



Lone Tree City Council Agenda Tuesday, October 7, 2014

Meeting Location: City Council Meeting Room, Lone Tree Civic Center, 8527 Lone Tree Parkway.

Meeting Procedure: The Lone Tree City Council and staff will meet in a public Study Session at 4:30pm. At 6:00pm and following the meeting, if necessary, the Council Meeting will adjourn and convene in Executive Session. If an Executive Session is not necessary, Council will recess for dinner. The Regular Session will be convened at 7:00pm. Study Sessions and Regular Sessions are open to the public, Executive Sessions are not. Comments from the public are welcome at these occasions: 1. Public Comment (brief comments on items not scheduled for a public hearing) 2. Public Hearings. Contact the City Clerk if special arrangements are needed to attend (at least 24 hours in advance).

4:30pm Study Session Agenda

1. Building and Zoning Code Updates
 2. Economic Development Plan
 3. Approval of Public Improvement Project Designation Addendum No. 1 Master IGA w/Park Meadows MD re: widening of I-25 ramp at Lincoln Ave. (Current Agenda Item)
 4. Approval of Revised IGA w/Douglas County re: Snow Removal on Lincoln Avenue and County Line Road (Current Agenda Item)
 5. Approval of Southeast Public Improvement MD IGA (Current Agenda Item)
-

6:00pm Executive Session Agenda

1. Roll Call
 2. Executive Session
-

7:00pm Regular Session Agenda

3. Opening of Regular Meeting/Pledge of Allegiance
4. Amendments to the Agenda and Adoption of the Agenda
5. Conflict of Interest Inquiry
6. Public Comment
7. Announcements
8. Consent Agenda
 - a. Minutes of the September 16, 2014 Regular Meeting
 - b. Claims for the Period of September 8-29, 2014
9. Community Development
 - a. Approval of SIP 3rd Amendment to Douglas County SIP#2011-037 (Kaiser Building 3) Project #SP13-48
 - b. **Public Hearing:** Approval of 1st Amendment to Annexation & Development Agreement w/Kaiser Foundation Hospitals (for vesting)
10. Public Works
 - a. Approval of Public Improvement Project Designation Addendum No. 1 Master IGA w/Park Meadows Metro District re: widening of I-25 ramp at Lincoln Ave.
 - b. Approval of Revised IGA w/Douglas County re: Snow Removal on Lincoln Avenue and County Line Road
11. Administrative Matters
 - a. **Public Hearing, Ordinance 14-04, AMENDING, RESTATING AND APPROVING A FRANCHISE AGREEMENT WITH QWEST BROADBAND SERVICES INC.,**

**D/B/A CENTURYLINK, TO PROVIDE CABLE SERVICES IN THE CITY
(Second Reading)**

- b. Approval of Southeast Public Improvement Metro District IGA to Support the Lone Tree Link Circulator Shuttle Service

12. Council Comments

13. Adjournment

City of Lone Tree Upcoming Events

more info available at www.cityoflonetree.com and www.lonetreeartscenter.org

- Seedlings: Sven the Juggler - Tuesday, October 7, 2014 at 9:30 and 11:00am
- Arts in the Afternoon: Serenade - Wednesday, October 8, 2014 at 1:30pm
- CJRO (Colorado Jazz Repertory Orchestra): A Night in New Orleans, featuring Byron Stripling - Friday, October 10, 2014 at 8:00pm
- Passport to Culture: Mad Science - Sunday, October 12, 2014 at 3:00pm
- Bonfils Community Blood Drive - Monday October 13, 2014 9:30am – 4:30pm Civic Center
- Colorado Symphony Orchestra: Beethoven's Symphony No. 5 - Sunday, October 19, 2014 at 7:30pm

**MINUTES OF A REGULAR MEETING
OF THE COUNCIL OF THE
CITY OF LONE TREE
HELD
September 16, 2014**

A regular meeting of the Council of the City of Lone Tree was held on Tuesday, September 16, 2014, at 6:00 p.m., at the Lone Tree City Council Chambers located at 8527 Lone Tree Parkway, Lone Tree, Colorado 80124.

Attendance

In attendance were:

James D. Gunning, Mayor
Jacqueline Millet, Mayor Pro Tem
Harold Anderson, Council Member
Kim Monson, Council Member
Susan Squyer, Council Member

Also in attendance were:

Seth Hoffman, City Manager
Jennifer Pettinger, City Clerk
Steve Hebert, Deputy City Manager
Jeff Holwell, Economic Development Director
Chief Jeffery Streeter, Lone Tree Police Department
Heather Lunde, Accountant
Kelly First, Community Development Director
Lisa Rigsby Peterson, Lone Tree Arts Center Director
Neil Rutledge, City Attorney, White, Bear and Ankele, P.C.
John Cotten, Public Works Director, TTG Corp.

Call to Order

Mayor Gunning called the meeting to order at 6:08 p.m., and observed that a quorum was present.

Executive Session

Mayor Gunning announced City Council intends to convene in Executive Session. Neil Rutledge, City Attorney, stated the Executive Session is for two different matters: First, is for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402 (4)(e) concerning issues related to cable franchise agreements. Second, is for discussion of a personnel

matter under C.R.S. Section 24-6-402(4)(f)(I) and it does not involving any specific employees who have requested discussion of the matter in open session.

Council Member Squyer moved, seconded by Council Member Anderson, for City Council to recess and convene in Executive Session for the reasons stated. The motion passed with a vote of 5-0.

Council adjourned to an Executive Session at 6:09 p.m.

The Executive Session was adjourned at 6:34 p.m.

Mayor Gunning reconvened the meeting in Regular Session at 7:01 p.m., following a short recess.

Pledge of Allegiance

Mayor Gunning led those assembled in reciting the Pledge of Allegiance.

Amendments to the Agenda

There were no amendments to the agenda.

Conflict of Interest

There was no conflict of interest.

Public Comment

There was no public comment.

Announcements

Michelle Timmons, Youth Commissioner, gave Council an update on the Youth Commission.

Mayor Gunning announced upcoming events.

Consent Agenda

Mayor Gunning noted the following items on the Consent Agenda, which consisted of:

- *Minutes of the September 2, 2014 Regular Meeting*
- *Claims for the period of August 25 – September 8, 2014 as amended with check #22004 payable to Wagner Equipment instead of Wagner Barnes*
- *Treasurer's Report for July 2014*

Council Member Squyer moved, Mayor Pro Tem Millet seconded, to approve the Consent Agenda as amended. The motion passed with a vote of 5-0.

Administrative Matters

ORDINANCE 14-04, AMENDING, RESTATING AND APPROVING A FRANCHISE AGREEMENT WITH QWEST BROADBAND SERVICES INC., D/B/A CENTURYLINK, TO PROVIDE CABLE SERVICES IN THE CITY (First Reading)

Neil Rutledge, City Attorney, introduced the item. Jack Campbell, Century Link spoke about the franchise agreement

Council Member Monson moved, Council Member Squyer seconded, to approve **ORDINANCE 14-04, AMENDING, RESTATING AND APPROVING A FRANCHISE AGREEMENT WITH QWEST BROADBAND SERVICES INC., D/B/A CENTURYLINK, TO PROVIDE CABLE SERVICES IN THE CITY** on first reading. The motion passed with a vote of 5-0.

Adjournment

There being no further business, Mayor Gunning adjourned the meeting at 7:27 p.m.

Respectfully submitted,

Jennifer Pettinger, CMC, City Clerk



CITY OF LONE TREE STAFF REPORT

Project Summary

- Date:** October 7, 2014 City Council Meeting
- Project Name:** Heritage Hills Filing 2, 3rd Amendment, Lot 9-A (Kaiser South Multi-Specialty Care Center)
- Location:** The project is located on approximately 20 acres west of Park Meadows Drive, across from the Lincoln Light Rail Station.
- Project Type / #:** Site Improvement Plan, Project File #SP13-48, third amendment to Douglas County SIP#2011-037
- Staff Contacts:** Kelly First, Community Development Department Director
- Meeting Type:** Public Meeting

Summary of Request:

Approval to amend the Kaiser Permanente SIP for approval of a third medical office building, a second parking structure and other related improvements as described in the report.

Planning Commission Recommendation:

Approval of the SIP amendment by a 6-1 vote, subject to two conditions, one of which has been satisfied with a revised note on the SIP.

Suggested Action:

Approval, subject to final approval by the City Public Works Department.



**CITY OF LONE TREE
STAFF REPORT**

TO: Mayor Gunning and City Council

FROM: Kelly First, Community Development Director

DATE: September 26, 2014

FOR: October 7, 2014 City Council meeting

SUBJECT: Heritage Hills Filing 2, 3rd Amendment, Lot 9-A (Kaiser South Multi-Specialty Care Center)
Site Improvement Plan, Project File #SP13-48, third amendment to Douglas County SIP#2011-037

Owner:
Kaiser Foundation Health Plan of Colorado
Mike Schultz
10350 East Dakota Ave
Denver, CO 80247

Representative:
Davis Partnership Architects
Jeff Stoecklein
2301 Blake Street Suite 100
Denver, CO 80205

Planning Commission Meeting Date:
City Council Meeting Date:

September 9, 2014
October 7, 2014

A. REQUEST:

Approval to amend the Kaiser Permanente SIP as follows:

- Addition of a third, 150,000 square foot medical office building located directly northeast of the existing building;
- Addition of a second, 6-level parking garage with rooftop solar panels, located at the north end of the site;
- Associated modifications to surface parking, internal circulation and landscaping on the site;
- Rooftop solar panels on the previously approved, but not yet constructed, south parking garage; and

- Building material options for Buildings Two and Three and each parking garage, subject to final approval by the Planning Commission.

B. LOCATION:

The site is located on approximately 20 acres west of Park Meadows Drive, across from the Lincoln Light Rail Station. Adjacent land uses are as follows:

East: Park Meadows Drive and Lincoln Station uses beyond
West: Heritage Hills single-family residential
North: Multi-family apartments
South: Undeveloped land and parking lot associated with office use

C. SITE CHARACTERISTICS:

The entire site is currently developed and consists of Building One, surface parking, landscaping and associated site features. Future buildings and parking structures will replace some existing surface parking.

D. SERVICE PROVIDERS:

Water: Southgate Water District
Sanitation: Southgate Sanitation District
Police: Lone Tree Police
Fire: South Metro Fire Rescue Authority
Metro Districts: Lincoln Station and Southeast Public Improvement Metro District

E. BACKGROUND:

The original SIP for the Kaiser South campus was approved by Douglas County in 2011, prior to annexation of the property into the City. The SIP contemplated that the property would be developed in phases, with a total of three buildings, structured parking and related improvements. The SIP included specific designs for Buildings One and Two and the first parking structure. Building One was constructed and opened to the public late in 2013. Building Two and the parking garage have not yet been constructed.

In 2012, the City annexed the property, known as Lot 9-A, (as well as a 5-acre property also owned by Kaiser on the east side of Park Meadows Drive). The City accepted the County Planned Development zoning and the approved SIP without changes. The corresponding Annexation Agreement between the City and Kaiser stipulates that Kaiser has the right to develop Lot 9-A with a third medical office building, an additional parking structure and associated modifications to the site, subject to the City review process.

There are no immediate plans to construct additional phases of the campus, although the applicant is seeking amendment to the SIP at this time in anticipation of build out as market conditions warrant.

F. DESCRIPTION:

Zoning. The property is zoned PD as part of the Heritage Hills Planned Development and is also governed by the Heritage Hills Filing No. 2 Framework Plan for Lincoln Station.

Access and traffic. There are three existing access points to the property from Park Meadows Drive and there are no changes to access required or proposed with this amendment. The applicant has provided a Traffic Impact Analysis Addendum to account for full build out of the campus. That analysis is attached for informational purposes and has been deemed acceptable by the City's Public Works Director. The existing southern access drive (#9a) will be signalized upon meeting warrants, as further described by General Note #2 on Sheet 1 of the SIP.

An existing traffic signal at Train Station Way and Park Meadows Drive provides a safe pedestrian crossing between the station and the medical campus. A hierarchy of sidewalks is provided along the street and internal to the campus, providing clear, safe routes through the parking areas and to the buildings.

Parking.

Parking spaces. The project is in compliance with the City's parking regulations. The required parking ratio was established by the original SIP at 4.3 spaces/1000 square feet or 645 spaces required for Building Three. There are 698 spaces provided with this amendment. Although the property is eligible for a reduction in the required amount of parking due to proximity to light rail, the

applicant is proposing parking based on their experience and anticipated needs at this site. Staff supports the use of structured parking to minimize the visual and environmental impacts of surface parking.

Parking garage design. The proposed north parking garage is six levels, plus a parapet. The design is very similar to that of the approved south parking garage, although the south garage is four levels. The design incorporates varied forms and materials that are in keeping with the design of the first medical office building, including a curtain wall system of spandrel glass, as well as brick, metal and concrete masonry units. A portion of the wall is a “green screen”, consisting of vines or other vegetative material. (Examples of green screens are included in the packet).

Both the approved south parking garage and the proposed north garage are proposed to have solar panels on the rooftop, as generally depicted with the SIP. As construction may be several years out and the technologies and costs associated with solar may change, the panels are depicted for reference only. Prior to issuance of a building permit, the specific location and design of the panels would be approved administratively by staff, as is currently provided for by the City Zoning Code. General Note #5 on Sheet One of the SIP is included to clarify this intent.

Building Design. Building Three is 150,000 square feet and has three stories, plus a partial garden level. The proposed design for Building Three is very similar and complimentary to Buildings One and Two, and will consist of similar architectural lines, materials and colors. Staff finds it is consistent with the zoning documents and City Design Guidelines.

Material Options: The construction of future phases may not take place for several years; therefore, the applicant is requesting the ability to defer final selection of exterior building wall materials until such time as construction is imminent and the availability and cost of materials can be evaluated. The SIP proposes three options: match the granite and terra cotta materials used on Building One, or use either gray or orange brick to match colors on Building One. The options are illustrated in the attached colored elevations. Prior to a building permit, the applicant will select specific materials and colors that will be subject to City review and approval by the Planning Commission. (The applicant proposed administrative approval, if the material selection was consistent with one of the options presented. However, the Planning Commission felt that the

process should go through the Planning Commission for approval. The applicant agreed to that change and General Note #4 on Sheet One of the SIP stipulates Planning Commission approval of building materials.)

