAFF RECOMMENDATION**

**Suggested Motion Language:**

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

Motion to authorize the city manager to enter into an agreement to settle property damage claims filed by Luis Chavez from the city in the amount of \$25,737.37.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic: Not applicable.
- Environmental: Not applicable.
- Social: The resolution of disputes is generally of social benefit and the resolution of this dispute will free up city attorney time to work on other projects.

## **OTHER IMPACTS**

- Fiscal-Budgetary: Payment for the proposed settlement will be made from the city's Property and Casualty Fund which was established and funded for the purpose of paying claims and settling cases. This settlement is within the city's anticipated loss planning parameters.
- Staff Time: The city attorney's office represents the city in this matter.

## **BOARD AND COMMISSION FEEDBACK**

None

## **PUBLIC FEEDBACK**

None

## **BACKGROUND**

In his claim, Luis Chavez seeks compensation for property damage arising out of a car accident involving a city transportation dump truck.

The settlement is in the amount of \$25,737.37.

## **ANALYSIS**

It is not possible to predict the outcome of a trial. Given the projected costs of litigation, the city attorney believes that it is unlikely that the city will be in a significantly better economic position by litigating the case as compared to accepting the settlement offer. The city manager supports the proposed settlement.

## **OPTIONS:**

Council has the option of approving or rejecting the proposed settlement. If the settlement is rejected, the matter will continue to trial.



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Second reading and consideration of a motion to adopt Ordinance 8343 designating the c.1900 building and a portion of the property at 940 North Street as an individual landmark under the city's Historic Preservation Ordinance

### **PRIMARY STAFF CONTACT**

Marcy Cameron, Historic Preservation, Planner II

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to adopt Ordinance 8343 designating the building and a portion of the property at 940 North Street, to be known as the Hagerman House, as an individual landmark under the City of Boulder Historic Preservation Ordinance

### **BRIEF HISTORY OF ITEM**

Landmark designation, potentially over the owner's objection. Demolition application submitted in August 2018; stay of demolition to explore alternatives to demolition placed on the application in December 2018; Landmarks Board voted to initiate designation on April 3 and voted to recommend designation to the City Council on June 5

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 5A - Second Reading 940 North Street Landmark Designation**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE**

Second reading and consideration of a motion to adopt Ordinance 8343 designating the 1899-1907 house and the property beneath it at 940 North Street as an individual landmark under the city's Historic Preservation Ordinance.

Owner: Daryl Carpenter

Applicant: City of Boulder Landmarks Board

**PRESENTERS**

Jane S. Brautigam, City Manager

Chris Meschuk, Assistant City Manager and Interim Director of Planning

Lucas Markley, Assistant City Attorney II

Jim Robertson, Comprehensive Planning Manager

James Hewat, Senior Historic Preservation Planner

Marcy Cameron, Historic Preservation Planner II

**EXECUTIVE SUMMARY**

The City Council is requested to determine whether the proposed individual landmark designation of the 1899-1907 portion of the building at 940 North St. and the property beneath it ("Hagerman House") meets the purposes and standards of the Historic Preservation Ordinance (*Sections 9-11-1 and 9-11-2, B.R.C. 1981*). This includes that Landmark Designation:

1. Will promote the public health, safety, and welfare by protecting, enhancing, and perpetuating buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past.

2. Will develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage.
3. Will draw a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them.

The property owner is opposed to the landmark designation. A demolition application was submitted in October 2018 and referred to the Landmarks Board. On Dec. 5, 2018, the board voted (3-1, **B. Jellick** opposed, **F. Sheets** absent) to place a stay of demolition finding that there was "probable cause" to consider the property was eligible for landmark designation and to explore alternatives to demolition. Representatives of the Landmarks Board and Historic Preservation staff met with the owner's representative during that period, but no alternatives were found that were suitable to the owner. On April 3, 2019, the Landmarks Board voted (4-1, **R. Pelusio** opposed) to initiate landmark designation over the owner's objection and on June 5, 2019 the Landmarks Board voted (3-1, **R. Pelusio** opposed, **J. Decker** absent) to recommend designation to the City Council. Staff recommended denial of the designation over the owner's objection, finding the while the building may meet the criteria for eligibility as an individual landmark (9-11-1(a)), in this case it does not meet the legislative intent (9-11-1(b)) in that it does not draw a reasonable balance between private property rights and the public interest.

If approved, this ordinance (see **Attachment A**) would result in the designation of the 1899-1907 Hagerman House and the property beneath it as an individual landmark. The findings are included in the ordinances. The second reading for this designation will be a quasi-judicial public hearing.



*Figure 1. 940 North St. Tax Assessor Photograph, c.1929 (left) and Current View of North Elevation, 2019 (right).*

## STAFF RECOMMENDATION

### **Suggested Motion Language:**

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

Motion to adopt Ordinance 8343 designating the building and a portion of the property at 940 North Street, to be known as the Hagerman House, as an individual landmark under the City of Boulder Historic Preservation Ordinance.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** - Owners of locally designated landmarked properties are eligible for state tax credits for approved rehabilitations and repairs, and studies have found that historic preservation adds to economic vitality and tourism. Exterior changes to individually landmarked buildings require a Landmark Alteration Certificate, issued by the Planning Department at no charge. The additional review process for landmarked buildings may, however, add time and design expense to a project.
- **Environmental** - The preservation of historic buildings is inherently sustainable. Owners of individually landmarked buildings are encouraged to reuse and repair as much of the original building as possible when making exterior alterations, thereby reducing the amount of building material waste deposited in landfills. City staff assists architects, contractors and homeowners with design and material selections and sources that are environmentally friendly. Also, the Historic Preservation website provides information on improving the energy efficiency of older buildings.
- **Social** - The Historic Preservation Ordinance was adopted to “...enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city’s living heritage.” Section 9-11-1 (a), B.R.C., 1981. The primary beneficiaries of historic designation are the property owners of a historic landmark and adjacent neighbors, who are ensured that the character of the immediate area will be protected through the design review process. The greater community also benefits from the preservation of the community’s character and history.

## OTHER IMPACTS

- **Fiscal** - The designation of individual historic landmarks is an anticipated and ongoing function of the Historic Preservation Program.
- **Staff time** - This designation application is within the staff work plan.

## LANDMARKS BOARD ACTIONS & FEEDBACK

On Dec. 5, 2018, the Landmarks Board voted (3-1, **B. Jellick** opposed, **F. Sheets** absent) to place a stay of demolition on the building for a period of up to 180 days in order to explore alternatives to demolition, finding that there was “probable cause” to consider the property may be eligible for landmark designation.

- **W. Jellick** opposed placing a stay of demolition on the application, stating that while the building may be eligible for landmark designation, he did not consider imposition of a stay-of-demolition would be productive use of time as the applicants have indicated that alternatives have already been explored and consider demolition to be the only feasible option.

At the Initiation Hearing for Individual Landmarks for 940 North Street held on April 3, 2019, the Landmarks Board voted (4-1, **R. Pelusio** opposed) to initiate landmark designation on the original portion (excluding the 1970s addition) of the house.

- **R. Pelusio** opposed the initiation, stating that in its current state, the building does not meet the criteria for landmark and the area is unlikely to be designated as a historic district in the future due to the lack of historic integrity.

At the June 5, 2019 Landmark Designation hearing, the Landmarks Board voted (3-1, **R. Pelusio** opposed, **J. Decker** absent) to recommend that the City Council designate the original portion of the building as an individual landmark.

- **R. Pelusio** stated his opposition to the designation was based upon his consideration that the location of the non-historic (1970s) addition on the front of the house obstructs the view and historic character of the building, that it is not in or near a potential historic district, and that in this case landmarking the property is not a reasonable balance of private property rights and the public good.

## PUBLIC FEEDBACK

At the Dec. 5, 2018 Demolition Hearing, one member of the public (a current resident of the property) stated the house was in poor condition and in need of rehabilitation. She spoke in support of a future use of the property for affordable housing.

At the April 3, 2018 Landmark Initiation Hearing, three members of the public spoke in support of the designation and one member (who owns the property to east), spoke in opposition of the designation and in support of the demolition application.

At the June 5, 2018 Landmark Designation Hearing, five members of the public spoke in support of the designation. The owner’s representative read a letter from the owner, who opposes the landmark designation and was unable to travel due to health reasons (see **Attachment D: Letter from Owner**).

During the stay of demolition, a member of the public solicited a bid to relocate the building and on May 31, 2019, submitted additional information on the history of the property (See **Attachment E: Public Comment**).

## **ANALYSIS**

### **Code Criteria for Review**

Section 9-11-6(b) *Council Ordinance Designating Landmark or Historic District*, of the historic preservation ordinance specifies that in its review of an application for local landmark designation, the council must consider “whether the designation meets the purposes and standards in Subsections 9-11-1(a) and Section 9-11-2, *City Council May Designate Landmarks and Historic Districts*, B.R.C. 1981, in balance with the goals and policies of the Boulder Valley Comprehensive Plan.” The City Council shall approve by ordinance, modify and approve by ordinance, or disapprove the proposed designation.

**9-11-1, *Legislative Intent*, B.R.C. 1981** states:

- (a) The purpose of this chapter is to promote the public health, safety, and welfare by protecting, enhancing, and perpetuating buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past. It is also the purpose of this chapter to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city’s living heritage.
- (b) The City Council does not intend by this chapter to preserve every old building in the city but instead to draw a reasonable balance between private property rights and the public interest in preserving the city’s cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them.
- (c) The City Council intends that in reviewing applications for alterations to and new construction on landmarks or structures in a historic district, the Landmarks Board shall follow relevant city policies, including, without limitation, energy-efficient design, access for the disabled, and creative approaches to renovation.

**9-11-2, *City Council may Designate Landmarks and Historic Districts*, B.R.C. 1981** states:

- (a) Pursuant to the procedures in this chapter the City Council may by ordinance:
  - (1) Designate as a landmark an individual building or other feature or an integrated group of structures or features on a single lot or site having a special character and historical, architectural, or aesthetic interest or value and designate a landmark site for each landmark;



- (2) Designate as a historic district a contiguous area containing a number of sites, buildings, structures or features having a special character and historical, architectural, or aesthetic interest or value and constituting a distinct section of the city;
- (3) Designate as a discontinuous historic district a collection of sites, buildings, structures, or features which are contained in two or more geographically separate areas, having a special character and historical, architectural, or aesthetic interest or value that are united together by historical, architectural, or aesthetic characteristics; and
- (4) Amend designations to add features or property to or from the site or district.

Upon designation, the property included in any such designation is subject to all the requirements of this code and other ordinances of the city.

### **Summary of Significance**

To assist in the interpretation of the historic preservation ordinance, the Landmarks Board adopted an administrative regulation in 1975 establishing Significance Criteria for Individual Landmarks (See **Attachment B**).

### **ANALYSIS:**

***A. Does the proposed application protect, enhance, and perpetuate buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past (9-11-1(a))?***

The Landmarks Board finds that the proposed designation will protect, enhance, and perpetuate the building and site that is reminiscent of past eras, events, and persons important in local history. The board also finds that the house is a significant example of an architectural style of the past that should be preserved. The board considers that the property meets the historic and architectural criteria for individual landmarks as outlined below, which was adopted to assist in the interpretation of this section of the ordinance:

### **Historic Significance**

**Summary:** The Landmarks Board considers the house at 940 North St. has historic significance under criteria 1, 2, 3 and 4.

- 1. Date of Construction:** 1899-1907.
- 2. Association with Historical Persons or Events:** Hagerman Family; The property is associated with Garret and Etta Hagerman, whose family resided here between 1918 and 1972. Garrett Hagerman was a miner. Etta Hagerman was part of the Walker family, early pioneers of Jamestown. The Landmarks Board considers the property to have associative significance in the social heritage of the community.
- 3. Distinction in the Development of the Community:** Urban Residential Neighborhoods, 1858-Present; The house was constructed the decade after the Neikirk-Stewart Addition was platted and represents the area's earliest period of

growth and development. The Landmarks Board finds the property to be significant for its association with this period of growth in Boulder.

4. **Recognition by Authorities:** Front Range Research Associates, Inc.; The property was surveyed in 1995 and found to be in fair condition with major alterations (“big apartment building in front and side of house; porch gone”) and found the building did not have architectural or historic significance, stating “Alterations to this house have diminished its historic integrity.” While the Landmarks Board acknowledges the negative visual impact of the 1970s addition, it considers the construction may be easily removed to reveal intact historic façade of the house.

### **Architectural Significance**

**Summary:** The Landmarks Board considers the house at 940 North St. has architectural significance under criteria 1 and 5.

1. **Recognized Period/Style:** Vernacular Frame; The Landmark Board considers the original house to be an example Vernacular Cottage construction with simple classically inspired design, including its pyramidal hipped roof with projecting gable, pediment and dentil detailing, and double-hung windows. With the exception of the 1970s construction at the front and side of the house the Board finds the building to be largely intact to its original construction.
5. **Indigenous Qualities:** The building rests on a stone foundation.

*B. Does the proposed application develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the City’s living heritage (9-11-1(b))?*

The Landmarks Board finds that the proposed landmark designation of the house would maintain an appropriate setting and environment, enhance property values, promote tourist trade and interest, and foster knowledge of the City’s living heritage.

### **Environmental Significance**

**Summary:** The Landmarks Board considers that the property does not meet any of the environmental criteria for individual landmarks (site characteristics, compatibility with site, geographic importance, environmental appropriateness and area integrity).

- C. Does the proposed application draw a reasonable balance between private property rights and the public interest in preserving the City’s cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them (9-11-2)?*

The purpose of the historic preservation ordinance, and one of the findings that the City Council is required to make when considering Landmark Designation, is whether the

designation “promotes the public health, safety, and welfare by protecting, enhancing, and perpetuating buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past.” The ordinance goes on to state that the “City Council does not intend by this chapter to preserve every old building in the city, but instead to draw a reasonable balance between private property rights and the public interest in preserving the city’s cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them.”

In its recommendation of this application to the City Council, the Landmarks Board finds that the proposed designation draws a reasonable balance between private property rights and the public interest in preserving the City’s cultural, historic, and architectural heritage. While the Landmarks Board acknowledges that the 1973 construction obscures the view of the historic house from the public right of way, it considers that the historic façade of the house behind is intact and could be easily removed in the future without damaging historic fabric.

#### **Staff’s Recommendation**

Staff’s June 5, 2019 recommendation to not designate the property was based upon its consideration that while it may meet the criteria for designation as an individual landmark in (9-11-1(a) of the Boulder Revised Code), the 1973 construction obscuring most of the historic façade negatively impacts the historic integrity of the historic building. For this reason, staff recommended that the Board not move forward with Landmark Designation in that doing so would not draw a reasonable balance between private property rights and the public’s interest as the historic significance of the building was diminished with the construction of the 1973 addition. For further analysis of the staff recommendation to the Landmarks Board, see **Attachment C: Landmarks Board Memorandum dated June 3, 2019.**

#### **Alternatives**

**Modify the Application:** If the City Council finds that the proposal to landmark the original portion of the building and the land beneath it would not meet the criteria for landmark designation, it may modify the landmark boundary.

**Deny the Application:** If the City Council finds the application does not meet the criteria for landmark designation, it would vote to deny the application. The historic preservation demolition application, submitted in October 2018, would issue. The approval is valid for 180 days and cannot be extended. If the demolition permit application is not finalized within that time frame, a new demolition application is required.

**ATTACHMENTS**

Attachment A – Ordinance 8343

Attachment B - June 5, 2019 Landmarks Board Memo

Attachment C - Significance Criteria for Individual Landmarks (1975)

Attachment D - Letter from Owner Dated June 4, 2019

Attachment E - Public Comment

## ORDINANCE 8343

AN ORDINANCE DESIGNATING THE BUILDING AND A PORTION OF THE PROPERTY AT 940 NORTH ST., CITY OF BOULDER, COLORADO, ALSO KNOWN AS THE HAGERMAN HOUSE, A LANDMARK UNDER CHAPTER 9-11, "HISTORIC PRESERVATION" B.R.C. 1981, AND SETTING FORTH DETAILS IN RELATION THERETO.

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

Section 1. The City Council enacts this ordinance pursuant to its authority under Chapter 9-11, "Historic Preservation," B.R.C. 1981, to designate as a landmark a property having a special character or special historic, architectural, or aesthetic interest or value.

Section 2. The City Council finds that: 1) on or about April 3, 2019, the Landmarks Board initiated designation as a landmark the portion of the building at 940 North St. built between 1899 and 1907, as shown in Exhibit A ("Hagerman House"); 2) the Landmarks Board held a public hearing on the proposed designation on June 5, 2019; and 3) on June 5, 2019, the Landmarks Board recommended that the City Council approve the proposed designation.

Section 3. The City Council also finds that upon public notice required by law, the council held a public hearing on the proposed designation on August 20, 2019 and upon the basis of the presentations at that hearing finds that the Hagerman House, possesses a special character and special historic, architectural, or aesthetic interest or value warranting its designation as a landmark.

Section 4. The characteristics of the subject property that justify its designation as a landmark are: 1) its historic significance relevant to the construction of the Hagerman House between 1899 and 1907; for its association with the Hagerman family, who owned the property from 1918 to

1972; and as a representative of the area's earliest period of residential development; and 2) its architectural significance as a well-preserved example of vernacular frame construction and for its classical detailing and stone foundation. The 1973 construction to the north and south of the 1899-1907 house is not considered to be historically, architecturally, or environmentally significant and is not included in the landmark boundary.

Section 5. The City Council further finds that the foregoing landmark designation is necessary to promote the public health, safety, and welfare of the residents of the city.

Section 6. There is hereby created as a landmark the Hagerman House and property beneath it, located at 940 North St., which address is also known as:

**LEGAL DESCRIPTION**

LOTS 4 AND 5, BLOCK 4, NEIKIRK STEWART ADDITION, COUNTY OF  
BOULDER, STATE OF COLORADO

The 1899-1907 Hagerman House and property beneath it to be designated as a landmark are identified on the proposed landmark boundary map, attached hereto as Exhibit A, as "PORTION TO BE DESIGNATED AS AN INDIVIDUAL LANDMARK."

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

Section 8. The City Council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the City Clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE  
ONLY THIS 6<sup>TH</sup> DAY OF AUGUST, 2019.

---

Mayor

1 Attest:

2  
3 \_\_\_\_\_  
4 City Clerk

5 READ ON SECOND READING, PASSED, ADOPTED, AND ORDERED PUBLISHED BY  
6 TITLE ONLY THIS 20<sup>th</sup> DAY OF AUGUST 2019.

7  
8 \_\_\_\_\_  
Mayor

9 Attest:

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11 \_\_\_\_\_  
12 City Clerk  
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## **Exhibit A – Landmark Boundary Map for 940 North Street**

### **LEGAL DESCRIPTION**

LOTS 4 AND 5, BLOCK 4, NEIKIRK STEWART ADDITION, COUNTY OF BOULDER, STATE OF COLORADO

Portion of the building and the property beneath it show in shaded area with dashed outline, labeled “940 North St. portion to be designated as an individual landmark.”



940 North St., View Facing Southeast, May 2019.





# City of Boulder Planning

## MEMORANDUM TO THE LANDMARKS BOARD

June 5, 2019

### Staff

---

Jim Robertson, Comprehensive Planning Manager  
Lucas Markley, Assistant City Attorney  
James Hewat, Senior Historic Preservation Planner  
Marcy Cameron, Historic Preservation Planner II  
Holly Opansky, Administrative Specialist III  
Caleb Gasparek, Historic Preservation Intern

### Landmark Designation

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Public hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, and consideration of the proposed designation of the c.1900 building and a portion of the site at 940 North St. as an individual local historic landmark per Section 9-11-5 of the Boulder Revised Code 1981.

|               |                                 |
|---------------|---------------------------------|
| Address:      | 940 North St.                   |
| Owner:        | Daryl Carpenter                 |
| Owner's Rep.: | Brady Burke                     |
| Applicant:    | City of Boulder Landmarks Board |
| Case Number:  |                                 |
| Case Type:    | Landmark Designation            |
| Code Section: | 9-11-5, B.R.C., 1981            |

### Site Information

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|                       |  |
|-----------------------|--|
| Date of Construction: | c. 1899-1907; addition constructed in 1973 |
| Zoning:               | RH-5 (Residential High - 5)                |
| Lot Size:             | 10,181 sq. ft. (approx.)                   |
| Building Size:        | 4,250 sq. ft. (County Assessor estimate)   |

### Staff Recommendation

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Recommend denial of the landmark designation application to the City Council.

### Recommended Motion

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*The Landmarks Board recommends to the City Council that it disapprove the application to designate the property at 940 North St. as a local historic landmark, finding that while the proposal may meet the criteria in 9-11-1(a), it does not meet the legislative intent of 9-11-1(b) in that it does not draw a reasonable balance between private property rights*

*and the public interest, and adopts this staff memorandum, including the following as the findings of the board:*

### Findings

---

The Landmarks Board finds, based upon the application and evidence presented, that the proposed designation application is inconsistent with the purposes and standards of the Historic Preservation Ordinance, in that:

1. The proposed designation will not protect, enhance, and perpetuate a building reminiscent of a past era and important in local and state history and provide a significant example of architecture from the past.
2. The proposed designation will not maintain an appropriate setting and environment and will enhance property values, stabilize the neighborhood, promote tourist trade and interest, and foster knowledge of the city's living heritage.
3. The proposed designation does not draw a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings important to that heritage will be carefully weighed with other alternatives.

### Alternative Motion Language

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If the board wishes to recommend landmark designation to the City Council, staff recommends the following motion language:

*The Landmarks Board approves the proposal and recommends that the City Council designate the 1899-1907 building at 940 North St., shown in Figure 9, as a local historic landmark, to be known as the **Hagerman House**, finding that it meets the standards for individual landmark designation in Sections 9-11-1 and 9-11-2, B.R.C. 1981, and adopt the staff memorandum dated June 5, 2019, as the findings of the board.*

### Summary

---

- Pursuant to Section 9-11-5(C) of the Boulder Revised Code, the Landmarks Board is required to determine whether the designation of the property at 940 North St. conforms with the purposes and standards of Sections 9-11-1, *Purpose and Legislative Intent*, and 9-11-2, *City Council May Designate Landmarks and Historic Districts*, B.R.C. 1981.
- On Sept. 12, 2018, the applicants submitted a demolition permit application to demolish the house and garage at 940 North St.
- On Sept. 19, 2018, the Landmarks design review committee (Ldrc) referred the application to the Landmarks Board for a public hearing, finding there was "probable cause to believe that the property may be eligible for designation as an individual landmark."
- On Dec. 5, 2018, the Landmarks Board imposed a stay-of-demolition for a period of up to 180 days in order to seek alternatives to the demolition of the house.

- During the stay-of-demolition, staff and representatives of the Landmarks Board have met on-site with the applicant to discuss alternatives. The applicant has indicated he and the owner do not consider the buildings historically or architecturally significant and are not interested in preserving the buildings.
- On April 3, 2019, the Landmarks Board passed a resolution to initiate landmark designation for the original portion of the c.1900 building located at 940 North St. pursuant to Section 9-11-3, *Initiation of Designation for Individual Landmarks and Historic Districts*, B.R.C. 1981, finding that it met the criteria for individual landmark designation.
- At the Dec. 5, 2018, hearing, one person spoke in support of redevelopment of the site to include low-income housing. At the April 3 hearing, the neighbor to the east (942 North St.) spoke in support of the demolition application; three members from the public spoke in support of preservation of the house.  
The property is not located in an identified potential historic district and does not possesses environmental significance. The 1973 addition at the front of the building has compromised the historic character of the property and staff considers there is not associative significance with past residents or events. For these reasons, staff recommends the board not recommend landmark designation and that the demolition permit be issued.

### Property Description

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Approximately 10,181 sq. ft. in size, the lot is located on the south side of North Street, between 9<sup>th</sup> and 10<sup>th</sup> streets in the Neikirk-Stewart addition to the city, which was platted in 1898. The original house is located on the northeast side of the property, with the adjacent 1973 multi-family buildings constructed immediately to the west and south. An alley runs along the west and south edges of the property, though due to the existing grade, it does not support vehicular access from the south. The area is comprised of an eclectic mix of historic and newer buildings of both residential and commercial use. The Mapleton Historic District is located one-half block southwest of the property, and the identified potential Expanded Mapleton Hill historic district is located south of the subject property, west of 9<sup>th</sup> Street and south of Portland Place (see *Figure 1*).



Figure 1. Location Map, 940 North St.



Figure 2. 940 North St., c. 1949 (left) and 2018 (right).

### Original House

The small one-story house was constructed between 1899 and 1907. An assessor card for the property indicates 1899 as the date of construction, while deed and directory research indicates it was built around 1907. An example of vernacular frame construction, the house features a hipped-roof and front gable that projects toward North Street, coursed shingles, and a small window with a pedimented surround. The front window has a transom and a surround with dentil molding. The building is clad in painted drop siding with corner boards and the building rests on a stone foundation.





*Figure 6. South elevation, 940 North St., 2018.*

The west elevation is simple in design, with boxed eaves, drop siding, and three evenly-placed double-hung windows. Three double-hung windows of varying sizes are located on the south elevation and feature the same window surrounds as those on the west elevation. All windows on the building appear to be original.

### **1973 Multi-Family Construction**

Marion Rayback received a building permit in 1973 for the construction of a four-unit apartment building on the site. The apartment building wraps the east and south sides of the original building, though is only connected to the original house via the front porch roof (see *Figures 5, 8 & 10*). There are no wall adjacencies or interior connections between the original house and 1973 buildings.



*Figure 7. North elevation, 940 North St., 2018.*

Two stories in height, with a shallow gable extending east-west, the 1973 construction is clad in T1-11 vertical siding. A gable roof projects over the entrance at the northeast corner of the building. The doors and windows appear to have been replaced. There are few window and door openings on the building.



*Figure 8. North elevation, 940 North St., 2018 showing shed roof of original house connecting to the 1973 Building.*

## **ALTERATIONS**

While the 1973 construction has visually altered the character of the property, the original house has not been materially altered and appears to be largely intact to its original construction. Staff considers that the 1973 construction could be removed with little or no damage to the original building.

Building permits for the property include reroofing the building in 1951 and 1995 and replacing the furnace and hot water heater in 1963 and 1966. In 1972, Marion Rayback received a building permit to “bring existing structure to all codes; construct and add 4 units to existing one-unit apt.” The construction of fences was permitted in 1974 and 1983. In 1983, Dean Carpenter received a permit to put a new gable over an existing flat roof.



Figure 9. Diagram showing 1899 construction (yellow) and 1973 construction (green).

### Area History

By 1900, Boulder's population was 6,150, with twenty-eight subdivisions added to the original townsite between 1890 and 1895.<sup>1</sup> The property is located in the Neikirk-Stewart addition to the city and is between the Mapleton Hill neighborhood, which primarily developed between 1865 and 1946, and the Newlands area, which was largely agricultural until it was incorporated into city limits beginning in the 1950s. The proximity to the Boulder Community Hospital at Broadway and Alpine streets influenced the character of this area during the second half of the twentieth century.

### Property History

The address is first listed in the 1908 city directory. The 1929 tax assessor card records the date of construction as 1899, while deed and directory research indicates the house was built sometime around 1907.

### Short Term Residents (1908-1918)

The first recorded resident of the property is Jennie Wood in 1908. Wood was an advertising clerk with the company Wellington and Associates. In 1910, the Cyrus and

<sup>1</sup> Front Range Research. *Survey of Scattered Resources*. City of Boulder, 1995.  
<https://bouldercolorado.gov/links/fetch/26794>



Nellie Kite lived in the house with their three children Moneta, Ruby, and William. The house appears to have been vacant between 1913 and 1916. Harry and Mamie Black resided there from 1916 until 1918. Harry Black was a local chef in town.

### **Long Term Residents (1918 – 1972)**

The property's longest residents were the Hagerman family, who resided there from 1918 until 1972. The 1920 US Census lists G.P. (Garrett) and Etta Hagerman as renters of 940 North St. with their children George (21), Edna (21), Hazel (17) and Carl (14).



*Figure 10. Garrett Hagerman*

Garrett and George worked as miners in a gold mine and Edna worked as a clerk in a sewing machine company. A decade later, the 1930 US Census records Garrett P. (65) and Etta (55) as owners and residents of 940 North St. along with their daughter Hazel Horton (28) and son Carl Hagerman (25). Garrett and Carl worked as miners in a "metal mine."

Henrietta (Etta) Hagerman was born in Ward, Colorado in 1874 to George and Lucy Walker, who had travelled across the prairie by ox team from Iowa. The Walkers were responsible for supplying lumber for many of Boulder's early structures, and took many photographs of Jamestown in the late 1800's. Her father was

actively involved with the Masonic lodges of early Jamestown. She married Garrett Hagerman in Jamestown in 1894.

Garrett P. Hagerman was born in 1865 in New Jersey. Following their marriage in 1894, the Hagermans lived in Jamestown until they moved to 940 North St. in Boulder in 1918. Garrett continued to work as a miner and died on November 15, 1931 at the age of 66. Etta was actively involved with the First Methodist Church.

Etta continued to live in the house until her death in 1967 at the age of 92 years old. After Etta's death, her daughter Hazel D. lived in the house with her husband Norton until 1972. Norton was a mechanic in Boulder that worked for a local service center and with Watts Hardy Dairy located along the 1200 block of Walnut. The Hagermans are buried in Green Mountain Cemetery in Boulder.

### **Multi-Family Apartments (1972-Present)**

Marion Rayback purchased the property from the Hagermans in 1972 and constructed a four-unit building the following year. The property continues to operate as a rental property. The current owner, Daryl Carpenter, purchased the property in 1979.

### **Surrounding Context**

The property is not located within an identified potential historic district as the area has lost much of its historic character. Historically, the 900 block of North Street had a residential character, with commercial businesses located east toward Broadway and in



proximity to the Boulder Community Hospital, which was constructed beginning in 1918 and operated at Broadway and Alpine Avenue until 2017.

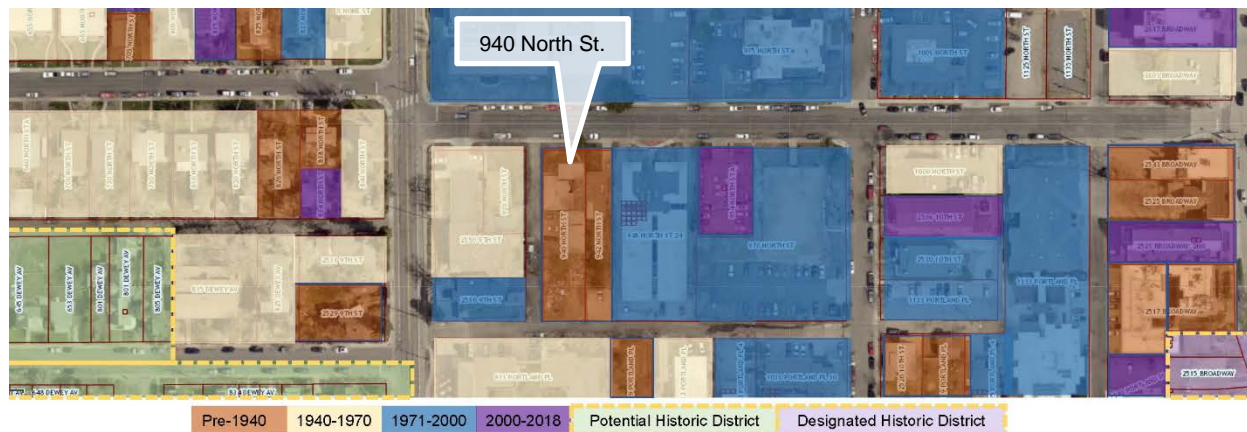


Figure 3. Map of Surrounding Area with approximate age of buildings.

The map in Figure 3 shows the area immediately around 940 North St. and the approximate dates of construction for the primary buildings on the property. The Potential Expanded Mapleton Hill Historic District is located to the southwest (9<sup>th</sup> Street and Dewey Avenue) and the Designated Mapleton Hill Historic District is located to the southeast (2500 block of Broadway). In this area, fourteen buildings remain that were constructed before 1940, nineteen were constructed between 1940 and 1970, and eighteen were constructed since 1971. Many of the lots in the 900-1000 block of North Street appear to have been consolidated at the time the large multi-family buildings were constructed. A clear development pattern or standard lot configuration is not evident in the 2018 aerial. Given the development pattern of the area and the overall loss of historic character, staff does not consider the area around 940 North Street to be eligible for designation as a local historic district.

### Criteria for the Board's Decision

Section 9-11-5(c), *Public Hearing Before the Landmarks Board*, B.R.C. 1981, specifies that in their review of an application for local landmark designation, "the landmarks board shall determine whether the proposed designation conforms with the purposes and standards in Sections 9-11-1, *Legislative Intent*, and 9-11-2, *City Council May Designate Landmarks and Historic Districts*."

#### Section 9-11-1, *Legislative Intent*, states:

- a) The purpose of this chapter is to promote the public health, safety, and welfare by protecting, enhancing, and perpetuating buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past. It is also the purpose of this chapter to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the city's living heritage.

- b) The City Council does not intend by this chapter to preserve every old building in the city but instead to draw a reasonable balance between private property rights and the public interest in preserving the city's cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives and that alterations to such buildings and structures and new construction will respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them.
- c) The City Council intends that in reviewing applications for alterations to and new construction on landmarks or structures in a historic district, the Landmarks Preservation Advisory Board shall follow relevant city policies, including, without limitation, energy-efficient design, access for the disabled, and creative approaches to renovation.

**Section 9-11-2, City Council may Designate Landmarks and Historic Districts, states:**

- (a) Pursuant to the procedures in this chapter the City Council may by ordinance:
  - (1) Designate as a landmark an individual building or other feature or an integrated group of structures or features on a single lot or site having a special character and historical, architectural, or aesthetic interest or value and designate a landmark site for each landmark;

Upon designation, the property included in any such designation is subject to all the requirements of this code and other ordinances of the city.

To assist in the interpretation of the historic preservation ordinance, the Landmarks Board has adopted significance criteria to use when evaluating applications for individual landmarks. The criteria are included in Attachment A: Significance Criteria.

### **Analysis**

Staff's analysis is based on the criteria for review provided above.

**A. Does the proposed application protect, enhance, and perpetuate buildings, sites, and areas of the city reminiscent of past eras, events, and persons important in local, state, or national history or providing significant examples of architectural styles of the past?**

**HISTORIC SIGNIFICANCE:**

**Summary:** The house located at 940 North St. meets historic significance under criteria 1, 2, 3 and 4.

**1. Date of Construction: 1899-1907**

**Elaboration:** The 1929 Tax Assessor Card lists the date of construction as 1899, one year after the Neikirk-Stewart Addition was platted. Deed research shows the lot first appearing in 1907, with the address first appearing in the 1908 city directory.

**2. Association with Persons or Events:** Hagerman family

**Elaboration:** The property is associated with Garret and Etta Hagerman, who resided here between 1918 and 1972. Garrett Hagerman was a miner. Etta Hagerman was part of the Walker family, early pioneers of Jamestown.

The property does not have associative interest in the social, cultural or political heritage of the community.

**3. Distinction in the Development of the Community:** Urban Residential Neighborhoods, 1858-Present.

**Elaboration:** The house was constructed the decade after the Neikirk-Stewart Addition was platted and represents the area's earliest period of growth and development.

**4. Recognition by Authorities:** Front Range Research Associates, Inc.

**Elaboration:** The property was surveyed in 1995 and found to be in fair condition with major alterations ("big apartment building in front and side of house; porch gone"). The historical background states:

*This address does not appear in the city directories for 1901 and 1913. One of the past owners of the house was Etta Hagerman, who died while still owning the property in 1967. She was born in Ward, Colorado, in 1874 to George and Lucy Walker, who had come across the prairies by ox team from Iowa. She was married in Jamestown in 1894 to Garrett Hagerman, a miner. They moved to Boulder in 1918 and he died there in 1931.*

The 1995 survey found the building did not have architectural or historic significance, stating "Alterations to this house have diminished its historic integrity."

Staff agrees that the construction of the large addition in 1973 has a significant negative visual impact the character of the property. While the original c.1899-1907 building has not been physically impacted by the adjacent construction and appears to be remarkably intact, landmark designation of the historic portion of the property is difficult to justify in its current state with the large unsympathetic 1973 addition obscuring the façade and east side of the original house.

**ARCHITECTURAL SIGNIFICANCE:**

**Summary:** The house located at 940 North St. meets architectural significance under criteria 1 and 5.

**1. Recognized Period or Style:** Vernacular Frame

**Elaboration:** The property is an example of a Vernacular Cottage with simple classically inspired design, including its pyramidal hipped roof with projecting gable, pediment and dentil detailing, and double-hung windows. The building appears to be largely intact to its original construction.

**2. Architect or Builder of Prominence:** Unknown

**Elaboration:** The builder of this house is unknown.

3. **Artistic Merit:** None observed

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

5. **Indigenous Qualities:** The building rests on a stone foundation.

***B. Does the proposed application develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote tourist trade and interest, and foster knowledge of the City's living heritage?***

Staff finds that landmark designation of the house at 940 North St. would not be appropriate given the architectural integrity of the property has been compromised as a result of the non-historic addition that obscures the property's historic form and character. Landmarking the historic portion of the house would not alter the fact that the 1973 construction nearly completely envelopes the character defining features of the façade of the original house. There is no evidence that landmarking the house would result in removal of 1973 construction and any changes or modifications to this construction would not be subject to landmark alteration certificate review.

#### **ENVIRONMENTAL SIGNIFICANCE:**

**Summary:** The house located at 940 North St. does not meet the criteria for environmental significance.

1. **Site Characteristics:** Historically, the 900 block of North Street had a residential character. The construction of the 1973 addition has impacted the historic character of the lot.
2. **Compatibility with Site:** The 1973 portion of the building is out of scale with the original building, overshadowing the mass and character of the hipped roof house.
3. **Geographic Importance:** None observed
4. **Environmental Appropriateness:** Mixed-Use Character  
**Elaboration:** The area has a mix of commercial and residential properties.
5. **Area Integrity:** The character of the area changed over the last few decades, as the original single-family houses have been replaced with large multi-family buildings. The property immediately to the east (942 North St.) retains its original historic character and relates to the building at 940 North St. and represents the area's earliest period of development.

**C. Does the proposed application draw a reasonable balance between private property rights and the public interest in preserving the City's cultural, historic, and architectural heritage by ensuring that demolition of buildings and structures important to that heritage will be carefully weighed with other alternatives?**

A stay-of-demolition is issued to provide time to “explore alternatives” that might prevent the demolition of significant historic resources. Staff considers that time has been taken and efforts have been made to explore alternatives including looking at rehabilitation costs using tax credits and other financial incentives. Given the diminished historic integrity of the property, as a result of the visually overwhelming and obscuring 1973 construction, landmark designation in its current condition would be difficult to justify.

During the course of the stay-of-demolition, there has been limited community support for the proposed designation. At the Dec. 5, 2018, meeting, one member of the public spoke in support of redevelopment of the property into low-income housing. At the April 3 hearing, the neighbor to the east (942 North St.) spoke in support of the demolition application; three members from the public spoke in support of preservation of the house.

The historic preservation code's stated purpose is to “draw a reasonable balance between private property rights and the public interest.” Staff considers that the compromised architectural integrity as a result of the 1973 construction that conceals the façade and face of the house and the limited public support demonstrated during the stay-of-demolition, makes designation over the owner's objection an unreasonable balance of private property rights and the public good.

In the history of the historic preservation program, individual landmark designations over the owner's objection have occurred very rarely and for properties of high significance and historic integrity. While the 1973 construction has had limited physical impact on the c.1899-1907 house, its location at the front and side of the original house significantly obscures the property's historic features. There is no indication that landmark designation of the historic house would result in the removal of the 1973 construction and any modifications to that building would not be subject to landmark alteration certificate review.

Of the 195 designated individual landmarks since 1980 (1974 to 1979 records do not clearly identify the initiator), 184 were initiated by the property owner. Four were initiated by Historic Boulder, one by the Modern Architecture Preservation League (Bandshell), and six by the Landmarks Preservation Advisory Board. Of these designations, five are known to have been initially over the owner's objection:

- 1980: 2032 14<sup>th</sup> Street – Boulder Theater
- 1990: 646 Pearl St – Arnett-Fullen House
- 1998: 1949 Pearl Street – Campbell Grocery
- 2007: 1936 Mapleton Avenue – Frakes House
- 2007: 3231 11<sup>th</sup> Street – Chambers Cottage
- 2014: 747 12<sup>th</sup> St. – Cowgill Residence

### Next Steps

Within 45 days of the hearing date, the Landmarks Board must adopt specific written findings and conclusions approving, approving with modifications, or disapproving the application. Should the board disapprove the application, the board must notify the City

Council of that action within 30 days of the hearing date. City Council may call up a decision disapproving a designation. Should an application be disapproved, the same application may not be submitted for a period of one year.

If the board finds that the proposed designation conforms to Sections 9-11-1 and 9-11-2, B.R.C. 1981, it shall adopt specific findings and conclusions approving or modifying and approving the application. If the board approves the proposed designation, the application will be forwarded to City Council (within 45 days) for a public hearing. The public hearing before City Council must be held within 100 days of the Landmark Board's decision recommending designation.

### Attachments

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- A: Significance Criteria for Individual Landmarks
- B: Historic Building Inventory Record
- C: Tax Assessor Card
- D: Current Photographs
- E: [Dec. 5, 2018 Landmarks Board Memo](#) – Demolition (link)
- F: [April 3, 2019 Landmarks Board Memo](#) – Initiation (link)

**SIGNIFICANCE CRITERIA**  
**Individual Landmark**  
**September 1975**

On September 6, 1974, the City Council adopted Ordinance #4000 providing procedures for the designation of Landmarks and Historic Districts in the City of Boulder. The purpose of the ordinance is the preservation of the City's permitted cultural, historic, and architectural heritage. The Landmarks Board is permitted by the ordinance to adopt rules and regulations as it deems necessary for its own organization and procedures. The following Significance Criteria have been adopted by the Board to help evaluate each potential designation in a consistent and equitable manner.

**Historical Significance**

The place (building, site, area) should show character, interest or value as part of the development, heritage, or cultural characteristics of the community, state or nation; be the site of a historic, or prehistoric event that had an effect upon society; or exemplify the cultural, political, economic, or social heritage of the community.

1. Date of Construction: This area of consideration places particular importance on the age of the structure.
2. Association with Historical Persons or Events: This association could be national, state, or local.
3. Distinction in the Development of the Community of Boulder: This is most applicable to an institution (religious, educational, civic, etc) or business structure, though in some cases residences might qualify. It stresses the importance of preserving those places which demonstrate the growth during different time spans in the history of Boulder, in order to maintain an awareness of our cultural, economic, social or political heritage.
4. Recognition by Authorities: If it is recognized by Historic Boulder, Inc. the Boulder Historical Society, local historians (Barker, Crossen, Frink, Gladden, Paddock, Schooland, etc), State Historical Society, The Improvement of Boulder, Colorado by F.L. Olmsted, or others in published form as having historical interest and value.

Other, if applicable.

**Architectural Significance**

The place should embody those distinguishing characteristics of an architectural type specimen, a good example of the common; be the work of an architect or master builder, known nationally, state-wide, or locally, and perhaps whose work has influenced later development; contain elements of architectural design, detail, materials or craftsmanship which represent a significant innovation; or be a fine example of the uncommon.

1. Recognized Period/Style: It should exemplify specific elements of an architectural period/style, ie: Victorian, Revival styles, such as described by *Historic American Building Survey Criteria*, Gingerbread Age (Maass), 76 Boulder Homes (Barker),

The History of Architectural Style (Marcus/Wiffin), Architecture in San Francisco (Gebhard et al), History of Architecture (Fletcher), Architecture/Colorado, and any other published source of universal or local analysis of Astyle.@

2. Architect or Builder of Prominence: A good example of the work of an architect or builder who is recognized for expertise in his field nationally, state-wide, or locally.
3. Artistic Merit: A skillful integration of design, material, and color which is of excellent visual quality and/or demonstrates superior craftsmanship.
4. Example of the Uncommon: Elements of architectural design, details, or craftsmanship that are representative of a significant innovation.
5. Indigenous Qualities: A style or material that is particularly associated with the Boulder area.
6. Other, if applicable.

#### Environmental Significance

The place should enhance the variety, interest, and sense of identity of the community by the protection of the unique natural and man-made environment.

1. Site Characteristics: It should be of high quality in terms of planned or natural vegetation.
2. Compatibility with Site: Consideration will be given to scale, massing placement, or other qualities of design with respect to its site.
3. Geographic Importance: Due to its unique location or singular physical characteristics, it represents an established and familiar visual feature of the community.
4. Environmental Appropriateness: The surroundings are complementary and/or it is situated in a manner particularly suited to its function.
5. Area Integrity: Places which provide historical, architectural, or environmental importance and continuity of an existing condition, although taken singularly or out of context might not qualify under other criteria.
6. Other, if applicable.



**Attachment B: Historic Building Inventory Form**

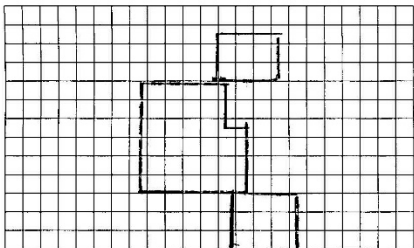
COLORADO HISTORICAL SOCIETY  
Office of Archaeology and Historic Preservation  
1300 Broadway, Denver, Colorado 80203

## HISTORIC BUILDING INVENTORY RECORD

| NOT FOR FIELD USE                          |   |
|--|---|
| <input type="checkbox"/> Eligible          | <input type="checkbox"/> Nominated        |
| <input type="checkbox"/> Det. Not Eligible | <input type="checkbox"/> Certified Rehab. |
| Date _____                                 |   |

|   |                 |   |   |   |
|---|-----------------|---|---|---|
| PROJECT NAME: Boulder Survey of Historic Places-Scattered Resources, 1995   |                 | COUNTY: Boulder   | CITY: Boulder                             | STATE ID NO.: 5BL6239   |
|   |                 | TEMPORARY NO.: 1461-25-1-27-003                               |   |   |
| CURRENT BUILDING NAME:  |                 | OWNER: CARPENTER DARYL L                                      |   |   |
| ADDRESS: 940 NORTH ST<br>BOULDER, CO 80304  |                 | 1203 N 24TH ST<br>FORT DODGE IA 50501                         |   |   |
|   |                 | TOWNSHIP 1N   | RANGE 71W                                 | SECTION 25 NE 1/4 SE 1/4  |
| HISTORIC NAME:  |                 | U.S.G.S. QUAD NAME: Boulder                                   |   |   |
|   |                 | YEAR: 1966 (PR1979) X 7.5' 15'                                |   |   |
| DISTRICT NAME:  |                 | BLOCK: 4 LOT(S): 4-5  |   |   |
|   |                 | ADDITION: Neikirk-Stewart YR. OF ADDITION: 1898               |   |   |
| FILM ROLL NO.: 95B-24<br>BY: T.H. Simmons   | NEGATIVE NO.: 5 | LOCATION OF NEGATIVES:<br>Boulder City Plng.                  |   | DATE OF CONSTRUCTION:<br>ESTIMATE: ACTUAL: 1899<br>SOURCE:<br>Boulder County Assessor   |
| ATTACH PHOTOGRAPH HERE  |                 |   |   | USE:<br>PRESENT:<br>Apartments<br><br>HISTORIC:<br>Residence  |
|   |                 |   |   | CONDITION:<br>EXCELLENT<br>X FAIR<br>GOOD<br>DETERIORATING  |
|   |                 |   |   | EXTENT OF ALTERATIONS:<br>MINOR MODERATE X MAJOR<br>DESCRIBE:<br>Big apartment building in front and side of house; porch gone. |
|   |                 |   |   | CONTINUED YES X NO  |
| STYLE: Edwardian Vernacular   |                 | STORIES: 1  | ORIGINAL SITE X MOVED<br>DATE(S) OF MOVE: |   |
| MATERIALS: Wood, Stone  |                 | SQ. FOOTAGE: 4250   | NATIONAL REGISTER ELIGIBILITY             |   |
| ARCHITECTURAL DESCRIPTION:<br>Original house is one-story with hipped roof with projecting gable and overhanging, boxed eaves. Gable end has pent roof enclosure, coursed shingles, small window with low pedimented surround. Walls clad with drop siding; corner boards; stone foundation. Sash and transom parlor window with dentil molding; double-hung, 1/1-light windows. Large apartment building added to front and side of house. |                 | INDIVIDUAL: YES X NO  |   |   |
|   |                 | CONTRIBUTING TO DISTRICT:<br>YES NO                           |   |   |
|   |                 | LOCAL LANDMARK DESIGNATION: No                                |   |   |
|   |                 | NAME:<br>DATE:  |   |   |
|   |                 | ASSOCIATED BUILDINGS? X YES NO<br>TYPE:<br>Apartment Building |   |   |
|   |                 | IF INVENTORIED, LIST ID NOS.:                                 |   |   |
| ADDITIONAL PAGES: YES X NO  |                 | CONTINUED? YES X NO   |   |   |

**Attachment B: Historic Building Inventory Form**

|   |  |  |  |  |  |
|---|--|--|--|--|--|
| <b>PLAN SHAPE:</b><br>   | <b>ARCHITECT:</b><br>Unknown   | <b>STATE ID NO.:</b> 5BL6239   |  |  |  |
|   | <b>SOURCE:</b>   | <b>ORIGINAL OWNER:</b><br>Unknown                                    |  |  |  |
|   | <b>BUILDER/CONTRACTOR:</b><br>Unknown  | <b>SOURCE:</b>   |  |  |  |
|   | <b>SOURCE:</b>   | <b>THEME(S):</b><br>Urban Residential Neighborhoods,<br>1858-Present |  |  |  |
| <b>CONSTRUCTION HISTORY (DESCRIPTION, NAMES, DATES, ETC., RELATING TO MAJOR ALTERATIONS TO ORIGINAL STRUCTURE):</b><br><br><br><div style="text-align: right;">CONTINUED    YES    <input checked="" type="checkbox"/>    NO</div>  |  |  |  |  |  |
| <b>HISTORICAL BACKGROUND (DISCUSS IMPORTANT PERSONS AND EVENTS ASSOCIATED WITH THIS STRUCTURE):</b><br>This address does not appear in city directories for 1901 and 1913. One of the past owners of the house was Etta Hagerman, who died while still owning the property in 1967. She was born in Ward, Colorado, in 1874 to George and Lucy Walker, who had come across the prairies by ox team from Iowa. She was married in Jamestown in 1894 to Garrett Hagerman, a miner. They moved to Boulder in 1918 and he died there in 1931.   |  |  |  |  |  |
| <div style="text-align: right;">CONTINUED    YES    <input checked="" type="checkbox"/>    NO</div>   |  |  |  |  |  |
| <b>SIGNIFICANCE (CHECK APPROPRIATE CATEGORIES AND BRIEFLY JUSTIFY BELOW):</b> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"> <b>ARCHITECTURAL SIGNIFICANCE:</b><br/> <input type="checkbox"/> REPRESENTS THE WORK OF A MASTER<br/> <input type="checkbox"/> POSSESSES HIGH ARTISTIC VALUES<br/> <input type="checkbox"/> REPRESENTS A TYPE, PERIOD, OR METHOD OF CONSTRUCTION         </td> <td style="vertical-align: top;"> <b>HISTORICAL SIGNIFICANCE:</b><br/> <input type="checkbox"/> ASSOCIATED WITH SIGNIFICANT PERSONS<br/> <input type="checkbox"/> ASSOCIATED WITH SIGNIFICANT EVENTS OR PATTERNS<br/> <input type="checkbox"/> CONTRIBUTES TO AN HISTORIC DISTRICT         </td> </tr> </table> |  |  |  | <b>ARCHITECTURAL SIGNIFICANCE:</b><br><input type="checkbox"/> REPRESENTS THE WORK OF A MASTER<br><input type="checkbox"/> POSSESSES HIGH ARTISTIC VALUES<br><input type="checkbox"/> REPRESENTS A TYPE, PERIOD, OR METHOD OF CONSTRUCTION | <b>HISTORICAL SIGNIFICANCE:</b><br><input type="checkbox"/> ASSOCIATED WITH SIGNIFICANT PERSONS<br><input type="checkbox"/> ASSOCIATED WITH SIGNIFICANT EVENTS OR PATTERNS<br><input type="checkbox"/> CONTRIBUTES TO AN HISTORIC DISTRICT |
| <b>ARCHITECTURAL SIGNIFICANCE:</b><br><input type="checkbox"/> REPRESENTS THE WORK OF A MASTER<br><input type="checkbox"/> POSSESSES HIGH ARTISTIC VALUES<br><input type="checkbox"/> REPRESENTS A TYPE, PERIOD, OR METHOD OF CONSTRUCTION  | <b>HISTORICAL SIGNIFICANCE:</b><br><input type="checkbox"/> ASSOCIATED WITH SIGNIFICANT PERSONS<br><input type="checkbox"/> ASSOCIATED WITH SIGNIFICANT EVENTS OR PATTERNS<br><input type="checkbox"/> CONTRIBUTES TO AN HISTORIC DISTRICT |  |  |  |  |
| <b>TIER EVALUATION:</b>   |  |  |  |  |  |
| <b>STATEMENT OF SIGNIFICANCE:</b><br>Alterations to this house have diminished its historic integrity.  |  |  |  |  |  |
| <div style="text-align: right;">CONTINUED    YES    <input checked="" type="checkbox"/>    NO</div>   |  |  |  |  |  |
| <b>REFERENCES (BE SPECIFIC):</b><br>Boulder County Assessor records; Boulder City Directories; Boulder Daily Camera files.  |  |  |  |  |  |
| <div style="text-align: right;">CONTINUED    YES    <input checked="" type="checkbox"/>    NO</div>   |  |  |  |  |  |
| <b>SURVEYED BY:</b> R.L. Simmons/T.H. Simmons   |  | <b>AFFILIATION:</b> Front Range Research Associates, Inc.            |  |  |  |
|   |  | <b>DATE:</b> November 1995   |  |  |  |



*Historic Building Inventory Photograph, 1995.*



*Tax Assessor Card Photograph, 940 North St., c. 1929.*



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*North Elevation, 2018*



*North (L) and South (R) Elevations, 2018*





*Southwest corner, 2018*



*North Elevation, Detail, 2018*



## **SIGNIFICANCE CRITERIA**

### **Individual Landmark**

**September 1975**

On September 6, 1975, the City Council adopted Ordinance #4000 providing procedures for the designation of Landmarks and Historic Districts in the City of Boulder. The purpose of the ordinance is the preservation of the City's permitted cultural, historic, and architectural heritage. The Landmarks Board is permitted by the ordinance to adopt rules and regulations as it deems necessary for its own organization and procedures. The following Significance Criteria have been adopted by the board to help evaluate each potential designation in a consistent and equitable manner.

### **Historic Significance**

The place (building, site, area) should show character, interest or value as part of the development, heritage, or cultural characteristics of the community, state or nation; be the site of a historic, or prehistoric event that had an effect upon society; or exemplify the cultural, political, economic, or social heritage of the community.

Date of Construction: This area of consideration places particular importance on the age of the structure.

Association with Historical Persons or Events: This association could be national, state, or local.

Distinction in the Development of the Community of Boulder: This is most applicable to an institution (religious, educational, civic, etc) or business structure, though in some cases residences might qualify. It stresses the importance of preserving those places which demonstrate the growth during different time spans in the history of Boulder, in order to maintain an awareness of our cultural, economic, social or political heritage.

Recognition by Authorities: If it is recognized by Historic Boulder, Inc. the Boulder Historical Society, local historians (Barker, Crossen, Frink, Gladden, Paddock, Schooland, etc), State Historical Society, The Improvement of Boulder, Colorado by F.L. Olmsted, or others in published form as having historic interest and value.

Other, if applicable.

### **Architectural Significance**

The place should embody those distinguishing characteristics of an architectural type specimen, a good example of the common; be the work of an architect or master builder, known nationally, state-wide, or locally, and perhaps whose work has influenced later

development; contain elements of architectural design, detail, materials or craftsmanship which represent a significant innovation; or be a fine example of the uncommon.

Recognized Period/Style: It should exemplify specific elements of an architectural period/style, i.e.: Victorian, Revival styles, such as described by *Historic American Building Survey Criteria*, Gingerbread Age (Maass), 76 Boulder Homes (Barkar), The History of Architectural Style (Marcus/Wiffin), Architecture in San Francisco (Gebhard et al), History of Architecture (Fletcher), Architecture/Colorado, and any other published source of universal or local analysis of a style.

Architect or Builder of Prominence: A good example of the work of an architect or builder who is recognized for expertise in his field nationally, state-wide, or locally.

Artistic Merit: A skillful integration of design, material, and color which is of excellent visual quality and/or demonstrates superior craftsmanship.

Example of the Uncommon: Elements of architectural design, details, or craftsmanship that are representative of a significant innovation.

Indigenous Qualities: A style or material that is particularly associated with the Boulder area.

Other, if applicable.

### **Environmental Significance**

The place should enhance the variety, interest, and sense of identity of the community by the protection of the unique natural and man-made environment.

Site Characteristics: It should be of high quality in terms of planned or natural vegetation.

Compatibility with Site: Consideration will be given to scale, massing placement, or other qualities of design with respect to its site.

Geographic Importance: Due to its unique location or singular physical characteristics, it represents an established and familiar visual feature of the community.

Environmental Appropriateness: The surroundings are complementary and/or it is situated in a manner particularly suited to its function.

Area Integrity: Places which provide historical, architectural, or environmental importance and continuity of an existing condition, although taken singularly or out of context might not qualify under other criteria.

June 4, 2019

Dear City of Boulder Landmarks Board,

I have been the owner of 940 North Street for almost 40 years and have operated the property as a rental the entire time. It has been a good source of additional income for my family over the years and at this point I feel the property is obsolete, needs an excessive amount of work, and the land and the neighborhood could be better served with a newer, nicer, and more efficient structure. As the property owner, I feel I should have the right to determine what happens with my property and my land, within the zoning restrictions. For this reason, I am strongly against 940 North Street being designated as a historic property. A historic designation would restrict redevelopment and cause the property to drop in value now and post-development, which is not consistent with my vision for the property. I can understand if an owner has done a significant amount of work to preserve a beautiful old building and would like to designate the property historic to insure it remain a staple in the community, but this is not the case here and I do not want this property designated historic. To designate a property against the owner's will would simply be egregious, setting this precedent would cause an uproar. There are an uncountable amount of old properties all over Boulder that were built in the same time frame as 940 North that have been added on to and altered, and now you can't scrape it and start over, people would avoid buying these homes, property values would go down, property owner's lose their rights, this would be bad publicity for Boulder. Designating a small rundown house in the middle of the block on North Street a historic property would be a mistake. I had planned to be present for this hearing so that I could voice my concerns in person but am unable to leave Iowa due to health reasons, I'm happy to discuss this matter further should it be necessary. As the owner of 940 North Street, I strongly request that the Landmarks Board end all proceedings that would designate my property historic.

Sincerely,

Daryl Carpenter

**From:** es cole  
**To:** [landmarksboard](#)  
**Cc:** [Hewat, James](#); [Cameron, Marcy](#)  
**Subject:** 940 North Street  
**Date:** Wednesday, June 5, 2019 3:59:50 PM

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## To the Landmarks Preservation Advisory Board

After viewing 940 North Street and its site from the public rights-of-way, I must respectfully disagree with Staff's findings regarding the initiation of individual designation of the house and a portion of the site.

The Staff Memo notes your motion should include, "The Landmarks Board finds, based upon the application and evidence presented, that the proposed designation application is inconsistent with the purposes and standards of the Historic Preservation Ordinance, in that:

1. The proposed designation will not protect, enhance, and perpetuate a building reminiscent of a past era and important in local and state history and provide a significant example of architecture from the past."

I respectfully disagree and contend that designation of the house and a portion of the site would protect a building reminiscent of a past era and "... provide a significant example of architecture from the past." This view appears to be reinforced under "Alterations" that notes that "...the original house has not been materially altered and appears to be largely intact to its original construction. Staff considers that the 1973 construction could be removed with little or no damage to the original building." The memo also notes that there are no wall adjacencies or interior connections between the original house and the 1973 buildings.

### From the Staff Memo:

Staff agrees that the construction of the large addition in 1973 has a significant negative visual impact the character of the property. While the original c.1899-1907 building has not been physically impacted by the adjacent construction and appears to be remarkably intact, landmark designation of the historic portion of the property is difficult to justify in its current state with the large unsympathetic 1973 addition obscuring the façade and east side of the original house.

Although an entire site is "typically" included in a designation, there is precedent for including only a portion of a site on the local and State Registers. If the Landmarks Preservation Advisory Board were to designate the original house and a portion of its site (e.g. 3'-0" or 5'-0" around the building footprint), the 1973 apartment buildings could be removed and - one would hope - more compatible new construction of multiple units could occur.

The Staff Memo finds the house meets Architectural Significance under Criteria 1 and 5, and I would concur that area residents and casual passersby could understand that this part of the property would be recognized as an example of early Boulder residential construction – primarily due to the fact that the 1973 addition is so minimally attached to it.

In Summary, while the architectural integrity of the property as a whole may have been compromised, the architectural integrity of the historic resource (the house) has not. Its historic form and character are clearly apparent even if the 1973 additions are not removed, and the house remains a visual reminder of the original character of this block within the City.

As a former member of the Landmarks Board, I've experienced the contentiousness of the Board initiating and recommending local designation so I understand the difficulty you are facing as you deliberate this agenda item. I appreciate the time and consideration you all are giving to the issues involved in protecting the City's historic resources that by extension help residents and visitors understand and appreciate our history.

**Estella Cole, Architect**



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Second reading, public hearing and consideration of a motion to adopt (on September 3, 2019) Ordinance 8344 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 5, 2019, the question of authorizing the city council to increase City of Boulder debt by an amount not to exceed \$10,000,000, with a maximum repayment cost of not to exceed \$15,000,000, without raising taxes, to provide for a housing assistance program that will include permanently affordable deed restrictions and make loans to middle-income households to purchase homes sold in boulder; and setting forth the ballot title and other election procedures and setting forth related details.

### **PRIMARY STAFF CONTACT**

David Gehr, Chief Deputy City Attorney

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to adopt Ordinance 8344 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 5, 2019, the question of authorizing the city council to increase City of Boulder debt by an amount not to exceed \$10,000,000, with a maximum repayment cost of not to exceed \$15,000,000, without raising taxes, to provide for a housing assistance program that will include permanently affordable deed restrictions and make loans to middle-income households to purchase homes sold in boulder; and setting forth the ballot title and other election procedures and setting forth related details.

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 5B- Ballot Measure for Middle Income Assistance**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE**

Second reading, public hearing and consideration of a motion to adopt (on September 3, 2019) Ordinance 8344 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 5, 2019, the question of authorizing the City Council to increase City of Boulder debt by an amount not to exceed \$10,000,000, with a maximum repayment cost of not to exceed \$15,000,000, without raising taxes, to provide for a housing assistance program that will include permanently affordable deed restrictions and make loans to middle-income households to purchase homes sold in Boulder; and setting forth the ballot title and other election procedures and setting forth related details.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Tom Carr, City Attorney  
David Gehr, Chief Deputy City Attorney  
Cheryl Pattelli, Chief Finance Officer  
Bob Eichem, Chief Financial Advisor  
Kurt Firnhaber, Director of Housing and Human Services  
Jay Sugnet, Senior Housing Planner

**EXECUTIVE SUMMARY**

City Council prioritized the Middle-Income Down Payment Assistance pilot project at the January 2018 retreat. This decision was based on work that was done to address the loss of middle-income households in Boulder, as documented in the [Middle Income Housing Strategy](#) and adopted by council in fall 2016. In response to this trend, Council Members Weaver and Yates crafted a white paper describing a potential down payment

assistance pilot titled *A Shared Equity Model for Middle-Income Affordable Housing Home Ownership in Boulder*. Staff prepared a memo to expand upon this white paper with additional background research and drafted a clear problem or “why” statement and a purpose statement that was discussed by council on [February 19, 2019](#). On [July 23, 2019](#) council directed staff to prepare ballot measure language to authorize the city to borrow money (without raising taxes) to fund the pilot.

To comply with the Taxpayer Bill of Rights in the state constitution (TABOR) requirements, voters must approve any debt amounts to be paid back over multiple years, and the estimated total debt service to be paid during the time the borrowed money would be outstanding. The borrowing could be done by using bonds, a private placement with a financial institution (has all of the attributes of a bond but is issued differently), or a line of credit. All methods can be done using a competitive process.

## **STAFF RECOMMENDATION**

### **Suggested Motion Language**

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

Motion to adopt Ordinance 8344 submitting to the registered electors of the City of Boulder at the Municipal Coordinated Election to be held on Tuesday, November 5, 2019, the question of authorizing the City Council to increase City of Boulder debt by an amount not to exceed \$10,000,000, with a maximum repayment cost of not to exceed \$15,000,000, without raising taxes, to provide for a housing assistance program that will include permanently affordable deed restrictions and make loans to middle-income households to purchase homes sold in Boulder; and setting forth the ballot title and other election procedures and setting forth related details.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic** – If passed, this program will provide another option for members of middle-income households to purchase homes in Boulder. Given that it is anticipated that such homes will be deed restricted with some form of affordability covenant, the homes will continue to be affordable to middle-income households into the future. Future buyers of the deed restricted home will likely need city assistance similar to the first buyer to afford the home.
- **Environmental** – One of the objectives of the middle-income housing strategy is to help make it more affordable for people who live and work in Boulder. This program will provide for opportunities for workforce housing and potentially reduce commuting into the city.



- Social – This program will help implement the city’s middle-income housing strategy. It will also help foster the community objective of making Boulder a welcoming and inclusive community.

## **IMPACTS**

- Fiscal – If passed, this ballot measure will allow the city to issue debt. The funds from the debt issued will be loaned to middle-income home purchasers. Ultimately, the city debt will be re-paid when the homeowner refinances or sells the property. Given that payback will depend on when a person sells or refinances the debt, the city will need to develop a budget plan to repay the debt for years when the revenue may be less than that year’s debt payment.

Down payment assistance is likely necessary for subsequent purchasers of the deed restricted homes that are placed in the middle-income program, a budget plan for revenues for this program will need to be developed in the future.

- Staff time – The staff time needed to complete the background work for the ballot item is included within the departmental work plans.

## **BACKGROUND**

### **“Why” Statement**

Boulder is doing well building and preserving housing for low- and moderate-income households (30-60 percent of Area Median Income (AMI)). The city currently has seven-and one-half percent of its housing stock as permanently affordable and recently increased the goal from 10 to 15 percent. However, it is increasingly difficult for middle-income households (up to 120 percent of AMI) to purchase a home in Boulder. This is a result of housing prices outpacing income growth for many years, leaving many middle-income households priced out of home ownership in Boulder.

### **Purpose Statement**

Create a program to assist middle-income Boulder workers or residents to purchase a home. The goal is to preserve economic diversity in the city and potentially reduce commuting into Boulder.

### **Pilot Outline**

The city will issue bonds or draw upon a line of credit to provide down payment assistance to moderate- and middle-income home buyers to purchase a home. In exchange, the homeowner agrees to make that home permanently affordable through a deed restriction. For example, the income-and asset-qualified purchaser locates a home to buy which is below the median price for that type of housing. The buyers’ have a down-payment of five percent (\$30,000) but can only qualify for a loan from a commercial

lender for 72 percent (\$432,000) of a \$600,000 purchase price. This leaves the buyers with a gap of 23 percent (\$138,000). Under the proposed pilot, the city receives their application, determines if they are income- and asset-qualified and that the purchase price is below the median. The city borrows money to fund the second mortgage for 23 percent of the home value (\$138,000). The advantage for the homebuyer is that there are no monthly payments on the second loan for the first 10 years, which reduces their monthly housing costs significantly.

In this example, the down payment arrangement continues until the home is sold or 10 years (whichever is earlier). At that time, the homeowner pays the city the amount of the second loan (\$138,000) plus interest. The city's financial position is restored, and the borrowed money is used to pay the city's bond or line of credit. The home with the deed restriction remains permanently affordable and is sold through the city's homeownership program to another eligible moderate to middle-income homebuyer with a maximum income of 120 percent AMI or less.

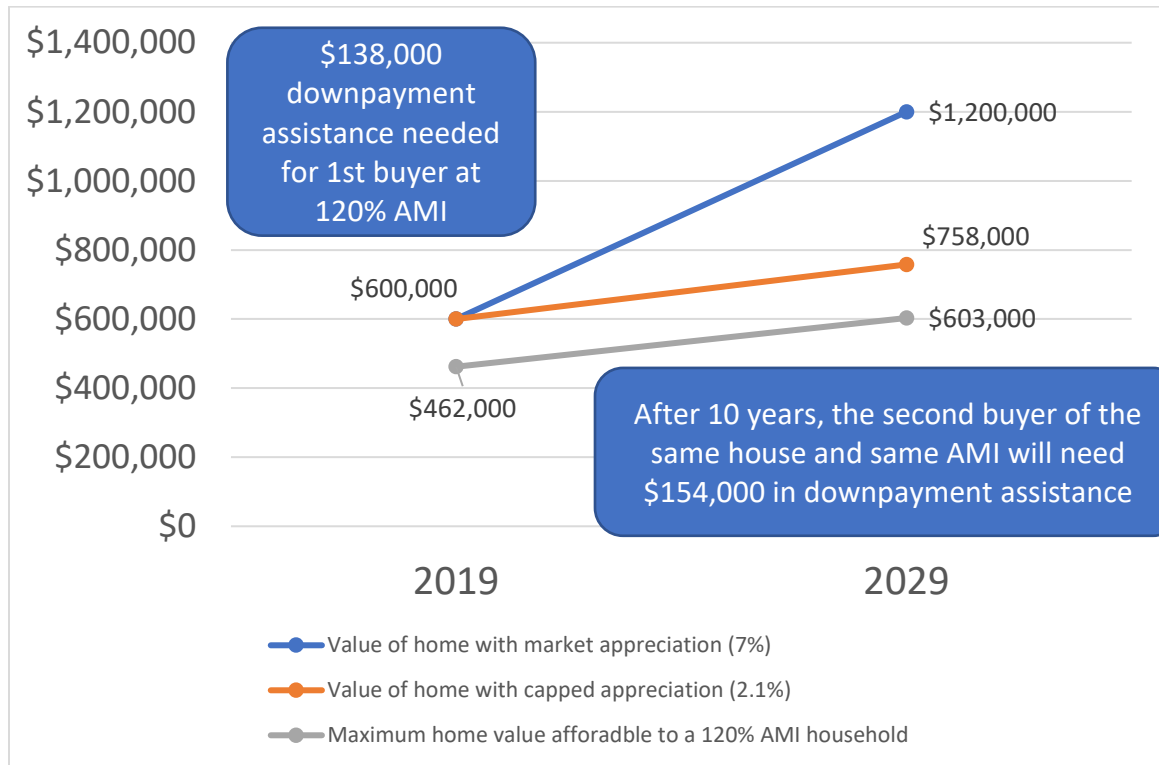
Council discussed this program at a study session on July 23, 2019. The consensus of the council was to further consider a ballot measure.

## **ANALYSIS**

If approved by the voters, this ballot measure allows the city to borrow a certain amount of money to be paid back over time. To comply with the TABOR requirements voters must approve any debt amounts to be paid back over multiple years, and the estimated total debt service to be paid during the time the borrowed money would be outstanding. The borrowing could be done by using bonds, a private placement with a financial institution (has all of the attributes of a bond but is issued differently), or a line of credit. All methods can be done using a competitive process.

On July 23, council expressed a preference to use a line of credit to reduce overall borrowing costs and to provide the flexibility to provide assistance based on demand. Council also stated that an annual two percent appreciation rate for the permanently affordable middle-income homes was most appropriate as a starting point for the pilot. This lower appreciation rate makes the home more affordable to middle-income households, but most subsequent middle-income buyers will not be able to purchase that home without future city subsidy unless they have significant savings or help from parents. The chart below shows how the affordability gap will remain in perpetuity.

**Figure 1. Resale Scenario Using AMI Method (2.1%)**



There is a potential risk that program participants may not be able to refinance (or repay using another tool) the loan at year 10 when the balloon payment is due. Staff calculated that principal and interest payments would increase 20 percent by refinancing, assuming the same interest rate. Some households may have higher incomes after 10 years, but not all will be in that situation. Similarly, after 10 years the owner of the home may not be able to find a household earning 120 percent AMI to purchase the home. A future household earning 120 percent of the AMI would likely still require the aid of this down payment assistance program, which would only be available if the \$10 million has not been allocated or another similar ballot initiative has been passed by voters in the future. As a result of these two factors, council requested that the staff consider a hardship circumstance, so we are not forcing people into foreclosure or to stay in the home. There would need to be enough funds for the city to purchase the home and resell it to another middle-income household in those instances. Although this process works well for low and moderate affordable homes, the affordability gap remains for middle-income homes and the city may also have difficulty selling the homes without a loss.

Another potential significant risk is interest rates. Higher interest rates, compared to the current low rates of the recent past, will increase borrowing costs for the city and present challenges refinancing for the homeowner as described above. Using the line of credit (and borrowing only as needed) will help to reduce the risk to the city, but it will not protect the homeowner from a balloon payment due in year 10. Again, some form of city assistance would likely be required.

Staff proposes that the maximum loan amount in the ballot measure be \$10 million. Assuming a five percent interest rate, the assumed maximum payback will be \$15 million. Below are two different scenarios for a \$10M borrowing, 10 years at a five percent interest rate. The first scenario shows cash flows if the city borrowed all \$10M up front (which the city would not want to do because of added interest cost and basis point fees for unused portion). The second scenario shows if the city lent out \$1 million per year for 10 years.

In addition to payments for principal and interest, the city may have extra fees related to money that is not borrowed but available from the line of credit. The tables show the amount of cash flows that are needed prior to collecting money from homeowners in year 10.

## Figure 2. Structure and Term Comparison

Assumes 5% Interest Rate for all Scenarios

|                                | Scenario 1: \$10 Million Draw; 10 Year Term & Bullet Maturity | Scenario 2: \$1 Million Draws over 10 Years with 10 Year Term per Draw |
|--------------------------------|---|--|
| <b>Bonding Sources Summary</b> |   |  |
| Par Amount                     | <u>\$10,000,000</u>   | <u>\$10,000,000</u>  |
| <b>Total Sources</b>           | <u>\$10,000,000</u>   | <u>\$10,000,000</u>  |
| <b>Bonding Uses Summary</b>    |   |  |
| Project Fund                   | <u>\$10,000,000</u>   | <u>\$10,000,000</u>  |
| <b>Total Uses</b>              | <u>\$10,000,000</u>   | <u>\$10,000,000</u>  |
|                                | -   | -  |
| <b>Financing Statistics</b>    |   |  |
| Dated Date                     | 12/1/2019   | 12/1/2019  |
| Total Debt Service             | \$15,000,000  | \$15,000,000   |
|                                |   |  |
| Maximum Annual Debt Service    | \$10,500,000  | \$1,500,000  |
| Interest Rate                  | 5.000%  | 5.000%   |
| Final Maturity                 | 12/1/2029   | 12/1/2038  |
| <b>Debt Service Cash Flows</b> |   |  |

| <u>Year</u> | Scenario 1          | Scenario 2          |
|-------------|---------------------|---------------------|
|             | <u>Debt Service</u> | <u>Debt Service</u> |
| 2020        | 500,000             | 50,000              |
| 2021        | 500,000             | 100,000             |
| 2022        | 500,000             | 150,000             |
| 2023        | 500,000             | 200,000             |
| 2024        | 500,000             | 250,000             |
| 2025        | 500,000             | 300,000             |
| 2026        | 500,000             | 350,000             |
| 2027        | 500,000             | 400,000             |
| 2028        | 500,000             | 450,000             |
| 2029        | 10,500,000          | 1,500,000           |
| 2030        |                     | 1,450,000           |
| 2031        |                     | 1,400,000           |
| 2032        |                     | 1,350,000           |
| 2033        |                     | 1,300,000           |
| 2034        |                     | 1,250,000           |
| 2035        |                     | 1,200,000           |
| 2036        |                     | 1,150,000           |
| 2037        |                     | 1,100,000           |
| 2038        |                     | <u>1,050,000</u>    |
|             | <b>\$15,000,000</b> | <b>\$15,000,000</b> |

## NEXT STEPS

If the proposed ordinance is acceptable to the council at the August 20, 2019 meeting, staff requests that the adoption of this ordinance be continued to September 3, 2019 so that all ballot issues may be adopted on the same date.

If it is amended at second reading, the final reading will occur on September 3, 2019.

## **ATTACHMENTS**

A – Proposed Ordinance 8344

ORDINANCE 8344

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO INCREASE CITY OF BOULDER DEBT BY AN AMOUNT NOT TO EXCEED \$10,000,000, WITH A MAXIMUM REPAYMENT COST OF NOT TO EXCEED \$15,000,000, WITHOUT RAISING TAXES, TO PROVIDE FOR A HOUSING ASSISTANCE PROGRAM THAT WILL INCLUDE PERMANENTLY AFFORDABLE DEED RESTRICTIONS AND MAKE LOANS TO MIDDLE-INCOME HOUSEHOLDS TO PURCHASE HOMES SOLD IN BOULDER; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

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

Section 1. A municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2019.

Section 3. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of the imposition of a middle-income housing program described in the ballot issue title in this ordinance.

Section 4. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

**BALLOT ISSUE \_\_\_\_**

**IMPOSITION OF A MIDDLE-INCOME  
HOUSING PROGRAM**

SHALL CITY OF BOULDER DEBT BE INCREASED BY AN AMOUNT NOT TO EXCEED \$10,000,000, WITH A MAXIMUM REPAYMENT COST OF NOT TO EXCEED \$15,000,000, WITHOUT RAISING TAXES, TO PROVIDE FOR A HOUSING ASSISTANCE PROGRAM THAT WILL INCLUDE PERMANENTLY AFFORDABLE DEED RESTRICTIONS AND MAKE LOANS TO MIDDLE-INCOME HOUSEHOLDS TO PURCHASE HOMES SOLD IN BOULDER, SUCH DEBT TO BE SOLD AT SUCH TIME AND IN SUCH MANNER AND CONTAIN SUCH TERMS, NOT INCONSISTENT HERewith, AS THE CITY COUNCIL MAY DETERMINE AND TO PAY ALL NECESSARY OR INCIDENTAL COSTS RELATED THERETO BY THE ISSUANCE AND PAYMENT OF NOTES, BONDS, LINES OF CREDIT OR OTHER DEBT OBLIGATIONS AS PROVIDED BY THE CITY CHARTER, WHICH OBLIGATIONS SHALL BE PAYABLE FROM THE GENERAL FUND AND ANY OTHER LEGALLY AVAILABLE FUNDS OF THE CITY, ALL WITHOUT IN ANY OTHER WAY AFFECTING THE CITY'S OTHER TAXES, REVENUES OR EXPENDITURES UNDER THE CONSTITUTION AND LAWS OF THIS STATE?

YES/FOR \_\_\_\_

NO/AGAINST \_\_\_\_

Section 5. If this ballot issue is approved by the voters, the Charter shall be so amended, and the City Council may adopt amendments to the Boulder Revised Code to implement this change.

Section 6. The election shall be conducted under the provisions of the Colorado Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this ordinance.



Section 9. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 6th day of August 2019.

Lynnette Beck,  
City Clerk

Lynnette Beck,  
City Clerk



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Second reading, public hearing, and consideration of a motion to pass Ordinance 8346 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday November 5, 2019, the question of whether the City of Boulder should extend and dedicate to Open Space and the General Fund a 0.15 cent sales tax; with eight potential alternative options for dedication of the revenue including options for a 1-year, 10-year, or 20-year extension, options to fund Transportation and for funding the acquisition of a property interest in an approximately 25-acre property known as Long's Gardens and setting forth the ballot title and other election procedures and setting forth related details.

### **PRIMARY STAFF CONTACT**

Thomas Carr, City Attorney

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to pass Ordinance 8346 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday November 5, 2019, the question of whether the City of Boulder should extend and dedicate to Open Space and the General Fund a 0.15 cent sales tax and setting forth the ballot title and other election procedures and setting forth related details.

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 5C- Ordinance 8346 Sales and Use Tax Ballot Issue**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: AUGUST 20, 2019**

**AGENDA TITLE**

Second reading, public hearing, and consideration of a motion to pass, Ordinance 8346 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday November 5, 2019, the question of whether the City of Boulder should extend and dedicate to Open Space and the General Fund a 0.15 cent sales tax; with eight potential alternative options for dedication of the revenue including options for a 1-year, 10-year, or 20-year extension, options to fund Transportation and for funding the acquisition of a property interest in an approximately 25-acre property known as Long's Gardens and setting forth the ballot title and other election procedures and setting forth related details.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Thomas A. Carr, City Attorney  
Cheryl Pattelli, Chief Financial Officer

**EXECUTIVE SUMMARY**

At the July 23, 2019 Study Session, council members discussed various approaches to addressing the need to fund the Open Space and Mountain Parks, Transportation Departments, and general government operations. Council members considered extending a 0.15 cent sales tax, which expires December 31, 2019 and dedicating the funding to specific city needs. Although there was no clear consensus among council members, council members expressed support for the following options:

- A. A dedication of 0.10 to Open Space and 0.05 to the General Fund for 10 Years
- B. A dedication of 0.10 to Open Space and 0.05 to the General Fund for 20 Years
- C. A dedication of 0.10 to Open Space and 0.05 to the General Fund including funding to purchase a conservation easement at Long's Gardens for 10 Years
- D. A dedication of 0.10 to Open Space and 0.05 to the General Fund including funding to purchase a conservation easement at Long's Gardens for 20 Years
- E. A dedication of 0.10 to Open Space and 0.05 to Transportation for 10 Years
- F. A dedication of 0.10 to Open Space and 0.05 to Transportation for 20 Years
- G. A dedication of 0.15 to Open Space for 10 Years
- H. A dedication of 0.15 to Open Space for 20 Years

Additionally, Council Members Yates and Young requested the following option, which was included on the dais at the August 6, 2019 council meeting:

- I. A dedication of 0.15 to fund the purchase of a conservation easement at Long's Gardens for 1 Year.

Staff members have developed the proposed ordinance which would adopt the first option presented above. Staff members have also developed eight alternatives, which are attachments B through I, representing the other alternatives. Staff chose the proposed ordinance at random. The schedule should allow ample time for council to receive public input and vote to adopt a preferred alternative. The proposed schedule would be as follows:

First Reading: August 6, 2019

Second Reading: August 20, 2019

Third Reading: September 3, 2019

Hopefully, council will select the preferred alternative at the August 20<sup>th</sup> council meeting, allowing for the amendments to be included in the third reading version to be adopted on September 3, 2019.

## **STAFF RECOMMENDATION**

### **Suggested Motion Language**

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

Motion to pass Ordinance 8346 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday November 5, 2019, the question of whether the City of Boulder should extend and dedicate to Open Space and the General Fund a 0.15 cent sales tax and setting forth the ballot title and other election procedures and setting forth related details.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- **Economic** – The renewal of the 0.15 cent sales taxes will not create any incremental economic impact on any businesses or individuals since the programs the tax currently supports are already absorbed within the macro economy of the city.
- **Environmental** – The existing tax funds transportation construction, maintenance and operations. Renewal of a portion of these taxes for open space will support land management activities such as weed and wildlife management and environmental education.
- **Social** – The use of sales taxes to fund the maintenance of mountain parks and natural lands that are accessible to all members of the community, foster a sense of place and provide opportunities for recreation.

## **OTHER IMPACTS**

- **Fiscal** – The fiscal impact to the city is covered in the analysis section of this agenda item.
- **Staff time** – The staff time needed to complete the background work for the ballot item is included within the departmental work plans.

## **ANALYSIS**

### **1. Open Space**

The various options would provide additional funding dedicated to open space. The options include dedicating either 0.10 cent or 0.15 cent to open space. These alternatives would be projected to produce approximately \$3.5 million and \$5.3 million respectively each year to fund open space operations, maintenance and acquisitions.

### **2. Transportation**

The proposed alternatives in attachments E and F would dedicate 0.05 cent of the 0.15 cent tax renewal to transportation maintenance, expansion and mass transit. This would be expected to produce approximately \$1.76 million each year.

### **3. General Government Operations**

There remains a need to fund general government operations. The funding gap persists and is projected to increase over time. The General Fund provides support to departments that do not have a dedicated funding source like public safety (police and fire), which makes up 37 percent of total budget within the General Fund. Accordingly, the proposed ordinance and the alternatives in attachments A, B, C, and D would dedicate

0.05 cent of the 0.15 cent sales tax for general government operations. This would be expected to produce approximately \$1.76 million each year.

#### 4. Long's Gardens

Council has expressed a desire to acquire a property interest in the 25.34-acre property known as "Long's Gardens." It does not appear that the entire property fits appropriately as an Open Space project. Existing budget priorities, as established by council, do not provide for the funds necessary to make a purchase of this magnitude. Council directed that staff provide language that would allow for the use of 0.05 cent of the 0.15 cent sales tax for the acquisition of a property interest in Long's Gardens at the discretion of the City Council. Such a tax would be expected to produce approximately \$1.76 million each year. Council may wish to consider whether to add additional bonding authority to the bonding measure that council is also considering to allow for the issuance of additional debt to purchase the property interest.