Landscaping. The proposed landscape and irrigation plans are a continuation of the existing landscape design and are compliant with the City's requirements and that of the approved SIP. A landscape buffer is provided to help screen the campus from future homes to the west, along with the existing Heritage Hills brick wall already in place. Enclosed are cross sections and perspectives to show the approximate relationship of grade along the west property line.

Lighting. Street lights and pedestrian lights are compliant with the approved SIP. Security lighting is fully cut-off to minimize light pollution.

G. PLANNING COMMISSION REVIEW:

The following has been taken directly from the minutes of the September 9, 2014 Planning Commission meeting:

Ms. Kelly First provided a brief introduction of the project that proposes to add a third building and parking structure, rooftop solar on the garages, and plans for optional building materials for the future buildings at the Kaiser Permanente campus. Ms. First stated that staff finds the application in compliance with City regulations and zoning and recommends approval, subject to final approval by the Public Works Department.

Ms. First responded to a question by Commissioner Godden, that the Site Improvement Plan would also serve as a Site Specific Development Plan for the purpose of vesting, and would vest the property for a period of ten years. Vesting would lock in existing zoning requirements, but she added that the applicant would still be required to comply with future changes in the City's building code.

Mr. Mike Shultz, Project Manager for Kaiser Permanente, made some brief opening remarks about the Kaiser Permanente proposal, and introduced the project architect, Jeff Stoecklein, from Davis Partnership Architects.

Mr. Stoecklein stated that Kaiser Permanente has always anticipated a third building that will complement the existing building on the campus. Their design objectives include a walkable and sustainable development with outdoor spaces that offers various experiences and provides a

connection to nature. The addition of a second parking garage will reduce surface parking and enhance the outdoor experience with the addition of open space. They have coordinated with Celebrity Homes (the residential development to the west), to minimize impacts through enhanced landscaping on the west side of their building.

Mr. Stoecklein talked more about the location of surface parking near the entry to accommodate visitors that may be ill, and mentioned that the entrances to the parking garages were sited to provide good traffic/pedestrian circulation. He elaborated on some of the building materials including the sun shades and mechanical systems that will create a more sustainable building.

Mr. Stoecklein discussed options for building materials for future buildings that, if used, will maintain a cohesive look at the campus. Optional materials that could be used in the future, should such be needed due to a lack of material supplies or high material costs, include the use of orange and grey brick to replace the terra cotta and granite materials used today. The parking structures will have the same look, but will integrate the use of "green screens" (the addition of climbing vines) along portions of the parking garage. He showed proposed landscaped areas that will be created by the new buildings, including a courtyard with seating for use by patients, staff and visitors.

Commissioner Godden asked for a clarification on the fence to be constructed "by others." Ms. First stated that this is an existing fence on the Celebrity Homes (Heritage Hills) side and showed a photograph of that brick fencing. Commissioner Godden asked for information on the detention and drainage of the site. Mr. Stoecklein stated that there is above ground detention at the southeast corner of the site goes through outlets under Park Meadows Drive. The drainage for the majority of the site will use underground drainage pipes that connect to the west through Heritage Hills. Commissioner Godden recommended better illustrations for the City Council packet, including what can be seen by the pedestrian from Heritage Hills and from Park Meadows Drive, and illustrations of what the site looks like at buildout.

Commissioner Carlson asked what electrical needs the solar panels mounted on the garages will serve. Mr. Schultz responded that they have not done that analysis, but it is possible that it will generate enough electricity for parking garage lighting and exterior lighting. Commissioner Carlson asked whether they were pursuing LEED certification. Mr. Schultz answered that they were pursuing Gold certification, and that LEED Silver was achieved for Building One.

Commissioner Kirchner complimented the design of the existing building, stating that the architecture is distinctive. He likes the addition of solar. He also felt that the use of grey brick as an option was less appealing than the existing building materials, and felt it important to maintain the orange color. He added that he likes the use of glass and bringing a feeling of “the outside in” to the buildings.

Commissioner Kline asked about the parking ratios and whether the 5 spaces per thousand square feet creates too massive of parking structures, particularly with their neighbors who may experience a shadowing effect. Mr. Stoecklein responded that the parking ratios were consistent with the other buildings and that one parking level will be below grade, which will help minimize the parking impact.

Commissioner Kline asked whether the garage rooftop parapet screening will screen parking. Mr. Stoecklein responded that the parapet will screen parking, but not the solar panels. Commissioner Kline asked if there would be a granite component. Mr. Stoecklein responded that yes, but they would like the flexibility of using brick to match. Commissioner Kline expressed concern with the use of orange brick, and stated he preferred the terra cotta materials. He added that he likes the use of the green screens and the solar. He expressed concern with traffic impacts at the intersection of Park Meadows Drive and Lincoln Avenue, projected to be at an “F” service level.

Commissioner Mikolajczak stated that he was hoping to see better graphics and samples of the building materials, and recommended that the applicant provide such to City Council. He expressed strong support for the existing building, finding it open and inviting, with a contemporary look. He felt the addition of the two new buildings will help to engage the street, and he likes the uses of glass curtain walls and sunshades. He expressed concern for the possible use of orange brick trying to look like terra cotta and some concern for the grey brick. He recommends keeping the terra cotta.

Commissioner Mikolajczak asked if the solar panels will be angled. Mr. Stoecklein responded that they will be and will cover the majority of the garage roofs, with the exception where the ramps are to be located. Commissioner Mikolajczak stated that he likes the overall design, including the green wall, the care taken to make the site nice for the adjoining residences, and the open spaces.

Commissioner Steele stated he found Building One extremely attractive and distinguishable. He asked whether the campus will have a regional draw. Mr. Schultz responded that it would likely draw from the south Metro area, and for specialty services, from Castle Rock, Parker,

Highlands Ranch, Littleton and Lakewood. Commissioner Steele inquired about their hours of operation. Mr. Schultz stated 8:00 am to 5:00 pm for the most part, with imaging services up to seven days a week. Some services may operate seven days a week.

Commissioner Steele asked when most staffing would arrive, and whether they will likely use light rail. Mr. Schultz stated that many staff would arrive early and leave late and had no estimates or incentives in place for staff to use light rail. Commissioner Steele stated his overall concern relates to density of building in the area at buildout, and the concern for traffic and pedestrian conflicts trying to cross Park Meadows Drive to access light rail. He expressed concern with the amount of signalization that will occur along this corridor, causing a lot of stop and go movements. He asked whether Kaiser Permanente owns property east of Park Meadows Drive, and Mr. Schultz responded that Kaiser Permanente owns five acres. Commissioner Steele expressed concern for integrating cars and pedestrian activity between the buildings across Park Meadows Drive.

Commissioner Steele asked about building signage, and expressed support for clearly labeling buildings and installing signage to direct visitors and patients to the campus. Mr. Schultz responded that they will address and mitigate that issue to ensure visitors can navigate their way through the campus.

Commissioner Sippel shared her concern regarding traffic volumes at peak travel periods, and concern for added traffic from the additional apartments under construction in the area. She said that she likes the building design and expressed a preference for rusty, terra cotta color, instead of what she described as a salmon color. In the drawings, she prefers the use of grey brick over the current salmon-orange color brick. She expressed strong concern with providing flexibility in color and materials and not having a material sample board with which the Planning Commission can view the optional materials.

Commissioner Sippel asked about the weeds on the southwest side of the site, and the fact that trees in this area were planted too close together. Mr. Stoecklein responded that the plans always show symbols of landscaping at their mature size to account for spacing, but that they did install more dense plantings on the west side for screening purposes, at the request of Celebrity Homes. Mr. Stoecklein added that many trees along the west side are dwarf species that may get only 12 feet in diameter.

Commissioner Sippel recommended the graphics be better labeled, particularly the photos and cross sections. She asked whether the screen

wall graphic was taken from photos from Colorado. Mr. Stoecklein responded that they can get photos from Colorado.

There was discussion by the Planning Commission members and general agreement expressed for requiring Kaiser Permanente to bring the final material boards and colors back to the Planning Commission in the future for approval by the Commission.

Commissioner Mikolajczak motioned to recommend approval of #SP13-38 with the following two conditions:

1. Final approval of the SIP is subject to approval by the City Public Works Department; and
2. Prior to issuance of building permits for Buildings Two and Three and each parking structure, the applicant shall submit specific building color and materials samples for review and approval by the Planning Commission.

The motion passed by a 6-1 vote. The dissenting vote by Commissioner Kirchner was in opposition to the second condition; not to the project. He felt that the condition defeated the purpose of the applicant's request for some degree of flexibility in making final material and color selections at the time of construction through a simplified, administrative process.

H. REFERRALS:

Referral agency comments have been of a general, instructional nature and no concerns or objections were raised. All Lone Tree Homeowners Associations were sent a referral and the project has been posted on the City web site. No HOA or homeowner comments were received. Single family homes have not yet been constructed in Heritage Hills near the northwest corner of this property; however, the applicant has been in contact with Celebrity development to coordinate issues of grade and landscaping.

I. STAFF FINDINGS AND RECOMMENDATION:

Staff finds that the application is in conformance with the SIP requirements of the Lone Tree Zoning Code, the Subdivision Code, the Comprehensive Plan, and the applicable PD zoning documents.

The condition of approval recommended by the Planning Commission regarding their approval of building materials has been accepted by the

Kaiser South Multi-Specialty Care Center
Site Improvement Plan amendment
Project File #SP13-48

applicant and is reflected in the revised plan. Therefore, staff recommends:

Approval of the SIP amendment, subject to final approval by the City Public Works Department.

END

City of Lone Tree

Department of Community Development
9220 Kimmer Drive Suite 100
Lone Tree, CO 80124
Ph: 303-708-1818 Fax 303-225-4949

DEVELOPMENT APPLICATION FORM

PROJECT NAME: Kaiser Permanente SIP 3rd amdt. PROJECT FILE # SP13-48

REQUEST: SIP amendment for building 3 and parking structure

SITE LOCATION: 10240 Park Meadows Dr
Littleton, CO 80124
(Nearest Intersections)

DATE SUBMITTED: 3-2-14

OWNER:

Name: Mike Schultz - Kaiser Foundation Health Plan of Colorado

Address: 10350 East Dakota Avenue
Denver, CO 80247

Phone: (303) 344-7796 FAX:

FEES: 1000 -

(Engineering fees are not included)

AUTHORIZED REPRESENTATIVE:

Name: Jeff Stoecklein

Fax:

Address: 2301 Blake St, Suite 100
Denver, CO 80205

Email: Jeff.Stoecklein@davispartnership.com

Phone: (303) 861-8555 Business/Project Name: Davis Partnership Architects

LEGAL DESCRIPTION (site address): A PORTION OF THE E 1/2 OF SECTION 10, TOWNSHIP 6 SOUTH, RANGE 67 WEST OF THE 6TH P.M., DOUGLAS COUNTY, COLORADO. PLANNING AREA 10 AND 12

PROJECT INFORMATION:

Subdivision Name: Heritage Hills Filing #: SP13-48 Lot # (if appropriate): 9-A Block #:
Planning Area # (if PD) 10 AND 12

PRESENT ZONING: PD (When rezoning) - PROPOSED ZONING

GROSS ACREAGE: 20.101 ACRES # of units (residential)

Unit type:

FIRE DISTRICT: METRO DIST:

WATER: ELEC:

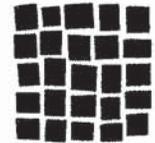
SEWER: GAS:

Further submissions pursuant to this application may include any and all development proposals, submissions, applications and procedures that may be made or initiated under the City of Lone Tree Charter, ordinances, rules, regulations, guidelines or policies including, without limitation, those for any of the following: (i) annexation; (ii) zoning or re-zoning, including any development plan for zoning within the Planned Development (PD) District; (iii) preliminary PD or PUD site plan, or related design guidelines or development standards; (iv) final PD or PUD site plan; (v) Site Improvement Plan; (vi) any master or general development plan, sub-area plan, site plan or similar development plan, however denominated, which may be provided for under any PD development plan or any other zoning; (vii) Sketch Plan, Preliminary Plat or Final Plat; or (viii) any amendment made to any of the foregoing, as applied for or as approved. *To the best of my knowledge, the information contained on this application is true and accurate.*

APPLICANT SIGNATURE: Jeff A. Stoecklein

Date: 3-2-14

APPLICANT'S NAME (PRINTED): JEFFREY A. STOECKLEIN



DAVIS
PARTNERSHIP
ARCHITECTS

April 30, 2014

Lone Tree Site Improvement Plan - Amendment
South Multi-Specialty Care Center – Building 3

I. Project Representative

Mike Schultz
Kaiser Foundation Health Plan of Colorado
10350 East Dakota Ave.
Denver, CO 80231-1314

II. Project Location:

Heritage Hills (Filing No. 2 Framework Plan) Lot 9-16 & Tract C

III. Project Zoning:

Heritage Hills PD

IV. Development Impacts:

There are no development impacts to this planned Amendment to the existing SIP. Offsite utilities and drainage were considered for full build out of this property. Work for Building Three will be within the limits of the existing property.

V. Project Narrative

The overall vision for this development is to expand on the first phase that is currently constructed as a specialty medical office building. This SIP Amendment adds a third future medical office building to the medical campus that will provide services to the community for medical, clinical, day surgery and office visit use for medical appointments, within an overall health atmosphere that reflects the Kaiser Permanente vision in both the interior and exterior environments.

The additional building is situated in a way that will still allow the site as planned to be a walkable, dynamic and sustainable environment that can serve as a passageway to the Lincoln Station Transit as well as provide outdoor spaces of various experiences and support Kaisers Total Health Environment mission for staff, patients and visitors. It is an environment that draws people in and is very connected to the surroundings by taking advantage of views and sun exposure.

DENVER OFFICE
2301 Blake Street, Suite 100
Denver, CO 80205-2108
T 303.861.8555
F 303.861.3027

VAIL OFFICE
0225 Main Street, Unit C101
Edwards, CO 81632-8113
T 970.926.8960
F 970.926.8961

www.davispartnership.com

Building One was completed and open to the public in late 2013. The building consists of 210,000 square feet of specialty medical services including pharmacy, general surgery, ophthalmology, allergy, cardiology, neurology, plastic surgery, GI, Oncology, Physical Therapy, Clinical Lab, and Medical Imaging. A second building and parking structure was proposed as part of the original SIP to include 150,000 square feet of additional medical offices. This amendment request is to include a third building and associated parking structure which will also include an additional 150,000 square feet of medical offices.

Site Plan: The attached SIP Amendment includes concepts for parking, walkways, building location and general site geometry. The Lincoln Station Framework Plan was used as the guiding document for the site layout. The attachments show the site geometry for the additional Building Three in its context with Building One and Building Two. Full build out parking is also shown. Lone Tree and the existing Lincoln Station Framework plan parking counts will be met in each phase, but full build out parking ratios shown are at Kaisers preferred 5/1000 square feet ratio. Separation of pedestrian and vehicular traffic are important safety concerns that Kaiser will address within their development by providing clearly defined drop-off locations and safe pedestrian/vehicular circulation zones. ADA parking ratios will be met for all constructed parking and a shuttle service will be provided for the ADA parking associated within the parking structures. Parking will be used as an opportunity to provide a pleasant and supportive experience for visitors.

Existing and Proposed Grades: Proposed grading is shown to work with the current building and parking lots but will also accommodate both future Building Two and Building Three additions. All ADA access paths are graded accordingly. Site walls will be incorporated into the design as needed.

Drainage: The site is split into two major drainage basins. The southern portion of the site drains to a culvert crossing Park Meadows Drive. In-site runoff in this portion of the site is currently treated and detained within the project limits before releasing at a controlled rate to the existing culvert. The remainder of the site drains west and north and has been coordinated with the development to the west to convey undetained developed flows through the development to a regional detention pond within Lone Tree. The regional detention pond has been sized to provide detention and water quality for the Kaiser site, including all three Buildings.

Building Elevations: Building Three (building height of 6010.33) and Parking Garage (garage height of 6000.00, including parking lot lighting and solar panels) are designed to fit under the Centennial Airport Height Restriction (contour elevation of 6033). Building elevations demonstrate a variety of materials, building overhangs, decks and rooftop/mechanical screening all to provide interest for the character of the building and are intended to complement Building One. Due to fluctuating market prices and unknown project budgets, Buildings Two and Three have been updated with material options that provide some level of flexibility for the future development. However, all material options shown continue to create a sense of medical campus by matching or complimenting the existing colors of Building One. Building Tree will be 3 stories with a partial garden level. The addition of a third building on the site will require the construction of a 6 level parking garage with the first level being below grade. Both parking structures are planned to have solar panels included on the top parking decks as shown on the elevations. The intent is to integrate the panels structurally on the top levels; both helping to support and minimize visual impact, specifically glare, on adjacent properties. If feasible, solar panels will be held away from the outer perimeter of the garage to further reduce visibility from the ground plane.

Landscape Plans: The site landscape design will focus on continuation of the existing theme to integrating nature to create pleasant spaces, safe paths of travel for pedestrians; attractive landscaping elements; protection from the sun, wind, and rain; simplified signage and wayfinding; separation of pedestrians from vehicles; respite areas; short term waiting with seating options; and provide a “connection” to nature rather than just observing it. Entrances are designed that welcome people to the building, and organizes functional requirements and amenities. The Lincoln Station Framework Plan was used as a guiding document for the landscape with the majority of the site planted with Phase One construction.

9222 Teddy Lane
Lone Tree, Colorado 80124



Ph: 303-662-8112
Fax: 303-792-9489
www.cityoflonetree.com

CITY OF LONE TREE

Department of Public Works

Jun 6, 2014
Updated 9/2/14

City of Lone Tree
Kelly First, Planning Manager
9220 Kimmer, Suite 100
Lone Tree, CO 80124

Re: SP13-48 – 3rd Amend (Kaiser)
Bld. #3 & Parking Structure #2
Project No. 061-326

Dear Kelly:

Per your request, I am providing an “UPDATE” to our prior review comment letter the SIP referral dated 5-19-14 for the above referenced Project.

The 5-19-14 SIP package submitted and reviewed consists of the following documents:

- 3rd Amendment to Site Improvement Plan (14 sheets), dated 4/30/14, by Davis Partnership Architects.
- Traffic Impact Analysis Addendum, dated 6/6/13, by Felsburg Holt & Ullevig.
- Application Package, with narrative letter dated 4/30/14 by Davis Partnership

Comments are provided below: *Updated comments are provided in “bold italics”.*

General Comments

1. The Public Works/Engineering SIP Review fee for this Project, per the adopted standard review fee schedule (see attached - re: SIP – Major Amendment) is \$5,500.00. Per the Kaiser Annexation Agreement, City applied fees should not exceed the similar Douglas County fees that would have been applicable at the time of the fee charge. The current Douglas County applicable fee schedule (available on-line from Douglas County) also shows \$5,500.00 (see attached excerpt). The \$5500.00 payment should be made out to “City of Lone Tree” and delivered to my attention at Public Works. ***We have no record of receipt of this payment as of 9/2/14.***
2. A Site Improvement Plan Improvements Agreement (SIPIA) is not anticipated to be required for the proposed Project.
3. A Grading, Erosion and Sedimentation Control (GESC) Permit will be required for this Project. No site work may begin prior to issuance of the GESC Permit.
4. Since this project will exceed one (1) acre of disturbed area, the developer must obtain a State Stormwater Construction Permit from the Colorado Department of Public Health and Environment (CDPHE), in addition to the City of Lone Tree issued GESC Permit.

5. Those sheets within the SIP set for which we have specifically identified comments are listed below. Comments provided also may apply to other sheets/locations in the Project documents. The applicant's professional(s) should verify that the item(s) are addressed throughout the related Project documents consistently, as applicable.
6. Site Stormwater: The previous Drainage Report (dated 8-30-11, as approved by Douglas County – prior to the annexation), appears to have considered the proposed ultimate development of the site (including Buildings No. 1, 2 & 3, and parking decks). However, the report included drainage Map (Sheet C3.51) does not show the ultimate condition layout. We believe from the information on-file that the proposed ultimate design build-out concept will be in general conformance with the already approved Drainage Report and stormwater collection system. However, we recommend/request that prior to approval of the SIP, the Engineer provide a signed/sealed Drainage Conformance Letter, with applicable attachments, outlining and/or confirming the following:
 - a. Revisions to the drainage system presented in the Drainage Report (drainage sub-basins, storm inlet types and/or locations, storm piping revisions) necessary to accommodate the ultimate development concept indicated in the SIP.
 - b. Confirmation that the “revised” system (inlets/piping) adequately will handle (intercept/transmit) the anticipated major storm (100-yr event) flows.
 - c. Confirmation that the “revised” flows to the east to Detention Pond A are still in conformance with the approved design for Pond A.
 - d. Confirmation that the “revised” Kaiser site flows west into the Heritage Hills storm system will remain within the Q5=48.4 cfs & Q100=96.0 cfs allocations for the Kaiser site (e.g.). (The Kaiser Drainage Report currently indicates the Kaiser site flows at this location as Q5=37.5 cfs & Q100=82.1 cfs).

A subsequently provided Drainage Conformance Letter (dated 6/13/14, by S.A. Miro) was provided, meets the requirements at this time, and has been accepted and placed in the Project file.

Specific Comments

1. Sheet 1:
We recommend General Note #1 discussing Trip Generation issues should be removed. Exclusion for this Kaiser site from the Trip Generation Budget limits and the need for an associated amendment to the Heritage Hills PD already is addressed within the Annexation Agreement. ***Per the 7/16/14 comment response letter by Davis Partnership, this note has been removed.***
2. Sheet 2:
General Note #1 should be removed (see preceding comment). ***Per the 7/16/14 comment response letter by Davis Partnership, this note has been removed.***
3. Sheets 3 – 8, and 11 - 13:
Information on these sheets is not part of typical engineering review scope. We have no comments.
4. Sheets 9 & 10:
These sheets show proposed general grading to incorporate the ultimate build-out. While we have no objection to the overall concept indicated, we note the following:
 - a. Some additional spot elevations are needed to better define the proposed grading and the drainage

patterns in the parking lot and drives between Building No. 3 and Parking Structure No. 2 (on Sheet 9). *A subsequent resubmittal of this sheet, with additional spot elevations was provided to our office, and is acceptable for SIP purposes.*

- b. A retention wall (for grading) is proposed at the north-west corner of Building #3. The information shown indicates portions of this wall are over the maximum 4' foot height above which sealed structural wall design documentation typically is required. Since this wall is "connected" to the Building, any associated wall submittal requirements normally will be addressed through the Building Department /Building Permit review process. *Per the 7/16/14 comment response letter by Davis Partnership, the requested structural evaluation will be provided to the Building Department as part of the applicable building plans submittals.*
5. Sheet 14:
The indicated parking lot striping appears reasonable. We have no further comment(s) on this sheet at this time.

Traffic Impact Analysis Addendum:

1. The letter (pg. 3, Summary and Conclusions, 2nd bullet and Figures 3 & 5 – Short Range Traffic Conditions) indicates that Access Locations 7 & 8 (e.g. the existing north and center drive connection/intersections to Park Meadows Drive), *"...are to be signalized with completion of Buildings 1 and 2"*. At the time this TIA Addendum was written, signalization of these two intersection may not have been completed. However, the signalization was planned and in process, and is now installed.
2. The TIA Addendum (Figures 3, 4, 5 & 6) indicates anticipation that Access Location #9a (e.g. the southern of the currently existing drive connections, the one at the immediate south of future Building No. 2) will be signalized as part of the future site expansions. Addition of the signalization Access Location (#9a) would occur when traffic warrants support the additional signalization. If warrants support the signalization at the time of addition of Building No. 2 and/or Building No 3, Kaiser should install the signalization, or pay for the City to install it, as part of that/those expansion(s). If traffic warrants do not support the added signalization at/by the time of the final expansion (e.g. Building No. 3), Kaiser should escrow with the City the estimated cost of the signalization at that time, and the City would subsequently install the signalization once the required warrants are met.

It is recommended that installation of the signalization by Kaiser or escrow of the signalization funds (whichever is applicable as described above) be made a condition of the SIP Approval for Building No. 3/Parking Deck #2.

Per emails and correspondence subsequent to the 6/6/14 comment letter, it was determined that signalization warrants are not anticipated to be met, at least initially based on projected traffic counts (per Charles Buck, of FHU, who did the FHU Traffic Study Update for the Kaiser SIP). However, once development of the Kaiser site (Bldg. #2 and/or Bldg. #3, and associated parking structure(s)) occurs, updated traffic counts could be obtained and evaluated to see if Warrants are met at that time. The following note (or something very close) has been agreed to be added to the SIP to address this overall issue:

Full Signalization of Access Location #9a (e.g. the existing southern drive connection to Park Meadows Drive) shall be installed by Kaiser concurrent with, and as part of, the Building No. 2 and associated southern parking deck construction project, if traffic warrants support

signalization at that time. If warrants are not met at that time, Kaiser shall escrow with the City the estimated cost of the signalization based on the projected completion date of Phase II, and the City will subsequently install the signalization once the required warrants are met.”

CONCLUSION

The 7/16/14 comment response letter by Davis Partnership adequately addresses my questions/concerns. The responses regarding providing additional more detailed information with the specific plans/CD's for Phase II and Phase III at the time of the associated Phase implementation is satisfactory. Accordingly, The general concept of the proposed Kaiser Building No. 3 / Parking Deck No.2 presented in the proposed SIP Amendment #3 appears acceptable to Engineering/Public Works. Subject to appropriate resolution of the issues we have noted above, we have no objection to recommendation of SIP.

Please feel free to call me with any questions or comments at 303-662-8112.

Sincerely,



Gregory A. Weeks, PE, LEED ® AP
City Engineer



Right of Way & Permits

1123 West 3rd Avenue
Denver, Colorado 80223
Telephone: 303.571.3306
Facsimile: 303. 571.3660
donna.l.george@xcelenergy.com

June 11, 2014

City of Lone Tree
Community Development Department
9220 Kimmer Drive, Suite 100
Lone Tree, Colorado 80124

Attn: Kelly First

Re: *** AMENDED RESPONSE ***
Kaiser Permanente SIP – Heritage Hills Flg. No. 2, 3rd Amendment, Lot 9-A
Case # SP13-48

Public Service Company of Colorado (PSCo) has reviewed the plans for **Kaiser Permanente SIP – Heritage Hills Flg. No. 2, 3rd Amendment, Lot 9-A**. Please be aware PSCo owns and operates an existing natural gas and electric distribution facilities within the subject property. As the project progresses, the property owner/developer/contractor must contact the **Builder's Call Line at 1-800-628-2121** and complete the application process for any new natural gas or electric service, or modification to existing facilities. It is then the responsibility of the developer to contact the Designer assigned to the project for approval of design details. Additional easements may need to be acquired by separate document for new facilities.

As a safety precaution, PSCo would like to remind the developer to call the **Utility Notification Center at 1-800-922-1987** to have all utilities located prior to any construction.

If you have any questions about this referral response, please contact me at (303) 571-3306.

Donna George
Contract Right of Way Referral Processor
Public Service Company of Colorado



June 9, 2014

Kelly First
City of Lone Tree
Community Development Department
9220 Kimmer Drive, Suite 100
Lone Tree, CO 80124

RE: Kaiser Permanente SIP 3rd Amendment
TCHD Case No. 3166

Dear Ms. First:

Thank you for the opportunity to review and comment on the proposed Site Improvement Plan for two proposed medical office buildings across from the Lincoln Station. Tri-County Health Department (TCHD) staff has reviewed the application for compliance with applicable environmental health regulations and for potential recommendations for site improvements to encourage opportunities for safe pedestrian and bicycle use.