The following chart sets out the options:

| Attachment | 0.10%          | 0.05%                         | Term     | Projected Annual Funding  |
|------------|----------------|-------------------------------|----------|---|
| <b>A</b>   | Open Space     | General Fund                  | 10 years | \$3.50 million per year to OSMP<br>\$1.76 million per year to the General Fund                          |
| <b>B</b>   | Open Space     | General Fund                  | 20 years | \$3.50 million per year to OSMP<br>\$1.76 million per year to the General Fund                          |
| <b>C</b>   | Open Space     | General Fund + Long's Gardens | 10 years | \$3.50 million per year to OSMP<br>\$1.76 million per year to the General Fund including Long's Gardens |
| <b>D</b>   | Open Space     | General Fund + Long's Gardens | 20 years | \$3.50 million per year to OSMP<br>\$1.76 million per year to the General Fund including Long's Gardens |
| <b>E</b>   | Open Space     | Transportation                | 10 years | \$3.50 million per year to OSMP<br>\$1.76 million per year to Transportation                            |
| <b>F</b>   | Open Space     | Transportation                | 20 years | \$3.50 million per year to OSMP<br>\$1.76 million per year to Transportation                            |
| <b>G</b>   | Open Space     | Open Space                    | 10 years | \$5.30 million per year to OSMP   |
| <b>H</b>   | Open Space     | Open Space                    | 20 years | \$5.30 million per year to OSMP   |
| <b>I</b>   | Long's Gardens | Long's Gardens                | 1 year   | \$5.30 million for one year for Long's Gardens  |

#### ATTACHMENTS

- A. Proposed Ordinance 8346: 0.10 Open Space/ 0.05 General Fund 10 Years
- B. Alternative: 0.10 Open Space/0.05 General Fund 20 Years
- C. Alternative: 0.10 to Open Space/0.05 to the General Fund including funding to purchase a conservation easement at Long's Gardens for 10 Years
- D. Alternative: 0.10 Open Space/ 0.05 General Fund including funding to purchase a conservation easement at Long's Gardens for 20 Years
- E. Alternative: 0.10 Open Space/0.05 Transportation 10 Years
- F. Alternative: 0.10 Open Space/0.05 Transportation 20 Years
- G. Alternative: 0.15 Open Space 10 Years

- H. Alternative: 0.15 Open Space 20 Years
- I. Alternative: 0.15 to fund the purchase of a conservation easement at Long's Gardens for 1 Year

ORDINANCE 8346

(0.10 Open Space, 0.05 General Fund – 10 year)

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, EXTENDING THE EXISTING 0.15 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2029; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2029, 0.10 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE, AND 0.05 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO GENERAL FUND SERVICES SUCH AS FIRE, POLICE, LIBRARIES, PARKS, RECREATION, HUMAN SERVICES AND OTHER GENERAL FUND PURPOSES; AS A VOTER APPROVED REVENUE CHANGE; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

A. The voters of the city have earmarked sales and use taxes to fund transportation construction and services, such as maintenance of pavement, construction of transportation infrastructure, transit service and other transportation purposes by approval of a sales and use tax in the amount of 0.15 cents on each dollar sales, which tax expires at the end of 2019.

B. The electorate should consider authorizing the City Council to continue the collection of a 0.15 cents on each dollar sales and use tax from its present expiration date of December 31, 2019 and beginning January 1, 2020 designate the revenue generated to fund open space purposes and other general funds purposes;

C. It is appropriate for voters to approve of the continued collection, retention and



1 expenditure of the full tax proceeds and any related earnings from this portion of the sales and  
2 use tax; and  
3

4 D. The purposes that will be served by the continued collection of the tax are critical  
5 for the continued provision of essential general fund city services.  
6

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

9 Section 1. A municipal coordinated election will be held in the City of Boulder, County  
10 of Boulder and State of Colorado, on Tuesday, November 5, 2019.

11 Section 2. At that election, there shall be submitted to the electors of the City of Boulder  
12 entitled by law to vote the question of authorizing the City Council, by duly passed ordinance, to  
13 amend that portion of section 3-2-5, "Rate of Tax," B.R.C. 1981, that pertains to the  
14 transportation tax that is currently set to expire at midnight on December 31, 2019 by extending  
15 the tax beyond its current sunset date until December 31, 2029.  
16

17 Section 3. The official ballot shall contain the following ballot title, which shall also be  
18 the designation and submission clause for the issue: (*see following page*)  
19  
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**BALLOT ISSUE \_\_\_\_\_****SALES AND USE TAX EXTENSION**

WITHOUT RAISING ADDITIONAL TAXES, SHALL THE EXISTING 0.15 CENT CITY SALES AND USE TAX FOR TRANSPORTATION PURPOSES, APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BE EXTENDED BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2029; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2029 DESIGNATING 0.10 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE LAND AND 0.05 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND SERVICES SUCH AS FIRE, POLICE, LIBRARIES, PARKS, RECREATION, HUMAN SERVICES AND OTHER GENERAL FUND PURPOSES AS A VOTER APPROVED REVENUE CHANGE?

YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

Section 4. If a majority of all the votes cast at the election on the issue submitted are for the issue, the issue shall be deemed to have passed, and the City Council authorized to make amendments to the Boulder Revised Code, 1981, to implement this issue.

Section 5. The election shall be conducted under the provisions of the Colorado Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this ordinance.

Section 6. The officers of the city are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to conduct the election for the city.

Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance. The tax established by this issue is intended to be authorized under

any lawful means of taxation, including license taxation pursuant to City of Boulder Charter  
Section 122.

Section 8. This ordinance is necessary to protect the public health, safety, and welfare of  
the residents of the city, and covers matters of local concern.

Section 9. The City Council deems it appropriate that this ordinance be published by title  
only and orders that copies of this ordinance be made available in the office of the city clerk for  
public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 6th day of August 2019.

\_\_\_\_\_  
Suzanne Jones,  
Mayor

Attest:

\_\_\_\_\_  
Lynnette Beck,  
City Clerk

READ ON SECOND READING, AND PASSED this 20th day of August 2019.

\_\_\_\_\_  
Suzanne Jones,  
Mayor

Attest:

\_\_\_\_\_  
Lynnette Beck,  
City Clerk

1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
2  
3 BY TITLE ONLY this 3rd day of September 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk  
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ORDINANCE 8346

(0.10 Open Space, 0.05 General Fund – 20 year)

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, EXTENDING THE EXISTING 0.15 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2039; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2039, 0.10 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE, AND 0.05 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO GENERAL FUND SERVICES SUCH AS FIRE, POLICE, LIBRARIES, PARKS, RECREATION, HUMAN SERVICES AND OTHER GENERAL FUND PURPOSES; AS A VOTER APPROVED REVENUE CHANGE; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

A. The voters of the city have earmarked sales and use taxes to fund transportation construction and services, such as maintenance of pavement, construction of transportation infra-structure, transit service and other transportation purposes by approval of a sales and use tax in the amount of 0.15 cents on each dollar sales, which tax expires at the end of 2019.

B. The electorate should consider authorizing the City Council to continue the collection of a 0.15 cents on each dollar sales and use tax from its present expiration date of December 31, 2019 and beginning January 1, 2020 designate the revenue generated to fund open space purposes and other general funds purposes;

C. It is appropriate for voters to approve of the continued collection, retention and

1 expenditure of the full tax proceeds and any related earnings from this portion of the sales and  
2 use tax; and  
3

4 D. The purposes that will be served by the continued collection of the tax are critical  
5 for the continued provision of essential general fund city services.  
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13 amend that portion of section 3-2-5, "Rate of Tax," B.R.C. 1981, that pertains to the  
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15 the tax beyond its current sunset date until December 31, 2039.  
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17 Section 3. The official ballot shall contain the following ballot title, which shall also be  
18 the designation and submission clause for the issue: (*see following page*)  
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**BALLOT ISSUE \_\_\_\_\_**

**SALES AND USE TAX EXTENSION**

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YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

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only and orders that copies of this ordinance be made available in the office of the city clerk for  
public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 6th day of August 2019.

---

Suzanne Jones,  
Mayor

Attest:

---

Lynnette Beck,  
City Clerk

READ ON SECOND READING, PASSED, AS AMENDED this 20th day of August  
2019.

---

Suzanne Jones,  
Mayor

Attest:

---

Lynnette Beck,  
City Clerk



1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
2  
3 BY TITLE ONLY this 3rd day of September 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk  
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ORDINANCE 8346

(0.10 Open Space, 0.05 General Fund, including Long's Gardens – 10 year)

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B. The electorate should consider authorizing the City Council to continue the collection of a 0.15 cents on each dollar sales and use tax from its present expiration date of December 31, 2019 and beginning January 1, 2020 designate the revenue generated to fund open space purposes and other general funds purposes, including the purchase of a conservation

1 easement over the property known as Long's Gardens at the discretion of the City Council;

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YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

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9  
10 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
11 TITLE ONLY this 6th day of August 2019.

12  
13  
14 \_\_\_\_\_  
Suzanne Jones,  
Mayor

15 Attest:

16  
17 \_\_\_\_\_  
Lynnette Beck,  
18 City Clerk

1 READ ON SECOND READING, PASSED, AS AMENDED this 20th day of August  
2 2019.

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5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

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12 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
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18 Attest:

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ORDINANCE 8346

(0.10 Open Space, 0.05 General Fund, including Long's Gardens – 20 year)

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**BALLOT ISSUE \_\_\_\_\_**

**SALES AND USE TAX EXTENSION**

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YES/FOR \_\_\_\_\_

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public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
TITLE ONLY this 6th day of August 2019.

---

Suzanne Jones,  
Mayor

Attest:

---

Lynnette Beck,  
City Clerk

READ ON SECOND READING, PASSED, AS AMENDED this 20th day of August  
2019.

---

Suzanne Jones,  
Mayor

Attest:

---

Lynnette Beck,  
City Clerk

1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
2  
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5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

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ORDINANCE 8346

(0.10 Open Space, 0.05 Transportation – 10 year)

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, EXTENDING THE EXISTING 0.15 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2029; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2029, 0.10 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE, AND 0.05 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND TRANSPORTATION CONSTRUCTION AND SERVICES, SUCH AS MAINTENANCE OF PAVEMENT, CONSTRUCTION OF TRANSPORTATION INFRA-STRUCTURE, TRANSIT SERVICE AND OTHER TRANSPORTATION PURPOSES; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

A. The voters of the city have earmarked sales and use taxes to fund transportation construction and services, such as maintenance of pavement, construction of transportation infrastructure, transit service and other transportation purposes by approval of a sales and use tax in the amount of 0.15 cents on each dollar sales, which tax expires at the end of 2019.

B. The electorate should consider authorizing the City Council to continue the collection of a 0.15 cents on each dollar sales and use tax from its present expiration date of December 31, 2019 and beginning January 1, 2020 designate the revenue generated to fund open space purposes and transportation purposes;

C. It is appropriate for voters to approve of the continued collection, retention and

1 expenditure of the full tax proceeds and any related earnings from this portion of the sales and  
2 use tax; and  
3

4 D. The purposes that will be served by the continued collection of the tax are critical  
5 for the continued provision of essential general fund city services.  
6

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

9 Section 1. A municipal coordinated election will be held in the City of Boulder, County  
10 of Boulder and State of Colorado, on Tuesday, November 5, 2019.

11 Section 2. At that election, there shall be submitted to the electors of the City of Boulder  
12 entitled by law to vote the question of authorizing the City Council, by duly passed ordinance, to  
13 amend that portion of section 3-2-5, "Rate of Tax," B.R.C. 1981, that pertains to the  
14 transportation tax that is currently set to expire at midnight on December 31, 2019 by extending  
15 the tax beyond its current sunset date until December 31, 2029.  
16

17 Section 3. The official ballot shall contain the following ballot title, which shall also be  
18 the designation and submission clause for the issue: (*see following page*)  
19  
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**BALLOT ISSUE \_\_\_\_\_**

**SALES AND USE TAX EXTENSION**

WITHOUT RAISING ADDITIONAL TAXES, SHALL THE EXISTING 0.15 CENT CITY SALES AND USE TAX FOR TRANSPORTATION PURPOSES, APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BE EXTENDED BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2029; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2029 DESIGNATING 0.10 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE LAND AND 0.05 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND TRANSPORTATION CONSTRUCTION AND SERVICES, SUCH AS MAINTENANCE OF PAVEMENT, CONSTRUCTION OF TRANSPORTATION INFRA-STRUCTURE, TRANSIT SERVICE AND OTHER TRANSPORTATION PURPOSES AS A VOTER APPROVED REVENUE CHANGE?

YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

Section 4. If a majority of all the votes cast at the election on the issue submitted are for the issue, the issue shall be deemed to have passed, and the City Council authorized to make amendments to the Boulder Revised Code, 1981, to implement this issue.

Section 5. The election shall be conducted under the provisions of the Colorado Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this ordinance.

Section 6. The officers of the city are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to conduct the election for the city.

Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance. The tax established by this issue is intended to be authorized under

1 any lawful means of taxation, including license taxation pursuant to City of Boulder Charter  
2 Section 122.

3  
4 Section 8. This ordinance is necessary to protect the public health, safety, and welfare of  
5 the residents of the city, and covers matters of local concern.

6 Section 9. The City Council deems it appropriate that this ordinance be published by title  
7 only and orders that copies of this ordinance be made available in the office of the city clerk for  
8 public inspection and acquisition.

9  
10 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
11 TITLE ONLY this 6th day of August 2019.

12  
13  
14 \_\_\_\_\_  
Suzanne Jones,  
Mayor

15 Attest:

16  
17 \_\_\_\_\_  
Lynnette Beck,  
18 City Clerk

19 READ ON SECOND READING, PASSED, AS AMENDED this 20th day of August  
20 2019.

21  
22  
23 \_\_\_\_\_  
Suzanne Jones,  
Mayor

24 Attest:

25  
26 \_\_\_\_\_  
Lynnette Beck,  
27 City Clerk  
28

1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
2  
3 BY TITLE ONLY this 3rd day of September 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk  
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ORDINANCE 8346

(0.10 Open Space, 0.05 Transportation – 20 year)

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, EXTENDING THE EXISTING 0.15 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2039; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2039, 0.10 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE, AND 0.05 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND TRANSPORTATION CONSTRUCTION AND SERVICES, SUCH AS MAINTENANCE OF PAVEMENT, CONSTRUCTION OF TRANSPORTATION INFRA-STRUCTURE, TRANSIT SERVICE AND OTHER TRANSPORTATION PURPOSES; AS A VOTER APPROVED REVENUE CHANGE; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

A. The voters of the city have earmarked sales and use taxes to fund transportation construction and services, such as maintenance of pavement, construction of transportation infrastructure, transit service and other transportation purposes by approval of a sales and use tax in the amount of 0.15 cents on each dollar sales, which tax expires at the end of 2019.

B. The electorate should consider authorizing the City Council to continue the collection of a 0.15 cents on each dollar sales and use tax from its present expiration date of December 31, 2019 and beginning January 1, 2020 designate the revenue generated to fund open space purposes and transportation purposes;

1 C. It is appropriate for voters to approve of the continued collection, retention and  
2 expenditure of the full tax proceeds and any related earnings from this portion of the sales and  
3 use tax; and  
4

5 D. The purposes that will be served by the continued collection of the tax are critical  
6 for the continued provision of essential general fund city services.  
7

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

10 Section 1. A municipal coordinated election will be held in the City of Boulder, County  
11 of Boulder and State of Colorado, on Tuesday, November 5, 2019.  
12

13 Section 2. At that election, there shall be submitted to the electors of the City of Boulder  
14 entitled by law to vote the question of authorizing the City Council, by duly passed ordinance, to  
15 amend that portion of section 3-2-5, "Rate of Tax," B.R.C. 1981, that pertains to the  
16 transportation tax that is currently set to expire at midnight on December 31, 2019 by extending  
17 the tax beyond its current sunset date until December 31, 2039.  
18

19 Section 3. The official ballot shall contain the following ballot title, which shall also be  
20 the designation and submission clause for the issue: (*see following page*)  
21  
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28

**BALLOT ISSUE \_\_\_\_\_**

**SALES AND USE TAX EXTENSION**

WITHOUT RAISING ADDITIONAL TAXES, SHALL THE EXISTING 0.15 CENT CITY SALES AND USE TAX FOR TRANSPORTATION PURPOSES, APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BE EXTENDED BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2039; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2039 DESIGNATING 0.10 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE LAND AND 0.05 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND TRANSPORTATION CONSTRUCTION AND SERVICES, SUCH AS MAINTENANCE OF PAVEMENT, CONSTRUCTION OF TRANSPORTATION INFRA-STRUCTURE, TRANSIT SERVICE AND OTHER TRANSPORTATION PURPOSES AS A VOTER APPROVED REVENUE CHANGE?

YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

Section 4. If a majority of all the votes cast at the election on the issue submitted are for the issue, the issue shall be deemed to have passed, and the City Council authorized to make amendments to the Boulder Revised Code, 1981, to implement this issue.

Section 5. The election shall be conducted under the provisions of the Colorado Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this ordinance.

Section 6. The officers of the city are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to conduct the election for the city.

Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance. The tax established by this issue is intended to be authorized under

1 any lawful means of taxation, including license taxation pursuant to City of Boulder Charter  
2 Section 122.  
3

4 Section 8. This ordinance is necessary to protect the public health, safety, and welfare of  
5 the residents of the city, and covers matters of local concern.

6 Section 9. The City Council deems it appropriate that this ordinance be published by title  
7 only and orders that copies of this ordinance be made available in the office of the city clerk for  
8 public inspection and acquisition.  
9

10 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
11 TITLE ONLY this 6th day of August 2019.  
12

13 \_\_\_\_\_  
14 Suzanne Jones,  
15 Mayor

16 Attest:

17 \_\_\_\_\_  
18 Lynnette Beck,  
19 City Clerk

20 READ ON SECOND READING, PASSED, AS AMENDED this 20th day of August  
21 2019.  
22

23 \_\_\_\_\_  
24 Suzanne Jones,  
25 Mayor

26 Attest:

27 \_\_\_\_\_  
28 Lynnette Beck,  
City Clerk

1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
2  
3 BY TITLE ONLY this 3rd day of September 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk  
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ORDINANCE 8346

(0.15 Open Space – 10 year)

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, EXTENDING THE EXISTING 0.15 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2029; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2029, 0.15 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE AS A VOTER APPROVED REVENUE CHANGE; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

A. The voters of the city have earmarked sales and use taxes to fund transportation construction and services, such as maintenance of pavement, construction of transportation infra-structure, transit service and other transportation purposes by approval of a sales and use tax in the amount of 0.15 cents on each dollar sales, which tax expires at the end of 2019.

B. The electorate should consider authorizing the City Council to continue the collection of a 0.15 cents on each dollar sales and use tax from its present expiration date of December 31, 2019 and beginning January 1, 2020 designate the revenue generated to fund open space purposes;

C. It is appropriate for voters to approve of the continued collection, retention and expenditure of the full tax proceeds and any related earnings from this portion of the sales and use tax; and

1 D. The purposes that will be served by the continued collection of the tax are critical  
2 for the continued provision of essential general fund city services.  
3

4 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
5 OF BOULDER, COLORADO:  
6

7 Section 1. A municipal coordinated election will be held in the City of Boulder, County  
8 of Boulder and State of Colorado, on Tuesday, November 5, 2019.

9 Section 2. At that election, there shall be submitted to the electors of the City of Boulder  
10 entitled by law to vote the question of authorizing the City Council, by duly passed ordinance, to  
11 amend that portion of section 3-2-5, "Rate of Tax," B.R.C. 1981, that pertains to the  
12 transportation tax that is currently set to expire at midnight on December 31, 2019 by extending  
13 the tax beyond its current sunset date until December 31, 2029.  
14

15 Section 3. The official ballot shall contain the following ballot title, which shall also be  
16 the designation and submission clause for the issue:  
17

18 **BALLOT ISSUE \_\_\_\_\_**

19 **SALES AND USE TAX EXTENSION**

20 WITHOUT RAISING ADDITIONAL TAXES, SHALL THE  
21 EXISTING 0.15 CENT CITY SALES AND USE TAX FOR  
22 TRANSPORTATION PURPOSES, APPROVED BY THE VOTERS BY  
23 ORDINANCE NO. 7913, BE EXTENDED BEYOND THE CURRENT  
24 EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER  
25 31, 2029; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER  
26 31, 2029 DESIGNATING 0.15 CENT OF EVERY DOLLAR OF THE  
REVENUES COLLECTED TO FUND THE ACQUISITION AND  
PRESERVATION OF OPEN SPACE LAND AS A VOTER  
APPROVED REVENUE CHANGE?

27 YES/FOR \_\_\_\_

NO/AGAINST \_\_\_\_

1        Section 4. If a majority of all the votes cast at the election on the issue submitted are for  
2 the issue, the issue shall be deemed to have passed, and the City Council authorized to make  
3 amendments to the Boulder Revised Code, 1981, to implement this issue.  
4

5        Section 5. The election shall be conducted under the provisions of the Colorado  
6 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this  
7 ordinance.  
8

9        Section 6. The officers of the city are authorized to take all action necessary or  
10 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
11 conduct the election for the city.

12        Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any  
13 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
14 provisions of this ordinance. The tax established by this issue is intended to be authorized under  
15 any lawful means of taxation, including license taxation pursuant to City of Boulder Charter  
16 Section 122.  
17

18        Section 8. This ordinance is necessary to protect the public health, safety, and welfare of  
19 the residents of the city, and covers matters of local concern.

20        Section 9. The City Council deems it appropriate that this ordinance be published by title  
21 only and orders that copies of this ordinance be made available in the office of the city clerk for  
22 public inspection and acquisition.  
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1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2  
3 TITLE ONLY this 6th day of August 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk

12 READ ON SECOND READING, PASSED, AS AMENDED this 20th day of August  
13 2019.  
14

15 \_\_\_\_\_  
16 Suzanne Jones,  
17 Mayor

18 Attest:

19 \_\_\_\_\_  
20 Lynnette Beck,  
21 City Clerk

1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
2  
3 BY TITLE ONLY this 3rd day of September 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk  
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ORDINANCE 8346

(0.15 Open Space – 20 year)

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, EXTENDING THE EXISTING 0.15 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2039; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER 31, 2039, 0.15 CENT OF EVERY DOLLAR OF THE REVENUES COLLECTED TO FUND THE ACQUISITION AND PRESERVATION OF OPEN SPACE AS A VOTER APPROVED REVENUE CHANGE; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

A. The voters of the city have earmarked sales and use taxes to fund transportation construction and services, such as maintenance of pavement, construction of transportation infra-structure, transit service and other transportation purposes by approval of a sales and use tax in the amount of 0.15 cents on each dollar sales, which tax expires at the end of 2019.

B. The electorate should consider authorizing the City Council to continue the collection of a 0.15 cents on each dollar sales and use tax from its present expiration date of December 31, 2019 and beginning January 1, 2020 designate the revenue generated to fund open space purposes;

C. It is appropriate for voters to approve of the continued collection, retention and expenditure of the full tax proceeds and any related earnings from this portion of the sales and use tax; and

1 D. The purposes that will be served by the continued collection of the tax are critical  
2 for the continued provision of essential general fund city services.  
3

4 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
5 OF BOULDER, COLORADO:  
6

7 Section 1. A municipal coordinated election will be held in the City of Boulder, County  
8 of Boulder and State of Colorado, on Tuesday, November 5, 2019.

9 Section 2. At that election, there shall be submitted to the electors of the City of Boulder  
10 entitled by law to vote the question of authorizing the City Council, by duly passed ordinance, to  
11 amend that portion of section 3-2-5, "Rate of Tax," B.R.C. 1981, that pertains to the  
12 transportation tax that is currently set to expire at midnight on December 31, 2019 by extending  
13 the tax beyond its current sunset date until December 31, 2039.  
14

15 Section 3. The official ballot shall contain the following ballot title, which shall also be  
16 the designation and submission clause for the issue:  
17

18 **BALLOT ISSUE \_\_\_\_\_**

19 **SALES AND USE TAX EXTENSION**

20 WITHOUT RAISING ADDITIONAL TAXES, SHALL THE  
21 EXISTING 0.15 CENT CITY SALES AND USE TAX FOR  
22 TRANSPORTATION PURPOSES, APPROVED BY THE VOTERS BY  
23 ORDINANCE NO. 7913, BE EXTENDED BEYOND THE CURRENT  
24 EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER  
25 31, 2039; AND BEGINNING JANUARY 1, 2020 UNTIL DECEMBER  
26 31, 2039 DESIGNATING 0.15 CENT OF EVERY DOLLAR OF THE  
REVENUES COLLECTED TO FUND THE ACQUISITION AND  
PRESERVATION OF OPEN SPACE LAND AS A VOTER  
APPROVED REVENUE CHANGE?

27 YES/ FOR \_\_\_\_

NO/AGAINST \_\_\_\_

1        Section 4. If a majority of all the votes cast at the election on the issue submitted are for  
2 the issue, the issue shall be deemed to have passed, and the City Council authorized to make  
3 amendments to the Boulder Revised Code, 1981, to implement this issue.  
4

5        Section 5. The election shall be conducted under the provisions of the Colorado  
6 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this  
7 ordinance.  
8

9        Section 6. The officers of the city are authorized to take all action necessary or  
10 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
11 conduct the election for the city.

12        Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any  
13 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
14 provisions of this ordinance. The tax established by this issue is intended to be authorized under  
15 any lawful means of taxation, including license taxation pursuant to City of Boulder Charter  
16 Section 122.  
17

18        Section 8. This ordinance is necessary to protect the public health, safety, and welfare of  
19 the residents of the city, and covers matters of local concern.

20        Section 9. The City Council deems it appropriate that this ordinance be published by title  
21 only and orders that copies of this ordinance be made available in the office of the city clerk for  
22 public inspection and acquisition.  
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1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2  
3 TITLE ONLY this 6th day of August 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk

12 READ ON SECOND READING, PASSED, AS AMENDED this 20th day of August  
13 2019.  
14

15 \_\_\_\_\_  
16 Suzanne Jones,  
17 Mayor

18 Attest:

19 \_\_\_\_\_  
20 Lynnette Beck,  
21 City Clerk

1 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
2  
3 BY TITLE ONLY this 3rd day of September 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk  
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ORDINANCE 8346

(0.15 Long's Gardens – 1 year)

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF, WITHOUT RAISING ADDITIONAL TAXES, EXTENDING THE EXISTING 0.15 CENT CITY SALES AND USE TAX APPROVED BY THE VOTERS BY ORDINANCE NO. 7913, BEYOND THE CURRENT EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER 31, 2020; TO FUND THE PURCHASE OF A CONSERVATION EASEMENT OVER THE PROPERTY KNOWN AS LONG'S GARDENS; AS A VOTER APPROVED REVENUE CHANGE; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

WHEREAS the City Council finds that:

A. The voters of the city have earmarked sales and use taxes to fund transportation construction and services, such as maintenance of pavement, construction of transportation infra-structure, transit service and other transportation purposes by approval of a sales and use tax in the amount of 0.15 cents on each dollar sales, which tax expires at the end of 2019.

B. The electorate should consider authorizing the City Council to continue the collection of a 0.15 cents on each dollar sales and use tax from its present expiration date of December 31, 2019 and beginning January 1, 2020 designate the revenue generated to fund the purchase of a conservation easement over the property known as Long's Gardens; and

C. It is appropriate for voters to approve of the continued collection, retention and expenditure of the full tax proceeds and any related earnings from this portion of the sales and use tax.



1 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
2 OF BOULDER, COLORADO:  
3

4 Section 1. A municipal coordinated election will be held in the City of Boulder, County  
5 of Boulder and State of Colorado, on Tuesday, November 5, 2019.

6 Section 2. At that election, there shall be submitted to the electors of the City of Boulder  
7 entitled by law to vote the question of authorizing the City Council, by duly passed ordinance, to  
8 amend that portion of section 3-2-5, "Rate of Tax," B.R.C. 1981, that pertains to the  
9 transportation tax that is currently set to expire at midnight on December 31, 2019 by extending  
10 the tax beyond its current sunset date until December 31, 2020.  
11

12 Section 3. The official ballot shall contain the following ballot title, which shall also be  
13 the designation and submission clause for the issue:  
14

15 **BALLOT ISSUE \_\_\_\_\_**

16 **SALES AND USE TAX EXTENSION**  
17 **TO PURCHASE A CONSERVATION**  
18 **EASEMENT AT LONG'S GARDENS**

19 WITHOUT RAISING ADDITIONAL TAXES, SHALL THE  
20 EXISTING 0.15 CENT CITY SALES AND USE TAX FOR  
21 TRANSPORTATION PURPOSES, APPROVED BY THE VOTERS BY  
22 ORDINANCE NO. 7913, BE EXTENDED BEYOND THE CURRENT  
23 EXPIRATION DATE OF DECEMBER 31, 2019 UNTIL DECEMBER  
24 31, 2020; DESIGNATING THE REVENUES COLLECTED TO FUND  
25 THE ACQUISITION OF A CONSERVATION EASEMENT AT  
26 LONG'S GARDENS AS A VOTER APPROVED REVENUE  
27 CHANGE?

28 YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

26 Section 4. If a majority of all the votes cast at the election on the issue submitted are for  
27 the issue, the issue shall be deemed to have passed, and the City Council authorized to make  
28 amendments to the Boulder Revised Code, 1981, to implement this issue.

1        Section 5. The election shall be conducted under the provisions of the Colorado  
2 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this  
3 ordinance.  
4

5        Section 6. The officers of the city are authorized to take all action necessary or  
6 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
7 conduct the election for the city.  
8

9        Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any  
10 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
11 provisions of this ordinance. The tax established by this issue is intended to be authorized under  
12 any lawful means of taxation, including license taxation pursuant to City of Boulder Charter  
13 Section 122.  
14

15        Section 8. This ordinance is necessary to protect the public health, safety, and welfare of  
16 the residents of the city, and covers matters of local concern.  
17

18        Section 9. The City Council deems it appropriate that this ordinance be published by title  
19 only and orders that copies of this ordinance be made available in the office of the city clerk for  
20 public inspection and acquisition.  
21

22        INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
23 TITLE ONLY this 6th day of August 2019.  
24

\_\_\_\_\_  
Suzanne Jones,  
Mayor

25        Attest:  
26

\_\_\_\_\_  
27 Lynnette Beck,  
28 City Clerk

1 READ ON SECOND READING, PASSED, AS AMENDED this 20th day of August  
2 2019.  
3

4  
5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk

12 READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED PUBLISHED  
13 BY TITLE ONLY this 3rd day of September 2019.  
14

15 \_\_\_\_\_  
16 Suzanne Jones,  
17 Mayor

18 Attest:

19 \_\_\_\_\_  
20 Lynnette Beck,  
21 City Clerk



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Continued second reading and consideration of a motion to adopt Ordinance 8341 placing on the November 5, 2019 Ballot a New Sales Tax on Cigarettes and Other Tobacco Products OR Ordinance 8342 placing on the November 5, 2019 Ballot a New Sales Tax on Tobacco Products Other Than Cigarettes, with Ordinance 8341 and Ordinance 8342 to be considered by council as alternatives; and setting forth the ballot title and other election procedures and setting forth related details.

### **PRIMARY STAFF CONTACT**

Tom Carr, City Attorney, 303.441.3020

### **REQUESTED ACTION OR MOTION LANGUAGE**

Motion to pass on second reading Ordinance 8341 placing on the November 5, 2019 Ballot a New Sales Tax on Cigarettes and setting forth the ballot title and other election procedures and setting forth related details; and

Motion to pass on second reading Ordinance 8342 placing on the November 5, 2019 Ballot a New Sales Tax on Electronic Smoking Devices including any refill, cartridge or component; and setting forth the ballot title and other election procedures and setting forth related details.

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 3H- Ballot Measure- Tobacco Ordinances**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE**

Items related to regulating and taxing tobacco products:

1. Continued second reading and consideration of a motion to adopt (on September 3, 2019) Ordinance 8340 Raising the Age for Purchase of Tobacco Products to 21 and Prohibiting the Sale of Flavored Tobacco Products; and
2. Continued second reading and consideration of a motion to adopt (on September 3, 2019) Ordinance 8341 placing on the November 5, 2019 Ballot a New Sales Tax on Cigarettes and Other Tobacco Products OR Ordinance 8342 placing on the November 5, 2019 Ballot a New Sales Tax on Tobacco Products Other Than Cigarettes, with Ordinance 8341 and Ordinance 8342 to be considered by council as alternatives; and setting forth the ballot title and other election procedures and setting forth related details.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Thomas A. Carr, City Attorney  
Kurt Firnhaber, Director of Housing and Human Services  
Kristen Hyser, Deputy Director for Housing  
Anthony Barkey, Human Services Planner

## **EXECUTIVE SUMMARY**

At the July 16, 2019, council meeting, the city council directed staff to develop ordinances regulating and taxing electronic cigarettes. The purpose for this agenda item is to introduce three ordinances. Ordinance 8340 would raise the age for purchasing tobacco products to 21 and would ban the sale of flavored tobacco products. Ordinance 8341 would place on the November 5, 2019 ballot an issue imposing a sales tax on all tobacco products including cigarettes. Ordinance 8342 is an alternative proposal that would only tax tobacco products other than cigarettes. The proposed tax is based on taxes imposed by other communities including Aspen, Avon and Basalt. The proposed tax ordinances would allow council to impose a tax of up to 40 percent of the purchase price of tobacco products other than cigarettes. Ordinance 8341 would also include a tax of 15 cents per cigarette or three dollars for a pack of 20. On August 6, 2019, council considered all three ordinances on first reading. On August 13, 2019, council held a public hearing, deliberated and directed staff to propose amendments for consideration as part of this agenda item.

## **STAFF RECOMMENDATION**

### **Suggested Motion Language**

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

1. Motion to pass on second reading Ordinance 8340 Raising the Age for Purchase of Tobacco Products to 21 and Prohibiting the Sale of Flavored Tobacco Products as amended and setting forth related details; and
2. Motion to pass on second reading Ordinance 8341 placing on the November 5, 2019 Ballot a New Sales Tax on Cigarettes and setting forth the ballot title and other election procedures and setting forth related details; and
3. Motion to pass on second reading Ordinance 8342 placing on the November 5, 2019 Ballot a New Sales Tax on Electronic Smoking Devices including any refill, cartridge or component; and setting forth the ballot title and other election procedures and setting forth related details.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic – Although the sale of nicotine products generates tax revenue, the long-term cost associated with nicotine addiction most likely far outweighs any tax benefit. Some of the proposed changes will adversely affect businesses and could result in closure and loss of jobs.

- Environmental – Vaping devices are intended to be disposable. They are constructed of plastic, contain lithium-ion batteries and electronic circuit boards. In addition, the used product includes residual amounts of various chemicals, including nicotine. Most devices and pods enter the waste stream, although they arguably should be treated as electronic devices and thus hazardous waste. There is no legal way to recycle them in the United States. In Boulder County, e-cigarette components, including batteries and e-liquids can be disposed of at the Boulder County Hazardous Materials Management Facility.
- Social – The potential social consequences of large-scale youth nicotine addiction will be significant.

## OTHER IMPACTS

- Fiscal – If the tax measures pass there should be little or no impact on the city budget. There could be a net positive. Without the ballot issue, enforcement and other regulatory resources will need to be reallocated from other tasks or funded with other revenues.
- Staff time – Staff time is not included in any current work plan.

## BACKGROUND

Detailed background was included in the first reading memorandum and the memorandum prepared for the August 13, 2019 public hearing. In addition, at the August 13, 2019 public hearing, the council heard a presentation from Boulder County Public Health as well as testimony from the 58 people who spoke during the public hearing.

## ANALYSIS

After hearing from concerned community members, industry representatives, experts, health care professionals, counselors, school administrators, teachers and students council deliberated and directed staff to provide council with the proposed amendments to be considered at second reading.

The ordinances adopted on first reading are in **Attachment A**. Ordinance 8340, the regulatory ordinance, with proposed amendments is **Attachment B**. Council directed that staff prepare two separate tax measures. **Attachment C** is Ordinance 8341 which would impose a sales and use tax on cigarettes and **Attachment D** is Ordinance 8342 which would impose a sales and use tax on Electronic Smoking Devices including any refill, cartridge or component. Council did not reach consensus on the amount of the proposed taxes. Accordingly, staff did not change the original proposed amounts. Council intends to change those amounts at second reading. All three ordinances will be scheduled for third reading on September 3, 2019.

## **The Proposed Amendments**

### **Ordinance 8340**

Council directed staff to work from the revised version of Ordinance 8340, which was Attachment E to the August 13, 2019 memorandum. Staff has proposed amendments to that version which would:

1. limit the flavor ban to electronic smoking devices and related products.
2. require age verification for all tobacco sales.
3. limit the number of electronic cigarettes and refills that can be sold to an individual within a 24-hour period.
4. allow the sale of menthol-flavored electronic cigarette products in stores that limit entry to persons over the age of 21.

### **Ordinance 8341**

Council directed staff to draft two separate ballot measures. Ordinance 8341 would place on the ballot a measure imposing a tax on cigarettes. The current draft would impose a tax of \$0.15 per cigarette or \$3.00 per pack of 20 cigarettes. These were the amounts included in the ordinance passed at first reading. The amounts could change based on council action at second reading. The proposed ballot measure would dedicate a portion of the revenue to licensing, enforcement, education and cessation programs.

### **Ordinance 8342**

Ordinance 8342 would place on the ballot a measure imposing a tax on electronic smoking devices. The definition of electronic smoking devices, which is referenced in the ballot title, includes refills, cartridges and components of such devices. The current draft would impose a tax of 40 percent of the sales price. These were the amounts included in the ordinance passed at first reading. The amounts could change based on council action at second reading. The proposed ballot measure would dedicate a portion of the revenue to licensing, enforcement, education and cessation programs.

## **NEXT STEPS**

Council plans to discuss the proposed amendments at the August 20, 2019 council meeting. The public hearing is closed. There will be no additional opportunity to testify. If council amends any of the ordinances, third reading will be held on September 3, 2019. Council also directed staff to review the ordinances through an equity filter and to consider whether the city should adopt restrictions on tobacco advertisements. The deadline for submission of materials for the August 20, 2019 meeting was August 14, 2019 and, therefore, staff was unable to include updates in this memorandum. Staff will work to have more information for council on these subjects prior to or at the August 20, 2019 meeting.



If either or both of the tax measures pass, staff will request that the next council include in their workplan the adoption of a licensing regime and any additional amendments that might become advisable after initial implementation.

## **ATTACHMENTS**

- A – Proposed Ordinances 8340, 8341 and 8342 as passed at first reading
- B – Amended Proposed Ordinance 8340 (Regulatory)
- C – Amended Proposed Ordinance 8341 (Cigarette Tax)
- D – Amended Proposed Ordinance 8342 (Electronic Smoking Devices Tax)

ORDINANCE 8340

AN ORDINANCE ADDING A NEW CHAPTER 6-4.5, "SALE OF TOBACCO PRODUCTS," TO RAISE THE MINIMUM AGE FOR PURCHASE OR SALE OF TOBACCO PRODUCTS TO 21 AND TO BAN THE SALE OF FLAVORED TOBACCO PRODUCTS; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS AND RECITES THE FOLLOWING:

A. The Federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibited candy- and fruit-flavored cigarettes, largely because these flavored products were marketed to youth and young adults, and younger smokers were more likely than older smokers to have tried these products.

B. Although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor Colorado law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products.

C. Mentholated and flavored products have been shown to be "starter" products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction.

D. The majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product.

1           E.       Among high school students, during 2017–2018, use of any flavored e-cigarettes  
2 increased among current e-cigarette users (from 60.9 percent to 67.8 percent), current use of  
3 menthol- or mint-flavored e-cigarettes increased among all current e-cigarette users (from 42.3  
4 percent to 51.2 percent) and current exclusive e-cigarette users (from 21.4 percent to 38.1 percent).

5           F.       Young people are much more likely than adults to use menthol-, candy-, and fruit-  
6 flavored tobacco products.

7           G.       Menthol cigarettes have been shown harder to quit and have been heavily marketed  
8 to certain communities, including youth, African Americans, LGBT people, and Latinos.

9           H.       Seventy percent of middle school and high school students who currently use  
10 tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or  
11 other sweets. Eighty-one percent of youth say that a flavored tobacco product was their  
12 introduction to tobacco.

13           I.       The Centers for Disease Control and Prevention reported a more than 800 percent  
14 increase in electronic cigarette use among middle school and high school students between 2011  
15 and 2015. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who  
16 were using e-cigarettes were using them more often, as was previously reported by external icon  
17 in November 2018. Frequent use (more than 20 days in the past 30 days) of e-cigarettes increased  
18 from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users.

19           J.       Nicotine solutions, which are consumed via electronic smoking devices such as  
20 electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy  
21 and bubble gum.  
22  
23  
24  
25

1 K. Between 2004 and 2014 use of non-menthol cigarettes decreased among all  
2 populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25)  
3 and adults (ages 26+).

4 L. Scientific reviews by the Tobacco Products Scientific Advisory Committee  
5 (TPSAC) and the FDA found marketing of menthol cigarettes likely increases the prevalence of  
6 smoking among the entire population, and especially among youth, African Americans and  
7 possibly Hispanic and Latino individuals. Among high school students in 2018, use of any tobacco  
8 product was reported by 32.4 percent of non-Hispanic white, 21.7 percent of Hispanic, 18.4 percent  
9 of non-Hispanic other race and 17.4 percent of non-Hispanic black students.

10 M. Scientific studies on the impact of a national ban on menthol in cigarettes found  
11 36.5 percent of menthol cigarette users would try to quit smoking if menthol was banned and  
12 between 300,000 and 600,000 lives could be saved by 2050.

13 N. An evaluation of New York City's law, which prohibits the sale of all flavored tobacco,  
14 excluding menthol, found that as a result of the law, youth had 37 percent lower odds of ever trying  
15 flavored tobacco products and 28 percent lower odds of ever using any type of tobacco.

16 O. According to a 2013-2014 survey, 81 percent of current youth e-cigarette users  
17 cited the availability of appealing flavors as the primary reason for use.

18 P. A March 2015 report by the Institute of Medicine concluded that raising the tobacco  
19 sale age to 21 will have a substantial positive impact on public health and save lives. The report  
20 found that raising the tobacco sale age will significantly reduce the number of adolescents and  
21 young adults who start smoking; reduce smoking-caused deaths; and immediately improve the  
22 health of adolescents, young adults and young mothers who would be deterred from smoking, as  
23 well as their children. Specifically, the report predicts that raising the minimum age for the sale  
24  
25

1 of tobacco products to 21 will, over time, reduce the smoking rate by about 12 percent and  
2 smoking-related deaths by 10 percent, which translates into 223,000 fewer premature deaths,  
3 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost. Stopping the initial  
4 use of the product can save lives by helping youth to never become smokers – 80 percent of current  
5 smokers started before they were 18 years old and 99 percent of smokers started by age 26.

6 Q. In August of 2014, New York City simultaneously implemented policies to raise  
7 the tobacco sale age to 21 and to reduce sources of cheap tobacco. While reductions in smoking  
8 cannot be attributed solely to raising the age for sales, preliminary findings suggest that the law is  
9 contributing to reductions in youth tobacco use:

- 10 • Data from the Youth Risk Behavior Survey showed that there was a 29 percent decline  
11 in current cigarette smoking among high school students between 2013 and 2015. There  
12 were also reductions in ever trying cigarettes (-18 percent) and smoking initiation in the  
13 past 12 months (-13 percent), over the same time period.

14 R. Vaping is a problem in Colorado in general and particularly in Boulder. A 2018  
15 survey of 37 states found that Colorado had the highest level of vaping among high school students.  
16 Colorado's high school student use was double the national average. The Boulder County Healthy  
17 Kids Behavior Survey showed the Boulder Valley School District averages 33 percent use among  
18 high schoolers. This is above the Colorado average of 26.2 percent and well above the national  
19 average of 13.2 percent.

20 S. National data shows that about 95 percent of adult smokers begin smoking before  
21 they turn 21, and a substantial number of smokers start even younger – about three-quarters of  
22 adult smokers first try smoking before age 18. While less than half (46 percent) of adult smokers  
23 become regular, daily smokers before age 18, four out of five become regular, daily smokers before  
24  
25

1 they turn 21. This means the 18 to 21 age range is a time when many smokers transition to regular  
2 use of cigarettes. According to one national survey, the prevalence of current smoking among  
3 individuals 18 to 20 years of age is more than double that of those ages of 16 and 17 (18.8 percent  
4 vs. 7.5 percent).