Community Design and Pedestrian and Bicycle Circulation

Because chronic diseases related to physical inactivity and obesity now rank among the country's greatest public health risks, TCHD encourages community designs that make it easy for people to include regular physical activity, such as walking and bicycling, in their daily routines. TCHD commends the applicant for maximizing the opportunities to support the broader pedestrian and bicycle network through the development. The strong connections to the nearby Lincoln Station are well planned and general site circulation elements from different areas of the site are included.

Low Impact Development Stormwater Management

TCHD recommends that the applicant incorporate Low Impact Stormwater Management (LID) into the development. The incorporation of LID is best if considered early in the design process when various design consultants including engineers, landscape architects, and landscaping installers can develop solutions collaboratively. The purpose of LID is to improve water quality and limit the volume of water that must be retained or detained in ponds. Implementing LID in this development could reduce the footprint of the two proposed detention ponds freeing up more land for other development amenities.

Food Service

Plans for all new and remodeled retail food establishments must be reviewed by Tri-County Health Department (TCHD) for compliance with Colorado Retail Food Establishment Rules and Regulations and approved by the Department before start of construction. We recommend that the City of Lone Tree require the plan review and approval be completed before issuing a building permit. The applicant shall call TCHD's Plan Review Hotline, at our Administrative Office at (303) 846-6230, regarding requirements for and scheduling a plan review. Instructions for opening a retail food establishment can be found on line at TCHD's web site at http://www.tchd.org/pdfs/how_to_open_food_est.pdf.

Sun Safety

Exposure to ultraviolet (UV) rays from the sun is a leading risk factor for skin cancer, the most common cancer in the United States. Since Colorado has the 5th highest death rate from

melanoma, the most deadly form of skin cancer, TCHD recommends the use of shade in any proposed outdoor seating areas. Shade can be achieved through the use of trees or physical shade structures. It is important that shade structures or appropriate landscaping are considered early in the design process so that they can be incorporated well into the overall site plan. Early incorporation of sun safety concepts into the design optimizes the opportunity for patrons and employees to shield themselves from the sun and reduce their risk of skin cancer.

Please feel free to contact me at (720) 200-1571 or slynch@tchd.org if you have any questions on TCHD's comments.

Sincerely,

A handwritten signature in black ink that reads "Sheila Lynch". The signature is written in a cursive, flowing style.

Sheila Lynch
Land Use Program Coordinator
Tri-County Health Department

CC: Keith Homersham, TCHD



SOUTH METRO FIRE RESCUE AUTHORITY

LIFE SAFETY BUREAU

9195 E Mineral Ave, Centennial, CO 80112

PHONE: 720.989.2230 www.southmetro.org FAX: 720.989.2130

Kelly First
City of Lone Tree
9220 Kimmer Dr Suite 100
Lone Tree, CO 80124
303-708-1818

File #/Name: Kaiser
Project Type: **Site Improvement Plan**

S Metro Review # 2019572
Plan reviewer: Chip Kerkhove
Review date: 9/19/14

Narrative: New building sites being added to existing lot.

Code Reference: 2009 International Fire Code, 2009 International Building Code

South Metro Fire Rescue's Life Safety Division has reviewed the above project and has approved the plans based on the following items.

UNRESOLVED ISSUES:

There are no unresolved issues. The addition of building 3 and associated parking garage are approved.

However, a meeting with the design team is required to discuss, fire department access, fire hydrant placement and building construction components. This meeting shall take place prior to any new construction...

File #/Name:
Project Type:

S Metro Review #
Plan reviewer:
Review date:



CITY OF LONE TREE
Community Development Department

REFERRAL REQUEST

Today's date: May 19, 2014

Project Name and File Number: Kaiser Permanente SIP 3 rd Amdt.
Project Type: Site Improvement Plan Major Amendment
Comments Due By: June 9, 2014
If you are unable to respond by the due date, please contact the project planner

Dear Referral Organization:

Information on the above referenced proposal in the City of Lone Tree is provided for your review and comment. Please submit your response no later than the due date to ensure adequate time to consider comments and enter them into the public record.

If you have difficulty viewing or understanding any of the information or have questions, please contact me at 303-708-1818. Printed materials and extra sets of materials are available upon request. Plans may also be viewed at the City offices from 8am-5pm.

We have no comments regarding this proposal

Please note the following concerns this organization has:

See attached letter for comments regarding this proposal

Organization Name: Parle Meadows Metropolitan District

Your name: Bob Blodgett

Your signature: [Signature] Date: 5/20/14

This project may be subject to public meetings. Please check the City's web site (www.cityoflonetree.com) for posted agendas or contact this office. Thank you for your consideration.

Kelly First

CD Director

PLEASE RETURN THIS PAGE AND ANY COMMENTS TO:

City of Lone Tree Community Development Dept.
9220 Kimmer Drive Suite 100
Lone Tree, CO 80124
Ph: 303-708-1818
Fx: 303-225-4949
kelly.first@cityoflonetree.com



FELSBURG
HOLT &
ULLEVIG

connecting and enhancing communities

June 6, 2013

Mr. Kevin Scott, AIA
Principal
Davis Partnership Architects
2301 Blake Street, Ste. 100
Denver, CO 80205-2108

Re: Traffic Impact Analysis Addendum
Kaiser South MSC SIP3
FHU Reference No. 113152-01

Dear Mr. Scott:

It is currently proposed to develop a third medical office building at the Kaiser Permanente Multi-Specialty Center at Lincoln Station. Our report, entitled KAISER SOUTH MULTI-SPECIALTY CENTER TRAFFIC IMPACT ANALYSIS, April 2011, provided an overall traffic impact analysis of the first two buildings of the facility. Because the current Site Improvement Plan amendment proposes the development of a third medical office building, the City of Lone Tree has requested a brief update report to identify any additional traffic impacts due to the proposed development of Building 3. This current effort focuses on the potential traffic impacts along Park Meadows Drive.

To be consistent with our previous efforts, two future scenarios are considered:

- Short Range Future. This scenario evaluates the traffic impacts on completion of the project in the near-term future
- Long Range Future. This scenario evaluates the traffic impacts at project build out within the context of a year 2035 horizon.

Site Plan

Figure 1 shows the current site plan concept. The Kaiser South Multi-Specialty Center is located along the west side of Park Meadows Drive, opposite the existing RTD Light Rail Station, parking garage, and transit facility. In addition to the two buildings currently under construction, the site would be developed with a third medical office building totaling about 150,000 square feet. A new parking structure will also be developed on the north side of the facility. As shown, the site would access Park Meadows Drive via four intersections: three full movement accesses and one right-in/right-out (RIRO) access. These four accesses are consistent with the access plan evaluated in our previous report.

Trip Generation and Traffic Assignment

As discussed above, the current development proposal consists of about 150,000 square feet of medical office building uses. A trip generation analysis of the current plan was conducted based on specific rates for Kaiser operations, documented in the previous study. To be consistent with previous traffic engineering efforts, trip reductions were applied for Transit Oriented Developments and Mixed Use Developments, per methodologies documented in TRIP GENERATION HANDBOOK, *Institute of Transportation Engineers*, 1998. **Table 1** summarizes the results.

Table 1. Site Trip Generation Estimates – Kaiser Building 3

Land Use	Quantity	Daily	AM Peak Hour			PM Peak Hour		
			In	Out	Total	In	Out	Total
Building 3	150 KSF	3,290	220	65	285	70	205	275
Reduced for Internal Trips (1)		2,530	185	55	240	55	165	220

1. Reductions include 15 % for Transit Oriented Development (AM, PM, and Daily), plus Mixed Use reductions of 8% (Daily), 5% (PM) (Mixed use reductions do not apply to AM peak hour trips).

It can be seen that the proposed Building 3 would have the potential to generate approximately 2,530 daily vehicle trips. About 240 of these trips would occur in the AM peak hour, and about 220 of the trips would occur in the PM peak hour. In comparison to the overall trip generation potential of Buildings 1 and 2 evaluated in the April 2011 report, the traffic increase represented by the proposed development of Building 3 is about 35 percent.

To evaluate the potential additional impacts along Park Meadows Drive between Lincoln Avenue and Yosemite Street, the above trip generation estimates for Building 3 were assigned based on previously established trip distribution patterns. Due to the location of Building 3 on the Kaiser site, it is estimated that Accesses 7 and 8 would provide primary access for this building. Based on the location of the proposed parking structure, it is estimated that 75 percent of the site generated traffic would use Access 7 and 25 percent would use Access 8. **Figure 2** depicts the site generated traffic assignment. It can be seen that Building 3 would increase volumes on Park Meadows Drive by 2,530 vehicles per day, on Lincoln Avenue by 1,260 vehicles per day, and on Yosemite Street by 510 vehicles per day.

Background Traffic

Background traffic represents the level of activity that would be present along Park Meadows Drive, Lincoln Avenue, and Yosemite Street, regardless of the proposed development of Building 3. For the short range future, background traffic volumes include the daily traffic volumes documented in the previous report plus the site generated traffic from Buildings 1 and 2. These volumes are the same as the short range future total traffic volumes presented in the April 2011 report. In the long range future (year 2035), background traffic volumes include the increased volumes based on regional growth rates documented in the previous report plus the site generated traffic from Buildings 1 and 2 and the site generated traffic from future developments at Lincoln Station. These volumes are the same as the long range future total traffic volumes presented in the April 2011 report. **Figure 3** and **Figure 4** depict the background traffic volumes for both scenarios.

Total Traffic Conditions

The site generated traffic volumes (**Figure 2**) were added to the respective background scenarios (**Figure 3** and **Figure 4**) to obtain the short range and long range future total traffic volumes depicted on **Figure 5** and **Figure 6**. These volumes represent anticipated AM and PM peak hour total traffic conditions, identified as critical in our April 2011 analysis. These volumes were used as the basis for intersection Level of Service (LOS) computations (worksheets are included in the attachments to this letter). LOS is a qualitative measure of traffic operational conditions, based primarily on motorist delay. The 2010 HIGHWAY CAPACITY MANUAL defines six levels of service, ranging from A to F, with LOS A representing the best possible operating conditions and LOS F representing over-capacity, or congested conditions. In urbanized areas, LOS D is typically considered to be acceptable for peak hour traffic operations.

In the short range future, the traffic operations along Park Meadows Drive, including the proposed site accesses, would generally operate at acceptable levels. Access 10 would operate at congested levels in the PM peak hour under STOP sign control. As mentioned in the April 2011 report, future plans indicate that this intersection will be signalized for RTD movements, which will improve the LOS from E to A in the PM peak hour. The intersection at Park Meadows Drive/Lincoln Avenue would also experience near capacity conditions (LOS E) during the PM peak hour.

In the long range future, both the intersections at Park Meadows Drive/Lincoln Avenue and Park Meadows Drive/Yosemite Street would experience AM and PM peak hour congestion. This condition is anticipated either with or without the additional traffic generated by the proposed Building 3. The April 2011 report documents potential geometric changes that could be implemented to help improve the LOS of these intersections.

Summary and Conclusions

The proposed Building 3 at Lincoln Station would have the potential to increase the trip generation of the Kaiser South Multi-Specialty Care Center. Compared to the overall trip generation potential analyzed in our previous report, the projected increase would be about 35 percent. About 240 additional trips in the AM peak hour and about 220 additional trips in the PM peak hour are projected. The potential traffic impacts due to this additional traffic were evaluated under both short range future and long range future scenarios. In general, the adjacent roadway system would have sufficient capacity to accommodate the projected traffic volumes. The following is a summary of the findings of this traffic analysis update:

- Due to the location of the building, Accesses 7 and 8 would provide primary access for Building 3. Based on the location of the proposed parking garage, it is estimated that 75 percent of the site generated traffic would use Access 7 and 25 percent would use Access 8.
- The two accesses that would serve Building 3 (Accesses 7 and 8) are to be signalized with the completion of Buildings 1 and 2.
- Traffic operations at the proposed site accesses would be acceptable, at LOS D or better during peak times.

June 6, 2013
Mr. Kevin Scott, AIA
Page 4

- Congested conditions are projected at the intersections of Park Meadows Drive/Yosemite Street and Park Meadows Drive/Lincoln Avenue by the year 2035. This condition is expected either with or without Kaiser generated traffic volumes. Analyses documented in the April 2011 report, however, identify potential geometric improvements that could be implemented to mitigate future congestion at these intersections.

These findings are consistent with the results of our previous analyses. We trust this information will assist you in your efforts on this project. If you have any questions, or if we can provide any additional services, please call.

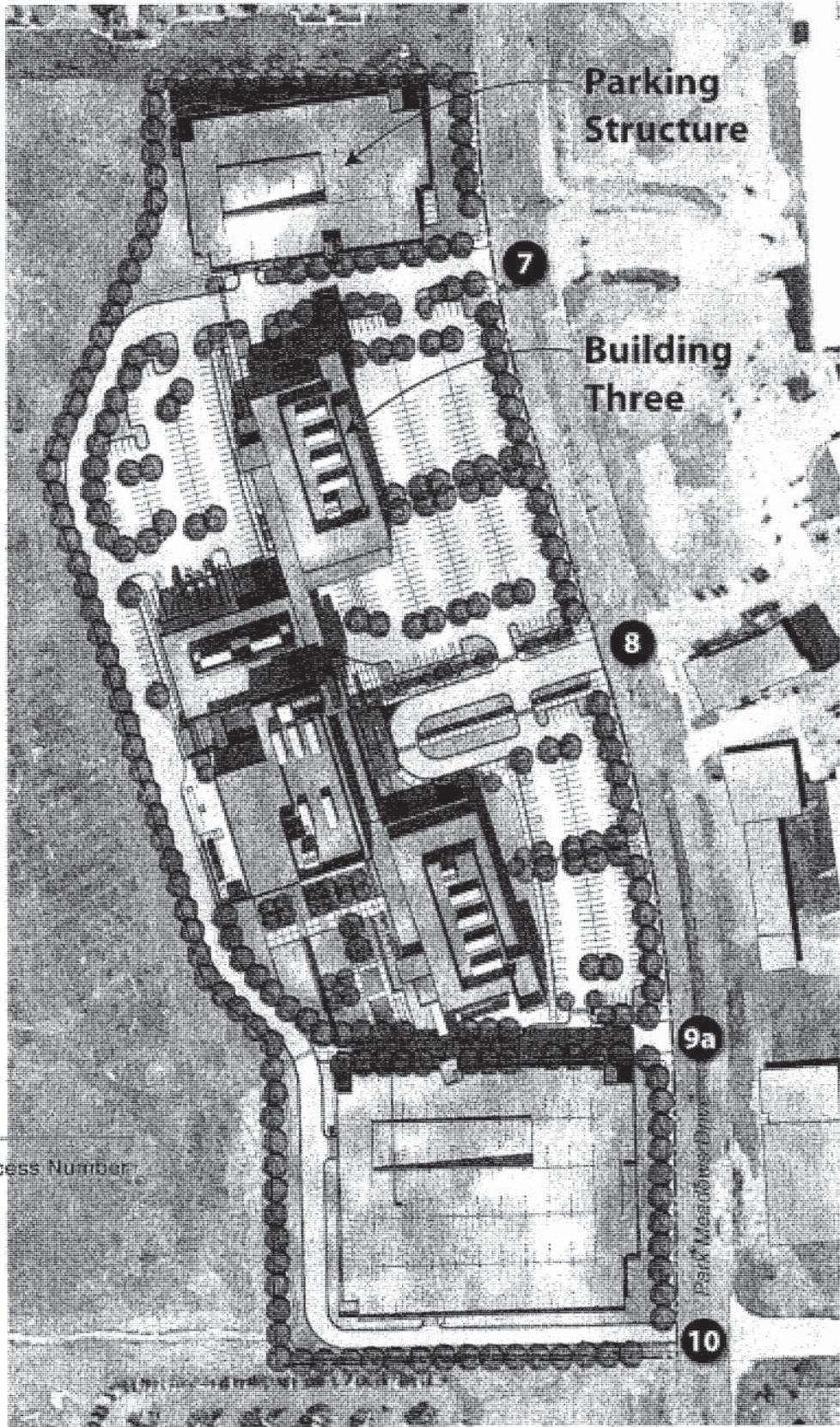
Sincerely,

FELSBURG HOLT & ULLEVIG



Charles M. Buck, P.E., PTOE
Senior Transportation Engineer

Attachments



LEGEND

X = Access Number

Figure 1
Conceptual Site Plan

NORTH

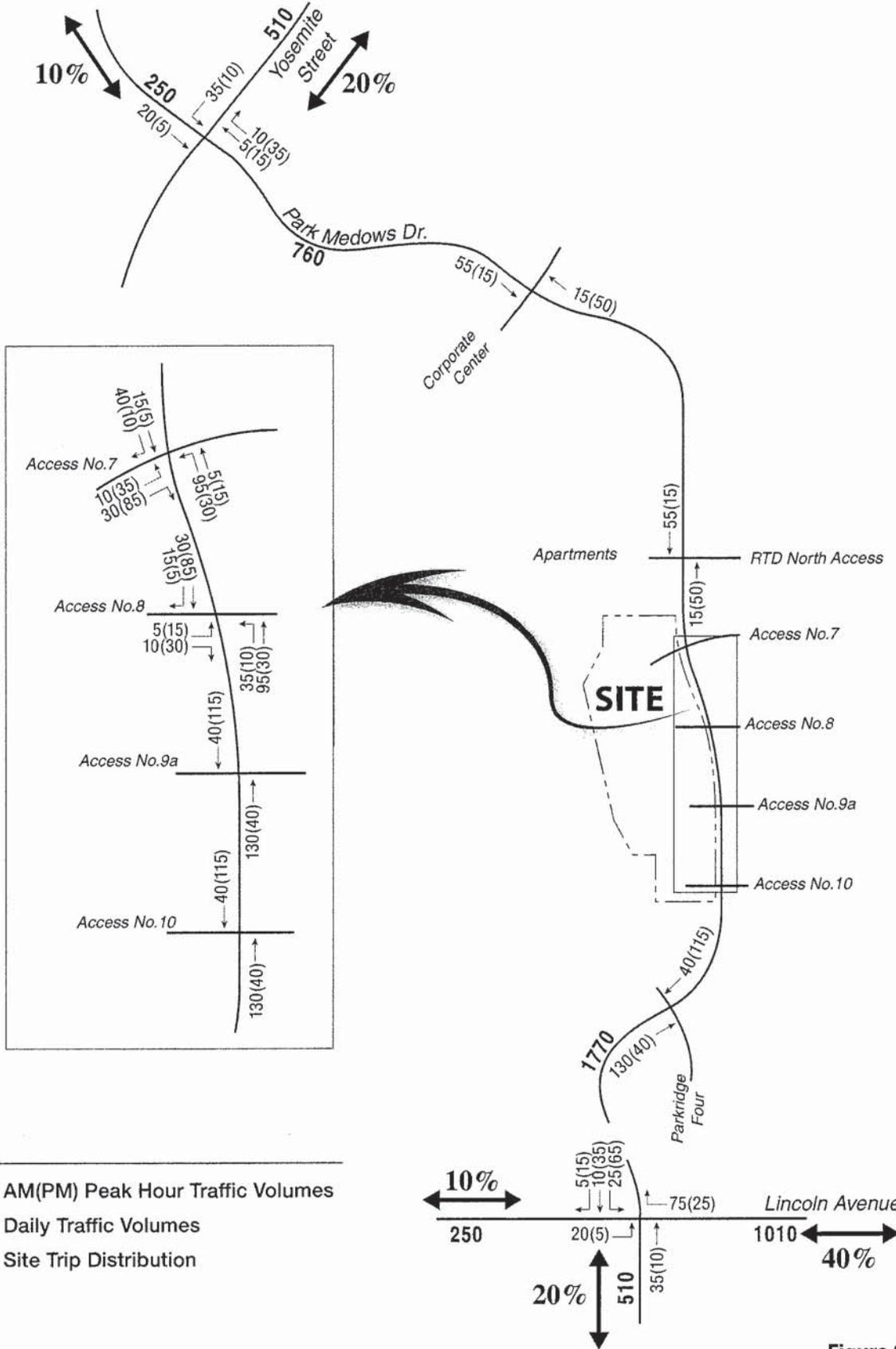


Figure 2
Site Generated Traffic Assignment



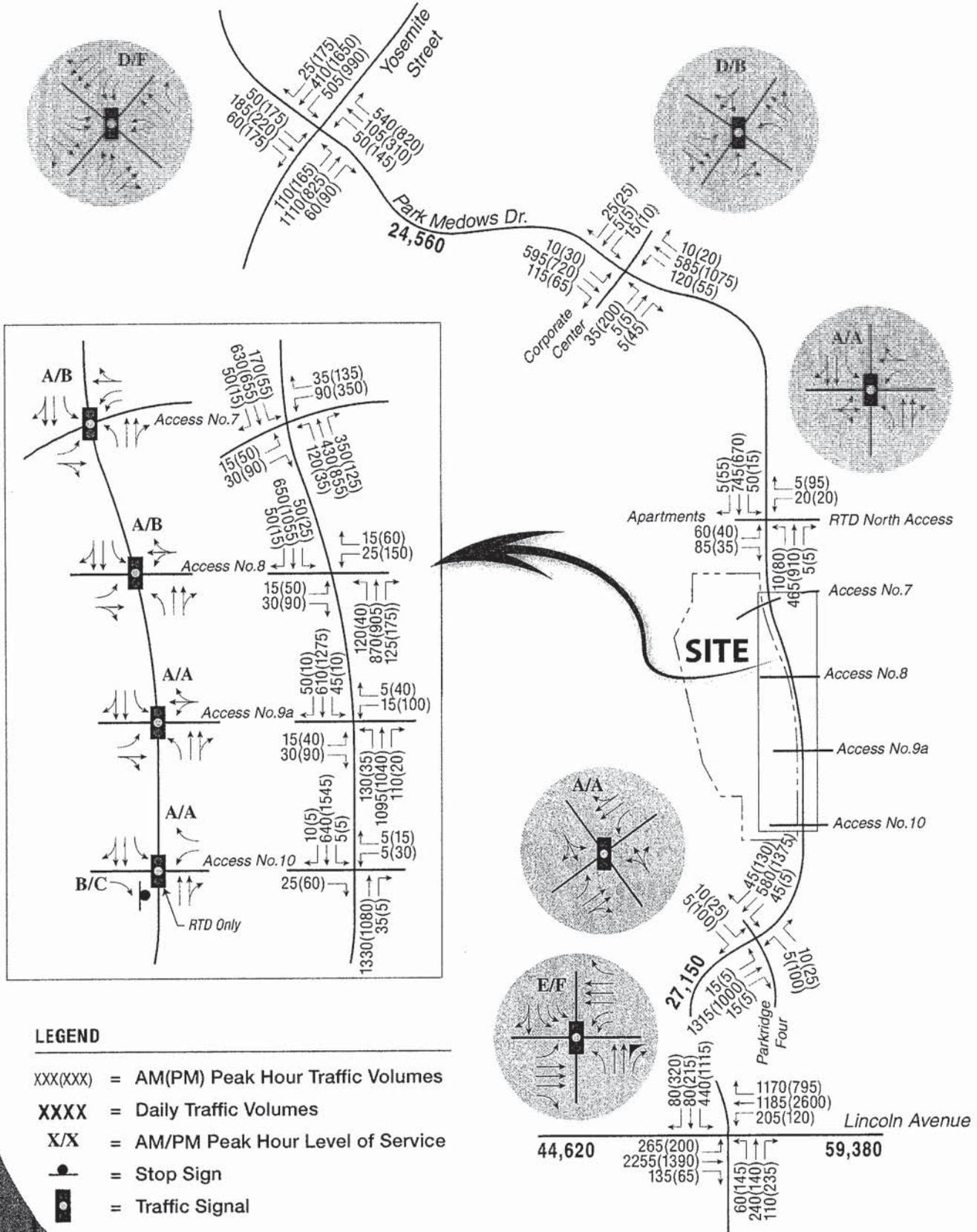


Figure 4
Long Range Future Background Traffic Conditions



NORTH

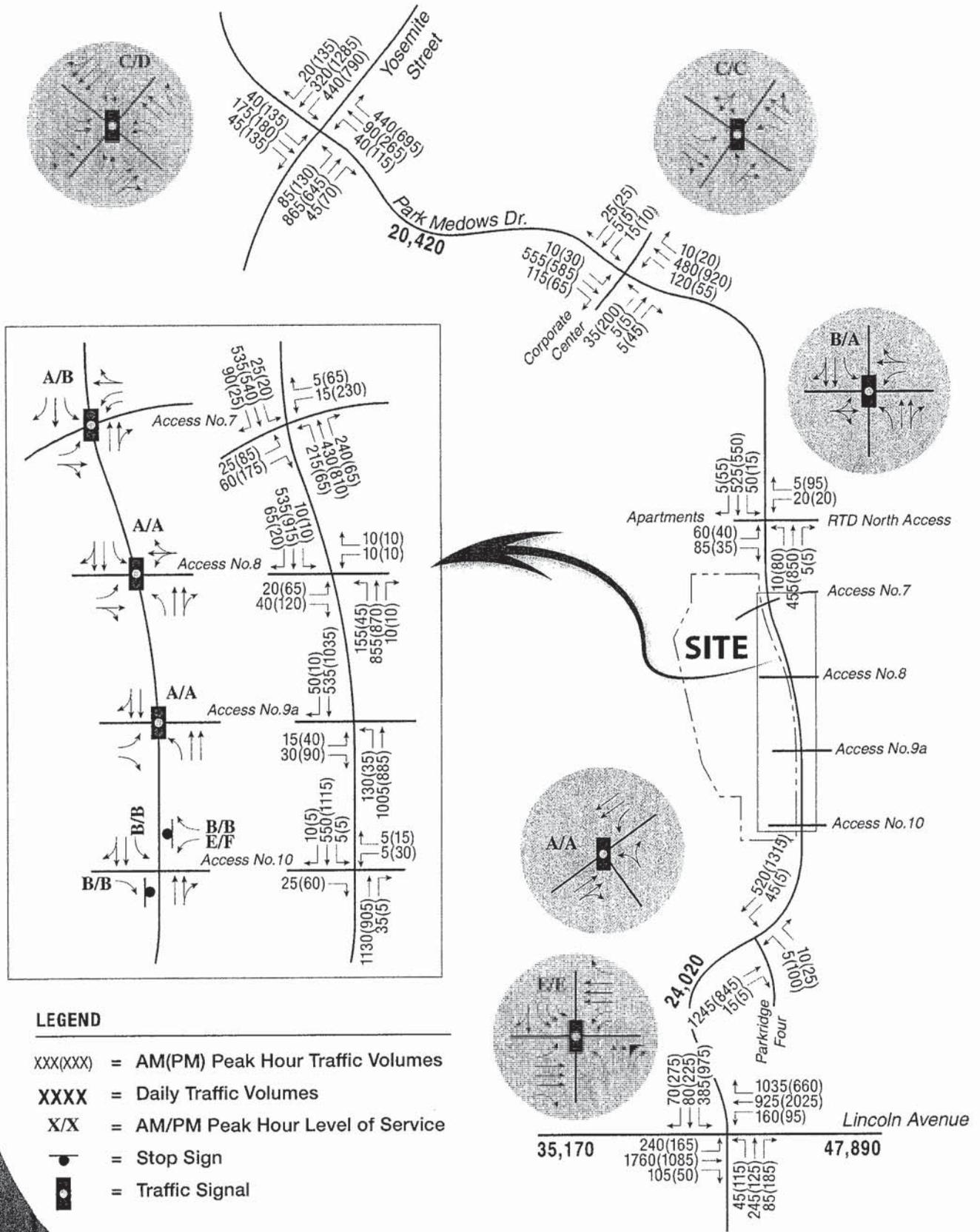


Figure 5
Short Range Future Total Traffic Conditions

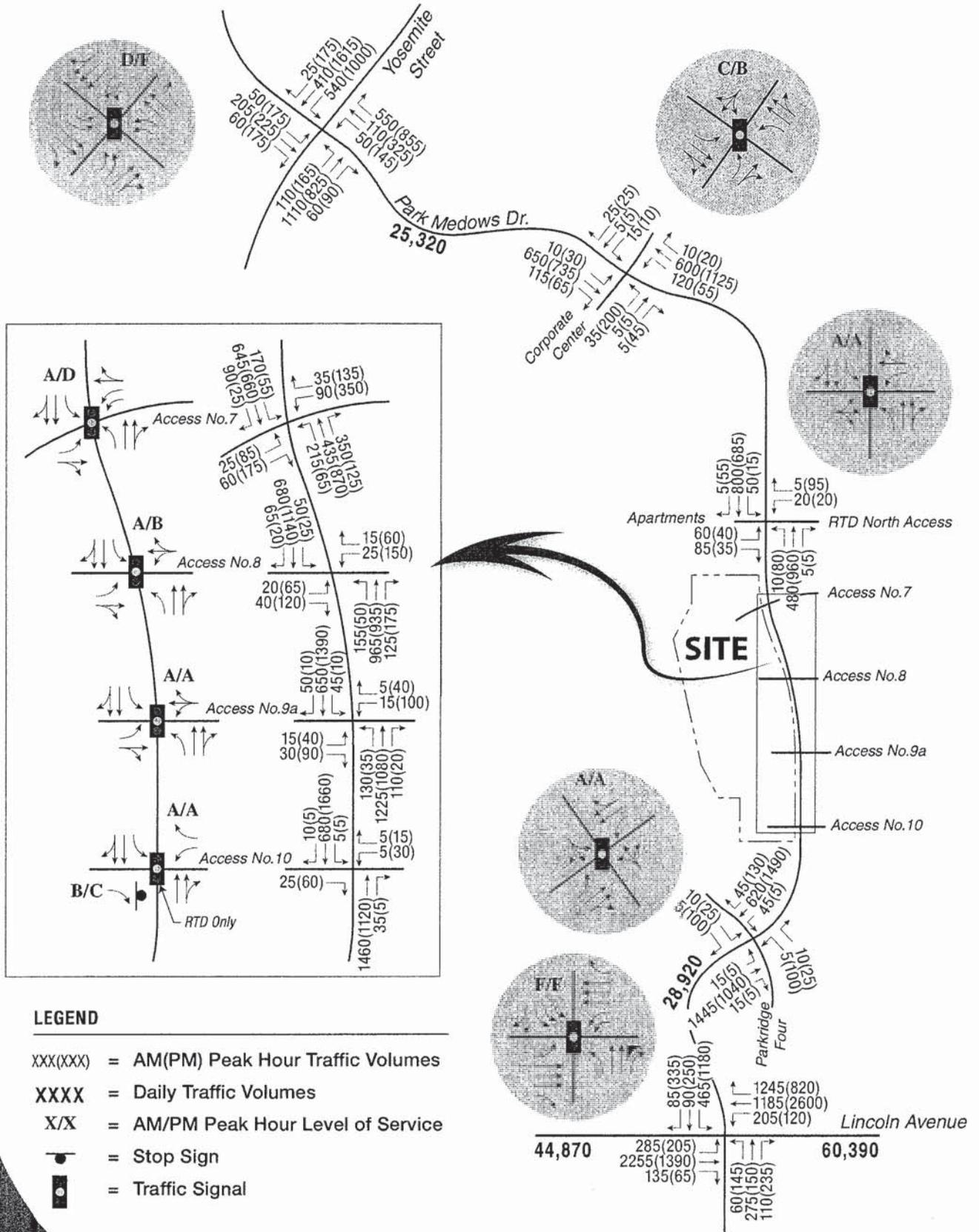


Figure 6
Long Range Future Total Traffic Conditions

NORTH



Timings
3: Yosemite St & Park Meadows Dr

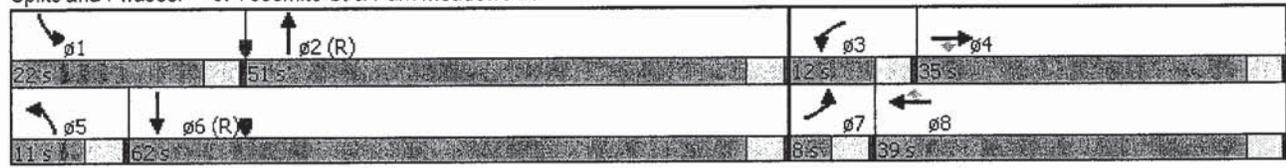
Short Range Background AM Peak Hour
6/6/2013



Lane Group	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	SBL	SBT
Lane Configurations	↖↖	↑↑	↗	↖↖	↑↑	↗	↖↖	↑↑	↖↖	↑↑
Volume (vph)	40	155	45	40	85	430	85	865	415	320
Turn Type	Prot	NA	Perm	Prot	NA	Perm	Prot	NA	Prot	NA
Protected Phases	7	4		3	8		5	2	1	6
Permitted Phases			4			8				
Detector Phase	7	4	4	3	8	8	5	2	1	6
Switch Phase										
Minimum Initial (s)	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Minimum Split (s)	8.0	20.0	20.0	8.0	20.0	20.0	8.0	20.0	8.0	20.0
Total Split (s)	8.0	35.0	35.0	12.0	39.0	39.0	11.0	51.0	22.0	62.0
Total Split (%)	6.7%	29.2%	29.2%	10.0%	32.5%	32.5%	9.2%	42.5%	18.3%	51.7%
Yellow Time (s)	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5
All-Red Time (s)	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Lost Time Adjust (s)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Lost Time (s)	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Lead/Lag	Lead	Lag	Lag	Lead	Lag	Lag	Lead	Lag	Lead	Lag
Lead-Lag Optimize?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Recall Mode	None	None	None	None	None	None	None	C-Max	None	C-Max
Act Effect Green (s)	4.0	20.4	20.4	6.9	23.0	23.0	7.8	58.8	19.9	70.8
Actuated g/C Ratio	0.03	0.17	0.17	0.06	0.19	0.19	0.06	0.49	0.17	0.59
v/c Ratio	0.38	0.28	0.13	0.22	0.14	0.88	0.41	0.57	0.80	0.18
Control Delay	66.4	42.4	0.8	76.5	16.0	32.1	59.6	26.0	59.3	13.4
Queue Delay	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Delay	66.4	42.4	0.8	76.5	16.0	32.1	59.6	26.0	59.3	13.4
LOS	E	D	A	E	B	C	E	C	E	B
Approach Delay		38.5			32.8			28.8		38.6
Approach LOS		D			C			C		D

Intersection Summary
 Cycle Length: 120
 Actuated Cycle Length: 120
 Offset: 49 (41%), Referenced to phase 2:NBT and 6:SBT, Start of Green
 Natural Cycle: 65
 Control Type: Actuated-Coordinated
 Maximum v/c Ratio: 0.88
 Intersection Signal Delay: 33.5
 Intersection Capacity Utilization 65.3%
 Analysis Period (min) 15
 Intersection LOS: C
 ICU Level of Service C

Splits and Phases: 3: Yosemite St & Park Meadows Dr



Timings
5: Corporate Center & Park Meadows Dr

Short Range Background AM Peak Hour
6/6/2013



Lane Group	EBL	EBT	WBL	WBT	NBL	NBT	SBL	SBT
Lane Configurations	↖	↕	↖	↕	↖	↕		↕
Volume (vph)	10	500	120	465	35	5	15	5
Turn Type	pm+pt	NA	pm+pt	NA	Perm	NA	Perm	NA
Protected Phases	7	4	3	8		2		6
Permitted Phases	4		8		2		6	
Detector Phase	7	4	3	8	2	2	6	6
Switch Phase								