5 T. Tobacco companies have admitted in their own internal documents that, if they  
6 don't capture new users by their early 20's, it is very unlikely that they ever will. In 1982, one RJ  
7 Reynolds researcher stated: "If a man has never smoked by age 18, the odds are three-to-one he  
8 never will. By age 24, the odds are twenty-to-one." Raising the sale age of tobacco to 21 is likely  
9 to make both direct retail purchase and social source acquisition more difficult for underage youth,  
10 especially individuals ages 15 through 17, "who are most likely to get tobacco from social sources,  
11 including from students and co-workers above the [minimum legal age of access]." With the  
12 minimum legal sale age set at 21 instead of 18, legal purchasers would be less likely to be in the  
13 same social networks as high school students and, therefore, less able to sell or give cigarettes to  
14 them. A study from Connecticut that looked at acquisition of e-cigarettes concluded that the top  
15 source for acquisition of e-cigarette was friends (2014: 50.2 percent, 2015: 45.4 percent).  
16

17 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,  
18 COLORADO:  
19

20 Section 1. A new Chapter 6-4.5, "Sale of Tobacco Products," B.R.C. 1981, is added to  
21 read as follows:

22 **6-4.5-1. – Definitions.**

23 The following terms used in this chapter have the following meanings unless the context  
24 clearly requires otherwise:

25 *Characterizing Flavor* means a taste or aroma, other than the taste or aroma of tobacco,  
imparted either prior to or during consumption of a *Tobacco Product* or any byproduct produced  
by the *Tobacco Product*, including, but not limited to, tastes or aromas relating to menthol, mint,

wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a *Tobacco Product* shall not be determined to have a *Characterizing Flavor* solely because of the use of additives or flavorings or the provision of ingredient information.

*Flavored Tobacco Product* means any *Tobacco Product* that imparts a *Characterizing Flavor*.

*Labeling* means written, printed, or graphic matter upon any *Tobacco Product* or any of its *Packaging*, or accompanying such *Tobacco Product*.

*Manufacturer* means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a *Tobacco Product*; or imports a finished *Tobacco Product* for sale or distribution into the United States.

*Packaging* means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a *Tobacco Product* is sold or offered for sale to a consumer.

*Person* means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

*Tobacco Paraphernalia* means any item designed or marketed for the consumption, use, or preparation of *Tobacco Products*.

*Tobacco Product* means:

- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff;
- (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device.
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, *Tobacco Product* includes any component, part, or accessory intended or reasonably expected to be used with a *Tobacco Product*, whether or not sold separately. *Tobacco Product* does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

*Tobacco Retailer* means any *Person* who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, *Tobacco Products* or *Tobacco Paraphernalia*.

*Tobacco Retailing* shall mean the doing of any of these things. This definition is without regard to the quantity of *Tobacco Products* or *Tobacco Paraphernalia* sold, offered for sale, exchanged, or offered for exchange.

#### **6-4.5-2. - Prohibited Acts.**

- (a) No person shall sell, give or otherwise transfer any *Tobacco Product* to any person who is under the age of 21.

- 1 (b) No Tobacco Retailer or any agent or employee of any Tobacco Retailer shall sell, offer for  
2 sale or possess with the intent to sell or offer for sale any Flavored Tobacco Product.
- 3 (c) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or  
4 more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco  
5 Products, packages of Flavored Tobacco Products, or any combination thereof, possesses  
6 such Flavored Tobacco Products with intent to sell or offer for sale.
- 7 (d) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco  
8 Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco  
9 Retailer or Manufacturer has:
- 10 (1) Made a public statement or claim that the Tobacco Product imparts a Characterizing  
11 Flavor;
- 12 (2) Used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly  
13 or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
- 14 (3) Taken action directed to consumers that would be reasonably expected to cause  
15 consumers to believe the Tobacco Product imparts a Characterizing Flavor.

12 **6-4.5-3. - Civil Penalty.**

13 Civil penalties for violations of this chapter may be imposed by the city against any  
14 person in an amount up to \$5,000 per occurrence. Any person subjected to civil penalties shall  
15 be entitled to a hearing pursuant to Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, to  
16 contest such penalties. All such hearings shall be conducted by the Boulder Municipal Court as  
17 the hearing officer under a de novo standard of review.

18 Section 2. This ordinance is necessary to protect the public health, safety, and welfare of  
19 the residents of the city, and covers matters of local concern.

20 Section 3. The city council deems it appropriate that this ordinance be published by title  
21 only and orders that copies of this ordinance be made available in the office of the city clerk for  
22 public inspection and acquisition.



1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2 TITLE ONLY this 6th day of August 2019.

3  
4  
5 Attest:

\_\_\_\_\_  
Suzanne Jones,  
Mayor

6  
7 \_\_\_\_\_  
8 Lynnette Beck,  
City Clerk

9 READ ON SECOND READING, PASSED AND ADOPTED this 13th day of August  
10 2019.

11  
12  
13  
14 Attest:

\_\_\_\_\_  
Suzanne Jones,  
Mayor

15  
16 \_\_\_\_\_  
17 Lynnette Beck,  
City Clerk

ORDINANCE 8341

(Tax on Cigarettes and Other Tobacco Products Including Electronic Cigarettes)

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO IMPOSE A SALES AND USE TAX OF 15 CENTS PER CIGARETTE OR THREE DOLLARS PER PACK OF 20 CIGARETTES AND A SALES AND USE TAX OF 40 PERCENT ON ALL OTHER TOBACCO AND NICOTINE PRODUCTS SOLD; GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS, NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

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

Section 1. A municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2019.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of a sales and use tax increase as described in the ballot issue title in this ordinance.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

**BALLOT ISSUE \_\_\_\_\_**

**TAX ON THE SALE OF CIGARETTES AND OTHER  
TOBACCO PRODUCTS INCLUDING ELECTRONIC  
CIGARETTES**

SHALL CITY OF BOULDER TAXES BE INCREASED SIX  
MILLION DOLLARS (FIRST FULL FISCAL YEAR INCREASE)  
ANNUALLY BY IMPOSING A SALES AND USE TAX OF 15  
CENTS PER CIGARETTE OR THREE DOLLARS PER PACK  
OF 20 CIGARETTES SOLD AND 40 PERCENT OF THE SALES  
PRICE OF ALL OTHER TOBACCO PRODUCTS SOLD; THE  
TERMS "CIGARETTES" SHALL HAVE THE MEANING AS IN  
SECTION 39-28-202 OF THE COLORADO REVISED  
STATUTES AND "TOBACCO PRODUCTS" SHALL HAVE THE  
MEANINGS AS IN SECTION 6-4.5-1 OF THE BOULDER  
REVISED CODE; ALL EFFECTIVE JULY 1, 2020?

AND IN CONNECTION THEREWITH,

SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH  
RATES AND ANY EARNINGS THEREON BE COLLECTED,  
RETAINED, AND SPENT, AS A VOTER-APPROVED  
REVENUE CHANGE WITHOUT LIMITATION OR  
CONDITION, AND WITHOUT LIMITING THE COLLECTION,  
RETENTION, OR SPENDING OF ANY OTHER REVENUES OR  
FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X  
SECTION 20 OF THE COLORADO CONSTITUTION OR ANY  
OTHER LAW?

YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

Section 4. If this ballot issue is approved by the voters, the Charter shall be so amended  
and the City Council may adopt amendments to the Boulder Revised Code to implement this  
sales and use tax, establish a system of regulation and licensing of sellers of tobacco and nicotine  
products, and such other amendments to the Boulder Revised Code as may be necessary to  
implement the intent and purpose of this ordinance.

1        Section 5. The election shall be conducted under the provisions of the Colorado  
2 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this  
3 ordinance.  
4

5        Section 6. The officers of the city are authorized to take all action necessary or  
6 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
7 conduct the election for the city.  
8

9        Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any  
10 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
11 provisions of this ordinance.

12        Section 8. If a majority of all the votes cast at the election on the issue submitted shall be  
13 for the issue, the issue shall be deemed to have passed and shall be effective on July 1, 2020.

14        Section 9. This ordinance is necessary to protect the public health, safety and welfare of  
15 the residents of the city and covers matters of local concern.  
16

17        Section 10. The City Council deems it appropriate that this ordinance be published by  
18 title only and orders that copies of this ordinance be made available in the office of the city clerk  
19 for public inspection and acquisition.  
20  
21  
22  
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28

1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2  
3 TITLE ONLY this 6th day of August 2019.

4  
5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk

12 READ ON SECOND READING, PASSED this 13th day of August 2019.

13  
14 \_\_\_\_\_  
15 Suzanne Jones,  
16 Mayor

17 Attest:

18 \_\_\_\_\_  
19 Lynnette Beck,  
20 City Clerk

ORDINANCE 8342

(Tax on Tobacco Products Not including Cigarettes)

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO IMPOSE A SALES AND USE TAX OF FORTY PERCENT ON ALL TOBACCO PRODUCTS SOLD, NOT INCLUDING CIGARETTES; GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS, NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

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

Section 1. A municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2019.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of a sales and use tax increase as described in the ballot issue title in this ordinance.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

**BALLOT ISSUE \_\_\_\_\_**

**TAX ON THE SALE OF TOBACCO PRODUCTS NOT  
INCLUDING CIGARETTES**

SHALL CITY OF BOULDER TAXES BE INCREASED TWO MILLION FOUR HUNDRED THOUSAND DOLLARS (FIRST FULL FISCAL YEAR INCREASE) ANNUALLY BY IMPOSING A SALES AND USE TAX OF 40 PERCENT OF THE SALES PRICE OF ALL TOBACCO PRODUCTS SOLD NOT INCLUDING CIGARETTES; THE TERM "CIGARETTES" SHALL HAVE THE MEANING AS IN SECTION 39-28-202 OF THE COLORADO REVISED STATUTES AND "TOBACCO PRODUCTS" SHALL HAVE THE MEANING AS IN SECTION 6-4.5-1 OF THE BOULDER REVISED CODE; ALL EFFECTIVE JULY 1, 2020?

AND IN CONNECTION THEREWITH,

SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH RATES AND ANY EARNINGS THEREON BE COLLECTED, RETAINED, AND SPENT, AS A VOTER-APPROVED REVENUE CHANGE WITHOUT LIMITATION OR CONDITION, AND WITHOUT LIMITING THE COLLECTION, RETENTION, OR SPENDING OF ANY OTHER REVENUES OR FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_

Section 4. If this ballot issue is approved by the voters, the Charter shall be so amended and the City Council may adopt amendments to the Boulder Revised Code to implement this sales and use tax, establish a system of regulation and licensing of sellers of tobacco and nicotine products, and such other amendments to the Boulder Revised Code as may be necessary to implement the intent and purpose of this ordinance.

1        Section 5. The election shall be conducted under the provisions of the Colorado  
2 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this  
3 ordinance.  
4

5        Section 6. The officers of the city are authorized to take all action necessary or  
6 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
7 conduct the election for the city.  
8

9        Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any  
10 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
11 provisions of this ordinance.

12        Section 8. If a majority of all the votes cast at the election on the issue submitted shall be  
13 for the issue, the issue shall be deemed to have passed and shall be effective on July 1, 2020.

14        Section 9. This ordinance is necessary to protect the public health, safety and welfare of  
15 the residents of the city and covers matters of local concern.  
16

17        Section 10. The City Council deems it appropriate that this ordinance be published by  
18 title only and orders that copies of this ordinance be made available in the office of the city clerk  
19 for public inspection and acquisition.  
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1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2  
3 TITLE ONLY this 6th day of August 2019.  
4

5 \_\_\_\_\_  
6 Suzanne Jones,  
7 Mayor

8 Attest:

9 \_\_\_\_\_  
10 Lynnette Beck,  
11 City Clerk

12 READ ON SECOND READING, PASSED this 13th day of August 2019.

13 \_\_\_\_\_  
14 Suzanne Jones,  
15 Mayor

16 Attest:

17 \_\_\_\_\_  
18 Lynnette Beck,  
19 City Clerk  
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ORDINANCE 8340

AN ORDINANCE ADDING A NEW CHAPTER 6-4.5, “SALE OF TOBACCO PRODUCTS,” TO RAISE THE MINIMUM LEGAL SALES AGE FOR PURCHASE OR SALE OF TOBACCO PRODUCTS TO 21 AND TO BAN THE SALE OF FLAVORED PRODUCTS SOLD FOR USE IN ELECTRONIC SMOKING DEVICES ~~TOBACCO~~ PRODUCTS; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS AND RECITES THE FOLLOWING:

A. The Federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), enacted in 2009, prohibited candy- and fruit-flavored cigarettes, largely because these flavored products were marketed to youth and young adults, and younger smokers were more likely than older smokers to have tried these products.

B. Although the manufacture and distribution of flavored cigarettes (excluding menthol) are banned by federal law, neither federal law nor Colorado law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products.

C. Mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction.

D. The majority of smokeless tobacco users reported that the first smokeless product they used was mint-flavored (such as ice, mint, spearmint, or wintergreen flavors), and almost two-thirds who transitioned to daily use of smokeless tobacco products first used a mint-flavored product.

1  
2 E. Among high school students, during 2017–2018, use of any flavored e-cigarettes  
3 increased among current e-cigarette users (from 60.9 percent to 67.8 percent), current use of  
4 menthol- or mint-flavored e-cigarettes increased among all current e-cigarette users (from 42.3  
5 percent to 51.2 percent) and current exclusive e-cigarette users (from 21.4 percent to 38.1 percent).

6 F. Young people are much more likely than adults to use menthol-, candy-, and fruit-  
7 flavored tobacco products.

8 G. Menthol cigarettes have been shown harder to quit and have been heavily marketed  
9 to certain communities, including youth, African Americans, LGBT people, and Latinos.

10 H. Seventy percent of middle school and high school students who currently use  
11 tobacco, report using flavored products that taste like menthol, alcohol, candy, fruit, chocolate, or  
12 other sweets. Eighty-one percent of youth say that a flavored tobacco product was their  
13 introduction to tobacco.

14 I. The Centers for Disease Control and Prevention reported a more than 800 percent  
15 increase in electronic cigarette use among middle school and high school students between 2011  
16 and 2015. There were 1.5 million more youth e-cigarette users in 2018 than 2017, and those who  
17 were using e-cigarettes were using them more often, as was previously reported by external icon  
18 in November 2018. Frequent use (more than 20 days in the past 30 days) of e-cigarettes increased  
19 from 20 percent in 2017 to 28 percent in 2018 among current high school e-cigarette users.

20 J. Nicotine solutions, which are consumed via electronic smoking devices such as  
21 electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy  
22 and bubble gum.  
23  
24  
25

1 K. Between 2004 and 2014 use of non-menthol cigarettes decreased among all  
2 populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25)  
3 and adults (ages 26+).

4 L. Scientific reviews by the Tobacco Products Scientific Advisory Committee  
5 (TPSAC) and the FDA found marketing of menthol cigarettes likely increases the prevalence of  
6 smoking among the entire population, and especially among youth, African Americans and  
7 possibly Hispanic and Latino individuals. Among high school students in 2018, use of any tobacco  
8 product was reported by 32.4 percent of non-Hispanic white, 21.7 percent of Hispanic, 18.4 percent  
9 of non-Hispanic other race and 17.4 percent of non-Hispanic black students.

10 M. Scientific studies on the impact of a national ban on menthol in cigarettes found  
11 36.5 percent of menthol cigarette users would try to quit smoking if menthol was banned and  
12 between 300,000 and 600,000 lives could be saved by 2050.

13 N. An evaluation of New York City's law, which prohibits the sale of all flavored tobacco,  
14 excluding menthol, found that as a result of the law, youth had 37 percent lower odds of ever trying  
15 flavored tobacco products and 28 percent lower odds of ever using any type of tobacco.

16 O. According to a 2013-2014 survey, 81 percent of current youth e-cigarette users  
17 cited the availability of appealing flavors as the primary reason for use.

18 P. A March 2015 report by the Institute of Medicine concluded that raising the tobacco  
19 sale age to 21 will have a substantial positive impact on public health and save lives. The report  
20 found that raising the tobacco sale age will significantly reduce the number of adolescents and  
21 young adults who start smoking; reduce smoking-caused deaths; and immediately improve the  
22 health of adolescents, young adults and young mothers who would be deterred from smoking, as  
23 well as their children. Specifically, the report predicts that raising the minimum age for the sale  
24  
25

1 of tobacco products to 21 will, over time, reduce the smoking rate by about 12 percent and  
2 smoking-related deaths by 10 percent, which translates into 223,000 fewer premature deaths,  
3 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost. Stopping the initial  
4 use of the product can save lives by helping youth to never become smokers – 80 percent of current  
5 smokers started before they were 18 years old and 99 percent of smokers started by age 26.

6 Q. In August of 2014, New York City simultaneously implemented policies to raise  
7 the tobacco sale age to 21 and to reduce sources of cheap tobacco. While reductions in smoking  
8 cannot be attributed solely to raising the age for sales, preliminary findings suggest that the law is  
9 contributing to reductions in youth tobacco use:

- 10 • Data from the Youth Risk Behavior Survey showed that there was a 29 percent decline  
11 in current cigarette smoking among high school students between 2013 and 2015. There  
12 were also reductions in ever trying cigarettes (-18 percent) and smoking initiation in the  
13 past 12 months (-13 percent), over the same time period.

14 R. Vaping is a problem in Colorado in general and particularly in Boulder. A 2018  
15 survey of 37 states found that Colorado had the highest level of vaping among high school students.  
16 Colorado's high school student use was double the national average. The Boulder County Healthy  
17 Kids Behavior Survey showed the Boulder Valley School District averages 33 percent use among  
18 high schoolers. This is above the Colorado average of 26.2 percent and well above the national  
19 average of 13.2 percent.

20 S. National data shows that about 95 percent of adult smokers begin smoking before  
21 they turn 21, and a substantial number of smokers start even younger – about three-quarters of  
22 adult smokers first try smoking before age 18. While less than half (46 percent) of adult smokers  
23 become regular, daily smokers before age 18, four out of five become regular, daily smokers before  
24  
25

1 they turn 21. This means the 18 to 21 age range is a time when many smokers transition to regular  
 2 use of cigarettes. According to one national survey, the prevalence of current smoking among  
 3 individuals 18 to 20 years of age is more than double that of those ages of 16 and 17 (18.8 percent  
 4 vs. 7.5 percent).

5 T. Tobacco companies have admitted in their own internal documents that, if they  
 6 don't capture new users by their early 20's, it is very unlikely that they ever will. In 1982, one RJ  
 7 Reynolds researcher stated: "If a man has never smoked by age 18, the odds are three-to-one he  
 8 never will. By age 24, the odds are twenty-to-one." Raising the sale age of tobacco to 21 is likely  
 9 to make both direct retail purchase and social source acquisition more difficult for underage youth,  
 10 especially individuals ages 15 through 17, "who are most likely to get tobacco from social sources,  
 11 including from students and co-workers above the [minimum legal age of access]." With the  
 12 minimum legal sale age set at 21 instead of 18, legal purchasers would be less likely to be in the  
 13 same social networks as high school students and, therefore, less able to sell or give cigarettes to  
 14 them. A study from Connecticut that looked at acquisition of e-cigarettes concluded that the top  
 15 source for acquisition of e-cigarette was friends (2014: 50.2 percent, 2015: 45.4 percent).  
 16

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

19 Section 1. A new Chapter 6-4.5, "Sale of Tobacco Products," B.R.C. 1981, is added to  
 20 read as follows:

21 **6-4.5-1. – Definitions.**

22 The following terms used in this chapter have the following meanings unless the context  
 23 clearly requires otherwise:

24 *Characterizing Flavor* means a Distinguishable taste or aroma or both, other than the taste  
 25 or aroma of tobacco, imparted either prior to or during consumption of a *Tobacco Product* or any  
 byproduct produced by the *Tobacco Product*, including Characterizing Flavors include, but are

not limited to, tastes or aromas relating to any menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, ~~or~~ spice; provided, however, that a *Tobacco Product* shall not be determined to have a *Characterizing Flavor* solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a *Distinguishable* taste or aroma or both, as described in the first sentence of this definition that constitutes a characterizing flavor.

*Constituent* means any ingredient, substance, chemical or compound other than tobacco, water or a reconstituted tobacco sheet that is added by the manufacturer to a *Tobacco Product* during the processing, manufacture or packaging of a *Tobacco Product*.

*Distinguishable* means perceivable by either the sense of smell or taste.

*Electronic Smoking Device* means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. *Electronic Smoking Device* includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. *Electronic Smoking Device* does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.

*Flavored Tobacco Product* means any *Tobacco Product* that contains a *Constituent* or that imparts a *Characterizing Flavor*.

*Ingredient* means any substance, chemical or compound, other than tobacco, water, reconstituted tobacco sheets that are added by the manufacturer to a *Tobacco Product* during the processing, manufacture or packaging of the *Tobacco Product*.

*Labeling* means written, printed, or graphic matter upon any *Tobacco Product* or any of its *Packaging*, or accompanying such *Tobacco Product*.

*Little Cigar* means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco and weighing no more than three pounds per thousand. *Little Cigar* includes, but is not limited to, any product known or labeled as “small cigar” “cigarillo” or “little cigar.”

*Manufacturer* means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a *Tobacco Product*; or imports a finished *Tobacco Product* for sale or distribution into the United States.

*Minimum Legal Sales Age* means 21 years of age or older.

*Packaging* means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a *Tobacco Product* is sold or offered for sale to a consumer.

*Tobacco Paraphernalia* means any item designed or marketed for the consumption, use, or preparation of *Tobacco Products*.

*Tobacco Product* means:

(1) any product which contains~~ing~~, is made, or derived from tobacco or used to deliver

1 nicotine, synthetic nicotine or other substances ~~that is~~ intended for human  
2 consumption, whether ~~smoked~~, heated, chewed, absorbed, dissolved, inhaled, snorted,  
3 sniffed, or ingested by any other means, including, but not limited to cigarettes,  
4 cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine  
5 product, mints or hand gels;

6 (2) any ~~e~~Electronic Smoking dDevice ~~that delivers nicotine or other substances to the~~  
7 ~~person inhaling from the device;~~

8 (3) Flavored Tobacco Products;

9 (4) ~~N~~otwithstanding any provision of subsections (1), and (2) and (3) above to the  
10 contrary, Tobacco Product includes any component, part, or accessory or associated  
11 Tobacco Paraphernalia intended or reasonably expected to be used with of a  
12 Tobacco Product; whether or not sold separately.

13 (5) The term Tobacco Product does not include:

14 (a) any product that contains marijuana; and

15 (ii) any product made from or derived from tobacco and approved by the or products  
16 intended for the use in the consumption of marijuana, or (b) drugs, devices, or  
17 combination products authorized for sale by the United States Food and Drug  
18 Administration (FDA) for use in connection with cessation of smoking, as those  
19 terms are defined in the Federal Food, Drug, and Cosmetic Act.

20 *Tobacco Retailer* means any *Person* who sells, offers for sale, or does or offers to exchange  
21 for any form of consideration, tobacco, *Tobacco Products* or *Tobacco Paraphernalia*.

22 *Tobacco Retailing* shall mean the doing of any of these things. This definition is without  
23 regard to the quantity of *Tobacco Products* or *Tobacco Paraphernalia* sold, offered for sale,  
24 exchanged, or offered for exchange.

#### 25 **6-4.5-2. - Prohibited Acts.**

(a) No person shall sell, give or otherwise transfer any Tobacco Product to any person who is  
under the Minimum Legal Sales ~~a~~Age of 21.

(b) No Tobacco Retailer shall sell any Tobacco Product to any person without first (1)  
requiring the person to produce government-issued identification including a photograph  
and a date of birth, or (2) for online sales verifying the purchaser's age and identity, by  
comparing information entered by the any purchaser against at least two databases that do  
not include self-reported, social media or marketing data.

(c) No Tobacco Retailer or any agent or employee of any Tobacco Retailer shall sell, offer for  
sale or possess with the intent to sell or offer for sale any Flavored Tobacco Product  
designed for or capable of use in any Electronic Smoking Device, provided, however, that  
a Tobacco Retailer does not permit anyone under the age of 21 from being present in or



entering the premises may sell or offer for sale menthol-flavored Flavored Tobacco Products designed for or capable of being used in an Electronic Smoking Device.

~~(b)~~(d) No Tobacco Retailer shall sell more than two electronic cigarettes or four associated products including refills to any one person in any 24-hour period.

~~(e)~~(e) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to sell or offer for sale.

~~(d)~~(f) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:

(1) Made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;

(2) Used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or

(3) Taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.

### **6-4.5-3. - Civil Penalty.**

Civil penalties for violations of this chapter may be imposed by the city against any person in an amount up to \$5,000 per occurrence. If a business entity receives revenue as the result of any act prohibited by this title, there shall be a presumption that any penalty shall be imposed on the business entity and not personally against any employee of the business entity. Any person subjected to civil penalties shall be entitled to a hearing pursuant to Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, to contest such penalties. All such hearings shall be conducted by the Boulder Municipal Court as the hearing officer under a de novo standard of review.

Section 2. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 3. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

1 INTRODUCTION, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
2 TITLE ONLY this 6th day of August 2019.

3  
4  
5 Attest:

\_\_\_\_\_  
Suzanne Jones,  
Mayor

6  
7  
8 Lynnette Beck,  
City Clerk

9 READ ON SECOND READING, PASSED AND ADOPTED this \_\_\_\_ day of  
10 \_\_\_\_\_ 2019.

11  
12  
13 Attest:

\_\_\_\_\_  
Suzanne Jones,  
Mayor

14  
15  
16 Lynnette Beck,  
City Clerk

ORDINANCE 8341

(Tax on Cigarettes and Other Tobacco Products Including Electronic Cigarettes)

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO IMPOSE A SALES AND USE TAX OF 15 CENTS PER CIGARETTE OR THREE DOLLARS PER PACK OF 20 CIGARETTES ~~AND A SALES AND USE TAX OF 40 PERCENT ON ALL OTHER TOBACCO AND NICOTINE PRODUCTS SOLD;~~ WITH A PORTION OF THE REVENUE BEING DEDICATED TO LICENSING OF NICOTINE PRODUCT RETAILERS, NICOTINE EDUCATION, NICOTINE USE CESSATION PROGRAMS AND NICOTINE PRODUCT ENFORCEMENT; GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS, NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

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

Section 1. A municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 5, 2019.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the question of a sales and use tax increase as described in the ballot issue title in this ordinance.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

**BALLOT ISSUE \_\_\_\_\_**

**TAX ON THE SALE OF CIGARETTES AND OTHER  
~~TOBACCO PRODUCTS INCLUDING ELECTRONIC~~  
CIGARETTES**

SHALL CITY OF BOULDER TAXES BE INCREASED SIX MILLION DOLLARS (FIRST FULL FISCAL YEAR INCREASE) ANNUALLY BY IMPOSING A SALES AND USE TAX OF UP TO 15 CENTS PER CIGARETTE OR THREE DOLLARS PER PACK OF 20 CIGARETTES SOLD ~~AND 40 PERCENT OF THE SALES PRICE OF ALL OTHER TOBACCO PRODUCTS SOLD;~~ THE TERMS "CIGARETTES" SHALL HAVE THE MEANING AS IN SECTION 39-28-202 OF THE COLORADO REVISED STATUTES; ~~AND "TOBACCO PRODUCTS" SHALL HAVE THE MEANINGS AS IN SECTION 6-4.5-1 OF THE BOULDER REVISED CODE; ALL EFFECTIVE JULY 1, 2020?~~

AND IN CONNECTION THEREWITH,

SHALL ALL OF THE REVENUES COLLECTED BE USED TO FUND:

- THE ADMINISTRATIVE COST OF THE TAX, AND THEREAFTER FOR:
- HEALTH PROMOTION;
- IMPLEMENTATION AND ADMINISTRATION OF A LICENSING PROGRAM FOR ALL NICOTINE PRODUCT RETAILERS;
- EDUCATION PROGRAMS REGARDING NICOTINE PRODUCT USE INCLUDING ENFORCEMENT;

WITH ANY REMAINING FUNDS BEING AVAILABLE FOR GENERAL GOVERNMENT SERVICES, INCLUDING LIBRARY, POLICE, FIRE, PARKS, TRANSPORTATION AND GENERAL GOVERNMENT ADMINISTRATION?

ALL EFFECTIVE JANUARY 1, 2020, AND IN CONNECTION THEREWITH,

1 SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH  
2 RATES AND ANY EARNINGS THEREON BE COLLECTED,  
3 RETAINED, AND SPENT, AS A VOTER-APPROVED  
4 REVENUE CHANGE WITHOUT LIMITATION OR  
5 CONDITION, AND WITHOUT LIMITING THE COLLECTION,  
6 RETENTION, OR SPENDING OF ANY OTHER REVENUES OR  
7 FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X  
8 SECTION 20 OF THE COLORADO CONSTITUTION OR ANY  
9 OTHER LAW?

10 YES/FOR \_\_\_\_

11 NO/AGAINST \_\_\_\_

12 Section 4. If this ballot issue is approved by the voters, ~~the Charter shall be so amended~~  
13 ~~and~~ the City Council may adopt amendments to the Boulder Revised Code to implement this  
14 sales and use tax, establish a system of regulation and licensing of sellers of tobacco and nicotine  
15 products, and such other amendments to the Boulder Revised Code as may be necessary to  
16 implement the intent and purpose of this ordinance.

17 Section 5. The election shall be conducted under the provisions of the Colorado  
18 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this  
19 ordinance.

20 Section 6. The officers of the city are authorized to take all action necessary or  
21 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
22 conduct the election for the city.

23 Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any  
24 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
25 provisions of this ordinance.

26 Section 8. If a majority of all the votes cast at the election on the issue submitted shall be  
27 for the issue, the issue shall be deemed to have passed and shall be effective on July 1, 2020.  
28

1        Section 9. This ordinance is necessary to protect the public health, safety and welfare of  
2 the residents of the city and covers matters of local concern.

3  
4        Section 10. The City Council deems it appropriate that this ordinance be published by  
5 title only and orders that copies of this ordinance be made available in the office of the city clerk  
6 for public inspection and acquisition.

7  
8        INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
9  
10 TITLE ONLY this 6th day of August 2019.

11  
12 \_\_\_\_\_  
13 Suzanne Jones,  
14 Mayor

15 Attest:

16 \_\_\_\_\_  
17 Lynnette Beck,  
18 City Clerk

19 READ ON SECOND READING, PASSED AND ADOPTED this \_\_\_\_ day of  
20 \_\_\_\_\_ 2019.

21  
22 \_\_\_\_\_  
23 Suzanne Jones,  
24 Mayor

25 Attest:

26 \_\_\_\_\_  
27 Lynnette Beck,  
28 City Clerk

ORDINANCE 8342

(Tax on Electronic Smoking Devices~~Tobacco Products Not including Cigarettes~~)

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 5, 2019, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO IMPOSE A SALES AND USE TAX OF UP TO 40 PERCENT OF THE SALES PRICE ON ALL ELECTRONIC SMOKING DEVICES~~TOBACCO PRODUCTS SOLD, NOT INCLUDING CIGARETTES~~ WITH A PORTION OF THE REVENUE BEING DEDICATED TO LICENSING OF NICOTINE PRODUCT RETAILERS, NICOTINE EDUCATION, NICOTINE USE CESSATION PROGRAMS AND NICOTINE PRODUCT ENFORCEMENT; GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS, NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH THE BALLOT TITLE AND OTHER ELECTION PROCEDURES AND SETTING FORTH RELATED DETAILS.

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

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Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the issue:

BALLOT ISSUE \_\_\_\_\_

**TAX ON THE SALE OF TOBACCO PRODUCTS NOT  
INCLUDING CIGARETTES**

SHALL CITY OF BOULDER TAXES BE INCREASED TWO MILLION FOUR HUNDERD THOUSAND DOLLARS (FIRST FULL FISCAL YEAR INCREASE) ANNUALLY BY IMPOSING A SALES AND USE TAX OF UP TO 40 PERCENT OF THE SALES PRICE OF ALL ELECTRONIC SMOKING DEVICES, INCLUDING ANY REFILL, CARTRIDGE OR COMPONENT OF SUCH A PRODUCT~~TOBACCO PRODUCTS SOLD NOT INCLUDING CIGARETTES;~~ THE TERM "CIGARETTESELECTRONIC SMOKING DEVICE" SHALL HAVE THE MEANING AS IN ~~SECTION 39-28-202 OF THE COLORADO REVISED STATUTES AND "TOBACCO PRODUCTS"~~ SHALL HAVE THE MEANING AS IN SECTION 6-4.5-1 OF THE BOULDER REVISED CODE; ~~ALL EFFECTIVE JULY 1, 2020?~~

AND IN CONNECTION THEREWITH,

SHALL ALL OF THE REVENUES COLLECTED BE USED TO FUND:

- THE ADMINISTRATIVE COST OF THE TAX, AND THEREAFTER FOR:
- HEALTH PROMOTION;
- IMPLEMENTATION AND ADMINISTRATION OF A LICENSING PROGRAM FOR ALL NICOTINE PRODUCT RETAILERS;
- EDUCATION PROGRAMS REGARDING NICOTINE PRODUCT USE INCLUDING ENFORCEMENT;

WITH ANY REMAINING FUNDS BEING AVAILABLE FOR GENERAL GOVERNMENT SERVICES, INCLUDING LIBRARY, POLICE, FIRE, PARKS, TRANSPORTATION AND GENERAL GOVERNMENT ADMINISTRATION?

ALL EFFECTIVE JANUARY 1, 2020, AND IN CONNECTION THEREWITH,



1 SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH  
2 RATES AND ANY EARNINGS THEREON BE COLLECTED,  
3 RETAINED, AND SPENT, AS A VOTER-APPROVED  
4 REVENUE CHANGE WITHOUT LIMITATION OR  
5 CONDITION, AND WITHOUT LIMITING THE COLLECTION,  
6 RETENTION, OR SPENDING OF ANY OTHER REVENUES OR  
7 FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X  
8 SECTION 20 OF THE COLORADO CONSTITUTION OR ANY  
9 OTHER LAW?

10 YES/FOR \_\_\_\_

11 NO/AGAINST \_\_\_\_

12 Section 4. If this ballot issue is approved by the voters, ~~the Charter shall be so amended~~  
13 ~~and~~ the City Council may adopt amendments to the Boulder Revised Code to implement this  
14 sales and use tax, establish a system of regulation and licensing of sellers of tobacco and nicotine  
15 products, and such other amendments to the Boulder Revised Code as may be necessary to  
16 implement the intent and purpose of this ordinance.

17 Section 5. The election shall be conducted under the provisions of the Colorado  
18 Constitution, the Charter and ordinances of the city, the Boulder Revised Code, 1981, and this  
19 ordinance.

20 Section 6. The officers of the city are authorized to take all action necessary or  
21 appropriate to effectuate the provisions of this ordinance and to contract with the county clerk to  
22 conduct the election for the city.

23 Section 7. If any section, paragraph, clause, or provision of this ordinance shall for any  
24 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining  
25 provisions of this ordinance.

26 Section 8. If a majority of all the votes cast at the election on the issue submitted shall be  
27 for the issue, the issue shall be deemed to have passed and shall be effective on July 1, 2020.  
28

1        Section 9. This ordinance is necessary to protect the public health, safety and welfare of  
2 the residents of the city and covers matters of local concern.

3  
4        Section 10. The City Council deems it appropriate that this ordinance be published by  
5 title only and orders that copies of this ordinance be made available in the office of the city clerk  
6 for public inspection and acquisition.

7  
8        INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY  
9  
10 TITLE ONLY this 6th day of August 2019.

11  
12  
13        \_\_\_\_\_  
Suzanne Jones,  
Mayor

14 Attest:

15  
16        \_\_\_\_\_  
Lynnette Beck,  
17 City Clerk

18        READ ON SECOND READING, PASSED AND ADOPTED this \_\_\_\_ day of  
19 \_\_\_\_\_ 2019.

20  
21        \_\_\_\_\_  
Suzanne Jones,  
22 Mayor

23 Attest:

24  
25        \_\_\_\_\_  
Lynnette Beck,  
26 City Clerk



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Call-Up Consideration: Designate the 400 block of Marine Street, including 1628 4th Street, 1606 4th Street, and 1603 4th Street as a local historic district pursuant to Section 9-11-5, B.R.C. 1981

### **PRIMARY STAFF CONTACT**

Marcy Cameron, Historic Preservation Planner II

### **REQUESTED ACTION OR MOTION LANGUAGE**

### **BRIEF HISTORY OF ITEM**

Went to landmarks Board Aug 7, 2019

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 8A - 400 Block of Marine Street Historic Designation**



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE: Call-Up Consideration:** Designate the 400 block of Marine Street, including 1628 4<sup>th</sup> St., 1606 4<sup>th</sup> St., and 1603 4<sup>th</sup> St., as a local historic district pursuant to Section 9-11-5 B.R.C. 1981

**PRESENTERS**

Jane S. Brautigam, City Manager  
Chris Meschuk, Interim Planning Director  
Jim Robertson, Comprehensive Planning Manager  
Lucas Markley, Assistant City Attorney II, City Attorney's Office  
James Hewat, Senior Historic Preservation Planner  
Marcy Cameron, Historic Preservation Planner II

**EXECUTIVE SUMMARY**

The proposal to designate the **400 block of Marine Street**, including **1628 4<sup>th</sup> St., 1606 4<sup>th</sup> St., and 1603 4<sup>th</sup> St.**, as a local historic district was recommended for disapproval by the Landmarks Board (**4-0, F. Sheets** recused) at its August 7, 2019 meeting.

The decision was based upon the board's consideration that the proposal generally does not meet the criteria in 9-11-1 (a) and 9-11-1 (b), B.R.C. 1981. Specifically, while the 1989 historic building survey of the Highland Lawn area recommended potential eligibility of the larger area as a local historic district, additional staff analysis has determined that today, the majority of buildings within the proposed district have been significantly changed in the recent past and the potential district no longer possesses sufficient architectural integrity to meet the criteria in 9-11-1 (a) and 9-11-1 (b), B.R.C. 1981.

Additionally, while the application received on April 12, 2019, was signed by more than the required twenty-five percent of affected property owners, property owner support declined and the majority of property owners oppose designation. At the time of the Aug.

7, 2019 hearing, 12 owners opposed designation, 3 had no opinion, 1 supported designation and 9 owners did not respond to the questionnaire. The board's recommended disapproval is subject to a 30-day call-up period by City Council. The denial is subject to City Council call-up no later than **Sept. 6, 2019**.

#### **ATTACHMENTS**

Attachment A: Disposition for the 400 block of Marine Street, dated Aug. 7, 2019

Attachment B: [Aug. 7, 2019 Landmarks Board Memorandum for the 400 block of Marine Street.](#)

**Attachment A: Notice of Disposition for 400 block of Marine Street, Aug. 7, 2019**

**Notice of Disposition**

You are hereby advised that on Aug. 7, 2019 the following action was taken by the Landmarks Board:

- ACTION:** Recommended for disapproval by a vote of **(4-0, F. Sheets recused)**
- APPLICATION:** Public hearing and consideration of whether to designate the 400 block of Marine Street, including 1628 4<sup>th</sup> St., 1606 4<sup>th</sup> St., and 1603 4<sup>th</sup> St., as a local historic district pursuant to Section 9-11-5 B.R.C. 1981 (HIS2019-00103).
- LOCATION:** 400 Block of Marine Street
- ZONING:** Residential Low - 1 (RL-1)
- OWNERS:** Various
- APPLICANT:** More than 25 percent of property owners

This decision was based on the Board's consideration that the proposed proposal generally does not meet the criteria in 9-11-1 (a) and 9-11-1 (b), B.R.C. 1981.

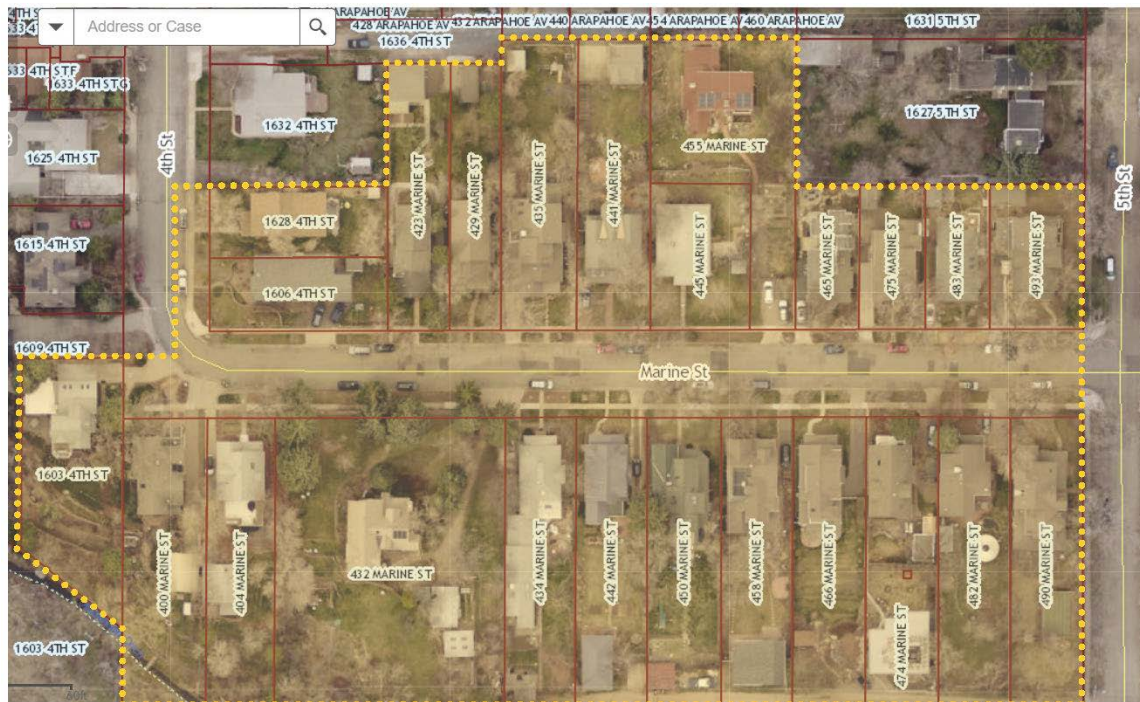
**Public Comment**

1. **John Fisher**  
434 Marine St.  
80302  
Spoke against historic district designation.
2. **Carol Raehn**  
483 Marine St.  
80302  
Spoke against historic district designation.
3. **Nick Forster**  
458 Marine St.  
80302  
Spoke about the lack in interest in proceeding with the expansion of the historic district.
4. **Lynn Segal**  
538 Dewey Ave.  
80304  
Spoke about the how Historic Districts in general create restrictive guidelines.

5. **Kathryn Barth**      Commended staff and the Historic Preservation process for  
2940 20<sup>th</sup> St.      historic district designation.  
80304

**Motion**

On a motion by **W. Jellick**, seconded by **R. Pelusio**, the Landmarks Board voted (**4-0, F. Sheets** recused) to adopt the staff memorandum dated August 7, 2019 as the findings of the board and recommend disapproval of the application to designate the 21 properties on the 400 block of Marine Street and the three properties on 4th Street as a local historic district, finding the proposal does not meet the criteria in 9-11-1 (a) and 9-11-1 (b), B.R.C. 1981.