Minimum Initial (s)	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Minimum Split (s)	8.0	20.0	8.0	20.0	20.0	20.0	20.0	20.0
Total Split (s)	12.0	82.0	12.0	82.0	26.0	26.0	26.0	26.0
Total Split (%)	10.0%	68.3%	10.0%	68.3%	21.7%	21.7%	21.7%	21.7%
Yellow Time (s)	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5
All-Red Time (s)	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Lost Time Adjust (s)	0.0	0.0	0.0	0.0	0.0	0.0		0.0
Total Lost Time (s)	4.0	4.0	4.0	4.0	4.0	4.0		4.0
Lead/Lag	Lead	Lag	Lead	Lag				
Lead-Lag Optimize?	Yes	Yes	Yes	Yes				
Recall Mode	None	None	None	None	C-Max	C-Max	C-Max	C-Max
Act Effect Green (s)	36.9	30.9	42.3	40.7	69.1	69.1		69.1
Actuated g/C Ratio	0.31	0.26	0.35	0.34	0.58	0.58		0.58
v/c Ratio	0.04	0.73	0.61	0.43	0.05	0.01		0.05
Control Delay	35.6	39.7	36.4	25.7	13.4	10.2		7.7
Queue Delay	0.0	0.0	0.0	0.0	0.0	0.0		0.0
Total Delay	35.6	39.7	36.4	25.7	13.4	10.2		7.7
LOS	D	D	D	C	B	B		A
Approach Delay		39.6		27.9		12.7		7.7
Approach LOS		D		C		B		A

Intersection Summary

Cycle Length: 120
 Actuated Cycle Length: 120
 Offset: 14 (12%), Referenced to phase 2:NBTL and 6:SBTL, Start of Green
 Natural Cycle: 50
 Control Type: Actuated-Coordinated
 Maximum v/c Ratio: 0.73
 Intersection Signal Delay: 32.3
 Intersection Capacity Utilization 43.4%
 Analysis Period (min) 15
 Intersection LOS: C
 ICU Level of Service A

Splits and Phases: 5: Corporate Center & Park Meadows Dr

↖ φ2 (R) 26 s	↖ φ3 12 s	↕ φ4 82 s
↕ φ6 (R) 26 s	↕ φ7 12 s	↕ φ8 82 s

Timings
9: Park Meadows Dr & Apartments/RTD North

Short Range Background AM Peak Hour
6/6/2013



Lane Group	EBL	EBT	WBL	WBT	NBL	NBT	SBL	SBT
Lane Configurations		↔	↖	↗	↖	↗	↖	↗
Volume (vph)	60	5	20	5	10	440	50	470
Turn Type	Perm	NA	Perm	NA	pm+pt	NA	pm+pt	NA
Protected Phases		4		8	5	2	1	6
Permitted Phases	4		8		2		6	
Detector Phase	4	4	8	8	5	2	1	6
Switch Phase								
Minimum Initial (s)	4.0	4.0	4.0	4.0	4.0	4.0	4.0	4.0
Minimum Split (s)	20.0	20.0	20.0	20.0	8.0	20.0	8.0	20.0
Total Split (s)	28.0	28.0	28.0	28.0	8.0	84.0	8.0	84.0
Total Split (%)	23.3%	23.3%	23.3%	23.3%	6.7%	70.0%	6.7%	70.0%
Yellow Time (s)	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5
All-Red Time (s)	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Lost Time Adjust (s)		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Lost Time (s)		4.0	4.0	4.0	4.0	4.0	4.0	4.0
Lead/Lag					Lead	Lag	Lead	Lag
Lead-Lag Optimize?					Yes	Yes	Yes	Yes
Recall Mode	None	None	None	None	None	C-Max	None	C-Max
Act Effect Green (s)		14.6	14.6	14.6	93.8	89.2	96.7	95.4
Actuated g/C Ratio		0.12	0.12	0.12	0.78	0.74	0.81	0.80
v/c Ratio		0.73	0.21	0.05	0.02	0.18	0.07	0.18
Control Delay		52.7	49.4	31.9	1.1	2.5	1.4	4.1
Queue Delay		0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Delay		52.7	49.4	31.9	1.1	2.5	1.4	4.1
LOS		D	D	C	A	A	A	A
Approach Delay		52.7		43.9		2.5		3.8
Approach LOS		D		D		A		A

Intersection Summary

Cycle Length: 120
 Actuated Cycle Length: 120
 Offset: 2 (2%), Referenced to phase 2:NBTL and 6:SBTL, Start of Green
 Natural Cycle: 50
 Control Type: Actuated-Coordinated
 Maximum v/c Ratio: 0.73
 Intersection Signal Delay: 10.6
 Intersection Capacity Utilization 42.0%
 Analysis Period (min) 15