*Figure 1. Map of Proposed Historic District.*



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Call-Up Consideration: Proposal to lift the building and construct a basement with two window wells, reconstruct a front porch, enlarge two windows on the east elevation, and install a stone patio in the rear of a contributing cottage at 10 Goldenrod located in the Chautauqua Historic District, pursuant to Section 9-11-18, B.R.C. 1981

### **PRIMARY STAFF CONTACT**

James Hewat, Senior Preservation Planner

### **REQUESTED ACTION OR MOTION LANGUAGE**

### **ATTACHMENTS:**

#### **Description**

- ▣ **Item 8B - Call-up Consideration: 10 Goldenrod**





**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: August 20, 2019**

**AGENDA TITLE: Call-Up Consideration:** Proposal to lift the building and construct a basement with two window wells, reconstruct a front porch, enlarge two windows on the east elevation, and install a stone patio in the rear of a contributing cottage at 10 Goldenrod located in the Chautauqua Historic District, pursuant to Section 9-11-18 B.R.C. 1981

**PRESENTERS**

Jane S. Brautigam, City Manager  
Chris Meschuk, Interim Planning Director  
Jim Robertson, Comprehensive Planning Manager  
Lucas Markley, Assistant City Attorney II, City Attorney's Office  
James Hewat, Senior Historic Preservation Planner  
Marcy Cameron, Historic Preservation Planner II

**EXECUTIVE SUMMARY**

The proposal for a contributing cottage at **10 Goldenrod**, located in the Chautauqua Historic District, to construct a basement with two window wells, reconstruct a front porch, enlarge two windows on the east elevation, and install a stone patio in the rear was approved with conditions by the Landmarks Board (**3-2, F. Sheets** and **A. Daniels** dissenting), at its August 7, 2019 meeting.

The decision was based upon the board's consideration that the proposal generally meets the Standards for Issuance of a Landmark Alteration Certificate in Chapter 9-11-18, B.R.C. 1981, the General Design Guidelines, and the Chautauqua Park Historic District Design Guidelines, subject to conditions.

The board's approval is subject to a 14-day call-up period by City Council.

**ATTACHMENTS**

Attachment A: Disposition for 10 Goldenrod, dated Aug. 7, 2019

Attachment B: [Link to Aug. 7, 2019 Landmarks Board Memorandum for 10 Goldenrod.](#)

**Attachment A: Notice of Disposition for 10 Goldenrod, Aug. 7, 2019**

**Notice of Disposition**

You are hereby advised that on Aug. 7, 2019 the following action was taken by the Landmarks Board:

**ACTION:** Recommended for approval by a vote of **3-2, F. Sheets** and **A. Daniels** dissenting

**APPLICATION:** Public hearing and consideration of a proposal to construct a basement with two window wells, reconstruct a front porch, enlarge two windows on the east elevation, and install a stone patio in the rear of a contributing cottage at **10 Goldenrod** located in the Chautauqua Historic District, pursuant to Section 9-11-18 B.R.C. 1981 (HIS2019-00203).

**LOCATION:** **10 Goldenrod**

**ZONING:**

**OWNER:** Jason and Branda Hann

**APPLICANT:** David Waugh, Waugh and Associates.

The decision was based upon the board's consideration that the proposal generally meets the Standards for Issuance of a Landmark Alteration Certificate in Chapter 9-11-18, B.R.C. 1981, the General Design Guidelines, and the Chautauqua Park Historic District Design Guidelines, subject to conditions.

**Staff Presentation**

**J. Hewat** presented the case to the board with a recommendation that the Landmarks Board approve the proposal with conditions.

**Applicant's Presentation**

**Jason Hann**, cottage-owner, described the building in detail and his desire to honor its historic value. He spoke in support of approving the application.

**David Waugh**, Waugh and Associates, explained the rationale for adding a basement, and that his research indicated that the porch was removed in 1945.

Both answered questions from the board.

### **Public Comment**

1. **Jeff Medanich**,  
Director of  
Preservation and  
Sustainability –  
Colorado  
Chautauqua  
Association  
Spoke in support of the application and answered questions regarding current and past cases at Colorado Chautauqua.
2. **Kathryn Barth**,  
2940 20<sup>th</sup> St.  
80304  
Addressed a concern that the application doesn't meet the guiding principles for Colorado Chautauqua.
3. **Kristian Woyna**  
11 Goldenrod  
80302  
Spoke in support of the application and addressed his concern for the house's current condition.

### **Motion**

On a motion by **R. Pelusio**, seconded by **J. Decker**, the Landmarks Board voted **(3-2)** to approve the project with conditions adopting the memorandum dated August 7, 2019 as the findings for the construction of a basement, possible reconstruction of the front porch, possible enlargement of rear windows and installation of a stone patio at 10 Goldenrod in the Chautauqua Historic District as shown on application materials dated May 10, 2019, finding that the proposal generally meets the Standards for Issuance of a Landmark Alteration Certificate in Chapter 9-11-18, B.R.C. 1981, the General Design Guidelines, and the Chautauqua Park Historic District Design Guidelines, subject to the following conditions:

#### **CONDITIONS OF APPROVAL**

- 1) The applicant shall be responsible for completing the work in compliance with the approved plans dated May 10, 2019, except as modified by these conditions of approval.
- 2) Prior to submitting a building permit application and final issuance of the Landmark Alteration Certificate, the applicant shall submit final details to the Landmarks design review committee (Ldrc), for its final review and approval:
  - a) Additional research definitively demonstrating that the west portion of the original porch was retained after the 1920s remodel

and expansion of the house to justify its reconstruction, otherwise existing entry patio area shall be retained.

- b) Final architectural plans and specifications showing retention of front door and opening size; stone facing of west and northwest corner of foundation to match existing; retention of existing exterior siding at foundation; window well, exterior stairs, and new window and door details; as well as all hardscaping to ensure that the final design of the building is consistent with the General Design Guidelines, the Chautauqua Park Historic District Design Guidelines and the intent of this approval.

**A. Daniels'** dissenting vote was based upon concern about setting a precedent for other basements at Chautauqua and a resulting loss of historic integrity to the National Historic Landmark District.

**F. Sheets'** dissenting vote was based upon concern for incremental change altering the historic character of Chautauqua and what it represents.

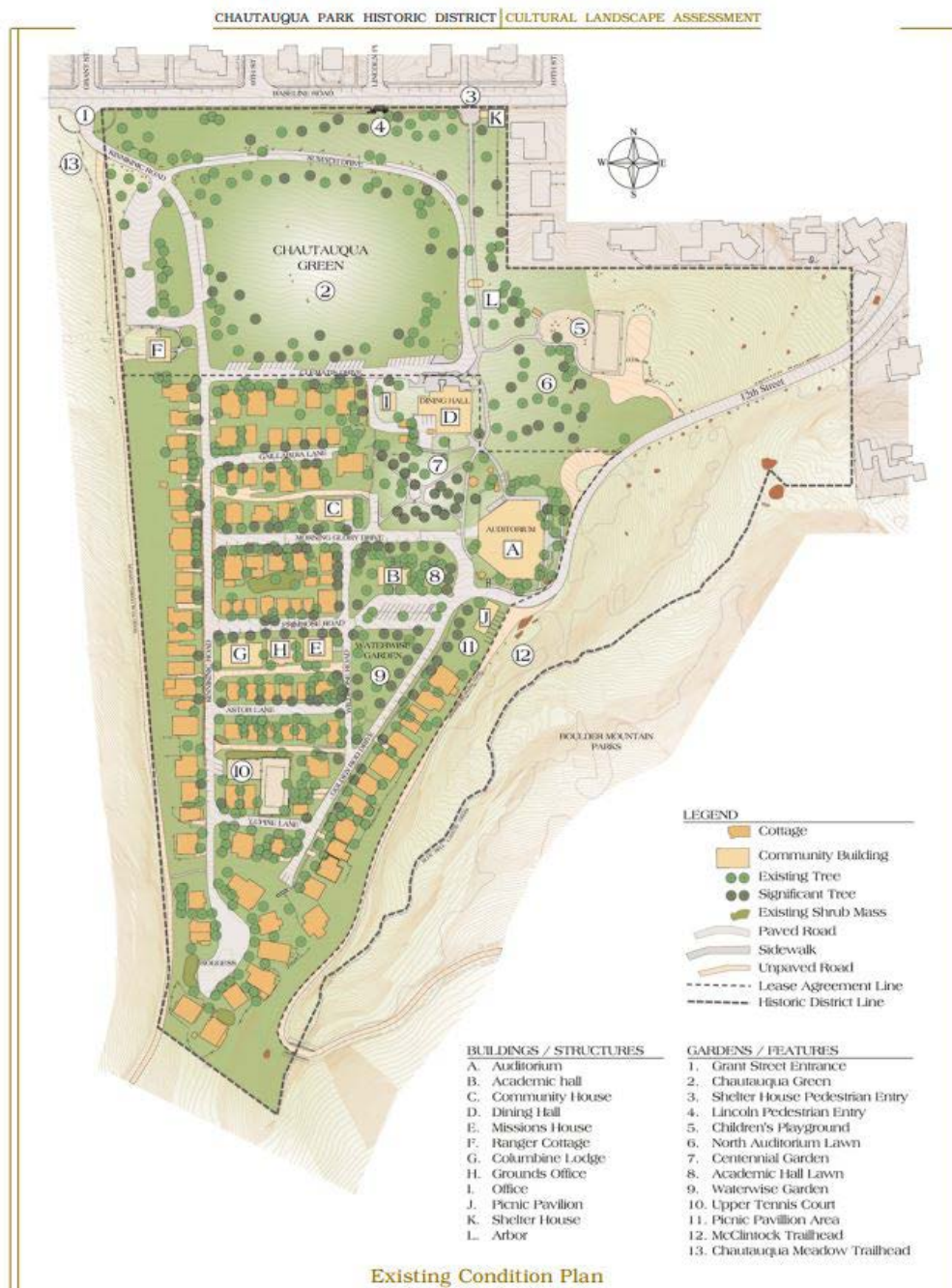


Figure 1. Location map, CCA Cultural Landscape Plan Map, 2004.





*Figures 2 & 3. Historic Photographs of 10 Goldenrod, c.1910 and 1953 Tax Assessor Photograph after 1920s expansion.*



*Figure 4. Rear of 10 Goldenrod from Lupine Lane, 2019*



*Figure 5. 10 Goldenrod, West Elevation (façade), 2019.*





## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Nod of Five for Marijuana Licensing Authority seating outside of annual recruitment

### **PRIMARY STAFF CONTACT**

N/A

### **ATTACHMENTS:**

#### **Description**

No Attachments Available



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **AGENDA ITEM**

Scheduling of tobacco item and other regulatory items in the next month

### **PRIMARY STAFF CONTACT**

N/A

### **ATTACHMENTS:**

#### **Description**

No Attachments Available



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **INFORMATION ITEM**

UHGID Pleasant Street Sale Consideration – Response to Information Requests

### **PRIMARY STAFF CONTACT**

Sarah Wiebenson

### **ATTACHMENTS:**

#### **Description**

- ▣ **IP - Pleasant Street Sale Consideration**



## **INFORMATION ITEM MEMORANDUM**

**TO:** Members of City Council

**FROM:** Jane S. Brautigam, City Manager  
Cheryl Pattelli, Chief Financial Officer  
Yvette Bowden, Director, Community Vitality Department  
David Gehr, Deputy City Attorney  
Joel Wagner, Tax and Special Projects Manager, Finance Department  
Lucas Markley, Assistant City Attorney  
Sarah Wiebenson, Hill Community Development Coordinator, Community Vitality Department

**DATE:** August 20, 2019

**SUBJECT:** UHGID Pleasant Street Sale Consideration – Response to Information Requests

---

### **EXECUTIVE SUMMARY**

This information item supplements prior documentation related to City Council consideration of the potential sale and redevelopment of the Pleasant Street parking lot; an asset owned by the University Hill General Improvement District (UHGID). UHGID generally follows the boundaries of what is known as the Hill Commercial Area, which consists of 33 privately owned properties that contribute to UHGID through a district-wide commercial property tax; two properties owned by the University of Colorado at Boulder (CU); and the two surface parking lots owned by UHGID.

Revitalization of the Hill Commercial Area, which has seen a gradual decline in both sales tax revenues and commercial occupancy in recent decades, was a City Council priority in 2014-2016, prompting the Hill Reinvestment Strategy initiative in 2014. A hotel was identified in a 2014-2015 Hill Reinvestment Strategy study as a potential catalytic use to support sustained Hill Commercial Area revitalization. The original Letter of Intent from the Hill Hotel Partners, LLP

to construct a hotel on the project site was received by the city in April 2015. The current proposal is to combine the Pleasant Street parking lot with three adjacent privately held parcels to construct a 189-room hotel and 10,500 square feet of related commercial space above a 50-car public parking garage operated by the hotel. There are currently no hotels in the broader University Hill area of Boulder, a neighborhood generally extending from University Avenue in the north to Baseline Road at the south, between Broadway to the east and the foothills to the west. CU is currently pursuing a combined conference center, hotel and underground parking garage on the east side of Broadway at University Avenue.

Related to the proposed sale and redevelopment of the Pleasant Street lot, council has previously been provided with:

- *Proposed project scope and intent;*
- *Parcel ownership descriptions;*
- *Pleasant Street lot current utilization and UHGID financial impacts of the proposed project;*
- *Summary of community input and outreach (including council directed outreach to current retail tenants);*
- *Overview of project bulk and mass comparisons to other Boulder hotel properties;*
- *Property appraisal of fair market value;*
- *Developer letter (from the Hill Hotel Partners, LLP, eliminating the request for financial support for the project and committing to requests from council such as funding \$200,000 in tenant relocation assistance to be administered by the city);*
- *Affordable housing feasibility analysis (preliminary “test fit” analysis to determine the feasibility of constructing affordable housing on the Pleasant Street lot as an alternate use); and*
- *Additional correspondence from one of the landowners on the project site.*

At the April 24, 2019 City Council meeting, council directed staff via a nod-of-five to hire an expert to conduct economic- and parking impact-related analyses of the proposed project and to proceed with negotiating an offer from the Hill Hotel Partners, LLP to purchase the Pleasant Street parking lot. Specifically, council requested the following additional information:

- *Economic Impact Study.* A study to determine whether selling the Pleasant Street lot at fair market value for the proposed use would likely benefit the businesses in the historic core, as intended by the Hill Reinvestment Strategy priority to attract such a catalytic use to the UHGID;
- *Parking Demand Projections.* A study to determine the manner in which proceeds from the sale of the Pleasant Street lot might be allocated to provide additional access enhancements (for both hourly parkers and permit holders) in UHGID, both during the hotel construction period and after construction is complete;

- *Offer Letter.* Updated offer letter from the Hill Hotel Partners, LLP to purchase the Pleasant Street lot for fair market value, as might be mutually agreed;
- *Term Sheet.* Negotiated term sheet with detail on the commitments that the developer will make to the city if the project is approved.

The two above-referenced studies are now complete and provided in this item for council's use and information while negotiation continues with the Hill Hotel Partners, LLP related to the Pleasant Street purchase offer letter and term sheet.

## **ECONOMIC IMPACT STUDY**

At the direction of council, staff drafted a scope of work and issued a request for proposals for a consulting firm to independently verify whether the proposed project would likely have a positive economic benefit for the businesses in UHGID and for the city at-large. The study analyzed the potential economic impact on Boulder and UHGID, fiscal impacts on City of Boulder revenues, and retail demand spillover on UHGID. The scope of work included comparison of the proposed hotel development to three alternative scenarios:

- A hypothetical 36,000 square foot office/retail development on the Pleasant Street lot consistent with existing zoning;
- A hypothetical 35-unit affordable housing project above approximately 8,000 square feet of ground floor retail on the Pleasant Street lot; and
- A status-quo scenario in which the Pleasant Street parking lot is maintained and operated as-is and the private property comprising the remainder of the development site does not change.

The firm of Gruen, Gruen + Associates ("GG+A") was selected in June and performed their analysis during the months of June and July. The scope of the study included interviews with businesses and property owners within UHGID, the Hill Hotel Partners, LLP, and the Boulder Convention and Visitors Bureau.

The complete results of the study are provided herein (ATTACHMENT A). Overall, GG+A concluded that the proposed hotel development is estimated to generate the highest one-time and ongoing fiscal impacts and second highest economic impacts. It also has the greatest potential to generate positive retail demand spillover for UHGID and to improve the balance between retail space supply and demand.

### Economic Impacts

- The proposed hotel development is estimated to generate the second highest ongoing economic impacts (including employment, earnings, and economic output), behind the hypothetical office/retail development:

|            | Proposed Hotel/Retail Development | Office/ Commercial Alternative | Affordable Housing Alternative | Status-Quo Alternative |
|------------|-----------------------------------|--------------------------------|--------------------------------|------------------------|
| Employment | 183.9                             | 257.8                          | 111.3                          | 78.1                   |
| Earnings   | \$5,133,000                       | \$10,761,000                   | \$2,701,000                    | \$1,830,000            |
| Output     | \$22,088,000                      | \$38,899,000                   | \$11,025,000                   | \$7,307,000            |

(Note: the potential impacts of the highest impact office/commercial hypothetical alternative represent less than 0.3 percent of citywide employment, earnings, and economic output for Boulder)

#### One-Time and Ongoing Benefits

- The proposed hotel development is estimated to generate the highest one-time and ongoing fiscal benefits (e.g. tax, impact fees, and land sale proceeds to UHGID) of all the alternatives:

|                   | Proposed Hotel/Retail Development | Office/ Commercial Alternative | Affordable Housing Alternative | Status-Quo Alternative |
|-------------------|-----------------------------------|--------------------------------|--------------------------------|------------------------|
| One-Time Benefits | \$5,428,418                       | \$4,319,497                    | \$3,604,965                    | \$0                    |
| Ongoing Benefits  | \$1,668,618                       | \$634,758                      | \$449,067                      | \$340,728              |

- In general, businesses on the Hill have significantly lower sales per square foot than the city as a whole (\$230/ft. vs \$435/ft.), despite average net rents being close to city averages (\$20-\$25/ft. vs \$25.37/ft.). This indicates that Hill businesses are currently less productive than the citywide average perhaps due to the largely seasonal customer base.

#### Retail Demand Spillover Effects

- The proposed hotel development is estimated to generate the highest demand for new retail space in the UHGID commercial area and has the highest likelihood of spurring business investment in the commercial area:

|  | Proposed Hotel/Retail Development # Square Feet | Office/ Commercial Alternative # Square Feet | Affordable Housing Alternative # Square Feet |
|--|---|--|--|
| Potential New Retail Space Demand Generated from Development | 26,400  | 5,100  | 1,300  |

- Based on past performance, future expected business and tourism growth, and the planned CU conference center and hotel, there is long-term potential for the proposed hotel to be supported without negatively impacting the existing hotel supply.

## **PARKING DEMAND PROJECTIONS**

At the direction of council, staff drafted a Scope of Work ultimately issued to the consulting firm which had recently completed a UHGID Parking Utilization Study, Apex Design, PC. The consultant was asked to build on their earlier findings regarding capacity and current use of the Pleasant Street lot to project parking demand, both during the construction phase of the hotel development (estimated at 20 months) and after the hotel construction is complete. The consultant was asked to distinguish demand during mid-day and in the evening, and to distinguish between hourly demand and employee permit demand. Lastly, the consultant was asked to determine to what degree the parking provided by the hotel would meet long-term demand, and how much unmet demand would need to be accommodated by allocating proceeds from the sale of the Pleasant Street lot toward additional district access enhancements.

The results of their inquiry are provided herein (ATTACHMENT B), including an appendix with additional detail on the consultant's methodology, assumptions and calculations. For purposes of this analysis, all parking demand projections assume 100 percent occupancy of the proposed hotel to envision the impact of a maximum demand scenario. This scenario is compared to average hotel occupancy in Boulder, which ranges from 67.7 percent to 73.1 percent as observed between 2015 and 2019 year-to-date.

The consultant's key findings were:

- At mid-day during the construction phase, existing UHGID spaces are sufficient to accommodate displaced demand from the Pleasant Street lot, increasing demand from 80 to 89 percent utilization.
- At 7:00 p.m. during the construction phase, existing UHGID spaces are sufficient to accommodate displaced demand, however the anticipated increase in demand from 77 to 96 percent may result in limited dispersion outside the commercial district.
- 30 employee permit holders will need to be relocated at the start of construction.
- At mid-day when the hotel construction is complete, the 50-space hotel garage can accommodate 10 hourly parking users in addition to demand generated on-site.
- At 7:00 p.m. when the hotel construction is complete, the hotel site will generate demand for five spaces in excess of what the garage can accommodate. UHGID spaces are sufficient to accommodate the demand, however the demand would increase from 77 to 95 percent and may (as during the construction period) result in limited dispersion outside the district.



The consultant concludes the report with recommendations concerning the accommodation of employee permit demand and the potential dispersion of evening and/or overnight parking demand, should the hotel project proceed.

- Continue to market the EcoPass program to maximize UHGID employee usage;
- Consider ways to create additional hourly parking supply within UHGID that will reduce estimated utilization rates to meet the 85 percent goal and reduce potential neighborhood parking impacts;
- Research further the demand for the employee permit parking program. Assess latent demand for permits and whether this program should be expanded;
- Identify a way to accommodate the demand for employee permit spaces, with consideration for allowing these spaces to transition to hourly spaces in the afternoon and evening; and
- Monitor the implementation of the Sage Hospitality transportation demand management program.

It is worth noting that since the hotel proposal was modified to no longer include a UHGID-owned and operated parking garage, the city has been in communication with CU about the potential to meet demand for UHGID employee permits via existing University Hill parking infrastructure and programs, or in the parking garage planned as part of the proposed CU hotel and conference center within one block of the Pleasant Street lot. CU has responded with openness to partnership proposals from UHGID, and conversations would resume if the project proceeds and once the number of permits needed is confirmed.

In light of potential increased hourly parking demand if the proposed hotel succeeds at catalyzing economic vitality in the district (i.e. decreasing the district's current eight percent vacancy rate), the University Hill Commercial Area Management Commission (UHCAMC) and the Hill Reinvestment Working Group (HRWG) have expressed interest in leveraging a portion of the proceeds from the sale of the Pleasant Street lot to engage a partner in the development of a privately operated garage on the UHGID-owned 14<sup>th</sup> Street surface lot.

Both avenues for enhancing the UHGID access would be explored further if and when the sale of the Pleasant Street lot is approved. Additionally, the city's Transportation Division and Community Vitality Department will continue to collaborate with CU and other area stakeholders to pursue ongoing comprehensive improvements to district access for its residents, businesses and visitors.

#### **AUTHORITY OF THE UHGID BOARD OF DIRECTORS**

UHGD was created by the city in 1970 under authority that exists in the city charter. UHGID is a quasi-municipal corporation, separate and apart from the City of Boulder, with only those powers granted to it by council. UHGID's powers derive from two places: 1) its originating legislation, described below, which includes powers related to UHGID's mission; and 2) the

powers described in Chapter 8-4, “General Improvement Districts,” B.R.C. 1981, which are the general corporate powers for the city’s general improvement districts.

### **Originating Legislation**

The powers of UHGID are described in its originating legislation. UHGID was created in 1970 by Ordinance 3638, and its boundaries increased in 1978 by Ordinance 4299. Its powers were then modified by Ordinance 4958 in 1985. UHGID’s powers are described in Section 4 of Ordinance 4958 as follows:

A general description of the improvements to be constructed and installed within the district or outside the district for the special benefit of the district is a *general program of providing parking, pedestrian, bicycle, mass transit, aesthetic and related improvements for the district area*, which may include, but shall not be limited to:

- (a) parking and off-street parking facilities;
- (b) acquisition or lease of necessary land or interests therein, and improvements thereto in connection with said facilities both within and outside the district; and
- (c) other incidental and appurtenant facilities and improvements designed to improve parking and improve the convenience of the district area;
- (d) pedestrian and bicyclist amenities including benches, trees, landscaping, bike racks, signage, banners and trash receptacles;
- (e) improvements to increase the attractiveness and convenience of the district;
- (f) incentive programs to encourage use of means of transportation to and from the district other than the under-occupied private automobile; and
- (g) maintenance of any of the above described types of facilities and improvements located in the public right of way within the district.

### **Authority for General Improvement Districts**

In addition to the originating legislation creating UHGID, its powers are also described in Section 8-4-11, “Powers of District,” B.R.C. 1981. This section of the code describes general corporate authority and addresses a number of issues, including perpetual corporate existence, the ability to sue or be sued, to borrow and repay debt, construct improvements, manage district assets and services, to acquire and dispose of property, improve public streets and property, repair, operate and maintain improvements, create and charge rates for services, adopt and enforce rules, to name a few.

UHGID has the power of taxation. There is a mill levy that is assessed on properties within the district. It can also charge fees for the use of its facilities.

The sale of the Pleasant Street parking lot would be within UHGID's authority to dispose of property and manage district assets and services. Proceeds of the sale could be allocated to provide additional district enhancements, while improved economic vitality would enhance UHGID's ability to serve its function into the future.

## **NEXT STEPS**

Following this satisfaction of council's requests for additional information related to the proposed sale and redevelopment of the Pleasant Street lot, staff will proceed with completing the negotiation of a purchase offer and associated term sheet with the Hill Hotel Partners, LLP. When complete, the documents will be forwarded to the City Council for its determination whether to proceed with scheduling a public hearing on the sale of the Pleasant Street lot.

If council, as the UHGID Board of Directors, decides to pursue the sale of the Pleasant Street lot to the Hill Hotel Partners, LLP, staff will begin to prepare for disposal of the property, which would likely include coordination with:

- District stakeholders to develop criteria for distribution of the tenant relocation assistance funding;
- The city's Community Vitality Department to update the UHGID budget to account for projected increases in UHGID mill levy revenues from the proposed hotel and related commercial uses; projected loss of hourly parking revenue from disposing of the Pleasant Street lot; and projected cost reductions from eliminating the operations and maintenance of the Pleasant Street lot;
- Current UHGID employee parking permit holders to coordinate alternate parking locations during the construction period;
- UHGID employers to quantify latent demand for UHGID employee parking permits;
- CU Parking and Transportation to develop a long-term solution for meeting UHGID employee parking permit demand, possibly in the proposed CU conference center garage;
- The city's Transportation and Mobility division and UHCAMC to begin planning for potentially allocating a portion of the Pleasant Street lot land sale proceeds to meet projected increases in hourly parking demand;
- Tenants on the project site to begin planning for relocation within the next two years.

## **ATTACHMENTS**

Attachment A – Economic Impact Study (July 2019)

Attachment B – Parking Demand Projections (July 2019)

**THE POTENTIAL ECONOMIC AND FISCAL AND SPILLOVER IMPACTS  
OF THE PROPOSED UNIVERSITY HILL HOTEL DEVELOPMENT**

A Report

To

**CITY OF BOULDER**

From

**GRUEN GRUEN + ASSOCIATES**

*Urban Economists, Market Strategists & Land Use/Public Policy Analysts*

July 2019

C1538



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*APPLYING KNOWLEDGE  
CREATING RESULTS  
ADDING VALUE*

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## CHAPTER I

### EXECUTIVE SUMMARY

#### INTRODUCTION

Nichols Partnership proposes to develop a 189-room hotel and 10,500 square feet of retail/commercial space (the “University Hill Hotel” development) on 1.4 acres of land within the University Hill General Improvement District (“UHGID” or “Hill District”) located at the southwest corner of University Avenue and Broadway in Boulder. The proposed redevelopment site includes the Pleasant Street public parking lot operated by UHGID.

Gruen Gruen + Associates (“GG+A”) was asked to evaluate and describe the potential economic and fiscal impacts and property spillover effects the proposed University Hill Hotel development may have on UHGID and City of Boulder.

#### ALTERNATIVE SCENARIOS

The economic and fiscal impacts and spillover effects of the proposed development are compared to three alternatives for the 20,000-square-foot Pleasant Street parking lot. The three alternatives as specified by the City project team include:

- 1) an office/commercial use (consistent with existing zoning);
- 2) an affordable housing use (including some ground floor retail/commercial space as required in the Business Main Street zoning district); and
- 3) a status-quo scenario in which the Pleasant Street parking lot is maintained and operated as-is and the private property comprising the remainder of the development site does not change.<sup>1</sup>

Note that neither of the alternative scenarios (office or affordable housing) assume any displacement of economic activity. Office and residential tenants are assumed to be new to Boulder. Ground floor retail/commercial spaces are assumed to capture new sales (rather than siphoning sales already captured in Boulder or the Hill District). Thus, the estimates presented for the alternatives are gross rather than net impacts. In addition, an inherent assumption is that the alternatives are financially feasible to develop. These assumptions made for purposes of estimating impacts may be unrealistic and optimistic given that there has been no interest from the development community in constructing either office or affordable housing on the Hill in recent years. The site is not a preferred and established location for office space users.

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<sup>1</sup> For purposes of this analysis, land use scenarios are assumed to be market responsive and financially feasible to develop and operate. While GG+A was not charged with evaluating the feasibility of the postulated alternatives the research conducted suggests that the office/commercial use alternative is unlikely to be feasibly developed.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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### PRINCIPAL FINDINGS AND CONCLUSIONS

Of the alternatives evaluated, the proposed University Hill Hotel development is estimated to generate the highest one-time and ongoing fiscal impacts and second highest economic impacts. It also has the greatest potential to generate positive spillover for UHGID and improve the balance between retail space supply and demand. The office/commercial alternative, assuming it is feasible to develop and operate, would generate the highest citywide economic impacts but substantially lower fiscal impacts and would generate less positive spillover than the proposed University Hill Hotel development.

#### Boulder Hotel Market Conditions

- Hotel room revenue growth has been strong. Real citywide room revenue (adjusted for inflation) grew by 25 percent or \$22.1 million between 2014 and 2018.
- Growth in hotel market volume at least partially reflects a considerable hotel supply expansion. Approximately 680 new hotel rooms were added between March 2015 and February 2018.
- New lodging inventory added over the past three years has primarily served/captured new room night demand. If new hotels were merely “siphoning” demand from existing lodging establishments in the City of Boulder, overall gross revenue per available room (“RevPAR”) would have significantly declined. This has not been the case in Boulder (see Chapter III).
- Estimates of economic and fiscal impact presented in this report related to the proposed University Hill Hotel development conservatively assume a 25 percent “displacement” factor with respect to short-term operations after the hotel is built and stabilized. Put differently, the estimates reflect “net” rather than “gross” impacts associated with the proposed University Hill Hotel development.
- Continued robust employment growth and office space development, the successful utilization of the adjacent planned CU hotel and conference center (which Boulder Convention and Visitor’s Bureau staff and others expect to “spillover” room night demands), general growth in local households and CU enrollment, and continued success in attracting leisure and recreational visitors to Boulder suggest that over time the proposed University Hill Hotel will not need to siphon off room night demand from existing hotels to succeed and that the market will be sufficient to support well maintained and well operated lodging facilities in Boulder.
- The proposed hotel represents a new land use for the Hill District that will attract a significant number of non-local visitors who would otherwise not be present in the District under the status quo or alternative development scenarios.



The Potential Economic and Fiscal and Spillover Impacts of  
the Proposed University Hill Hotel Development

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### Hill District Retail Market Conditions

- The Hill District contains an estimated 176,500 square feet of retail space. The retail space vacancy rate is estimated to currently approximate nine percent (9%).
- Time-series sales tax receipts data suggest the Hill District has not shared proportionally in the recovery from the Great Recession. Inflation-adjusted taxable sales in Hill District have increased by three percent (3%) since 2010; while citywide taxable sales have increased about 17 percent (17%) over the same period.
- A high degree of tenant turnover persists. The seasonal and singular nature of the customer base served (CU students) contributes to the high rate of turnover. Rents have declined in the Hill District but even with the decline in rents, as a percentage of sales, rents tend to be higher in the Hill District than in other retailing areas in Boulder. A relatively high rent to sales relationship also contributes to the high rate of turnover.
- Overall sales-per-square-foot for the Hill District are estimated to be much lower than achieved citywide. Retail sales in the Hill District have averaged about \$230-per-square-foot. Citywide sales productivity is about 90 percent higher, estimated at \$435-per-square-foot.

### Economic Impacts on City of Boulder

- The office/commercial alternative would produce the largest economic impact on the local Boulder economy. The proposed University Hill Hotel development would generate the second largest economic impact.
- The on-going employment and earnings impact of the office/commercial alternative is estimated at 258 jobs and \$10.8 million. These potential impacts represent less than 0.3 percent of citywide employment and earnings.<sup>2</sup> The estimated output impact of \$38.9 million represents a similar share (at less than 0.3 percent) of the total volume of economic activity in the City of Boulder.

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<sup>2</sup> Quarterly Census of Employment and Wage (QCEW) data indicates the City of Boulder contained about 93,000 wage and salary jobs (not including self-employed individuals or contract workers) with annual wages of about \$5.8 billion as of 2018.



The Potential Economic and Fiscal and Spillover Impacts of  
the Proposed University Hill Hotel Development

| <b>Table 1-1: Total Annual Economic Impacts on City of Boulder<sup>1</sup></b>   |   |   |   |                           |
|--|---|---|---|---------------------------|
|  | Proposed<br>Hotel/Retail<br>Development | Office/<br>Commercial<br>Alternative <sup>2</sup> | Affordable<br>Housing<br>Alternative <sup>2</sup> | Status-Quo<br>Alternative |
| Employment <sup>3</sup>  | 183.9                                   | 257.8   | 111.3   | 78.1                      |
| Earnings <sup>4</sup>  | \$5,133,000                             | \$10,761,000                                      | \$2,701,000                                       | \$1,830,000               |
| Output <sup>5</sup>  | \$22,088,000                            | \$38,899,000                                      | \$11,025,000                                      | \$7,307,000               |
| <sup>1</sup> Total impacts include direct, indirect, and induced effects. The impacts assume each of the alternatives are feasible to develop, which is not assured.<br><sup>2</sup> Impacts of each alternative include those related to the status-quo activity.<br><sup>3</sup> Full- and part-time employment (jobs).<br><sup>4</sup> Wages, salaries, benefits and proprietor income.<br><sup>5</sup> Local value of goods and services produced or sold. |   |   |   |                           |
| Sources: RIMS II, Regional Production Division, Bureau of Economic Analysis; Gruen Gruen + Associates.   |   |   |   |                           |

### Economic Impacts on Hill District

| <b>Table I-2: Total Annual Economic Impacts on Hill District<sup>1</sup></b>   |   |   |   |                           |
|--|---|---|---|---------------------------|
|  | Proposed<br>Hotel/Retail<br>Development | Office/<br>Commercial<br>Alternative <sup>2</sup> | Affordable<br>Housing<br>Alternative <sup>2</sup> | Status-Quo<br>Alternative |
| Employment <sup>3</sup>  | 187.7                                   | 212.1   | 98.0  | 70.8                      |
| Earnings <sup>4</sup>  | \$5,060,000                             | \$8,949,000                                       | \$2,183,000                                       | \$1,556,000               |
| Output <sup>5</sup>  | \$21,229,000                            | \$30,366,000                                      | \$8,371,000                                       | \$5,868,000               |
| <sup>1</sup> Total impacts include direct, indirect, and induced effects. The impacts assume each of the alternatives are feasible to develop, which is not assured.<br><sup>2</sup> Impacts of each alternative include those related to the status-quo activity.<br><sup>3</sup> Full- and part-time employment (jobs).<br><sup>4</sup> Wages, salaries, benefits and proprietor income.<br><sup>5</sup> Local value of goods and services produced or sold. |   |   |   |                           |
| Sources: RIMS II, Regional Production Division, Bureau of Economic Analysis; Gruen Gruen + Associates.   |   |   |   |                           |



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

### Fiscal Impacts

- One-time fiscal benefits (including the \$3,000,000 purchase price for the Pleasant Street parking lot) to the City and UHGID total \$5.4 million for the proposed University Hill Hotel development.
- On-going fiscal benefits including accommodations tax, sales tax (direct and indirect), and property tax to the City of Boulder and UHGID are estimated at \$1,734,000 annually upon stabilization of the proposed University Hill hotel development.
- The estimated on-going fiscal benefits attributable to the proposed University Hill Hotel development compare to approximately \$341,000 of sales tax, property tax, and net parking revenues (to UHGID) estimated to be generated from the existing use of the 1.4-acre site.
- As summarized below, fiscal benefits from the proposed University Hill Hotel development will far exceed those likely to result from alternative uses even under the assumptions that these alternatives are (a) feasible to develop and (b) represent “net new” activity to the City and Hill District. On-going tax revenues from the proposed University Hill Hotel development, net of the “status-quo”, are estimated at approximately \$1.4 million.

**Table I-3: Summary of Fiscal Benefits to City of Boulder and UHGID**

|   | Proposed<br>Hotel/Retail<br>Development<br>\$ | Office/<br>Commercial<br>Alternative<br>\$ | Affordable<br>Housing<br>Alternative<br>\$ | Status-Quo<br>Alternative<br>\$ |
|---|---|--|--|---------------------------------|
| One-Time Benefits <sup>1</sup>  | 5,428,418                                     | 4,319,497                                  | 3,604,965                                  | 0                               |
| <i>Per Acre</i>   | <i>3,813,902</i>                              | <i>3,034,795</i>                           | <i>2,532,779</i>                           | <i>0</i>                        |
| On-Going Benefits <sup>2</sup>  | 1,668,618                                     | 634,758                                    | 449,067                                    | 340,728                         |
| <i>Per Acre</i>   | <i>1,172,339</i>                              | <i>445,968</i>                             | <i>315,506</i>                             | <i>239,389</i>                  |
| <sup>1</sup> Includes construction use tax, affordable housing linkage fees, other capital impact fees, and land sale disposition proceeds from Pleasant Street Parking Lot to UHGID.<br><sup>2</sup> Recurring or “on-going” benefits estimated upon stabilization of each land use/scenario. Estimates include direct City accommodations tax, sales tax, and property tax, as well as indirect City sales tax. Direct benefits to UHGID include property tax and net parking revenues (for status-quo operation of Pleasant Street parking lot). |   |  |  |                                 |
| Source: Gruen Gruen + Associates  |   |  |  |                                 |



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

### Hill District Spillover Impacts

- The Hill District and nearby environs do not currently contain a hotel. Hotel-related economic activities and hotel visitor spending will represent new market segments/sales not presently attracted to the Hill District.
- Annual hotel visitor expenditures are estimated at nearly \$9.9 million for retail goods and eating and drinking activities. The visitor expenditure potential equates to approximately 25,000 square feet of additional retail space supported at a sales threshold of \$400-per-square-foot. Some of the hotel visitor spending potential will be captured within the Hill District.
- The proposed University Hill Hotel development includes 10,500 square feet of new retail/commercial space. Hotel visitors can support this space, in addition to existing space elsewhere in the Hill District provided that existing or new businesses are well-attuned to the preferences and tastes of hotel visitors.
- Relative to alternative scenarios, the largest “net change” or improvement in the Hill District retail space supply-demand balance can be achieved through development of the proposed University Hill Hotel. Table I-4 summarizes the estimated retail supply effects and new retail space demand potentially associated with the alternative land uses.

**Table I-4: Estimated Retail Supply and New Retail Demand Associated with Proposed University Hill Development and Alternative Land Uses**

|   | Proposed<br>Hotel/Retail<br>Development<br># Square Feet | Office/<br>Commercial<br>Alternative<br># Square Feet | Affordable<br>Housing<br>Alternative<br># Square Feet |
|---|--|---|---|
| Existing Hill District Retail Space Inventory <sup>1</sup>                      | 176,546  | 176,546   | 176,546   |
| Removal: Existing Space at Hotel Site   | (31,521)   | 0   | 0   |
| Plus: New Retail Space Added via Development                                    | 10,500   | 13,600  | 8,000   |
| <b>Future Hill District Retail Space Inventory</b>                              | <b>155,525</b>   | <b>190,146</b>  | <b>184,546</b>  |
| <b>Potential New Retail Space Demand Generated from Development<sup>2</sup></b> | <b>26,400<sup>3</sup></b>                                | <b>5,100</b>  | <b>1,300</b>  |

<sup>1</sup> Includes basement and second floor retail spaces as well as currently vacant spaces (about 15,000 square feet currently vacant).

<sup>2</sup> Represents potential hotel visitor spending as well as the indirect and induced effects from introducing additional hotel or office space workers, or affordable housing residents, to the Hill District.

<sup>3</sup> Does not assume any relocation of existing tenants (at the development site) to other spaces in the Hill District, i.e., it is conservative.

Source: Gruen Gruen + Associates



The Potential Economic and Fiscal and Spillover Impacts of  
the Proposed University Hill Hotel Development

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- Whether property owners will maintain and improve their properties and businesses maintain and enhance their space and goods and services in a particular area or neighborhood often boils down to expectations about the future. The interviews and analysis of secondary data suggest that portions of and some uses in the Hill District have stagnated or deteriorated as the customer base has become less diverse and smaller while the appeal of Downtown Boulder and other areas have improved.
- Optimism about the future of the Hill District has declined. While not a panacea for all challenges associated with the Hill District, the development and occupancy of the proposed University Hill Hotel development would signal confidence in the future of the District and spillover value within the District from the fiscal and economic impacts including funds that can be used to enhance the District.
- In addition, if the retail tenancies are unique and experiential, such uses may attract new visitors, residents, and workers in Boulder and generate sales spillover to restaurants and services in the Hill District responsive to their preferences.
- If the proposed University Hill Hotel development succeeds, it may encourage investments and enhancements by other property owners and businesses seeking to emulate the success of the University Hill Hotel development and capture the new visitor base attracted to the University Hill Hotel development.



## CHAPTER II

### INTRODUCTION AND STUDY PURPOSE

#### INTRODUCTION

Nichols Partnership proposes to develop a 189-room hotel and 10,500 square feet of retail/commercial space (the “University Hill Hotel” development) on 1.4 acres of land within the University Hill General Improvement District (“UHGID” or “Hill District”) located at the southwest corner of University Avenue and Broadway. The proposed redevelopment site includes the Pleasant Street public parking lot operated by UHGID. The Pleasant Street parking lot is approximately 20,000 square feet in size and currently accommodates 68 off-street parking spaces. The privately-owned portions of the proposed redevelopment site contain approximately 31,500 square feet of existing retail and commercial building space. About 20 percent of the existing building space is currently vacant.

We understand from City staff that Nichols Partnership proposed to purchase the UGHID-owned Pleasant Street parking lot for \$3 million in a Letter of Intent sent to the UHGID Board of Directors in November 2018. Pursuant to UHGID charter, proceeds from the sale must remain with UHGID fund and be utilized to enhance access and economic vitality in UHGID.

The University of Colorado intends to develop a new conference center including 15,000 square feet of contiguous multi-purpose assembly/ballroom space and a 250-room hotel across the street from the proposed University Hill Hotel development at the university-owned Grandview site (at the corner of University and Broadway). The University of Colorado development will contain a parking garage which could accommodate a portion of the parking that is displaced by the proposed development on the municipal parking lot. The University of Colorado is not subject to the City of Boulder development entitlement/zoning process and therefore the hotel conference center development could potentially be completed before the proposed University Hill Hotel development. Because of a lack of an existing base of large traditional, full-service, convention-quality hotel properties, and that the size of the ballroom/meeting facilities would support more than 250 hotel rooms, the proposed University Hill Hotel development could be expected to obtain spillover room night demand from the conference center. Currently, only two hotels are within one mile of the university-owned Grandview site: the Boulder University Inn along Broadway and the St. Julien at the corner of Canyon Boulevard and 9th Street. Therefore, the proposed University Hill Hotel development would be ideally positioned to capture spillover demand attributable to the conference center.





## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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### PURPOSE

The City of Boulder and UHGID desire to attract a catalytic anchor that will improve the Hill District's ability to attract and serve non-student customers on a year-round basis. The UHGID-owned Pleasant Street public parking lot was identified as a potential 'catalytic site' for a use that could generate spillover benefits in the 2014 University Hill Commercial District Moratorium Project Phase 1 Report. The purpose of the study summarized in this report by Gruen Gruen + Associates ("GG+A") is to evaluate and describe the potential economic and fiscal impacts, and property spillover effects on the Hill District the development and operation of the proposed University Hill Hotel development may generate.

For purposes of the fiscal and economic impact analysis, we conservatively estimate that no more than 25 percent of room nights in an initial stabilized condition may be displaced from existing commercial lodging establishments in the City of Boulder. Any negative near-term competitive effects are also likely to be "spread wide" given (a) the university campus and UHGID presently contain no hotel room inventory and (b) the proposed select-service hotel product type has minimal direct competition in Boulder.

A related purpose of the study is to evaluate and describe the same economic, fiscal, and spillover effects potentially associated with alternative uses of the Pleasant Street parking lot. The alternatives compared to the proposed University Hill Hotel development described in more detail in the next section selected by the City project team include an office/commercial use (consistent with existing zoning), affordable housing use, and a "status quo" scenario in which the Pleasant Street parking lot is maintained and operated as-is.

### ALTERNATIVE SCENARIOS

The economic and fiscal impacts and spillover effects of the proposed University Hill Hotel development are compared to three alternatives for the 20,000-square-foot Pleasant Street parking lot including:

- An office/commercial use consistent with existing zoning. Based on information provided by City staff, this alternative includes a three-story building with approximately 36,000 square feet of gross floor area ( $\pm$  1.8 FAR). Two floors of office space (22,000 square feet) are included over 13,600 square feet of retail/commercial space on the ground floor;
- An affordable housing alternative that assumes a similar building size and height (three floors) with a small amount of off-street parking tucked under the rear of the building. Two floors of residential space are included above 8,000 square feet of ground floor retail/commercial with frontage on Pleasant Street (as required in current zoning standards). Based on prior analysis performed by City Staff and additional input, this alternative includes 35 multi-family housing units that would be affordable to households at 60 percent of Area Median Income



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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(“AMI”). Unit sizes and mix would be small, with an average occupancy of 1.2 persons per affordable unit; and

- A “status quo” scenario in which the 68 off-street parking stalls at the Pleasant Street lot are maintained and operated as-is.

Note that each of the alternative scenarios only reflect activity from redevelopment of the 20,000-square-foot Pleasant Street public parking lot. The privately-owned remainder of the proposed hotel development site ( $\pm$  42,000 square feet of land) is assumed to remain unchanged from current conditions.

### WORK COMPLETED

In order to accomplish the study purpose, GG+A staff completed the following principal tasks:

- Inspected the Hill District and environs;
- Obtained and reviewed land use, real estate (hotel, retail, and office market), and property inventory data;
- Obtained and analyzed demographic, income, employment, and taxable sales data;
- Evaluated recent time-series hotel revenue and hotel room supply trends and relationships to estimate the potential short-term diversion of hotel rooms from the opening of the proposed University Hill Hotel development on existing hotel supply;
- Forecast the potential growth in demand for hotel rooms attributable to anticipated increases in occupied office space;
- Obtained and analyzed information on the cost and operating characteristics of the proposed University Hill Hotel development;
- Estimated the potential retail/restaurant expenditures visitors to the proposed University Hill Hotel development could contribute and the amount of associated retail/restaurant building space the estimated visitors could support;
- Conferred with Boulder staff to create prototypical development options as alternatives against which the economic, fiscal, and spillover effects of the proposed University Hill Hotel development were compared;
- Obtained sources and rates of taxes and fees from the Boulder Finance Department and applied the tax and fee rates to the characteristics of the proposed University Hill Hotel



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development and postulated alternatives to estimate the amounts of tax and fee revenue each of the land use alternatives can be expected to generate;

- Conducted interviews with merchants and property owners within the Hill District as well as with representatives of the Boulder Convention and Visitors Bureau;
- Created an economic impact model of the jobs, income, and economic output of the proposed University Hill Hotel development and the postulated alternatives using RIMS II input-output multipliers obtained from the United States Bureau of Economic Analysis, a provider of custom input-output data for local economies; and
- Synthesized and described the results of the research and analysis outlined above in this report.

## **REPORT ORGANIZATION**

Chapter III reviews the existing and planned hotel inventory within Boulder and presents an assessment of the current hotel market conditions and sources that stimulate hotel room night demand.

Chapter IV reviews an analysis of taxable retail sales trends and retail market conditions for the Hill District and the City of Boulder.

Chapter V presents an estimate of the economic impact that the proposed University Hill Hotel development is likely to have on the City of Boulder economy. Order-of-magnitude estimates are presented for potential impacts to the Hill District. Comparisons between the proposed University Hill Hotel development and alternative scenarios (for use of the Pleasant Street parking lot) are also summarized.

Chapter VI presents an estimate of the fiscal benefits that the proposed University Hill Hotel development will generate for the City of Boulder as well as UHGID. Comparisons between the proposed University Hill Hotel development and alternative scenarios (for use of the Pleasant Street parking lot) are also summarized.

Chapter VII presents the additional spillover effects the proposed University Hill Hotel development may generate within the Hill District based on a synthesis of the interviews with merchants and property owners and analysis of hotel and retail market conditions and trends.



### **CHAPTER III**

## **BOULDER HOTEL MARKET CONDITIONS AND ASSESSMENT OF MARKET SUPPORT FOR PROPOSED HOTEL DEVELOPMENT**

### **INTRODUCTION AND BASIC CONCLUSIONS**

This chapter reviews the existing and planned hotel inventory within Boulder and presents an assessment of the current hotel market conditions and sources that stimulate hotel room night demand. The results of the review and assessment suggest that the Boulder hotel market is strong enough to support the development of the proposed University Hill Hotel without the hotel having to siphon off room night demands of a magnitude that could cause existing hotels to close.

If the CU hotel and conference center development is successful, it may spillover group bookings-related room night demands to the proposed University Hill Hotel property; a source of new lodging demand to the Boulder market.

### **EXISTING HOTEL ROOM INVENTORY**

The City of Boulder contains a total hotel room inventory of about 2,500 rooms. Table III-1 shows the hotels with number of rooms in the City of Boulder. Limited service hotels (i.e., hotels that do not offer food and beverage service or significant amounts of on-site meeting/conference space) comprise most of the existing room inventory. The 269-room Millennium Harvest House and 201-room St. Julien Hotel & Spa are the two primary full-service hotels in Boulder.



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**Table III-1: Existing Hotel Room Inventory in Boulder**

| Name of Establishment  | Number of Rooms<br># |
|--|----------------------|
| Basecamp Boulder   | 50                   |
| Best Western Plus Boulder Inn  | 98                   |
| Boulder Marriott   | 165                  |
| Boulder University Inn   | 40                   |
| Bradley Boulder Inn  | 12                   |
| Colorado Chautauqua  | 58                   |
| Courtyard by Marriott Boulder  | 149                  |
| Days Hotel Boulder <sup>1</sup>  | 0                    |
| Embassy Suites Boulder   | 204                  |
| Foot of the Mountain   | 20                   |
| Hampton Inn & Suites Boulder North   | 100                  |
| Hilton Garden Inn  | 172                  |
| Holiday Inn Express  | 106                  |
| Homewood Suites by Hilton  | 112                  |
| Hotel Boulderado   | 160                  |
| Hyatt Place Boulder  | 150                  |
| Millennium Harvest House   | 269                  |
| Residence Inn by Marriott Boulder  | 128                  |
| Residence Inn - Canyon Blvd  | 155                  |
| St. Julien Hotel & Spa   | 201                  |
| Roadway Inn & Suites <sup>2</sup>  | 118                  |
| Briar Rose <sup>2</sup>  | 10                   |
| Total  | 2,477                |
| <sup>1</sup> Days Hotel closed; Fairfield Inn Marriott opening 2020 with 74 renovated rooms. |                      |
| <sup>2</sup> Non-BHMA member hotels.   |                      |
| Sources: Boulder Hotel Motel Association; Gruen Gruen + Associates.                          |                      |

Three hotels have opened in the past 18 months including the Embassy Suites Boulder and Hilton Garden Inn totaling 376 rooms on 28<sup>th</sup> Street and Canyon Boulevard close to the University of Colorado campus and the 155-room Residence Inn- Canyon Boulevard. Hyatt Place Boulder opened in 2015. Since 2015, a total of 681 rooms have been added to Boulder's hotel room inventory.



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## HOTEL MARKET CONDITIONS AND ROOM NIGHT DEMAND SOURCES

Table III-2 summarizes the two basic indicators of lodging demand (average daily rate and occupancy rate) for the Boulder hotel market.

| <b>Table III-2: Boulder Hotel Market Performance, 2015-2019 Year-to-Date</b> |                    |           |                       |
|--|--------------------|-----------|-----------------------|
|  | Average Daily Rate |           | Annual Occupancy Rate |
|  | January<br>\$      | May<br>\$ | %                     |
| 2015   | 131.27             | 176.06    | 73.1                  |
| 2016   | 135.06             | 187.98    | 72.1                  |
| 2017   | 139.98             | 192.06    | 71.2                  |
| 2018   | 142.96             | 195.40    | 67.7                  |
| 2019 YTD   | 134.13             | 195.03    | 67.7                  |
| Sources: Boulder Convention & Visitors Bureau; Gruen Gruen + Associates.     |                    |           |                       |

Average daily room rates since 2015 have increased. The average daily room rate was \$131.27 in January 2015 and \$176.06 in May 2015 and has increased to \$134.13 and \$195.03, respectively in January and May 2019. Average daily rates in May as well as August tend to be high relative to other times of year due to CU-related activity (such as graduation events which draw families and visitors to town and move-ins during late summer prior to start of Fall semester, etc.). The year-over-year increases in average daily room rates have generally ranged from two to over three percent even with the additions to the supply of hotel rooms. While average daily room rates have grown over time, annual occupancy rates have declined. The annual occupancy rate declined from about 73 percent in 2015 to nearly 68 percent in 2018 and year-to-date 2019.

Hotel demand in the Boulder market area is driven by three primary segments: business travel, leisure travel, and convention/conferences. An interview with representatives of the Boulder Convention & Visitors Bureau ("Boulder CVB") indicates that business travel and business conferences are large sources of room night demand in Boulder. The leisure/tourism market also generates significant room night demand. Boulder appeals to leisure travelers who enjoy its vibrant Downtown and accessibility to outdoor recreation activities. According to a Boulder CVB tourism snapshot report<sup>3</sup>, 73 percent of visitors come to see family and friends or recreate and vacation. The presence of the CU Boulder campus also stimulates hotel room night demand. The number of CU employees has grown by over one-third from 2010 to 2018, increasing by approximately 4,800 employees to a total of 18,475 employees in 2018. CU student enrollment has also grown. Between

<sup>3</sup>2018 Tourism Snapshot, Boulder Convention and Visitors Bureau



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2010 and 2018, student enrollment grew by 15 percent, to over 34,000 students for fall 2018 enrollment.

According to the CVB, Boulder has experienced growth in business travel and conferences due to the robust economy and attraction and expansion of high technology and business and technical services sectors.

### OVERALL HOTEL REVENUE PERFORMANCE

Table III-3 summarizes an estimate of annual room revenues in Boulder attributable to the existing hotel supply. Accommodation tax receipts collected by the City of Boulder are used to estimate historical gross room revenues in the City.

| <b>Table III-3: Estimated City of Boulder Hotel Revenue Performance</b>  |                                       |                                      |                           |
|--|---------------------------------------|--------------------------------------|---------------------------|
| Year   | Gross Room Revenue <sup>1</sup><br>\$ | Estimated Hotel Inventory<br># Rooms | RevPAR <sup>2</sup><br>\$ |
| 2014   | 87,733,576                            | 1,870                                | 128.54                    |
| 2018   | 109,827,209                           | 2,477                                | 121.48                    |
| Actual Change, 2014-2018   | 19,165,784                            | 607                                  | (7.06)                    |
| 2019 (projection) <sup>3</sup>   | 117,357,481                           | 2,477                                | 129.81                    |
| Projected Change, 2014-2019  | 29,623,905                            | 607                                  | +1.27                     |
| <sup>1</sup> Adjusted for inflation to current 2019 dollars.   |                                       |                                      |                           |
| <sup>2</sup> Daily gross revenue per available room.   |                                       |                                      |                           |
| <sup>3</sup> Accommodations tax receipts through April 2019 were up 8.6 percent year to date. This year-over-year percentage change is used to project 2019 gross room revenues. |                                       |                                      |                           |
| Sources: City of Boulder; Boulder Convention & Visitors Bureau; Gruen Gruen + Associates.  |                                       |                                      |                           |

Total annual gross room revenue in Boulder is estimated to have increased in real terms from approximately \$88 million in 2014 to \$110 million in 2018, representing 25 percent inflation-adjusted growth over the four-year period. According to information provided by the Boulder CVB, the net (after openings and closings) inventory of hotel rooms is estimated to have increased by 32 percent or by about 600 rooms over that same period.

Average daily revenue per available room (“RevPAR”) provides another basic indicator of hotel market performance and a basis from which to judge historical competitive impacts of hotel supply additions if new hotel rooms are added to inventory. The overall RevPAR estimate for 2018 of approximately \$121 is commensurate with an average daily rate of about \$180 at a 68 percent annual occupancy rate. Relative to 2014 estimates, overall RevPAR declined slightly by about five percent over the four-year period.



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The comparison of citywide RevPAR before and after recent growth in hotel room inventory suggests that some competitive effects have likely occurred. If all new hotels were merely capturing lodging demands already served by existing hotels/motels, overall RevPAR by 2018 would have declined to below \$100. Given high land and development costs in Boulder, new hotels will typically need to generate above-average RevPAR to be feasibly built and operated. Table III-4 provides perspective on the potential competitive impacts occurring from the development of 681 new hotel rooms over the 2015-2018 period.

| <b>Table III-4: Hotel Revenue Displacement Effects</b>  |                       |
|---|-----------------------|
|   | Citywide <sup>1</sup> |
| Projected citywide “net” hotel room revenue growth, 2014-2019 (see Table III-3)   | \$29,624,000          |
| Total new hotel room inventory added since 2014 (# Rooms) <sup>2</sup>  | 681                   |
| New hotel room inventory gross annual revenue requirement @ \$150 RevPAR <sup>3</sup>   | \$37,285,000          |
| <b>Net-to-gross room revenues from new hotel developments</b>   | <b>79.5%</b>          |
| <sup>1</sup> In current 2019 dollars.   |                       |
| <sup>2</sup> Includes Hyatt Place (Boulder Junction), Embassy Suites, Hilton Garden Inn, and Residence Inn, all opened between March 2015 and February 2018.                                |                       |
| <sup>3</sup> Assumes recent new hotel developments have likely required at least \$150 RevPAR (e.g., \$200 average daily rate at 75% annual occupancy) to be feasibly developed in Boulder. |                       |
| Source: Gruen Gruen + Associates  |                       |

An order-of-magnitude comparison between citywide room revenue growth and gross room revenue likely required to develop 681 new hotel rooms suggests that about 20 percent of room revenues may be displaced, in the short-term, from other existing lodging establishments in the City of Boulder.

If the CU conference center is well utilized, and robust economic conditions continue, growth in occupancy rates will likely resume along with continued growth in average daily room rates. Continued growth in tourism and business activity suggest the longer-term potential for the proposed hotel to be supported without having to negatively impact existing supply to succeed.

For purposing of quantifying fiscal and economic impacts of the proposed development, to be conservative, we estimate that no more than 25 percent of room nights in an initial stabilized condition may be displaced from existing commercial lodging establishments in the City of Boulder.





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### FUTURE HOTEL SUPPLY

In addition to the proposed 189-room University Hill hotel, CU Boulder has proposed a new hotel and conference center facility on university-owned land near Broadway and Grandview Avenue. The proposed project would include a 250-room hotel, 15,000-square-foot ballroom, and additional meeting rooms, and underground parking. Fairfield Inn and Suites is anticipated to re-open 74 rooms after renovations to the former Days Hotel are completed (in 2020). A 120-room Holiday Inn Express is also under construction in northeast Boulder with an anticipated 2020 opening date.

Collectively, these projects represent potential hotel supply additions totaling 633 rooms. This is similar in magnitude to the recent hotel supply growth that occurred between 2015 and 2018.

### POTENTIAL HOTEL ROOM DEMAND

#### Short Term Forecast

Historical changes in hotel demand can be partially explained by continued growth in occupied office space and employment. We use a short-term projection of office space growth for Boulder to estimate the potential short-term growth in hotel demand. The Boulder office market has experienced 750,000 square feet of new office space added since 2016. Another nearly 300,000 square feet of space is under construction. Office space market vacancy rates have declined. Rents have increased even as a significant amount of new office space has been constructed. Google is expected to add 1,500 workers in Boulder into its multi-phased campus. Apple and Amazon are also moving high technology jobs to Boulder.

Assuming a relationship equating to about \$1,200 in annual room revenue per additional job<sup>4</sup>, consistent with past trends, we estimate the magnitude of potential room night demand growth. To estimate the total number of potential new hotel rooms supported, we then apply a citywide RevPAR benchmark.

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<sup>4</sup> Boulder contains approximately 93,300 jobs as of 2018. Total gross hotel room revenue in Boulder is estimated to have equated to approximately \$1,200 per primary job.



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Table III-5 summarizes these calculations and the projection of potential hotel demand.

| <b>Table III-5: Short-Term Hotel Demand Projection for Boulder</b>   |                                |
|--|--------------------------------|
|  | Four-Year Total<br>(2019-2023) |
| Projected Office Employment Growth (Jobs) in Boulder <sup>1</sup>  | 4,800                          |
| Additional Annual Hotel Room Revenue Per Job   | \$1,200                        |
| Total Additional Room Revenue  | \$5,760,000                    |
| Existing RevPAR (citywide for 2018)  | \$121                          |
| Additional Hotel Demand (# Rooms)  | 130                            |
| <sup>1</sup> Based on MacLaurin Williams Metro Denver/Boulder Office Market Report (1Q 2019) showing additional office space growth of over 1.4 million square feet in Boulder market area. Assume 66 percent of this space is in City of Boulder for total additional office space of 955,000 square feet. Assuming employment density of 200 square feet per employee, the office space demand projection for City of Boulder would equate to approximately 4,800 additional office space jobs over the next four years. |                                |
| Sources: MacLaurin Williams Metro Denver/Boulder Office Market Report (1Q 2019); Boulder Economic Profile, January 2019; Gruen Gruen + Associates.   |                                |

The demand projection over four years totals approximately 130 hotel rooms. The quantitative projection is not a precise tool, but its results lend to a basic comparison between likely future demand and supply based solely on office space employment. The results suggest growth in near-term office space occupancy will support about 130 existing hotel rooms. Short term growth office space development growth in Boulder will offset some competitive/displacement effects that may result from development of the identified hotel supply pipeline, especially for existing hotels (e.g., near 29<sup>th</sup> Avenue) situated closest to major concentrations of non-university employment.

Note according to the Boulder Valley Comprehensive Plan, employment in all sectors is projected to increase by 18,500 jobs to a total of 117,000 jobs within City limits by 2040. Accordingly, over time, the growth in employment and volume of economic activities can be expected to induce growth in room night demand and meeting space.



## **CHAPTER IV**

### **UNIVERSITY HILL DISTRICT RETAIL MARKET CONDITIONS AND ESTIMATE OF AMOUNT OF RETAIL SPACE HOTEL VISITORS MAY SUPPORT**

#### **INTRODUCTION AND BASIC CONCLUSIONS**

This chapter reviews an analysis of taxable retail sales trends and retail market conditions for the Hill District and the City of Boulder. The results indicate that retail sales growth in the Hill District has lagged citywide sales growth, and that the Hill District comprises a small and decreasing share of citywide sales.

Retail sales productivity per-square-foot is one basic indicator of retail space supply and demand conditions. Overall sales-per-square-foot for the Hill District are estimated to be much lower than achieved citywide. Retail sales in the Hill District have averaged about \$230-per-square-foot. Citywide sales productivity is about 90 percent higher, estimated at \$435-per-square-foot. As a percentage of sales, retail space occupancy costs (rents and expenses) are generally higher in the Hill District than for Boulder as a whole.

Fast-casual restaurants, cafes, and service-oriented businesses dominate the tenant mix of the Hill District. Eating and drinking establishments consistently comprise more than 60 percent of taxable retail sales in the Hill District. CU students (and to a lesser extent, faculty and staff) continue to represent the predominant source of sales for most merchants.

If the retail tenancies attracted to the proposed University Hill Hotel development serve to appeal to both visitors and Boulder residents who are not affiliated with CU, they would represent sources of demand not typically attracted to the Hill District. This chapter also presents estimates of the sales and the amount of retail space hotel visitors alone could support. Hotel visitor expenditures are estimated at nearly \$9.9 million. The visitor expenditure potential equates to approximately 25,000 square feet of retail space supported at a sales threshold of \$400-per-square-foot. This suggests the proposed retail uses of 10,500 square feet can potentially be supported by hotel guests and that businesses and space located in the Hill District well attuned to the preferences of the hotel visitors can also capture sales from a market segment new to the Hill District.



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## ANALYSIS OF TAXABLE RETAIL SALES

### Citywide and UHGID

Table IV-1 presents annual taxable retail sales in the Hill District and City of Boulder in constant 2019 dollars from 2010 to 2018. In other words, the sales dollars have been adjusted to consider inflation.

| <b>Table IV-1: Taxable Retail Sales in UHGID and City of Boulder, 2010-2018<sup>1</sup></b> |              |                                    |
|---|--------------|------------------------------------|
|   | <b>UHGID</b> | <b>City of Boulder<sup>2</sup></b> |
|   | <b>\$</b>    | <b>\$</b>                          |
| 2010  | 39,438,183   | 2,339,654,970                      |
| 2011  | 36,480,741   | 2,367,258,871                      |
| 2012  | 34,822,738   | 2,430,683,153                      |
| 2013  | 33,624,839   | 2,495,381,839                      |
| 2014  | 38,799,269   | 2,729,218,204                      |
| 2015  | 38,727,040   | 2,940,681,034                      |
| 2016  | 35,963,795   | 2,757,651,623                      |
| 2017  | 40,044,122   | 2,711,442,790                      |
| 2018  | 40,755,527   | 2,740,086,856                      |
| Change 2010-2018:   |              |                                    |
| Retail sales \$   | 1,272,384    | 400,431,886                        |
| Retail sales %  | 3.2%         | 17.1%                              |
| <sup>1</sup> Retail sales presented in 2019 dollars.  |              |                                    |
| <sup>2</sup> Excludes auto trade sales for City of Boulder.                                 |              |                                    |
| Sources: City of Boulder, Sales and Use Tax Revenue Reports; Gruen Gruen + Associates.      |              |                                    |

Retail sales in the Hill District have grown by nearly \$1.3 million between 2010 and 2018. Retail sales increased by approximately three percent from \$39.4 million in 2010 to \$40.8 million in 2018. Citywide retail sales grew by \$400 million or about 17 percent, increasing from approximately \$2.34 billion to \$2.74 billion. The Hill District's retail sales growth accounted for less than 0.5 percent of the Citywide sales growth.



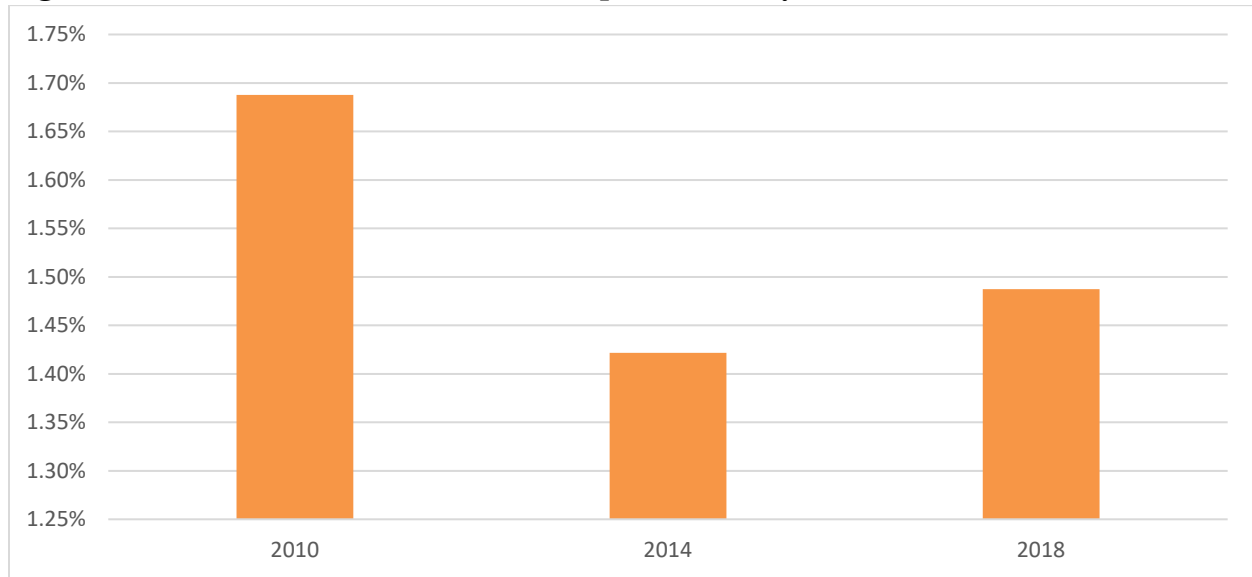
## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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### UHGID Sales as Proportion of Citywide Sales

Figure IV-1 presents the Hill District's retail sales as a proportion of Citywide retail sales from 2014 to 2018

**Figure IV-1: Hill District Retail Sales as Proportion of Citywide Retail Sales**



As a proportion of Citywide sales, the Hill District's retail sales are less than two percent of Citywide sales. Over the 2010-2018 period, Hill District's sales have declined as a proportion of Citywide sales. In 2010, Hill District's sales comprised about 1.69 percent of total City sales. As overall Citywide sales growth outpaced Hill District's sales growth, the Hills sales declined to about 1.42 percent in 2014 and slightly higher at 1.49 percent in 2018.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

### RETAIL MARKET CONDITIONS

Table IV-2 presents the amount of retail space, vacancy rate, reported net rents, non-auto taxable retail sales, estimated sales-per-square-foot, and estimated rents as a proportion of sales for both the Hill District and City of Boulder.

| <b>Table IV-2: Retail Market Conditions</b>  |                      |                              |
|--|----------------------|------------------------------|
|  | Hill District        | City of Boulder <sup>1</sup> |
| Estimated Inventory of Retail Space  | 176,500 <sup>2</sup> | 6,300,000                    |
| Estimated Vacancy Rate   | 8.6% <sup>2</sup>    | 3.9%                         |
| Average Net Rents (Per-Square-Foot)  | \$20-\$25            | \$25.37                      |
| Non-Auto Taxable Retail Sales (2018)   | \$40.8 million       | \$2.74 billion               |
| Estimated Sales Per-Square-Foot  | \$230                | \$435                        |
| Net Rent Percent of Sales  | 8.7-10.9%            | 5.8%                         |
| <sup>1</sup> Inventory, vacancy, and rent estimates from <i>Citywide Retail Study, Final Report</i> , City of Boulder, June 2019.  |                      |                              |
| <sup>2</sup> Approximately 15,000 square feet of vacant retail space existed in UHGID as of May 2019. The total estimated inventory is drawn from property-level estimates summarized in Appendix 2 of the <i>University Hill Commercial District Moratorium Project: Phase 1 Report</i> . |                      |                              |
| Sources: City of Boulder; Gruen Gruen + Associates.  |                      |                              |

The overall retail inventory in Boulder comprises 6.3 million square feet with a 3.9 percent vacancy rate and non-automotive taxable sales of about \$435-per-square-foot. The Hill District contains approximately 176,500 square feet of retail space, or approximately 2.7 percent of Citywide retail inventory. According to a 2015 University Hill Commercial District Moratorium Project report, the Hill District contained 87 businesses at that time. Fast-casual restaurant/cafes and service-oriented businesses comprised 50 percent of Hill District businesses. General retail businesses comprised only 17 percent of the total businesses. Full-service restaurants of which there were five made up just five percent of Hill District businesses.

Table IV-3 summarizes the retail vacancies on University Hill as of May 2019. Approximately 15,000 square feet of space is currently vacant in six locations. The 5,614-square-foot vacancy at 1301 Broadway is one of the parcels proposed to be redeveloped for the hotel use. Excluding this property, the Hill District contains approximately 9,500 square feet of vacant retail space.



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| Table IV-3: Current Retail Vacancies in Hill District  |                         |                                       |
|--|-------------------------|---------------------------------------|
| Address  | Vacant<br># Square Feet | Asking Rent<br>\$ NNN Per Square Foot |
| 1301 Broadway <sup>1</sup>   | 5,614                   | 12.00                                 |
| 1144 13 <sup>th</sup> Street   | 300                     | NA                                    |
| 1140 13 <sup>th</sup> Street   | 2,000                   | NA                                    |
| 1129 13 <sup>th</sup> Street   | 2,475                   | NA                                    |
| 1121 13 <sup>th</sup> Street   | 2,251                   | 28.50 (modified gross) <sup>2</sup>   |
| 1261 College Ave.  | 2,500                   | 15.00                                 |
| Total  | 15,140                  |                                       |
| <sup>1</sup> Property is part of the proposed hotel redevelopment site.  |                         |                                       |
| <sup>2</sup> Tax and operating expenses reported at \$9.90 per square foot.  |                         |                                       |
| Sources: Loopnet; Dean Callan & Company, Inc.; Flagstaff Properties Incorporated;<br>Mapleton Real Estate Group; Gruen Gruen + Associates. |                         |                                       |

The historic core and “center of gravity” for the Hill District has traditionally been comprised of tenants located on 13<sup>th</sup> Avenue, from College Avenue to Pennsylvania Avenue. This core area along 13<sup>th</sup> Street currently contains four retail vacancies with approximately 7,000 square feet of available space.

Some businesses interviewed which have been in the Hill District for at least eight years or more pay higher net rents than current asking net rents for some vacant spaces. Some property owners also report that effective net rents have declined over time in the Hill District. This reflects a combination of stagnant sales performance and increasing operating expenses (such as property taxes). One fast-casual restaurant space being marketed at a modified gross rent of \$28.50-per-square-foot, according to the property owner, used to command higher rent of \$35-per-square-foot. A second property owner also reported that a new lease was recently signed at a net rent 20 percent lower than rent obtained 15 years ago.

#### ESTIMATE OF ANNUAL SALES AND AMOUNT OF RETAIL SPACE VISITORS TO PROPOSED HOTEL MAY SUPPORT

Table IV-4 presents an estimate of retail sales potentially to be generated by overnight visitors to the proposed 189-room University Hill Hotel development. Retail sales estimates are based on the number of occupied room nights estimated by the developer and assumptions drawn from our review of prior tourism studies and visitor surveys conducted by the City of Boulder and Boulder CVB.



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| <b>Table IV-4: Visitor Expenditure Estimate for Proposed 189-Room Hill Hotel</b>   |                                |
|--|--------------------------------|
|  | University Hill Hotel Visitors |
| Annual Occupied Room Nights <sup>1</sup>   | 54,167                         |
| Annual Overnight Visitor-Days <sup>2</sup>   | 131,524                        |
| Daily Spending, Per Overnight Visitor:   |                                |
| Eating and drinking (food service)   | \$40.00                        |
| Retail food stores   | \$10.00                        |
| Other retail stores  | \$25.00                        |
| Subtotal   | \$75.00                        |
| <b>Total Annual Retail Expenditures<sup>3</sup></b>  | <b>\$9,864,300</b>             |
| Sales-Per-Square-Foot Threshold  | \$400                          |
| <b>Supportable Retail Space in Square Feet</b>   | <b>24,700</b>                  |
| <sup>1</sup> Based on stabilized occupancy estimate of 78.5 percent.   |                                |
| <sup>2</sup> Based on 1.85 visitors per room and average length of stay of 3.2 nights. Drawn from 2015/16 visitor survey data for commercial lodging in Boulder. |                                |
| <sup>3</sup> Does not include potential spending on non-retail activities such as recreation and entertainment.  |                                |
| Sources: Downtown Boulder User Survey, Summer 2018, RRC Associates; 2015/16 Boulder CVB Visitor Survey; Nichols Partnership; Gruen Gruen + Associates.           |                                |

GG+A reviewed the developer's projections of hotel occupancy and secondary sources of information including the results of the 2015/16 Boulder CVB Visitor Survey and Summer 2018 Downtown Boulder User Survey to quantify the volume of visitation the University Hill Hotel is likely to generate. We estimate the number of annual overnight visitor-days at approximately 131,500 upon stabilization of the hotel. The non-lodging retail expenditure estimate of \$75 per day results in annual hotel visitor expenditures of nearly \$9.9 million. This does not include potential spending on non-retail activities (e.g., arts and recreation and entertainment).

To convert the visitor expenditure potential estimate into on-the-ground retail space demand, we utilize an average sales-per-square-foot threshold of \$400. This threshold is similar to the average sales-per-square-foot performance of Boulder's retailing base overall, but well above the existing sales performance of the Hill District. The assumption reflects the typical need for new retail development to generate rents high enough to feasibly amortize contemporary development costs. According to the developer of the proposed University Hill Hotel, retail/restaurant space rents are estimated to average \$30 per square foot (triple-net). Therefore, rents for new retail space are assumed to approximate 7.5 percent of required sales (a lower proportion than currently the case).

Hotel visitor retail expenditure potential equates to approximately 24,700 square feet of supportable retail space. This suggests the proposed retail uses of 10,500 square feet can potentially be supported by hotel guests. The estimate of supportable space attributable to hotel visitors also suggests that businesses and space located in the Hill District well attuned to the preferences of the hotel visitors can also capture sales from a market segment new to the Hill District.





## CHAPTER V

### ECONOMIC IMPACTS THE PROPOSED UNIVERSITY HILL HOTEL DEVELOPMENT AND ALTERNATIVE SCENARIOS

#### INTRODUCTION

This chapter presents an estimate of the economic impact that the proposed University Hill Hotel development is likely to have on the City of Boulder economy. Order-of-magnitude estimates are also presented for potential impacts to the Hill District. The economic impacts estimated and presented in this section relate to:

- Occupancy and on-going operation of the proposed University Hill Hotel development; and
- Off-site hotel visitor expenditures.

Once completed and occupied, the operations of the proposed University Hill Hotel development will generate an “on-going” economic impact on the local economy as the hotel and other tenants produce sales, pays wages to employees, and purchases goods and services from other vendors/businesses in the local economy. Visitors attracted to the development will also generate an on-going economic impact of their own through off-site purchases of local goods and services during their stay. These on-going impacts are also recurring in nature.

Comparisons between the proposed University Hill Hotel development and alternative scenarios (for use of the Pleasant Street parking lot) are also estimated and summarized in this chapter. Note that neither of the alternative scenarios (office or affordable housing) assume any displacement of economic activity. In the case of office space, if as likely, any of the office space users moved from within Boulder, such a relocation would not represent new economic activities to Boulder; just an internal change in location. Office and residential tenants are assumed to be new to Boulder and ground floor retail/commercial spaces are assumed to capture new sales (rather than siphoning sales already captured in Boulder or the Hill District). In addition, the alternatives are assumed to be financially feasible to develop and operate. These assumptions may be unrealistic and optimistic but facilitate a comparison of the gross economic impacts associated with the alternatives postulated by the City’s project team. The impacts associated with the hotel component of the proposed University Hill Hotel development are presented on a net rather than gross basis and so therefore represent conservative estimates relative to the impacts estimated for the land use alternatives.

#### DATA SOURCES

The economic impact analysis is based on anticipated characteristics of the proposed development provided by representatives of Nichols Partnership and RIMS II input-output multipliers obtained from the Bureau of Economic Analysis, a provider of custom input-output data for local economies.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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### 2019 CONSTANT DOLLARS

The figures presented in this report are expressed in constant 2019 dollars. That is, the possible effects of inflation or deflation on future economic activities are not quantified.

### METHODOLOGY AND TYPES OF ECONOMIC IMPACTS ESTIMATED

The economic impacts quantified in this report are presented in terms of:

- Employment (full- and part-time jobs);
- Earnings (wages, salaries, benefits and proprietor income); and
- Output (the value of goods and services produced or sold).

Development of the proposed University Hill Hotel will cause an economic impact beyond the direct expenditures associated with on-going operations. Secondary or “multiplier” effects result from increased production in industries affected by direct changes in local economic activity. These secondary impacts are referred to as indirect and induced effects.

**Direct Effects** are the number of jobs, earnings, and output produced in industries directly affected by the on-going operations of the hotel and retail space. Direct effects attributable to the occupancy and on-going operations of the hotel and retail space are estimated based upon expected gross revenue performance.

**Indirect Effects** relate to changes in the number of jobs, earnings, and output produced within a local economy given interdependencies among economic sectors. Businesses buy products and services from each other, creating indirect impacts on other businesses. In other words, a change in one industry or business “ripples” through to other industries or businesses.

**Induced Effects** refer to the impacts of increased household spending. For example, a portion of the wages paid to hotel workers (direct employment) and a portion of the wages paid to employees of firms providing goods or services to the hotel (indirect employment) will then be spent locally to purchase goods and services (induced effect) in the local economy.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

### TOTAL ECONOMIC IMPACTS ON CITY OF BOULDER

Table V-1 shows the estimated annual on-going total (direct, indirect and induced) economic impacts on the City of Boulder economy attributable to the occupancy and operations of building space included in each alternative.

| <b>Table V-1: Total Annual Economic Impacts on City of Boulder<sup>1</sup></b>                            |   |   |   |                           |
|---|---|---|---|---------------------------|
|   | Proposed<br>Hotel/Retail<br>Development | Office/<br>Commercial<br>Alternative <sup>2</sup> | Affordable<br>Housing<br>Alternative <sup>2</sup> | Status-Quo<br>Alternative |
| Employment <sup>3</sup>   | 183.9                                   | 257.8   | 111.3   | 78.1                      |
| Earnings <sup>4</sup>   | \$5,133,000                             | \$10,761,000                                      | \$2,701,000                                       | \$1,830,000               |
| Output <sup>5</sup>   | \$22,088,000                            | \$38,899,000                                      | \$11,025,000                                      | \$7,307,000               |
| <sup>1</sup> Total impacts include direct, indirect, and induced effects.                                 |   |   |   |                           |
| <sup>2</sup> Impacts of each alternative include those related to the status-quo activity.                |   |   |   |                           |
| <sup>3</sup> Full- and part-time employment (jobs).   |   |   |   |                           |
| <sup>4</sup> Wages, salaries, benefits and proprietor income.   |   |   |   |                           |
| <sup>5</sup> Local value of goods and services produced or sold.  |   |   |   |                           |
| Sources: RIMS II, Regional Production Division, Bureau of Economic Analysis;<br>Gruen Gruen + Associates. |   |   |   |                           |

The proposed University Hill Hotel development is estimated to generate a net<sup>5</sup> employment impact of about 184 jobs and an annual earnings impact of \$5.1 million in a stabilized condition. The total direct and indirect annual output impact approximates \$22.1 million. The citywide economic impacts of the proposed development include those related to hotel operations (including food and beverage), the 10,500 square feet of retail/commercial space as well as hotel visitor spending.

Based on the reported level of sales generated by existing retail and commercial tenants of the proposed development site, we estimate the “status-quo” use of the property generates an employment impact of 78 jobs and an annual earnings impact of approximately \$1.8 million.

The office/commercial use alternative is estimated to generate an annual employment impact of 258 jobs and an annual earnings impact of \$10.8 million. The total direct and indirect annual output impact approximates \$38.9 million. These citywide economic impacts assume the alternative office/commercial use is fully occupied and include the impacts related to the status-quo use which is not assumed to change. As indicated earlier the analysis assumes market support and that the office/commercial alternative is financially feasible. These may be unrealistic assumptions given that

<sup>5</sup> As indicated previously, assumes 25 percent of gross hotel room revenues and off-site visitor spending are initially displaced from other existing lodging establishments in Boulder.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

the interviews and review of office supply do not indicate the location is preferred by office space users.

The affordable housing use alternative is estimated to generate an annual employment impact of 111 jobs and an annual earnings impact of \$2.7 million. The total direct and indirect annual output impact approximates \$11 million. Again, these citywide economic impacts assume the alternative affordable housing use is fully occupied and include the impacts related to the status-quo use which is not assumed to change.

Relative to the status-quo, the results of the economic impact modeling suggest that the proposed University Hill Hotel development would result in an incremental increase in citywide employment of approximately 106 full- and part-time jobs. Many of the net-new jobs will directly result within the Hill District.

### LOCAL ECONOMIC IMPACTS ON HILL DISTRICT

Table V-1 shows the estimated annual on-going total (direct, indirect and induced) economic impacts on the Hill District<sup>6</sup> attributable to the occupancy and operations of building space for each alternative.

| <b>Table V-2: Total Annual Economic Impacts on Hill District<sup>1</sup></b>                              |   |   |   |                           |
|---|---|---|---|---------------------------|
|   | Proposed<br>Hotel/Retail<br>Development | Office/<br>Commercial<br>Alternative <sup>2</sup> | Affordable<br>Housing<br>Alternative <sup>2</sup> | Status-Quo<br>Alternative |
| Employment <sup>3</sup>   | 187.7                                   | 212.1   | 98.0  | 70.8                      |
| Earnings <sup>4</sup>   | \$5,060,000                             | \$8,949,000                                       | \$2,183,000                                       | \$1,556,000               |
| Output <sup>5</sup>   | \$21,229,000                            | \$30,366,000                                      | \$8,371,000                                       | \$5,868,000               |
| <sup>1</sup> Total impacts include direct, indirect, and induced effects.                                 |   |   |   |                           |
| <sup>2</sup> Impacts of each alternative include those related to the status-quo activity.                |   |   |   |                           |
| <sup>3</sup> Full- and part-time employment (jobs).   |   |   |   |                           |
| <sup>4</sup> Wages, salaries, benefits and proprietor income.   |   |   |   |                           |
| <sup>5</sup> Local value of goods and services produced or sold.  |   |   |   |                           |
| Sources: RIMS II, Regional Production Division, Bureau of Economic Analysis;<br>Gruen Gruen + Associates. |   |   |   |                           |

<sup>6</sup> All “direct” economic impacts from operations will occur within the Hill District, and portions of economic impacts related to hotel visitor spending will also occur locally within the Hill District. Based on our knowledge of the tenant mix and economic activities present within the Hill District, the estimates also assume a small share of indirect and induced economic effects occurring citywide will impact the Hill District. (For example: a part-time hotel worker will spend a small portion of its earnings locally on eating and drinking, or convenience-type goods, during the workday or commute).



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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The proposed University Hill Hotel development is estimated to generate an employment impact of about 188 jobs and an annual earnings impact of \$5.0 million within the Hill District. Note that the local employment impact on the Hill District is estimated to be higher than the citywide impact because the analysis assumes a 25 percent displacement factor for the proposed hotel use at the citywide level (there are no existing hotel room revenues within the Hill District to displace).<sup>7</sup>

Based on the reported level of sales generated by existing retail and commercial tenants of the proposed development site, we estimate the “status-quo” use of the property generates an employment impact of 71 jobs and an annual earnings impact of approximately \$1.6 million on the Hill District.

The office/commercial use alternative is estimated to generate an annual employment impact of 212 jobs and an annual earnings impact of \$8.9 million. The total direct and indirect annual output impact approximates \$30.3 million.

The affordable housing use alternative is estimated to generate an annual employment impact of 98 jobs and an annual earnings impact of \$2.2 million. The total direct and indirect annual output impact approximates \$8.4 million.

(Again, the estimates of local Hill District economic impacts for these alternative scenarios include the impacts related to the status-quo use which is not assumed to change).

Relative to the status-quo, the results suggest that the proposed University Hill Hotel development will result in a “net” increase in Hill District employment of approximately 117 full- and part-time jobs.

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<sup>7</sup> The overall difference in employment is estimated at approximately four jobs. Direct hotel-related employment impacts in the Hill District exceed those at the citywide level by 24 jobs (i.e., 24 direct jobs may be displaced elsewhere in Boulder). Indirect and induced employment effects in the small Hill District however are estimated to be lower than such impacts at the larger citywide level; by about 20 jobs. Therefore the total difference in employment impact approximates four jobs.



## CHAPTER VI

### FISCAL IMPACTS OF THE PROPOSED UNIVERSITY HILL HOTEL DEVELOPMENT AND ALTERNATIVE SCENARIOS

#### FISCAL IMPACTS

This chapter presents an estimate of the fiscal benefits that the proposed University Hill Hotel development will generate for the City of Boulder as well as UHGID. Comparisons between the proposed University Hill Hotel development and alternative scenarios (for use of the Pleasant Street parking lot) are also summarized.

Estimates related to the proposed development, as indicated in Chapter III, reflect a 25 percent displacement factor for gross hotel room revenues and related hotel visitor spending within the City of Boulder. While all hotel room night demands will be new to the Hill District neighborhood (there is no existing hotel), some near-term displacement from other commercial lodging establishments in Boulder may occur. We estimate that no more than 25 percent of room nights in an initial stabilized condition may be displaced from existing commercial lodging establishments in the City of Boulder.

The estimates of direct fiscal benefits estimated and presented include:

- Accommodation Tax;
- Retail Sales Tax;
- Property Tax;
- Construction Use Tax;
- Affordable Housing Linkage Fees; and
- Capital Impact Fees.

Based on the economic impact estimates summarized in Chapter VI, estimates of indirect retail sales tax revenue are also presented. The Status-Quo scenario also presents an estimate of net revenue UHGID receives from operation of the 68 off-street parking spaces in the Pleasant Street lot.

The fiscal impacts can be categorized into two categories: one-time benefits related to initial development of the proposed project and alternative projects; and on-going or “recurring” sources of revenue related economic activities once the hotel and retail development (and alternative scenarios) are operational and occupied. Estimates of on-going tax revenue are made for the stabilized build-out condition of each alternative including the proposed hotel and retail development.

We have assumed that current tax rates will remain constant and all estimates are presented in constant 2019 dollars.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

### ONE-TIME FISCAL IMPACTS

Table VI-1 summarizes the one-time tax and impact fee revenues from the proposed University Hill Hotel development and the three alternative scenarios to the City of Boulder. For each land use alternative, a \$3.0 million one-time land sale proceed is assumed to be generated.

| <b>Table VI-1: One-Time (Upfront) Taxes and Fees</b>   |   |                                      |                                      |                           |
|--|---|--------------------------------------|--------------------------------------|---------------------------|
|  | Proposed<br>Hotel/Retail<br>Development | Office/<br>Commercial<br>Alternative | Affordable<br>Housing<br>Alternative | Status-Quo<br>Alternative |
| City Revenues:   |   |                                      |                                      |                           |
| Construction Use Tax   | \$809,751                               | \$223,301                            | \$167,910                            | \$0                       |
| Affordable Housing Linkage Fees  | \$1,159,559                             | \$932,000                            | \$160,000                            | \$0                       |
| Other City Impact Fees <sup>1</sup>  | \$459,109                               | \$164,196                            | \$277,055                            | \$0                       |
| Subtotal   | \$2,428,418                             | \$1,319,497                          | \$604,965                            | \$0                       |
| UHGD Land Sale Proceeds  | \$3,000,000                             | \$3,000,000                          | \$3,000,000                          | \$0                       |
| <b>Total</b>   | <b>\$5,428,418</b>                      | <b>\$4,319,497</b>                   | <b>\$3,604,965</b>                   | <b>\$0</b>                |
| <sup>1</sup> Includes capital impact fees (for municipal facilities, police, fire, and transportation) and transportation excise tax revenues. |   |                                      |                                      |                           |
| Source: Gruen Gruen + Associates   |   |                                      |                                      |                           |

The proposed University Hill Hotel development is estimated to generate construction use tax and impact fees of approximately \$2.4 million and a total one-time benefit of \$5.4 million including land sale proceeds. The office/commercial use alternative is estimated to generate \$1.3 million in use tax and impact fees and a total of over \$4.3 million including land sale proceeds. The affordable housing alternative is estimated to generate a total of approximately \$605,000 in use tax and impact fees and a total of approximately \$3.6 million including land sale proceeds. The status-quo alternative will not generate any one-time taxes and fees.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

### ON-GOING FISCAL IMPACTS

Table VI-2 summarizes the estimates of annual tax revenue at build-out of each of the four land use alternatives to the City of Boulder General Fund. An estimate of UHGID annual revenues is also presented.

| <b>Table VI-2: Summary of Direct Annual Fiscal Impacts<sup>1</sup></b>   |   |                                      |   |                           |
|--|---|--------------------------------------|---|---------------------------|
|  | Proposed<br>Hotel/Retail<br>Development | Office/<br>Commercial<br>Alternative | Affordable<br>Housing<br>Alternative <sup>2</sup> | Status-Quo<br>Alternative |
| City Revenues:   |   |                                      |   |                           |
| Accommodations Tax   | \$761,530                               | \$0                                  | \$0   | \$0                       |
| Retail Sales Tax   | \$181,661                               | \$448,096                            | \$361,632   | \$238,112                 |
| Property Tax   | \$177,850                               | \$79,606                             | \$43,645  | \$33,221                  |
| Subtotal   | \$1,121,041                             | \$527,702                            | \$405,277   | \$271,333                 |
| UHGD Revenues:   |   |                                      |   |                           |
| UHGD Property Tax <sup>3</sup>   | \$24,760                                | \$11,083                             | \$6,076   | \$4,625                   |
| UHGD Net Parking Revenue <sup>4</sup>  | \$0                                     | \$0                                  | \$0   | \$46,981                  |
| <b>Total</b>   | <b>\$1,145,802</b>                      | <b>\$538,784</b>                     | <b>\$411,353</b>                                  | <b>\$322,939</b>          |
| <sup>1</sup> The office/commercial and affordable housing alternatives include sales tax and property tax currently generated by the privately-owned portions of the redevelopment site (which consists of about one acre of land with 31,500 square feet of existing retail/commercial building space).<br><sup>2</sup> Affordable housing units assumed to be exempt from property taxes (i.e., owned/operated by non-profit). Property tax estimate is for retail/commercial space included in the alternative.<br><sup>3</sup> Based on currently reduced UHGID mill levy of 1.668.<br><sup>4</sup> Attributable to 68 off-street spaces in the Pleasant Street lot. |   |                                      |   |                           |
| Source: Gruen Gruen + Associates   |   |                                      |   |                           |

Development, operation, and occupancy of the proposed University Hill Hotel development is estimated to generate direct annual city tax revenues of approximately \$1.1 million upon stabilization and UHGID annual property tax revenues of approximately \$25,000. Total annual city and UHGID revenues approximate \$1,146,000.

Development, operation, and occupancy of an office/commercial land use alternative on the Pleasant Street parking lot is estimated to generate direct annual city tax revenues of \$527,700 and UHGID annual revenues of approximately \$11,100. Total annual city and UHGID revenues approximate \$539,000.





## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

Development, operation, and occupancy of an affordable housing land use alternative is estimated to generate annual city tax revenues of \$405,300 and UHGID annual revenues of approximately \$6,100. Total annual city and UHGID revenues approximate \$411,400.

The status quo alternative is estimated to generate annual city tax revenues of \$271,300 and UHGID annual revenues of \$51,600. Total annual revenues to the city and UHGID approximate \$323,000.

### ACCOMMODATION TAX REVENUE

Table VI-3 summarizes the estimated accommodation tax revenue.

| <b>Table VI-3: Annual Accommodation Tax Revenue at Build-out</b>         |                                |
|--|--------------------------------|
|  | 189-Room Hotel @ Stabilization |
| Annual Average Occupancy Rate  | 78.5%                          |
| Average Annual Daily Room Rate   | \$250                          |
| Annual Gross Room Revenue  | \$13,508,306                   |
| Room Night Demand Displacement Factor                                    | 25%                            |
| <b>Annual Net Accommodation Tax Revenue<sup>1</sup></b>                  | <b>\$761,530</b>               |
| <sup>1</sup> Based on 7.5 percent tax rate. Figures have been rounded    |                                |
| Sources: City of Boulder; Nichols Partnership; Gruen Gruen + Associates. |                                |

The City of Boulder imposes a tax of 7.5 percent on the gross room revenues of lodging facilities when occupied by visitors staying in Boulder for less than 30 days. In order to estimate accommodation tax revenue, we assume the 189-room hotel will obtain at stabilization average daily room rates of \$250 and an average annual occupancy rate of 78.5 percent. These assumptions produce an estimate of approximately \$13,508,000 in annual gross hotel room revenues.

We estimate that no more than 25 percent of room nights in an initial stabilized condition may be displaced from existing commercial lodging establishments in Boulder. Given the accommodation tax rate of 7.5 percent and the annual hotel room revenue at built out, the proposed hotel development is estimated to generate net annual accommodation tax revenue of approximately \$762,000.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

### RETAIL SALES TAX REVENUE

#### Direct

The proposed University Hill Hotel development will generate General Fund sales tax revenue directly from hotel food and beverage service and retail/restaurant space in addition to indirectly from the expenditures of hotel visitors or other patrons.

Table VI-4 summarizes indirect annual sales tax revenues at build-out of each land use alternative.

| <b>Table VI-4: Direct Annual Retail Sales Tax Revenues</b>  |   |                                      |                                      |                           |
|---|---|--------------------------------------|--------------------------------------|---------------------------|
|   | Proposed<br>Hotel/Retail<br>Development | Office/<br>Commercial<br>Alternative | Affordable<br>Housing<br>Alternative | Status-Quo<br>Alternative |
| Hotel Food & Beverage Revenue @ \$275 per<br>Square Foot for 5,550 Square Feet  | \$1,526,250                             |                                      |                                      |                           |
| New Retail Sales @ \$400 Per Square Foot  | \$3,180,000 <sup>1</sup>                | \$5,440,000 <sup>2</sup>             | \$3,200,000 <sup>3</sup>             | \$0                       |
| Existing Retail Sales <sup>4</sup>  | ---                                     | \$6,168,705                          | \$6,168,705                          | \$6,168,705               |
| Total Estimated Retail Sales  | \$4,706,250                             | \$11,608,705                         | \$9,368,705                          | \$6,168,705               |
| <b>Direct Retail Sales Tax Revenue @ 3.86<br/>Percent</b>   | <b>\$181,661</b>                        | <b>\$448,096</b>                     | <b>\$361,632</b>                     | <b>\$238,112</b>          |
| <sup>1</sup> The developer estimates obtainable rents of \$30 per square foot for primarily restaurant tenancies. Restaurants and other retailers typically cannot afford to pay rents more than 7.5 percent of sales and citywide sales average \$415 per square foot. Ancillary retail/restaurant space assumed to total 7,950 square feet.<br><sup>2</sup> Assumes 13,600 square feet of retail space at the same rents and sales productivity as assumed for the hotel and retail development.<br><sup>3</sup> Assumes 8,000 square feet of retail space at the same rents and sales productivity as assumed for the hotel and retail development.<br><sup>4</sup> Sales tax revenues for the 31,500 square feet of existing retail/commercial space at the hotel site. |   |                                      |                                      |                           |
| Sources: City of Boulder; Nichols Partnership; Gruen Gruen + Associates.  |   |                                      |                                      |                           |

Based on information provided by the developer of the proposed University Hill Hotel project, food and beverage components are estimated to generate sales of about \$1.5 million upon stabilization (sales per square foot of \$275 for 5,550 square feet of food and beverage space). In addition, approximately 7,950 square feet of retail/restaurant space in the proposed University Hill Hotel development is estimated to generate sales per square foot of \$400 or \$3,180,000. This sales productivity is close to the overall sales per square foot for the citywide retail space as a whole and equates to rents of \$30 per square foot comprising 7.5 percent of sales. With a sales tax rate of 3.86 percent, total retail sales of over \$4.7 million are estimated to generate direct annual City sales tax of nearly \$182,000.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

The office/commercial component with 13,800 square feet of retail space would generate over \$5.4 million in new sales assuming the same \$400 per square foot sales productivity applied to the proposed hotel and retail development. The office/commercial alternative is estimated to generate annual sales tax of \$448,000 when combined with the existing retail/commercial space on the hotel site.

The affordable housing alternative includes 8,000 square feet of retail space pursuant to current zoning standards. Assuming the same sales productivity and tax rates, the estimated \$3,200,000 in new annual retail sales equates to annual sales taxes of approximately \$123,500. Combined with the existing space on the hotel site, the annual direct sales tax revenue to the City would total about \$362,000.

The status-quo alternative (existing retail/commercial space on the hotel site) is estimated to generate about \$238,000 in existing annual City sales tax revenues.

### Indirect

The indirect sale of taxable retail goods will generate revenue for the General Fund. Table VI-5 summarizes an estimate of taxable retail sales, and therefor sales tax revenues, that result indirectly from the operations of each alternative based on the 3.86 percent local sales tax rate.

| <b>Table VI-5: Indirect Annual Retail Sales Tax Revenues</b>   |  |                                      |                                      |                           |
|--|--|--------------------------------------|--------------------------------------|---------------------------|
|  | Proposed<br>Hotel/Retail<br>Development <sup>1</sup> | Office/<br>Commercial<br>Alternative | Affordable<br>Housing<br>Alternative | Status-Quo<br>Alternative |
| Indirect Taxable Sales in Boulder  | \$6,968,224  | \$2,486,354                          | \$977,058                            | \$460,851                 |
| <b>Indirect Retail Sales Tax Revenue @<br/>3.86 Percent</b>  | <b>\$268,973</b>                                     | <b>\$95,973</b>                      | <b>\$37,714</b>                      | <b>\$17,789</b>           |
| <sup>1</sup> Estimates assume that hotel visitor spending supports one-half of sales required to viably operate the proposed on-site retail/commercial space. (The fiscal benefits of which are accounted for directly in Table VI-4). |  |                                      |                                      |                           |
| Sources: RIMS II, Regional Product Division, Bureau of Economic Analysis; Gruen Gruen + Associates   |  |                                      |                                      |                           |

Estimates of indirect taxable sales for the proposed hotel and alternative scenarios reflect the results of the economic impact (input-output) modeling described previously in Chapter V.

The proposed University Hill Hotel development is estimated to generate about \$7 million of indirect retail sales and eating and drinking activity within the City of Boulder. Indirect retail sales tax is estimated at \$269,000 annually. This includes the effects of off-site hotel visitor spending.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

Indirect retail sales tax revenues associated with the alternative scenarios range from approximately \$18,000 to \$96,000 annually. The office/commercial alternative generates the largest indirect impact among the three alternative scenarios largely because it is assumed the scenario would directly add 88 new, high-earning office jobs.

### PROPERTY TAX REVENUE

The assessed value of new development will generate property tax revenue. The City of Boulder's General Fund mill levy rate is 1.1981 percent. The current UHGID mill levy rate is 0.1668 percent.

#### Estimate of Property Tax Revenue by Alternative Land Use at Build-out

Table VI-6 summarizes an estimate of annual General Fund property tax revenue at build-out for the proposed University Hill Hotel development and alternative uses of the Pleasant Street lot.

| <b>Table VI-6: Annual Property Tax Revenue at Build-out</b>       |   |  |  |                                 |
|---|---|--|--|---------------------------------|
|   | Proposed<br>Hotel/Retail<br>Development<br>\$ | Office/<br>Commercial<br>Alternative<br>\$ | Affordable<br>Housing<br>Alternative<br>\$ | Status-Quo<br>Alternative<br>\$ |
| New Market Value at Build-out                                     | 51,187,500                                    | 13,350,000                                 | 3,000,000                                  |                                 |
| Total Assessed Value at Build-out @<br>29 Percent Assessment Rate | 14,844,375                                    | 3,871,500                                  | 870,000                                    | 2,772,824                       |
| City Property Tax @ 11.981 Mills                                  | 177,850                                       | 46,384                                     | 10,423                                     | 33,221                          |
| UHGID Property Tax @ 1.668 Mills                                  | 24,760  | 6,458                                      | 1,451                                      | 4,625                           |
| <b>Total Annual Property Tax Revenue</b>                          | <b>202,611</b>                                | <b>52,842</b>                              | <b>11,874</b>                              | <b>37,846</b>                   |
| Sources: City of Boulder; Gruen + Associates.                     |   |  |  |                                 |

### Hotel

For purposes of taxation, we assume a total market value of \$51.2 million at build-out for the proposed University Hill Hotel development. This equates to a market value of \$250,000 per hotel room and \$375-per-square-foot for the retail space. According to the assessor, three hotels in Boulder built in 2016-17 have current actual values ranging from approximately \$172,000 to \$228,000 per room. Given the assessment rate of 29 percent of market value, the estimated assessed value of the proposed University Hill Hotel development is \$14.8 million. Based on the current City mill rate of 1.1981 percent, the proposed University Hill Hotel development is estimated to generate annual property tax revenue of \$177,900 for the City. At a current UHGID mill rate of 0.1668 percent, the proposed University Hill Hotel development is estimated to generate annual property tax revenue for UHGID of \$24,800. The total annual property tax revenue the proposed University Hill Hotel development is estimated to generate is \$202,600.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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### **Office/Commercial**

We apply a market value of \$375 per square foot of space or a total market value for the office/commercial alternative of \$13,350,000. Given the assessment rate of 29 percent of market value, the estimated assessed value of the office/commercial alternative is nearly \$3.9 million. Based on a municipal mill rate of 1.1981 percent the office/commercial alternative is estimated to generate annual property tax revenue of \$46,400. At a current UHGID mill rate of 0.1668 percent the office/commercial is estimated to generate annual property tax revenue for UHGID of \$6,500. The combined annual property tax revenue the office/commercial alternative is estimated to generate is \$52,800.

### **Affordable Housing**

The affordable housing units are assumed to be exempt from property taxes (i.e., owned/operated by non-profit). The alternative, however, does include retail/commercial space. Based on a market value of \$375 per square foot of space, we assume a market value for the affordable housing alternative of \$3,000,000. Given the assessment rate of 29 percent of market value the estimated assessed value of the affordable housing alternative is nearly \$870,000. Based on a municipal mill rate of 1.1981 percent the affordable housing alternative is estimated to generate annual property tax revenue of \$10,400. At a current UHGID mill rate of 0.1668 percent the affordable housing is estimated to generate annual property tax revenue for UHGID of \$1,500. The total annual property tax revenue the affordable housing alternative is estimated to generate is nearly \$12,000.

### **Status Quo Alternative**

Based on the 2018 assessed value of the existing property (consisting of 31,500 square feet of retail/commercial space) of nearly \$2.8 million, and a City mill rate of 1.1981 percent the status quo alternative is estimated to generate annual property tax revenue of \$33,200. At a current UHGID mill rate of 0.1668 percent the private property is estimated to generate annual property tax revenue for UHGID of \$4,600. The total annual property tax revenue the private property is estimated to generate nearly \$37,800.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

### ONE-TIME TAX REVENUE AND FEES

Construction use tax revenue is based on the City's sales tax rate of 3.86 percent applied to 50 percent of direct hard construction costs for the proposed hotel and each alternative. Affordable housing linkage fees, and other impact fees are calculated on a per room, per unit, or per square foot basis. Table VI-7 summarizes these fees. The City of Boulder Finance Department is the source.

| <b>Table VI-7: City Impact and Other Fees</b>                             |   |   |                                 |
|---|---|---|---------------------------------|
| Use   | Affordable Housing Linkage <sup>1</sup><br>\$ | Other City Impact Fees <sup>2</sup><br>\$ | Transportation Excise Tax<br>\$ |
| Lodging   | 5,024 per room                                | 628 per room                              | 2.48 psf                        |
| Retail/Restaurant   | 20.00 psf                                     | 2.33 psf                                  | 2.48 psf                        |
| Office  | 30.00 psf                                     | 2.01 psf                                  | 2.48 psf                        |
| Residential (<799 SF Per Unit)  | NA  | 4,109 per unit                            | 2,707 per unit                  |
| <sup>1</sup> Affordable linkage fees included for 2021 per rate schedule. |   |   |                                 |
| <sup>2</sup> Municipal, police, fire, and transportation impact fees.     |   |   |                                 |
| Sources: City of Boulder; Gruen Gruen + Associates.                       |   |   |                                 |

The construction use tax associated with the proposed University Hill Hotel development is estimated at nearly \$810,000. The construction use tax associated with the office/commercial alternative is estimated at \$223,000 while the construction use tax associated with the affordable housing alternative is estimated at \$168,000.

Affordable housing linkage fees are estimated at \$1,160,000 for the proposed University Hill Hotel development, \$932,000 for the office/commercial alternative, and \$160,000 for the affordable housing alternative. Other municipal impact fees including police, fire, and transportation fees are estimated to total \$459,000 for the proposed University Hill Hotel development, \$164,000 for the office/commercial alternative, and \$277,000 for the affordable housing alternative.



## CHAPTER VII

### SPILLOVER EFFECTS THE PROPOSED UNIVERSITY HILL HOTEL MAY GENERATE WITHIN THE HILL DISTRICT

#### INTRODUCTION AND BASIC CONCLUSIONS

Whether property owners will maintain and improve their properties and businesses maintain and enhance their space and goods and services in a particular area or neighborhood often boils down to expectations about the future. The interviews with Hill District businesses and property owners and analysis of real estate market and retail sales data suggest that portions of and some uses in the Hill District have stagnated or deteriorated as the customer base has become less diverse and smaller and the appeal of Downtown Boulder and other areas have improved. Optimism about the future of the Hill District has declined.

While not a panacea for all challenges associated with the Hill District, the development and occupancy of the proposed University Hill Hotel development would signal confidence in the future of the District and spillover value to the Hill District. The value spillover from the fiscal and economic impacts and disposition proceeds can be used to enhance the District. In addition, visitors who would be unlikely to be in the Hill District in the absence of the proposed University Hill Hotel development constitute another source of potential positive spillover.

In addition, if the retail tenancies are unique and experiential, such uses may attract visitors and generate sales spillover to restaurants and services in the Hill District responsive to their preferences. Compared to the alternatives, the proposed University Hotel Development is estimated to improve the retail supply-demand conditions the most.

If the proposed University Hill Hotel development succeeds, it may encourage investments and enhancements by other property owners and businesses seeking to emulate its success, attract the visitor base induced by the University Hill Hotel development, and whose property and tenancing enhancements may cumulatively serve to encourage the revitalization of the Hill District.

The findings outlined above about spillover effects reflect the results drawn from interviews with businesses and property owners in the Hill District. The results are summarized in the rest of this chapter.



## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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### **DIRECT BENEFITS TO UHGID OPERATIONS/FUNDING**

A wide array of merchants and property owners concur that UHGID needs to develop additional sources of revenue to fund deferred maintenance items (like replacing public streetlights) and to help mitigate other challenges associated with the Hill District. Such challenges reportedly relate to negative perceptions of safety and security, parking optimization, and events management. Representatives of businesses and property owners believe that one-time proceeds from disposition of the Pleasant Street lot and on-going property tax benefits, once the hotel is built and on the tax rolls, could be directed to improving the physical environment, safety and security, programming, and to address other disadvantages or constraints. Accordingly, one spillover effect would be the direct and indirect revenues the proposed University Hill Hotel development generates that could be reinvested in the Hill District.

### **HILL DISTRICT SEASONALITY AND TURNOVER**

The Hill District is “betwixt and between” the CU campus and significant amounts of off-campus student housing. Merchants and property owners indicate that the vast proportion of the customer base for businesses in the Hill District are CU students and other members of CU. The interviews indicate that the excessive dependence on the student customer base makes it difficult for some businesses to sustain their operations (make payroll, pay rent, etc.) during CU holiday breaks and during the summer when fewer classes are offered. The presence of students and the types of businesses that appeal to students do not equally well appeal to non-student Boulder residents or workers.

Merchants and property owners suggest that the seasonal nature and over dependence upon the primary customer base has resulted in a high degree of tenant turnover over for many years. Other conditions - such as comparatively high operating/occupancy costs, high tenant improvement costs and a difficult approvals process, etc. - also contribute to a relatively high rate of store turnover.

Many establishments including well-known and reputable fast-casual food chains (e.g., Five Guys, Qdoba, and Del Taco) have tried but failed to establish sustainable units in the Hill District. These establishments would have benefited from patronage of a wider market, including more non-student residents and workers. The more successful merchants in the Hill District have established secondary sources of business unrelated to students without which they may not be sustainable. Some local Hill District restaurants, for example, generate additional business/sales through catering.

Accordingly, another spillover effect of the proposed University Hill Hotel development would be to help reduce the seasonality and over-reliance upon student spending, provided property owners and businesses can adjust their offerings to appeal to the preferences of hotel visitors.





## The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hill Hotel Development

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### THE UNIVERSITY HILL BRAND/PERCEPTION

Merchants and property owners agree that improving the perception of the Hill District to local non-student Boulder residents and workers is essential for the Hill District to become more successful. Safety and security concerns and signs of social dislocation discourage Boulder residents or other potential sources of demand from patronizing the Hill District. Unlike students, other Boulder residents and workers do not necessarily live or work in the immediate area and can readily access other shopping and dining locations.

Merchants and property owners believe the proposed University Hill Hotel development and planned CU conference center and hotel could help to improve the image of the Hill District, induce a critical mass of potential non-student foot traffic to the Hill District, and start the process of diversifying and increasing the sources of patronage for services, restaurants, and stores in the Hill District. Compared to the alternatives, the proposed University Hill Hotel development is most likely to contribute these type of spillover effects.

### INVENTORY OF RETAIL/COMMERCIAL SPACE IN THE HILL DISTRICT

The results of the interviews suggest that the Hill District has over time become too big or spread-out relative to supportable demand to thrive. Concentrating food/dining, entertainment, retail, and service-type uses in a more compact area would be advantageous and beneficial to long-term success. Accordingly, another positive effect of the proposed University Hill Hotel development would be to reduce the overall retail building space footprint of UHGID.

### PSYCHOLOGY OF CAPITAL INVESTMENTS

Local and experienced restaurateurs and retailers with other locations in Boulder and elsewhere throughout the Front Range have not generally located in the Hill District, despite the marketing efforts of multiple property owners. Some property owners and merchants are reportedly very reluctant to make capital investments in old buildings and spaces under the status-quo, which tends to prohibit changing the “tenant mix” in any significant way. Part of this reluctance reflects the probable returns may not be high enough to justify the risky expenditure of capital (sales and rents are not increasing at the same rates or to levels enjoyed at other more productive locations in Boulder).

Expectations about the future, however, are a key part of the investment decision equation. The interviews we conducted with merchants and owners all point to a “confidence” benefit associated with the proposed University Hill Hotel development. Real estate and store location decisions require speculation about the future. Attracting establishments that can appeal to and attract a broader, larger customer base over the long-term will require greater confidence from both landlords and prospective tenants to make investments in Hill District properties.

Property owners and merchants believe the positive emotional or psychological benefits from \$65 million of new development in UHGID could be significant by instilling confidence about the future



The Potential Economic and Fiscal and Spillover Impacts of  
the Proposed University Hill Hotel Development

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health of the Hill District. The immediate direct benefits of additional visitors and new retail space by themselves may not dramatically improve the sales and rent capacity of Hill District properties and businesses. The more important spillover effect would be if the proposed University Hill Hotel development is successful in giving confidence to other property owners and businesses to take risks and invest resources in improving their properties and businesses that serve to improve the capacity of the Hill District to compete for new sources of demand.





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APPLYING KNOWLEDGE, CREATING RESULTS, ADDING VALUE

# Memo

**TO:** Sarah Wiebenson, City of Boulder  
**FROM:** Jessica Hernandez, Apex Design, PC  
**DATE:** August 12, 2019  
**RE:** Proposed University Hill Hotel Parking Demand Analysis  
**ATTACHMENTS:** Appendix A

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Apex Design, PC (Apex) has been asked by the City of Boulder to estimate and summarize the impacts of the proposed University Hill Hotel on parking demand in the University Hill General Improvement District (UGHID) area. There are two time periods that the Hotel project is expected to have impacts on parking: during the construction stage and once the hotel and new on-site commercial uses are in full operation. During the construction period, the parking demand generated by off-site uses that are currently served by the Pleasant Street Lot on the project site and on-street parking adjacent to the project site will need to be accommodated elsewhere in UGHID. Once the hotel and commercial uses are operational, the existing Pleasant Street Lot demand will continue to need to be accommodated in addition to the demand generated by the new hotel uses.

For the purposes of this memo, Apex has summarized the parking demand during the construction and operation stages at both midday and at 7pm on a typical weekday. These time periods were selected because they represent the peak parking demand periods currently recorded in UGHID and are most likely to be affected by the proposed hotel. Note that all parking demand estimates in this memo are based on UGHID land uses and observed parking occupancy as of November 2018.

To support this effort, Apex has completed the following tasks.

- Reviewed past parking studies and reports documenting parking conditions in UGHID.
- Studied UGHID employee commute and parking patterns, including surveys administered to employees in 2015 and 2017.
- Assessed current UGHID employee parking permit demand.
- Reviewed the inventory of hourly parking restrictions and supply in UGHID (completed by Apex in November 2018).
- Reviewed the parking occupancy study of City-managed and private customer-only parking spaces (completed by Apex in November 2018).
- Reviewed the observed parking patterns of Pleasant Street Lot users, including administering an intercept survey to users (completed by Apex in November 2018).
- Worked with Sage Hospitality to understand proposed Hotel programmed uses.
- Interviewed Denver metro hotel and valet operators to learn about guest parking behavior.

# Memo

The following memo summarizes the results of parking study in two parts:

1. Examining projected parking demand during the construction phase, and
2. Projecting parking demand once the hotel and new on-site commercial uses are in full operation.

Additional detail on the demand calculations for each part of the parking study is available in the attached appendix. The memo finishes with our recommendations for next steps to address the study findings.

## Summary of Key Results

### Construction Phase

- At midday, the demand for hourly parking spaces that can no longer be served by the Pleasant Street Lot during construction of the hotel can likely be met with existing unoccupied spaces in UHGID. This additional demand is expected to bring most of the streets in UHGID to capacity or very close to capacity.
- At 7pm, the demand for hourly parking spaces that can no longer be served by the Pleasant Street Lot is expected to be higher than at midday. As a result, the UHGID parking supply will likely be full, and the overflow parking demand may be dispersed to surrounding residential streets.
- At least 30 employee permit spaces will need to be relocated to a new location in the UHGID area. Allowing these spaces to transition to hourly parking after work hours will help to accommodate some of the additional evening demand that is anticipated.

### Fully Operational Hotel and On-site Commercial Phase

- At midday, the parking demand in the 50-space hotel garage will likely be around 40 spaces. As a result, the garage may be able to accommodate additional parking demand that is currently served by UHGID spaces during the midday peak.
- At 7pm, the parking demand for the hotel lot will be around 55 spaces, and thus would spill over to the surrounding area. The UHGID parking supply is expected to be experienced as full at that time, so there may be parking demand dispersed to surrounding residential streets.

# Memo

## Parking Demand During Construction

During the construction of the proposed hotel, the existing commercial buildings and the Pleasant Street Lot will be closed and demolished, so demand from customers and employees of the approximately 26,000 square feet (SF) of existing commercial land uses on the site will be eliminated. Parking demand will continue from people who currently park in the Pleasant Street Lot and visit locations off-site (not located on the proposed hotel site). The latter demand will need to be accommodated at other parking spaces in the UHGID area. The demand is estimated to be one hourly space and 26 employee permit spaces at midday and 18 hourly spaces and seven permit spaces at 7 pm (see Appendix).

In addition, there are 13 on-street metered spaces on the north side of Pleasant Street, adjacent to the potential construction site that will likely not be available for use during construction but will return to service once construction is complete. Using the parking occupancy of these spaces observed in November 2018, an additional nine hourly spaces during midday and 10 hourly spaces at 7pm may need to be accommodated in the UHGID area.

Based on the above, during construction at midday, the total estimated parking demand that will need to be accommodated is 10 hourly and 26 employee permit parking spaces. During construction at 7pm, the parking demand is estimated at 28 hourly and seven employee permit parking spaces. Table 1 summarizes the total parking demand that may need to be accommodated elsewhere in the UHGID area during construction.

**Table 1:** Estimated Pleasant Lot Unmet Parking Demand During Construction

|        | Unmet Parking Lot<br>User Demand<br>(spaces) |     | Unmet On-Street<br>User Demand<br>(spaces) |     | Total Parking<br>Demand (spaces) |     |
|--------|--|-----|--|-----|----------------------------------|-----|
|        | Midday                                       | 7pm | Midday                                     | 7pm | Midday                           | 7pm |
| Hourly | 1  | 18  | 9  | 10  | 10                               | 28  |
| Permit | 26   | 7   | 0  | 0   | 26                               | 7   |
| Total  | 27   | 25  | 9  | 10  | 36                               | 35  |

## UHGID Potential to Accommodate Parking Demand During Hotel Construction

At midday, the estimated demand for 10 hourly parking spaces that is currently met by the Pleasant Lot can be accommodated by unoccupied hourly parking spaces located elsewhere in UHGID. The additional demand, however, will likely bring most streets in UHGID at or very close to capacity, increasing utilization from the 80 percent recorded in November 2018 to 89 percent. When parking occupancy is higher than 85 percent, a driver perceives the parking supply to be full. It is therefore a possibility that the additional demand will be dispersed to surrounding residential streets. It is important to note that at the time of the 2018 parking study there were vacancies in some commercial properties, and if these vacancies were to be filled, the parking demand in UHGID might increase.

# Memo

At 7 pm, the observed hourly parking demand in the Pleasant Street Lot and on-street is higher than in the daytime. Some of the increase may be from drivers taking advantage of the free parking allowed after 7 pm that continues until 9 am the following morning. Accommodating the total estimated demand within UHGID at 7 pm is expected to increase utilization from the 77 percent observed in 2018 to 96 percent. Since this is an essentially full parking supply, some demand may be dispersed to surrounding residential streets.

Note: current hourly Pleasant Street Lot customers who shift to on-street metered parking locations within UHGID will also experience a change from four-hour limits to two-hour time limits.

About 26 employee permit parking spaces are estimated to need to be relocated based on current employee permit usage. This number does not take into account permits that were not in use at the time of the 2018 parking occupancy study, such as permits purchased by businesses but not distributed. It also does not take into account latent demand for permits from employees that currently park in metered spaces or surrounding residential on-street spaces, but who do not have a permit because of the restricted number of permits made available by the city (50). Allowing permit spaces to shift to a mix of permit and hourly spaces in the late afternoon will accommodate some of the demand for parking after 7 pm created by former users of the Pleasant Street Lot, as discussed above.

## Hotel and Commercial Uses Parking Demand Once Operational

The following uses of the proposed hotel program are expected to generate parking demand:

- Hotel guests (189 rooms)
- Hotel employees (20 daytime, 15 evening)
- Commercial space customers and employees (10,500 SF)

A number of assumptions were used to estimate the parking demand once the proposed hotel and on-site commercial uses become operational. These were based on conversations with Sage Hospitality and other hotel and valet operators in the Denver area, and current commercial customer and employee parking patterns in UHGID. The assumptions include:

- Hotel and commercial occupancy at 100 percent. While the observed average annual occupancy rate in Boulder 2015-2019 year to date is 67.7-71.3%,<sup>1</sup> using a conservative occupancy rate accounts for unusual circumstances such as parents weekend.

<sup>1</sup> *The Potential Economic and Fiscal and Spillover Impacts of the Proposed University Hotel Development*. Gruen Gruen + Associates (July 2019).

# Memo

- The 10,500 SF of commercial occupied by two soft goods retailers, such as clothing or gifts (3,800 SF), and by two fast casual dining restaurants (6,700 SF).
- About 25 percent of hotel rooms are occupied by guests arriving with an automobile requiring a parking space in the hotel lot.
- About 50 percent of these hotel guest vehicles will be parked on-site at midday and 100 percent at 7pm.
- About 75 percent of on-site commercial customers will park in the hotel lot and 25 percent will park in hourly spaces elsewhere in UHGID, as some customers will visit more than one destination in UHGID and choose to park closer to another destination.
- Sage Hospitality will implement parking mitigation strategies including \$25-35 overnight parking charges, communication to guests encouraging the use of public transit, private shuttle, taxi, and ride share services, and providing all employees with EcoPass transit passes.<sup>2</sup>
- Hotel and commercial employees will follow similar work commute patterns to current UHGID employees with EcoPass transit passes.

Using these assumptions, the hotel and commercial uses are estimated to have a parking demand of 49 spaces at midday and 63 spaces at 7 pm. Table 2 shows the distribution of parking space demand by user group and parking space location.

**Table 2:** Summary of Hotel and Hotel Commercial Parking Demand

|              | Hotel Guest<br>Parking<br>Demand<br>(spaces) |     | Hotel<br>Employee<br>Parking<br>Demand<br>(spaces) |     | Commercial<br>Customer<br>Parking<br>Demand<br>(spaces) |     | Commercial<br>Employee<br>Parking<br>Demand<br>(spaces) |     | Total Parking<br>Demand<br>(spaces) |     |
|--------------|--|-----|--|-----|---|-----|---|-----|-------------------------------------|-----|
|              | Midday                                       | 7pm | Midday   | 7pm | Midday  | 7pm | Midday  | 7pm | Midday                              | 7pm |
| Hotel Lot    | 24   | 47  | 2  | 1   | 12  | 7   | 0   | 0   | 38                                  | 55  |
| UHGID Hourly | 0  | 0   | 2  | 2   | 4   | 2   | 3   | 2   | 9                                   | 6   |
| UHGID Permit | 0  | 0   | 1  | 1   | 0   | 0   | 1   | 1   | 2                                   | 2   |
| Total        | 24   | 47  | 5  | 4   | 16  | 9   | 4   | 3   | 49                                  | 63  |

Assuming the commercial uses in UHGID continue to operate similar to current conditions, the off-site parking demand that was accommodated by the Pleasant Street Lot will continue to exist. The total parking demand, including the UHGID parking demand that will need to be met once the hotel and commercial uses are operational, is estimated to be 76 spaces at midday and 88 spaces at 7 pm.

<sup>2</sup> Outlined in *Sage Hospitality University Hill Hotel – Valet Operations* presentation dated May 30, 2019.



# Memo

Table 3 shows the distribution of parking space demand by type of parking space.

**Table 3:** Summary of Total Hotel and Commercial Parking Demand

|              | UHGID Off-Site<br>Parking Demand<br>(spaces) |     | Hotel and Commercial<br>Parking Demand<br>(spaces) |     | Total Parking Demand<br>(spaces) |           |
|--------------|--|-----|--|-----|----------------------------------|-----------|
|              | Midday                                       | 7pm | Midday   | 7pm | Midday                           | 7pm       |
| Hotel Lot    | 0  | 0   | 38   | 55  | <b>38</b>                        | <b>55</b> |
| UHGID Hourly | 1  | 18  | 9  | 6   | <b>10</b>                        | <b>24</b> |
| UHGID Permit | 26   | 7   | 2  | 2   | <b>28</b>                        | <b>9</b>  |
| Total        | 27   | 25  | 49   | 63  | <b>76</b>                        | <b>88</b> |

## Impact of Hotel and Commercial Parking Demand Once Operational

At midday, the 50-space hotel lot would accommodate the hourly parking demand generated by the hotel and on-site commercial uses and still have around 10 spaces available. Thus, the hotel lot may be able to accommodate a portion of additional UHGID hourly demand during the midday peak. It should be noted, however, that the number of spaces available to accommodate additional demand will vary based on hotel occupancy and parking location of commercial customers.

At 7pm, assuming 100 percent occupancy, the hotel guest parking demand is likely to fill the spaces in the 50-space hotel lot. As a result, evening customers of the two fast casual dining establishments may be required to find parking elsewhere in the District. The UHGID area may need to accommodate an additional demand of 29 spaces. As noted in the section on construction impacts, a portion of this demand can be met by spaces in the District. The additional demand is estimated to bring occupancy at 7pm to 95 percent from the 77 percent observed in 2018. Since this represents an effectively full parking supply within UHGID, some demand may be dispersed to surrounding residential streets.

The hotel and commercial uses are anticipated to generate additional demand for approximately two employee permit spaces. These additional spaces should be considered when identifying a location for the existing permit spaces being served by the Pleasant Street Lot. As noted, there may be additional demand for employee permit spaces if the City expands the program. Allowing the permit spaces to shift to a mix of permit and paid spaces in the late afternoon will accommodate some of the UHGID evening parking demand.

# Memo

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## Next Steps

Apex recommends that the City consider the following if the hotel project moves forward to support future parking and access management decisions:

- Continue to market the EcoPass program to maximize UHGID employee participation.
- Consider ways to create additional hourly parking supply within UHGID that will reduce estimated utilization rates to meet the 85 percent goal and reduce neighborhood parking impacts.
- Research further the demand for the employee parking permit program. Assess the latent demand for permits and whether this program should be expanded.
- Identify a way to accommodate the demand for employee permit spaces, with consideration for allowing these spaces to transition to hourly spaces in the afternoon and evening.
- Monitor the implementation of the Sage Hospitality transportation demand management strategies.

# Appendix A

## Proposed University Hill Hotel Parking Demand Analysis

Apex Design, PC (Apex) has been asked by the City of Boulder to estimate and summarize the impacts of the proposed University Hill Hotel on parking demand in the University Hill General Improvement District (UGHID) area. There are two time periods that the Hotel project is expected to have impacts on parking: during the construction period and once the hotel and new on-site commercial uses are in full operation. The following sections summarize the parking demand analysis for each of these time periods at midday and at 7pm on an average weekday.

Note that all parking demand estimates in this memo are based on the UGHID land uses and observed in November 2018.<sup>1</sup> References to existing conditions or the current time frame reflects the data recorded in November 2018. Since then, some changes to land uses have occurred (businesses have opened and/or closed), but the parking behaviors and demand patterns observed in November 2018 is not considered to have changed significantly.

### Parking Demand During Construction

What land uses and parking is available on the site currently?

The University Hotel project site is comprised of about 26,000 square feet (sf) of commercial land uses and two surface parking lots. The commercial uses and a 25-space private surface lot for customer use only (no time limit) are located within the purple area shown in Figure 1. The Pleasant Street Lot, a 62-space City-owned and managed paid public parking lot (\$1.25 per hour with a 4-hour time limit) is shown in the purple area. Driving patrons of the on-site commercial uses have a choice to park in either of the on-site parking lots, at meters on streets in the UGHID area, or for free on nearby residential streets (2-hour time limit). Employees that drive or carpool to work can park with a permit in the Pleasant Street Lot (50 permits available at \$70 per month, no time limit), at meter parking in the Pleasant Street Lot (\$1.25 per hour with 4-hour time limit), at on-street meter parking (\$1.25 per hour with 2-hour time limit), for free on nearby residential streets (2-hour time limit), or further away for free on residential streets outside of the Neighborhood Permit Program (no time limit).

<sup>1</sup> Details about the results of these parking studies can be found in the *University Hill Parking Study* memo dated December 28, 2018.

# Appendix A

Figure 1: University Hotel Project Site Boundaries



## What is the parking occupancy on the site currently?

A parking occupancy study completed in November 2018<sup>2</sup> showed that peak parking demand occurs on the site, and across the UHGID area, on weekdays at midday. Table 1 summarizes the observed on-site weekday parking demand by parking lot and type of payment at the Pleasant Street Lot. Peak parking demand was 62 spaces at midday and 55 spaces at 7 pm. In the Pleasant Street Lot, parking demand from employee permit parking is higher at midday and demand from drivers parking and paying hourly is higher in the evening.

Table 1: Observed Weekday Parking Occupancy (November 2018)

|                        | Capacity<br>(Spaces) | Midday<br>Demand | 7 pm<br>Demand |
|------------------------|----------------------|------------------|----------------|
| Customer Lot           | 25                   | 21               | 23             |
| Pleasant Lot           | 62                   | 41               | 32             |
| <i>Pleasant Hourly</i> |                      | 13               | 24             |
| <i>Pleasant Permit</i> |                      | 28               | 8              |
| <b>Total</b>           | <b>87</b>            | <b>62</b>        | <b>55</b>      |

<sup>2</sup> Details about the results of these parking studies can be found in the *University Hill Parking Study* memo dated December 28, 2018.

# Appendix A

## What is the current parking demand from the on-site uses?

On the University Hotel redevelopment site there are four different types of parking demand:

1. Customers patronizing the on-site commercial uses
2. Employees working at the on-site commercial uses
3. Customers, students, residents, and visitors with off-site destinations and parking in the Pleasant Street Lot
4. Employees working at off-site commercial uses in UHGID and parking in the Pleasant Street Lot

During the construction of the proposed hotel, the existing commercial buildings and the Pleasant Street Lot will be closed and demolished. As a result, customers and employee demand at the on-site commercial uses will be eliminated, but parking demand will continue from the other users who currently park in the Pleasant Street Lot and visit locations off-site. In order to better understand the off-site parking demand being served by the Pleasant Lot, Apex estimated the on-site parking demand from customers and employees. This demand was subtracted from the total observed parking occupancy to determine the demand from off-site uses that would need to be accommodated during construction.

In November 2018, about 19,000 sf of the space on the hotel project site was occupied and 7,000 sf was vacant. The parking demand generated by the commercial land uses was estimated using the UHGID commercial parking demand rate for the peak period developed by the Fox Tuttle Hernandez Transportation Group<sup>3</sup> of 1.92 parking spaces per thousand commercial square feet for the UHGID area. This rate is based on the parking rates observed in downtown Boulder and at other mixed use commercial sites throughout the city. It assumes that 85 percent of public and private commercial parking spaces are occupied during the midday peak. This is consistent with the November 2018 parking occupancy study, which observed a midday peak demand of 80 percent occupancy. Using this parking rate, the on-site commercial uses would generate a demand for 36 spaces at midday (Table 2).

Table 2: On-site Commercial Land Use Estimated Peak Parking Demand

| Land Use     | Size (SF)     | Parking Demand per KSF (Spaces) | Midday Parking Demand (Spaces) |
|--------------|---------------|---------------------------------|--------------------------------|
| Shopping     | 6,750         | 1.92                            | 13                             |
| Office       | 2,000         | 1.92                            | 4                              |
| Restaurant   | 3,200         | 1.92                            | 6                              |
| Fast Food    | 6,848         | 1.92                            | 13                             |
| <b>Total</b> | <b>18,798</b> |                                 | <b>36</b>                      |

<sup>3</sup> *Buildout Parking Projections Using Current Land Use Projection and Parking Supply/Demand Assumptions* dated November, 2015

# Appendix A

## What is the breakdown of on-site employee and customer parking demand?

The commercial parking demand at midday is estimated to be 36 spaces. This parking demand is generated by both employees and customers of the on-site commercial uses. The Urban Land Institute (ULI) has developed a Shared Parking methodology to estimate employee parking demand by type of commercial land use<sup>4</sup>. Using this methodology, which assumes that all employees drive to work and park, the total employee parking demand for the site is about 34 spaces. Table 3 shows the estimate of the peak parking demand by land use, or the number of employees expected to be on-site and requiring parking during midday.

Table 3: Estimated Employee On-site Peak Parking Demand (ULI Parking Rates)

| Land Use     | Size (SF)     | Employee Parking Demand (spaces per KSF) | Total Employees |
|--------------|---------------|--|-----------------|
| Shopping     | 6,750         | 0.7                                      | 4.7             |
| Office       | 2,000         | 3.2                                      | 6.3             |
| Restaurant   | 3,200         | 2.5                                      | 7.9             |
| Fast Food    | 6,848         | 2.3                                      | 15.4            |
| <b>Total</b> | <b>18,798</b> |  | <b>34.4</b>     |

In UHGID, not all employees drive to work, as assumed by the ULI estimates. A survey administered to full-time UHGID employees in September 2017<sup>5</sup> found that 49 percent of employees drove alone, 34 percent rode a bus, 12 percent biked or walk, and 5 percent carpooled to work. Assuming one vehicle for every two employees that carpooled, about 52 percent of employees required a parking space. This equals about 18 employees that drive to work of the 34 employees estimated to be on-site at midday.

The survey also asked respondents if they drove to work, where they parked. Table 4 summarizes the parking locations of the 18 employees that drive to work using the results from the survey.

Table 4: Estimate of Employees by Parking Location

| Location                         | Percent of Employees | Number of Employees Parking |
|----------------------------------|----------------------|-----------------------------|
| City Lot, with cash <sup>6</sup> | 32%                  | 5.8                         |
| City Lot, with permit            | 14%                  | 2.5                         |
| Residential Street, no meter     | 54%                  | 9.7                         |
| <b>Total</b>                     | <b>100%</b>          | <b>18.0</b>                 |

<sup>4</sup> Urban Land Institute and International Council of Shopping Centers. (2005). *Shared parking, 2nd edition*. Washington, D.C.: ULI.

<sup>5</sup> Details can be found in the *University Hill Employee EcoPass Pilot Program Usage Assessment* memo dated January 11, 2017.

<sup>6</sup> While about 25% of employees in the UHGID area choose to park at on-street meters, it was assumed that for employees working on-site, they would choose to pay for metered parking in the Pleasant Lot as the price is the same but the time limit is four hours as compared to three hours at on-street meters.

# Appendix A

Using these assumptions, about 10 employees choose to park off-site and 8 employees choose to park on-site in the Pleasant Lot at midday. Parking demand at 7 pm is based on ULI shared parking methodology, which equates to about 54 percent of the midday peak employee demand. Table 5 shows the estimated distribution of employee parking spaces by type of payment and time of day.

Table 5: Pleasant Lot Employee Parking Demand

| Pleasant Lot Parking Type | Midday Demand | 7 pm Demand |
|---------------------------|---------------|-------------|
| Hourly                    | 5.8           | 3.1         |
| Permit                    | 2.5           | 1.4         |
| <b>Total</b>              | <b>8.3</b>    | <b>4.5</b>  |

Using the peak parking demand for commercial land uses of 36 spaces and the estimate that employees require eight of those spaces, customer parking demand equates to 28 spaces at midday (Table 6).

Table 6: On-site Parking Demand at Midday Peak

| User Type    | Parking Demand |
|--------------|----------------|
| Employees    | 8              |
| Customers    | 28             |
| <b>Total</b> | <b>36</b>      |

## How many customers park in the Pleasant Lot?

To determine the number of customers patronizing on-site commercial uses parking in the Pleasant Lot, the parking demand observed in the November 2018 study was subtracted from the estimated total customer demand. Note that this calculation is not possible to estimate customer parking demand at 7 pm, as the observed parking demand in the Pleasant Lot also includes people parking to take advantage of the free spaces after 7 pm. Therefore, customer parking demand at 7 pm was estimated using the ULI shared parking methodology, or 46 percent of midday peak customer parking. Table 7 shows that there is a demand of about 7 spaces at midday and 3 spaces in the early evening for parking from customers patronizing on-site commercial uses.

Table 7: Pleasant Lot Parking Demand from On-site Customers

| Customer Parking Location                   | Midday   | 7 pm     |
|---|----------|----------|
| Total Customer Parking Demand               | 28       | N/A      |
| Observed Customer-Only Lot Occupancy        | 21       | N/A      |
| <b>Estimated Pleasant Lot Hourly Spaces</b> | <b>7</b> | <b>3</b> |



# Appendix A

Table 8 shows the distribution of current customer and employee parking on-site commercial parking demand at the on-site parking lot.

Table 8: Summary of Pleasant Lot Parking Demand from On-site Customers and Employees

| Pleasant Lot Parking Type | Midday     |            |             | 7 pm       |            |            |
|---------------------------|------------|------------|-------------|------------|------------|------------|
|                           | Customers  | Employees  | Total       | Customers  | Employees  | Total      |
| Hourly                    | 7.0        | 5.8        | 12.8        | 3.0        | 3.1        | 6.1        |
| Permit                    | 0.0        | 2.5        | 2.5         | 0.0        | 1.4        | 1.4        |
| <b>Total</b>              | <b>7.0</b> | <b>8.3</b> | <b>15.3</b> | <b>3.0</b> | <b>4.5</b> | <b>7.5</b> |

## What is the parking demand that will need to be met during construction?

Parking demand in the Pleasant Lot from off-site uses will need to be accommodated during construction. By subtracting the number of on-site customers and employees that park in the Pleasant Lot from the total parking demand observed in the Pleasant Lot in November 2018, the demand for parking spaces from off-site uses can be estimated. Table 10 summarizes the distribution of Pleasant Lot parkers by type of demand and payment.

Table 10: Distribution of Existing Pleasant Lot Demand

| Pleasant Lot Parking Type | Total Observed Demand |             | On-site Commercial Demand |            | Off-site Demand |             |
|---------------------------|-----------------------|-------------|---------------------------|------------|-----------------|-------------|
|                           | Midday                | 7 pm        | Midday                    | 7 pm       | Midday          | 7 pm        |
| Hourly                    | 13.0                  | 24.0        | 12.8                      | 6.1        | 0.2             | 17.9        |
| Permit                    | 28.0                  | 8.0         | 2.5                       | 1.4        | 25.5            | 6.6         |
| <b>Total</b>              | <b>41.0</b>           | <b>32.0</b> | <b>15.3</b>               | <b>7.5</b> | <b>25.7</b>     | <b>24.5</b> |

Table 11 rounds the results of the off-site demand reported in Table 10. About 27 parking spaces at midday and 25 spaces at 7pm in the Pleasant Lot will need to be accommodated during construction.

Table 11: Estimated Pleasant Lot Unmet Demand During Construction

| Pleasant Lot Parking Type | Midday    | 7 pm      |
|---------------------------|-----------|-----------|
| Hourly                    | 1         | 18        |
| Permit                    | 26        | 7         |
| <b>Total</b>              | <b>27</b> | <b>25</b> |

## How will construction affect the on-street parking along Pleasant Street?

There are 13 parking spaces (2 hour limit metered parking) on the north side of Pleasant Street, adjacent to the potential construction site. These spaces will likely be closed during construction and demand for the spaces will also need to be accommodated during construction. Using the Parking Occupancy Study from November 2018, the District may need to accommodate the demand for an additional nine on-street spaces during midday and 10 on-street spaces at 7pm. Figures 2 and 3 at the end of the Appendix show parking demand by street and lot at midday and 7pm.



# Appendix A

## What is the total parking demand that will need be accommodated during construction?

During construction at midday, the total estimated parking demand that will need to be accommodated is 10 hourly and 26 employee permit parking spaces. During construction at 7pm, the parking demand is estimated at 28 hourly and seven employee permit parking spaces. Table 12 summarizes the total parking demand that may need to be accommodated elsewhere in the UHGID area during construction.

Table 12: Estimated Pleasant Lot Unmet Parking Demand During Construction

| Parking Type | Unmet Parking Lot User Demand (spaces) |           | Unmet On-Street User Demand (spaces) |           | Total Parking Demand (spaces) |           |
|--------------|--|-----------|--------------------------------------|-----------|-------------------------------|-----------|
|              | Midday                                 | 7pm       | Midday                               | 7pm       | Midday                        | 7pm       |
| Hourly       | 1                                      | 18        | 9                                    | 10        | 10                            | 28        |
| Permit       | 26                                     | 7         | 0                                    | 0         | 26                            | 7         |
| <b>Total</b> | <b>27</b>                              | <b>25</b> | <b>9</b>                             | <b>10</b> | <b>36</b>                     | <b>35</b> |

## Hotel and Commercial Uses Parking Demand Once Operational

Apex consulted with Sage Hospitality to confirm the programmed uses for the hotel and additional retail spaces. In addition, Sage Hospitality provided the parking demand observed at their operating Denver-area hotels and in similar communities across the country. Apex combined this information with research on parking demand from other Denver-area hotels, knowledge of transportation planning, parking best practices, and research efforts to calculate the demand for parking spaces anticipated for the site after the redevelopment of the hotel.

## What proposed uses will generate parking demand on the hotel site?

The University Hill hotel is anticipated to have the following uses that will generate parking demand:

- Hotel guests (189 rooms)
- Hotel employees (20 weekday day time, 15 early evening)
- Commercial space customers and employees (10,500 square feet)

The following discussion looks at each use and the parking demand estimated to be generated by each use.

## What is the parking demand from hotel guests?

The hotel will have 189 guest rooms. Sage Hospitality, based on their valet experiences at similar hotels in Denver, anticipates that approximately 20 percent of the guests will arrive at the hotel with a vehicle requiring a parking space. This capture rate may be met, as Sage Hospitality plans to implement a number of parking mitigation strategies.<sup>7</sup> Critical strategies include \$25-35 overnight parking charges and communication to

<sup>7</sup> Outlined in *Sage Hospitality University Hill Hotel – Valet Operations* presentation dated May 30, 2019.

# Appendix A

guests encouraging the use of public transit, private shuttle, taxi, and ride share services. Based on additional research with Denver area hotels and valets, Apex has assumed a more conservative capture rate of 25 percent.

At 100% occupancy and assuming that 50 percent of guests would leave their vehicle parked during the day, the anticipated parking demand is 24 spaces during midday and 47 spaces at 7 pm (Table 13).

Table 13: Estimated Hotel Guest Parking Demand

|                                     |           |
|-------------------------------------|-----------|
| Hotel Rooms                         | 189       |
| Percent Occupancy                   | 100%      |
| Percent of Rooms With Car           | 25%       |
| <b>Total Parking Spaces</b>         | <b>47</b> |
| Percent Parking Use Midday          | 50%       |
| <b>Total Occupied Spaces Midday</b> | <b>24</b> |
| Percent Parking 7pm                 | 100%      |
| <b>Total Occupied Spaces 7pm</b>    | <b>47</b> |

## What is the parking demand from hotel employees?

Sage Hospitality anticipates having 20 employees on-site at midday on a weekday and 15 employees on-site at 7 pm on a weekday. The hotel will supply 2 parking spaces for employees. These will be reserved for the General Manager and the Head of Sales. All other employees will be provided an RTD EcoPass, an annual transit pass that allows unlimited rides on all local and regional buses and light rail service.

The City of Boulder established a program to provide an EcoPass to all full-time employees in UHGID in 2016. Based on a survey administered to full-time UHGID employees in September 2017, 49 percent of employees drove alone, 34 percent rode a bus, 12 percent biked or walked, and 5 percent carpooled to work. Assuming one vehicle for every two employees that carpooled, about 52% of employees required a parking space. However, when this same distribution is analyzed for EcoPass-holding employees only, 39 percent of employees drove alone and 5 percent carpooled. Assuming one vehicle for every two employees that carpooled, about 42 percent of employees with an EcoPass would require a parking space.

If Sage Hospitality employees follow a similar pattern in their transportation choices when commuting to and from work, it is anticipated that eight employees at midday and four at 7 pm will require a parking space in the UHGID area (Table 14).

Table 14: Estimated Number of Hotel Employees Driving to Work Requiring Parking Space

| <b>Employee Data</b>                                   | <b>Midday</b> | <b>7pm</b> |
|--|---------------|------------|
| Total Hotel Employees With No Designated Parking Space | 20            | 15         |
| Employees With Designated Parking Space                | 2             | 1          |
| Employees With No Designated Parking Space             | 18            | 14         |
| Percent of Driving Employees                           | 42%           | 42%        |
| Total Driving Requiring UHGID Area Parking Space       | 8             | 6          |

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Table 15 shows the distribution of parking locations of hotel employees if they were to follow a similar pattern to current employees. Half of employees would likely park on a residential street without a meter.

Table 15: Estimated Parking Locations of Hotel Employees that Drive to Work

| Parking Location                | Percent of Employees | Midday   | 7pm      |
|---------------------------------|----------------------|----------|----------|
| City Lot, with cash             | 7%                   | 1        | 0        |
| City Lot, with permit           | 14%                  | 1        | 1        |
| On-street, with meter           | 25%                  | 2        | 2        |
| Residential Street, no meter    | 54%                  | 4        | 3        |
| Residential Street, with permit | 0%                   | 0        | 0        |
| <b>Total</b>                    | <b>100%</b>          | <b>8</b> | <b>6</b> |
| Hotel Lot                       | --                   | 2        | 1        |

## What is the parking demand from the commercial uses?

In addition to the hotel, Sage Hospitality will provide 10,500 sf of commercial space. Based on discussions with Sage Hospitality, it is anticipated that about 3,800 sf will likely be occupied by two soft goods retailers, such as clothing or gifts, and about 6,700 sf by two fast casual dining restaurants. These land uses will likely primarily be visited by hotel guests and University of Colorado staff and students, UGHID residents, and visitors. Since the type and location of the hotel commercial uses will likely generate similar patrons and transportation mode patterns to the existing businesses in the District, the same parking rate of 1.92 spaces per KSF that is estimate for UGHID today was applied to the new commercial uses. Using this rate, the 10,500 commercial sf would require a total of 20 parking spaces at midday (Table 16).

Table 16: Midday Parking Demand by Type of Commercial Use

| Land Use Type                | Size (SF)     | Parking Demand per KSF (Spaces) | Parking Demand Midday |
|------------------------------|---------------|---------------------------------|-----------------------|
| Retail: clothing, soft goods | 1,800         | 1.92                            | 3                     |
| Retail: soft goods           | 2,000         | 1.92                            | 4                     |
| Restaurant: fast casual      | 2,600         | 1.92                            | 5                     |
| Restaurant: fast casual      | 4,100         | 1.92                            | 8                     |
| <b>Total</b>                 | <b>10,500</b> |                                 | <b>20</b>             |

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Using the ULI's Shared Parking methodology, the commercial space would require 18 employee spaces on-site during the midday peak (Table 17).

Table 17: Midday Commercial Employee Demand by Use (ULI Demand Rates)

| Land Use Type                | Size (SF)     | ULI Employee Parking Demand per KSF (Spaces) | ULI Employee Demand |
|------------------------------|---------------|--|---------------------|
| Retail: clothing, soft goods | 1,800         | 0.7  | 1.3                 |
| Retail: soft goods           | 2,000         | 0.7  | 1.4                 |
| Restaurant: fast casual      | 2,600         | 2.3  | 5.9                 |
| Restaurant: fast casual      | 4,100         | 2.3  | 9.2                 |
| <b>Total</b>                 | <b>10,500</b> |  | <b>17.7</b>         |

Based on current employee commuting patterns, nine of these employees are anticipated to drive (Table 18).

Table 18: Midday Commercial Employee Parking Demand

| User Type | Total | Percent who Drive | Parking Demand (Spaces) |
|-----------|-------|-------------------|-------------------------|
| Employees | 17.7  | 52%               | 9.2                     |

Table 19 shows the estimated distribution of employee parking spaces by type of payment during the midday peak based on existing UHGID employee parking patterns. As the table indicates, employees would generate a demand for four spaces within UHGID at midday, and five spaces on the residential streets outside of UHGID.

Table 19: Estimated Locations of Commercial Employees Driving to Work

| Parking Location                | Percent of employees | Midday Parking Demand |
|---------------------------------|----------------------|-----------------------|
| City Lot, with cash             | 7%                   | 1                     |
| City Lot, with permit           | 14%                  | 1                     |
| On-street, with meter           | 25%                  | 2                     |
| Residential Street, no meter    | 54%                  | 5                     |
| Residential Street, with permit | 0%                   | 0                     |
| <b>Total</b>                    | <b>100%</b>          | <b>9</b>              |

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Summarizing the table above, Table 20 shows the expected distribution of the commercial employees parked at paid spaces within UHGID. Employee parking demand at 7 pm is based on ULI shared parking methodology, which equates to about 63 percent of the midday peak employee demand.

Table 20: Distribution of Commercial Employee Parking at UHGID Paid Spaces

| Location     | Midday Demand | 7 pm Demand |
|--------------|---------------|-------------|
| UHGID Hourly | 3             | 2           |
| UHGID Permit | 1             | 1           |
| <b>Total</b> | <b>4</b>      | <b>3</b>    |

Subtracting the employee parking demand from the total commercial parking demand of 20 spaces (Table 16), 16 customers will require parking during the midday peak (Table 21). Customer parking demand at 7 pm is based on ULI shared parking methodology, which equates to about 56 percent of the midday peak customer demand.

Table 21: Commercial Employee and Customer Parking Demand

| User Type              | Midday Demand | 7 pm Demand |
|------------------------|---------------|-------------|
| Total Demand           | 20            | 12          |
| Employee Demand        | 4             | 3           |
| <b>Customer Demand</b> | <b>16</b>     | <b>9</b>    |

In order to better understand the distribution of parking from commercial uses, it was assumed that a small number of customers patronizing the hotel commercial would park at paid locations elsewhere in the District rather than at the hotel lot. This could be for a number of reasons, including that the customers patronized other businesses within UHGID on the same trip and walked to the hotel commercial, chose a less expensive option if the hotel lot charges more than city spaces, or a longer time limit found at the surface parking lots.

For this analysis, the distribution was assumed to be 75 percent park in the hotel lot and 25 percent park elsewhere in UHGID (Table 22).

Table 22: Commercial Customer Parking Locations

| Location     | Percent     | Midday Demand | 7 pm Demand |
|--------------|-------------|---------------|-------------|
| Hotel Lot    | 75%         | 12            | 7           |
| UHGID Hourly | 25%         | 4             | 2           |
| <b>Total</b> | <b>100%</b> | <b>16</b>     | <b>9</b>    |

**What is the total parking demand that will need to be met once the hotel and commercial uses are operational?**

Based on the analysis above, the estimated parking demand within the UHGID district at midday would be about 49 spaces at midday and 63 in the evening (Table 23). Sage Hospitality plans to supply a total of 50 parking spaces on the hotel site.

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Table 23: Summary of Total Hotel and Commercial Parking Demand

| Location     | Hotel Guest Parking Demand (spaces) |           | Hotel Employee Parking Demand (spaces) |          | Commercial Customer Parking Demand (spaces) |          | Commercial Employee Parking Demand (spaces) |          | Total Parking Demand (spaces) |           |
|--------------|-------------------------------------|-----------|--|----------|---|----------|---|----------|-------------------------------|-----------|
|              | Midday                              | 7pm       | Midday                                 | 7pm      | Midday                                      | 7pm      | Midday                                      | 7pm      | Midday                        | 7pm       |
| Hotel Lot    | 24                                  | 47        | 2                                      | 1        | 12  | 7        | 0   | 0        | 38                            | 55        |
| UHGID Hourly | 0                                   | 0         | 2                                      | 2        | 4   | 2        | 3   | 2        | 9                             | 6         |
| UHGID Permit | 0                                   | 0         | 1                                      | 1        | 0   | 0        | 1   | 1        | 2                             | 2         |
| <b>Total</b> | <b>24</b>                           | <b>47</b> | <b>5</b>                               | <b>4</b> | <b>16</b>                                   | <b>9</b> | <b>4</b>                                    | <b>3</b> | <b>49</b>                     | <b>63</b> |

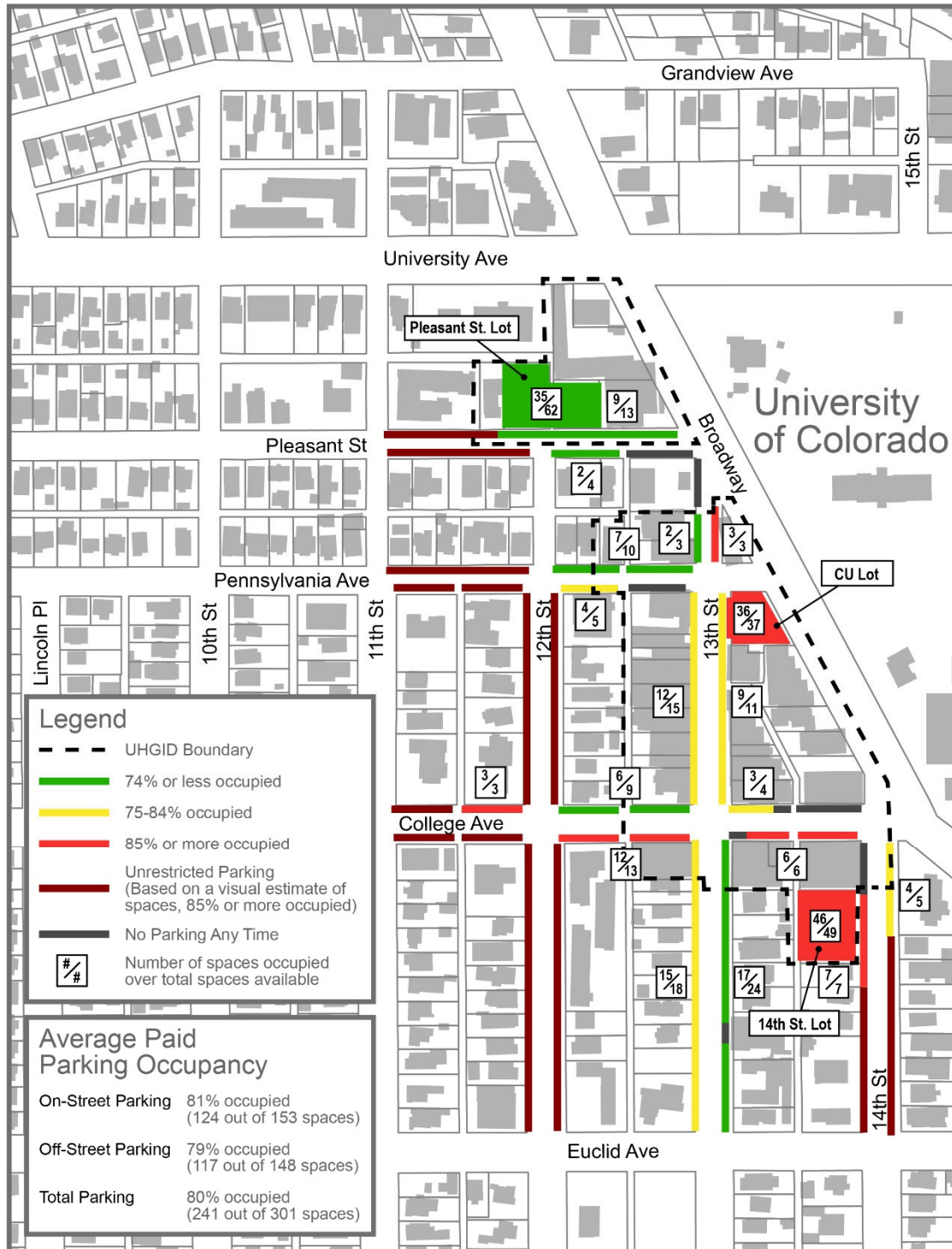
Assuming the commercial uses in UHGID continue to operate similar to current conditions, the off-site parking demand that was accommodated by the Pleasant Street Lot will continue to exist. The total parking demand, including the UHGID parking demand that will need to be met once the hotel and commercial uses are operational, is estimated to be 76 spaces at midday and 88 spaces at 7pm. Table 24 shows the distribution of parking space demand by type of parking space.

Table 24: Summary of Total Hotel and Commercial Parking Demand

| Location     | UHGID Off-Site Parking Demand (spaces) |           | Hotel and Commercial Parking Demand (spaces) |           | Total Parking Demand (spaces) |           |
|--------------|--|-----------|--|-----------|-------------------------------|-----------|
|              | Midday                                 | 7pm       | Midday                                       | 7pm       | Midday                        | 7pm       |
| Hotel Lot    | 0                                      | 0         | 38   | 55        | 38                            | 55        |
| UHGID Hourly | 1                                      | 18        | 9  | 6         | 10                            | 24        |
| UHGID Permit | 26                                     | 7         | 2  | 2         | 28                            | 9         |
| <b>Total</b> | <b>27</b>                              | <b>25</b> | <b>49</b>                                    | <b>63</b> | <b>76</b>                     | <b>88</b> |

# Appendix A

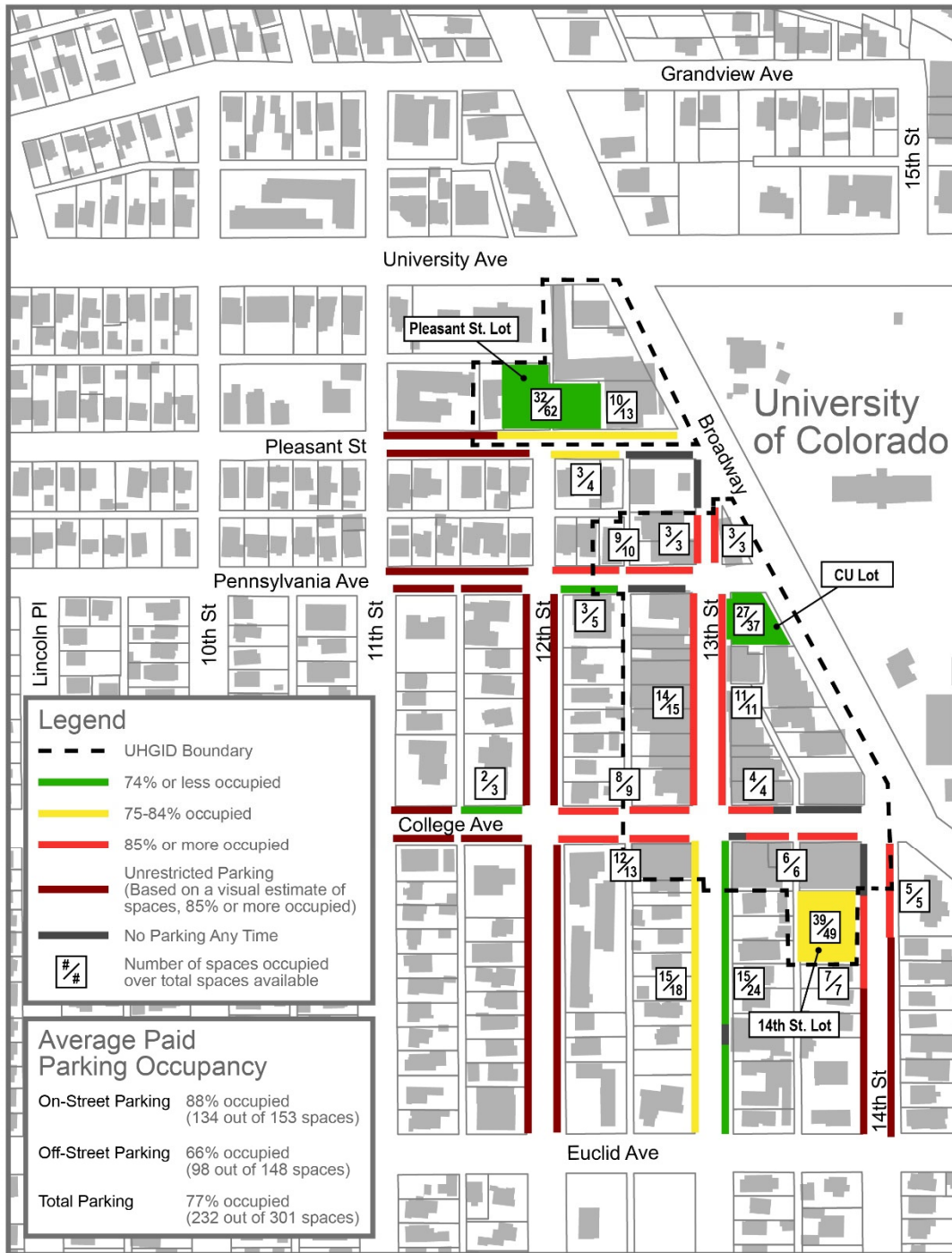
Figure 2: Noon Weekday Parking Occupancy (November 2018)





# Appendix A

Figure 3: 7pm Weekday Parking Occupancy (November 2018)







## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **BOARDS AND COMMISSIONS ITEM**

June 5, 2019 BLC Minutes

### **PRIMARY STAFF CONTACT**

Celia Seaton

### **ATTACHMENTS:**

#### **Description**

- ▣ **B & C Item Library Commission- Minutes June 5, 2019**

**CITY OF BOULDER  
BOULDER, COLORADO  
BOARDS AND COMMISSIONS MEETING MINUTES**

|   |                             |
|---|-----------------------------|
| <b>Name of Board/ Commission:</b> Library Commission  |                             |
| <b>Date of Meeting:</b> June 5, 2019 at the Carnegie Branch Library, 1125 Pine St.  |                             |
| <b>Contact information preparing summary:</b> Celia Seaton, 303-441-3106  |                             |
| <b>Commission members present:</b> Tim O'Shea, Joel Koenig, Jane Sykes Wilson, Steven Frost   |                             |
| <b>Commission members not present:</b> Juana Gomez  |                             |
| <b>Library staff present:</b><br>David Farnan, Director of Library & Arts<br>Jennifer Phares, Deputy Library Director<br>Celia Seaton, Administrative Specialist<br>Kate Kelsch, Volunteer Services Coordinator<br>Wendy Hall, Carnegie Librarian<br><br><b>City staff present:</b><br>None<br><br><b>Members of the public present:</b> None   |                             |
| <b>Type of Meeting:</b> Regular   |                             |
| <b>Agenda Item 1: Call to order and approval of agenda</b>  | <b>[0:00:38 Audio min.]</b> |
| The meeting was called to order and O'Shea asked if there were any changes to the agenda. There was a nod of approval from the commission for this agenda.  |                             |
| <b>Agenda Item 2: Public comment</b>  | <b>[0:00:55 Audio min.]</b> |
| None.   |                             |
| <b>Agenda Item 3: Consent agenda</b>  | <b>[0:01:04 Audio min.]</b> |
| a. Approval of May 8, 2019 Meeting Minutes: Koenig moved to approve these minutes, O'Shea seconded, and the motion was unanimously approved.  |                             |
| <b>Agenda Item 4: Presentation: update on volunteer services</b>  | <b>[0:01:37 Audio min.]</b> |
| Kelsch presented alongside a slideshow overview of the progression and future of volunteer program goals (see <a href="#">handouts</a> ).<br><br>Achieving goals of increased diversity and developing a robust volunteer program will help library staff feel more supported, raise community engagement, improve programs and services, and allow for an ever-more welcoming library space for Boulder's increasingly diverse populations.<br><br>City-wide, Boulder will be working with volunteers in a more systematic way with a structured volunteer process (online application development, tracking, appreciation events).<br><br>Kelsch reported statistics on growth: 43% increase in volunteers and 30% increase in volunteer hours from 2016-2019. Groundwork laid for teen involvement and further volunteer leadership (volunteer-led training, book sales, and homebound delivery).<br><br>City-wide volunteer cooperative activity began 3 years ago resulting in the achievement of Service Enterprise certification which spurred on strategic plan across the city (risk/release form, volunteer handbook, appreciation events, replacement of spreadsheets with the new volunteer management system).<br><br>Highlighted achievements include the fact that Library volunteers record 20% more hours than volunteers in other city departments. 1,100 volunteers donated 23,765 hours in service with an in-kind value of \$636,400.<br><br>Kelsch provided a glimpse of the new website for the volunteer cooperative: "Count Me in Boulder." This foundational tool incorporates calendaring and can track hours and applications. Upcoming opportunities with Summer of Discovery and the Jaipur Literature Festival (JLF). Kelsch will be onboarding a part-time temporary staff member to support JLF and some elements of the volunteer management system.<br><br>Having served as a volunteer himself for many years, Koenig appreciates Kelsch's efforts as viewed from an "inside" |                             |

perspective. Kelsch noted that the new system will present recruitment opportunities as it should allow more time for outreach.

O'Shea wondered about Kelsch's involvement in building this new management system; Kelsch relayed that she became a core member of the City's volunteer cooperative this year and was involved in the discussions about needs and wants.

O'Shea asked about feedback received so far – Kelsch noted that staff like the ease of features like mass-email communications. She also noted speaking to the Teen Services Librarian who reported that teen patrons are enjoying the new system and consider it a step up from the previous method.

O'Shea, considering the volunteers' assisting role to staff, wondered whether it would be possible for "volunteers [to] replace staff." Kelsch: it's a rare volunteer that wants to take on the "whole ball of wax;" the flexibility inherent in the role means that volunteers enhance programming, but they are not in a place to replace staff.

Kelsch noted the affinity for the library as evidenced by the commitment of hours given by library volunteers. BoulderReads and Homebound Delivery are two programs that O'Shea pointed out as engaging across community in valuable ways.

O'Shea questioned demographics; Kelsch had no hard data but has observed a large contingent of retired people.

Koenig pondered increasing the volunteer numbers and Kelsch noted opportunities with this during CSED week and with the bookstore.

The group thanked Kelsch.

**Agenda Item 5: Approve new Library Commission public comment guidelines [0:40:15 Audio min.]**

Koenig moved to adopt the public comment guidelines as drafted. Frost seconded, and the motion passed unanimously. O'Shea appreciated the efforts of Gomez and Phares during the refinement of this document.

**Agenda Item 6: Discussion: Library Commission recess for July [0:43:10 Audio min.]**

With annual retreat having occurred in March, commission is positioned to forgo the July meeting. As there are members that will be out of town or otherwise occupied, O'Shea moved to have a commission recess in July and to reconvene in August 2019. Koenig seconded and this motion was unanimously approved.

**Agenda Item 7: Library Commission Update [0:49:00 Audio min.]**

a. Items from Commission

- i. Commissioner update on outreach to stakeholders – County Commissioners currently reviewing the ~720 signatures gathered by petitioning efforts of the Library Champions (who have recently hired a campaign manager). Funding poll results created a "ripple" across City Council, with the May 7<sup>th</sup> council meeting indicating pushback around the validity of the poll. Discussion continued at the May 14<sup>th</sup> meeting around ballot initiatives where it became clear that council deemed the issue as "not attractive to put out in a public forum vote." Council Member Yates indicated that current council climate holds 5 votes to "opt out," creating a "donut district." City Attorney Tom Carr and City Manager Jane Brautigam indicated that city staff would encourage City Council to opt out (generally, City Council follows staff direction). Option to hold the petition results for later re-activation and create a working group. Gomez, Teter, and O'Shea have spoken with Council Member Young, Mayor Jones, and Council Member Brockett and report that there still appears to be confusion around what a district would represent. Council Member Young's feedback was helpful. Mayor Jones felt that the petition "forced the hand with City Council," not allowing enough time for a measured decision. Brockett has been an advocate for library districting. Planning to meet with Councilman Weaver tomorrow. Champions spoke with Patrick Sweeney who was favorable to the idea of a 2020 election despite the increased workload and funding need.

Farnan noted that another poll is to be conducted in June; the results are planned for a July 23<sup>rd</sup> presentation to council. Action on the petition would likely be necessary at the start of August. Koenig noted his confusion with the inquisition into the original pollster whose firm has national recognition for reliability. Farnan noted that the individual currently going through the hiring process has very different manner of inquiry from the former, but Farnan finds him "credible." Koenig expressed concern about competing with presidential election in 2020, though he understands the need. Koenig: positive momentum of library advocacy that has been gained

might dissipate.

ii. Alpine Balsam update

- b. Boulder Library Foundation update – Sykes Wilson reported that BLF kicked off a capital fundraising campaign for the north Boulder branch library, “Building Beyond Books,” by hosting a dinner for ~45 potential donors. She noted that WORKac presented an energizing session. BLF’s follow-up meeting indicated some pledges from private parties to assist in getting the word out. New website launched and logo is public. BLF will be in recess for June and July.
- c. Responses to patron emails from the Library Commission
- d. Library organizational structure – p. 17 of the [packet](#).
- e. Backstage tour of Main Library for commission – planned for August meeting, at 4:30PM (to be confirmed ahead of the meeting).

**Agenda Item 8: Library and Arts Director’s Report**

**[1:22:15 Audio min.]**

- a. Main Library restroom renovation officially began on May 30<sup>th</sup> and planned to conclude July 25<sup>th</sup>. More information at the following link: <https://boulderlibrary.org/featured/restrooms-closed-for-renovation/>. No major complaints yet about the temporary closure. Patrons observed reading the informational displays.
- b. North Boulder branch library project – Farnan reported that the last official community engagement session drew over 60 attendees. The newest architectural model is on display in the Canyon Gallery until June 9<sup>th</sup>. The site review process is expected to take up to 6 months. The project team plans an updated cost analysis in fall 2019.

**Agenda Item 9: Adjournment**

**[1:32:19 Audio min.]**

There being no further business to come before the commission at this time, the meeting was adjourned.

**Date, time, and location of next meeting:**

The next Library Commission meeting will be at 6 p.m. on Wednesday, August 7, 2019, in the Canyon Meeting Room at the Main Library, 1001 Arapahoe Ave., Boulder, CO 80302.

**Commissioner O’Shea approved these minutes on August 7, 2019; and Celia Seaton attested to it.**



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **HEADS UP! EMAIL ITEM**

Here is some important information on the city projects and issues.

### **PRIMARY STAFF CONTACT**

Karl Watkins, (please add position title)

### **REQUESTED ACTION OR MOTION LANGUAGE**

### **ATTACHMENTS:**

#### **Description**

- ▣ **Head's Up Email- August 2**

# Heads up! Heads up!

August 2, 2019

Dear City Council Members,

Here is some important information on the city projects and issues.

## **Knollwood Annexation election passes**

On July 30, 2019, the city held a special election for the qualified voters of the Knollwood neighborhood to vote on annexation into the City of Boulder. The vote passed with 87.5% in favor, 12.5% opposed. With these results, the final step in the annexation process is for City Council to adopt an ordinance annexing the area, with the same terms and conditions as was discussed on [March 19, 2019](#), as well as resolutions related to the assimilation of the Knollwood Metropolitan District. These items are scheduled for second reading on Sept. 3, 2019.

*If you have questions, please contact Kathleen King, senior planner, at 303-441-1898 or [KingK@bouldercolorado.gov](mailto:KingK@bouldercolorado.gov).*

## **City of Boulder news now included in Google News**

The Communication Department is pleased to share that City of Boulder news is now included in Google News.

Google News, [news.google.com](https://news.google.com), aggregates news content from around the world and receives more than 500 million visitors a day. The City of Boulder requested inclusion in Google News and Google approved the request last week; Google approves which news sources appear in its listings, which are also displayed above related search results (see the image below for an example).



News content from the city's online newsroom, [bouldercolorado.gov/newsroom](https://bouldercolorado.gov/newsroom), is now automatically pulled into Google News and appears alongside news from local and national media outlets. The Communication Department will be monitoring web traffic to measure the impact of this development.

The city's newsroom has been redesigned with a focus on the public, as opposed to solely the media, and is a one-stop destination for the latest city news, videos, photos and social media content. The Communication Department has made the online newsroom a core component of its communication efforts and launched a bimonthly citywide newsletter in June to help promote newsroom content.

*For additional information, please contact Communication Director Patrick von Keyserling at [vonkeyserlingp@bouldercolorado.gov](mailto:vonkeyserlingp@bouldercolorado.gov) or 303-441-4959.*

Regards,  
Jane



## **COVER SHEET**

### **MEETING DATE**

**August 20, 2019**

### **HEADS UP! EMAIL ITEM**

Here is some important information on public art.

### **PRIMARY STAFF CONTACT**

Karl Watkins, Communication Coordinator

### **ATTACHMENTS:**

#### **Description**

No Attachments Available