Intersection LOS: B
 ICU Level of Service A

Splits and Phases: 9: Park Meadows Dr & Apartments/RTD North

8 s	84 s	28 s
8 s	84 s	28 s

HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

A PORTION OF THE E 1/2 OF SECTION 10, TOWNSHIP 6 SOUTH, RANGE 67 WEST OF THE 6TH P.M., DOUGLAS COUNTY, COLORADO

PLANNING AREA 10 AND 12 20.101 ACRES

THIRD AMENDMENT TO SITE IMPROVEMENT PLAN #SP2011-037, PROJECT #SP13-48

SITE DATA CHART		
ITEM	SQUARE FOOTAGE*	% OF GROSS SITE*
Gross Site Area	875,602	100%
BUILDING 1:		
Building Footprint	59,250	6.77%
Parking / Roads (including planted interior parking islands)	427,200	48.79%
HARDSCAPE TOTAL	486,450	55.56%
Planted Area (if applicable, including water retention/quality parking lot islands)	191,215	21.84%
Existing Vegetation	54,400	6.21%
Trails and Walks	20,137	2.30%
Porous Pavement	123,400	14.09%
LANDSCAPE TOTAL	389,152	44.44%
BUILDING 2:		
Building Footprint	96,750	11.05%
Parking / Roads (including planted interior parking islands)	489,855	55.95%
HARDSCAPE TOTAL	586,605	67.00%
Planted Area (if applicable, including water retention/quality parking lot islands)	182,993	20.90%
Existing Vegetation	0	0%
Trails and Walks	41,004	4.68%
Porous Pavement	65,000	7.42%
LANDSCAPE TOTAL	288,997	33%
BUILDING 3:		
Building Footprint	135,323	15.45%
Parking / Roads (including planted interior parking islands)	433,125	49.47%
HARDSCAPE TOTAL	568,448	64.92%
Planted Area (if applicable, including water retention/quality parking lot islands)	215,272	24.59%
Existing Vegetation	0	0%
Trails and Walks	84,542	9.65%
Porous Pavement	7,340	0.84%
LANDSCAPE TOTAL	307,154	35.08%
ITEM	DESCRIPTION	
BUILDING 1:	277,000 sq. ft. TOTAL	
Building Size: 6 Stories		
Parking:		
Required	1,192 spaces (4.3 / 1,000 sq. ft.)	
Provided	1,355 spaces (4.89 / 1,000 sq. ft.)	
TOTAL Deferred**	245 spaces	
incl. 136 H.C., incl. 23 Van		
BUILDING 2:	150,000 sq. ft. TOTAL	
Building Size: 4 Stories		
Parking Structure: 4 Levels		
Parking:		
Required:	645 spaces (4.3 / 1,000 sq. ft.)	
Total Provided:	895 spaces (5 / 1,000 sq. ft.)	
incl. 90 H.C., incl. 15 Van		
CAMPUS TOTAL: BUILDINGS 1 AND 2		
TOTAL Required	1,837 spaces	
TOTAL Provided	2,237 spaces	
(Surface):	777 spaces	
(Structure):	1,460 spaces	
BUILDING 3:	150,000 sq. ft. TOTAL	
Building Size: 3 Stories with Partial Garden Level		
Parking Structure: 6 Levels		
Parking:		
Required	645 spaces (4.3 / 1,000 sq. ft.)	
Total Provided	698 spaces (4.65 / 1,000 sq. ft.)	
incl. 37 H.C., incl. 7 Van		
CAMPUS TOTAL: BUILDINGS 1, 2, AND 3		
TOTAL Required	2,482 spaces (4.3 / 1,000 sq. ft.)	
TOTAL Provided	2,880 spaces (4.99 / 1,000 sq. ft.)	
(Surface):	340 spaces	
(Structure):	2,540 spaces	

*NOTE: When a portion of a site's natural vegetation is proposed as landscape area, as permitted herein, these totals may not add up to 100.

**NOTE: 245 parking spaces to be deferred during Building One construction. Deferred parking may be constructed if needed, pending approval from City of Lone Tree SIP review.

SHEET INDEX	
SHEET 01 OF 14	COVER SHEET
SHEET 02 OF 14	COMPOSITE PLAN
SHEET 03 OF 14	BUILDING ELEVATIONS - BUILDING 2
SHEET 04 OF 14	BUILDING ELEVATIONS - BUILDING 2
SHEET 05 OF 14	SITE PLAN - BUILDING 3
SHEET 06 OF 14	SITE PLAN - BUILDING 3
SHEET 07 OF 14	LANDSCAPE PLAN - BUILDING 3
SHEET 08 OF 14	LANDSCAPE PLAN - BUILDING 3
SHEET 09 OF 14	GRADING/DRAINAGE PLAN - BUILDING 3
SHEET 10 OF 14	GRADING/DRAINAGE PLAN - BUILDING 3
SHEET 11 OF 14	BUILDING ELEVATIONS - BUILDING 3
SHEET 12 OF 14	BUILDING ELEVATIONS - BUILDING 3
SHEET 13 OF 14	LIGHTING PLAN - BUILDING 3
SHEET 14 OF 14	LIGHTING PLAN - BUILDING 3



1 VICINITY MAP
1" = 2000'

APPROVAL CERTIFICATE	
THIS THIRD AMENDMENT TO THE SIP HAS BEEN REVIEWED AND FOUND TO BE COMPLETE AND IN ACCORD WITH CITY REGULATIONS, AS APPROVED BY THE CITY ON (DATE).	
By: _____	_____
Name: _____	_____
Title: Community Development Director	_____
Date: _____	_____
By: _____	_____
Name: _____	_____
Title: City Engineer	_____
Date: _____	_____
By: _____	_____
Name: _____	_____
Title: Mayor	_____
Date: _____	_____
The owner(s) of the lands described herein, hereby agree(s) (1) to develop and maintain the property described herein in accordance with this approved Site Improvement Plan and in compliance with Chapter 16 of the Lone Tree Municipal Code and that (2) the heirs, successors and assigns of the owner(s) shall also be bound. The signatures of the owner(s) representative(s) below indicate that any required authorizations to enter this agreement, including any corporate authorizations, have been obtained.	
(Name of Owner)	_____
(Signature of Owner)	_____
(Printed Name and Title)	_____
State of _____) ss.	_____
County of _____)	_____
Subscribed and sworn to before me this _____ day of _____, 20____, by _____	_____
Witness my hand and official seal.	_____
My commission expires: _____	_____
Notary Public	_____
Approval by the City of Lone Tree does not signify that the requirements of the Americans with Disabilities Act (ADA) have been satisfied. The applicant is responsible to ensure that said ADA requirements have been met.	
For all future phases, the applicant shall submit a revised Site Improvement Plan of the phase for which a permit is requested. The revised SIP shall be approved prior to issuance of a building permit.	

- GENERAL NOTE:
- THIS THIRD AMENDMENT INCLUDES THE ADDITION OF BUILDING THREE AND PARKING STRUCTURE TO THE KAISER SOUTH MULTI-SPECIALTY CAMPUS, THE ADDITION OF SOLAR PANELS ON BOTH THE NORTH AND SOUTH PARKING STRUCTURES, AND REFINED BUILDING MATERIALS FOR USE ON BUILDINGS TWO AND THREE.
 - FULL SIGNALIZATION OF ACCESS LOCATION #9a (e.g. THE EXISTING SOUTHERN DRIVE CONNECTION TO PARK MEADOWS DRIVE) SHALL BE INSTALLED BY KAISER CONCURRENT WITH, AND AS PART OF, THE BUILDING NO. 2 AND ASSOCIATED SOUTHERN PARKING GARAGE CONSTRUCTION PROJECT, IF TRAFFIC WARRANTS SUPPORT SIGNALIZATION AT THAT TIME. IF WARRANTS ARE NOT MET AT THAT TIME, KAISER SHALL ESCROW WITH THE CITY THE ESTIMATED COST OF THE SIGNALIZATION BASED ON THE PROJECTED COMPLETION DATE OF PHASE II, AND THE CITY WILL SUBSEQUENTLY INSTALL THE SIGNALIZATION ONCE THE REQUIRED WARRANTS ARE MET.
 - PER SEC. 16-27-70(b)(1): THE PROPERTY HEREIN IS SUBJECT TO ALL APPLICABLE REQUIREMENTS OF THE LONE TREE ZONING CODE, INCLUDING BUT NOT LIMITED TO MAINTENANCE, LIGHTING, PARKING, SIGNAGE, AND OUTDOOR STORAGE, EXCEPT AS MAY OTHERWISE BE ADDRESSED IN AN APPROVED DEVELOPMENT PLAN OR SUB-AREA PLAN.
 - FINAL BUILDING MATERIAL SELECTIONS FOR BUILDINGS TWO AND THREE, AND ASSOCIATED PARKING GARAGES TWO AND THREE, SHALL BE SUBJECT TO APPROVAL BY THE CITY PLANNING COMMISSION PRIOR TO BUILDING PERMIT ISSUANCE.
 - THE SOLAR PANELS SHOWN IN THIS SIP ARE FOR REFERENCE ONLY. FINAL LAYOUT, LOCATION, NUMBER, AND COLOR OF EXTERIOR COMPONENTS SHALL BE ADMINISTRATIVELY APPROVED BY THE COMMUNITY DEVELOPMENT DIRECTOR PRIOR TO ISSUANCE OF A BUILDING PERMIT.



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Vail | 2225 Main Street, Unit C101
Edwards, CO 81632 | 970.926.8960

OCTOBER 7, 2014

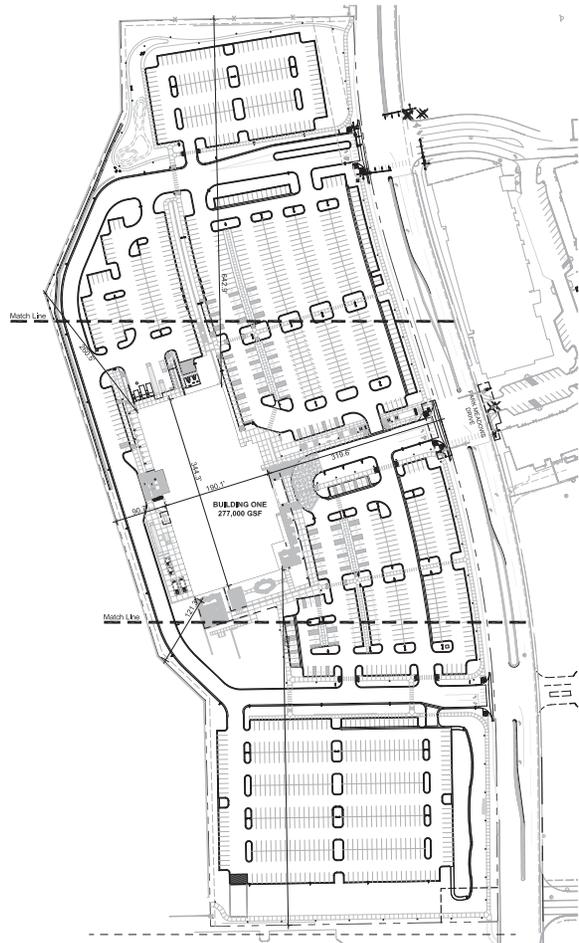
01 OF 14

HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

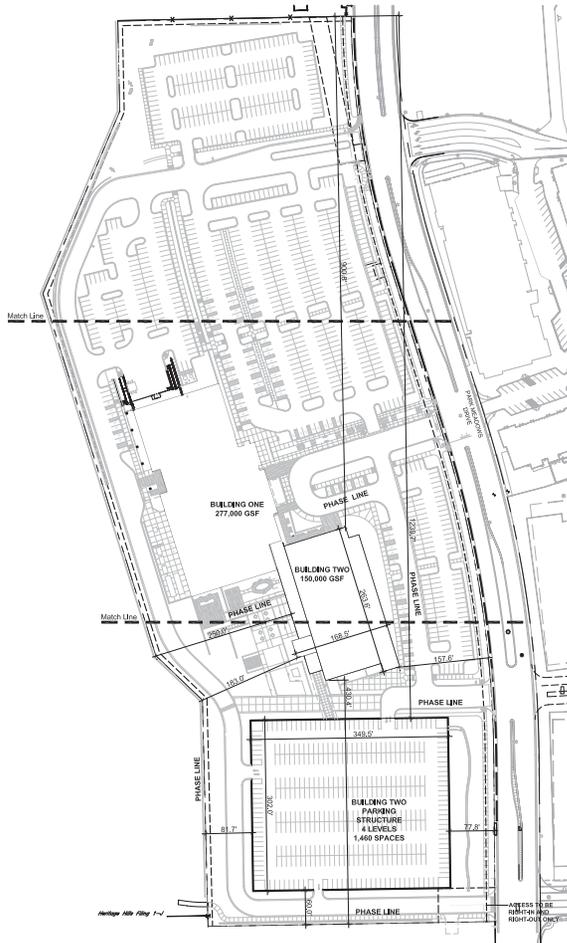
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PLANNING AREA 10 AND 12 20.101 ACRES

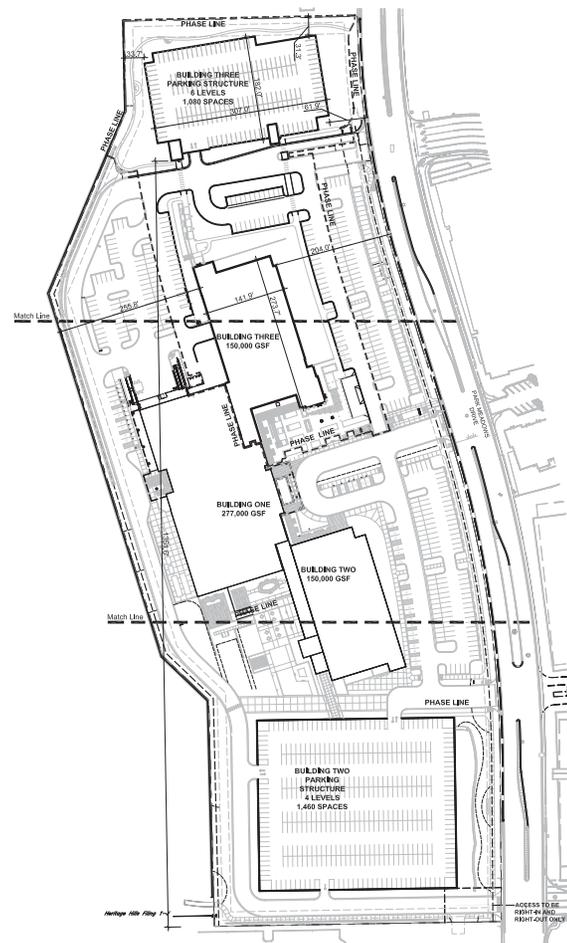
THIRD AMENDMENT TO SITE IMPROVEMENT PLAN #SP2011-037, PROJECT #SP13-48



① SITE PLAN - BUILDING ONE



② SITE PLAN - BUILDING TWO



② SITE PLAN - BUILDING THREE



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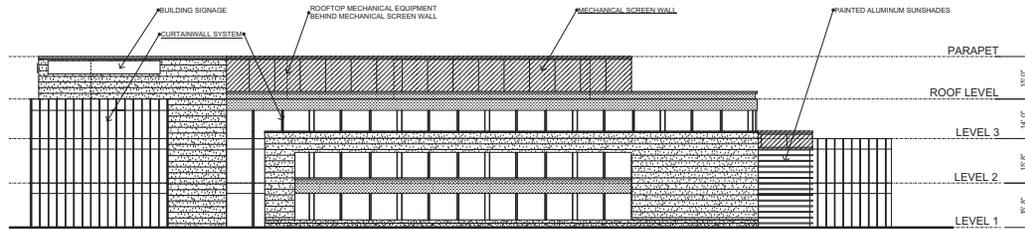
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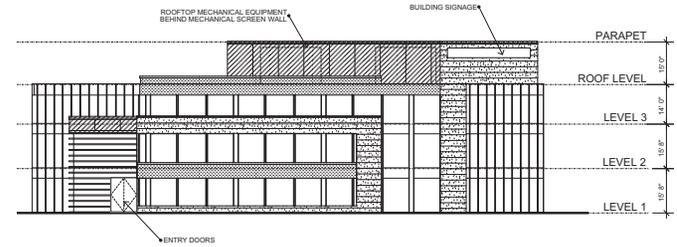
02 OF 14

HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

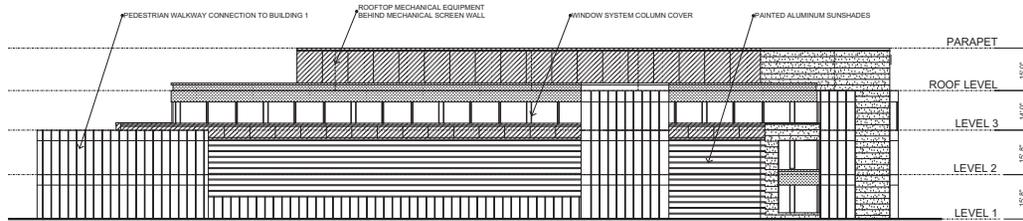
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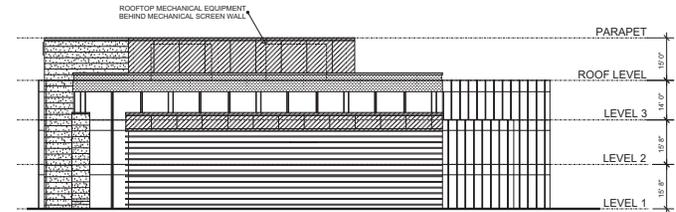
1 BUILDING 2 MOB - EAST ELEVATION
 SCALE: 1" = 20'



2 BUILDING 2 MOB - SOUTH ELEVATION
 SCALE: 1" = 20'



3 BUILDING 2 MOB - WEST ELEVATION
 SCALE: 1" = 20'



4 BUILDING 2 MOB - NORTH ELEVATION
 SCALE: 1" = 20'

MATERIAL LEGEND

-  **CURTAIN WALL SYSTEM 1**
 HIGH PERFORMANCE VISION AND SPANDREL GLASS
 VIBRACON COLOR: CRYSTAL GRAY
 HORIZONTAL AND VERTICAL ALUMINUM MULLIONS
 *KAWNEER COLOR: STERLING GRAY
 *WAUSAU COLOR: SILVER LIT750
-  **EXTERIOR WALL SYSTEM 1**
 MASONRY UNIT SYSTEM
 OPTION 1 - TERRA COTTA
 OPTION 2 - ORANGE BRICK TO MATCH COLOR OF EXISTING TERRA COTTA
 OPTION 3 - GREY BRICK TO MATCH COLOR OF EXISTING GRANITE
-  **EXTERIOR WALL SYSTEM 2**
 COMPOSITE METAL PANEL SYSTEM
 *ALUCOBOND COLOR: COLOR TO MATCH ANODIC BRONZE
 *REYNOLBOND COLOR: ANODIC BRONZE

-  **EXTERIOR WALL SYSTEM 3**
 CONCRETE MASONRY UNIT
 BASALITE - GROUND FACE BLOCK - COLOR 807
-  **EXTERIOR WALL SYSTEM 4**
 MASONRY UNIT SYSTEM
 OPTION 1 - GRANITE TO MATCH EXISTING
 OPTION 2 - GREY BRICK TO MATCH COLOR OF EXISTING GRANITE
-  **PARAPET/MECHANICAL SCREEN WALL**
 COMPOSITE METAL PANEL SYSTEM
 *ALUCOBOND COLOR: COLOR TO MATCH ANODIC BRONZE
 *REYNOLBOND COLOR: ANODIC SATIN



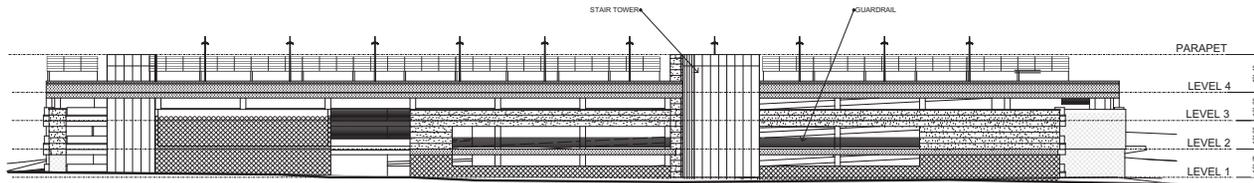
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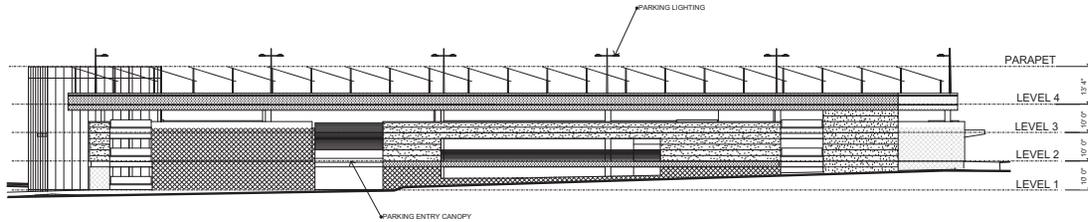
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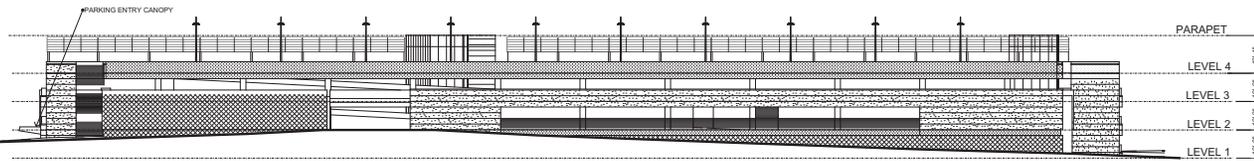
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 THIRD AMENDMENT TO SITE IMPROVEMENT PLAN #SP2011-037, PROJECT #SP13-48



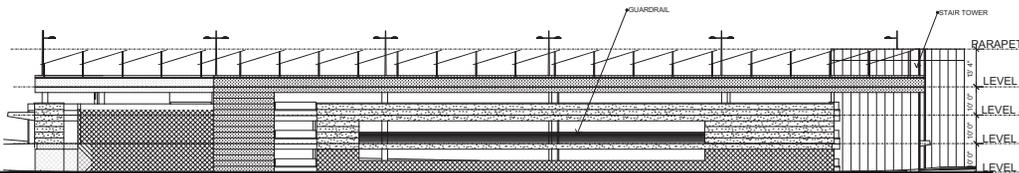
1 PARKING GARAGE - NORTH ELEVATION
 SCALE: 1" = 20'



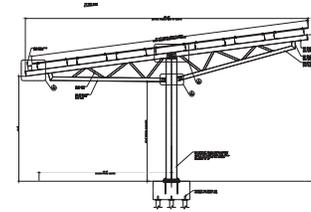
2 PARKING GARAGE - WEST ELEVATION
 SCALE: 1" = 20'



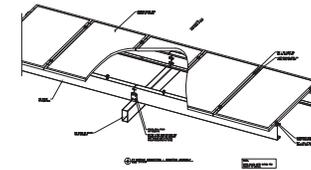
3 PARKING GARAGE - SOUTH ELEVATION
 SCALE: 1" = 20'



4 PARKING GARAGE - EAST ELEVATION
 SCALE: 1" = 20'



TYPICAL PV MODULE - ELEVATION (N.T.S.)



TYPICAL PV MODULE - ISOMETRIC (N.T.S.)

NOTE:
 FINAL GRADING TO BE DETERMINED WITH CIVIL

MATERIAL LEGEND

CURTAIN WALL SYSTEM 1
 HIGH PERFORMANCE IRON AND SPANDREL GLASS
 VIRAICON COLOR: CRYSTAL GRAY
 HORIZONTAL AND VERTICAL ALUMINUM MULLIONS
 NAWINEER COLOR: STERLING GRAY
 WAUSAU COLOR: SILVER LT730

EXTERIOR WALL SYSTEM 1
 MASONRY UNIT SYSTEM
 OPTION 1 - TERRA COTTA
 OPTION 2 - ORANGE BRICK TO MATCH COLOR OF EXISTING TERRA COTTA
 OPTION 3 - GREY BRICK TO MATCH COLOR OF EXISTING GRANITE

EXTERIOR WALL SYSTEM 2
 COMPOSITE METAL PANEL SYSTEM
 *ALUCOBOND COLOR: COLOR TO MATCH ANODIC BRONZE
 *REYNOLDBOND COLOR: ANODIC BRONZE

EXTERIOR WALL SYSTEM 3
 CONCRETE MASONRY UNITS
 BASALITE - GROUND FACE BLOCK - COLOR 607

EXTERIOR WALL SYSTEM 4
 MASONRY UNIT SYSTEM
 OPTION 1 - GRANITE TO MATCH EXISTING
 OPTION 2 - GREY BRICK TO MATCH COLOR OF EXISTING GRANITE

PARAPET/MECHANICAL SCREEN WALL
 COMPOSITE METAL PANEL SYSTEM
 *ALUCOBOND COLOR: COLOR TO MATCH ANODIC SATIN
 *REYNOLDBOND COLOR: ANODIC SATIN



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HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

A PORTION OF THE E 1/2 OF SECTION 10, TOWNSHIP 6 SOUTH, RANGE 67 WEST OF THE 6TH P.M., DOUGLAS COUNTY, COLORADO

PLANNING AREA 10 AND 12 20.101 ACRES

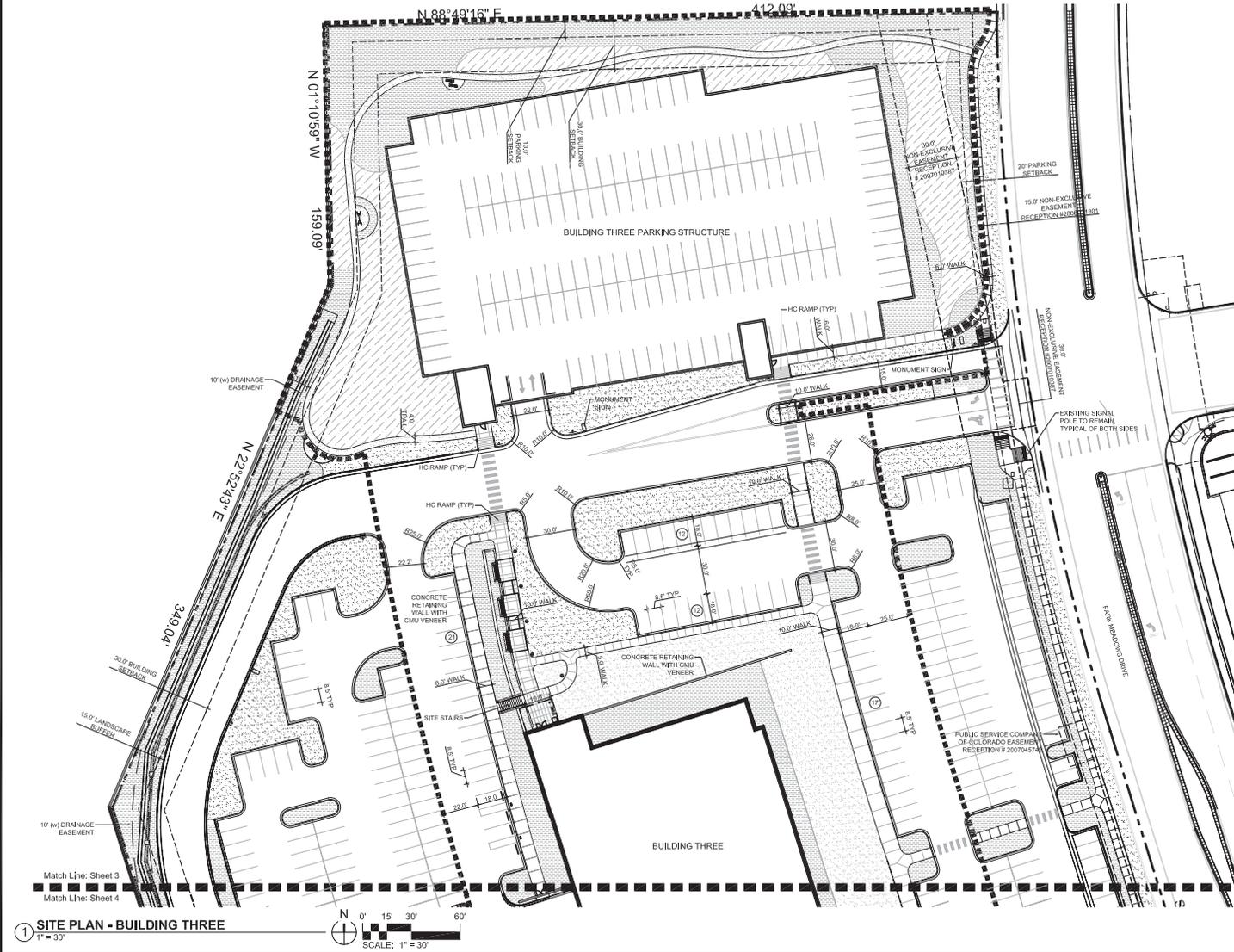
THIRD AMENDMENT TO SITE IMPROVEMENT PLAN #SP2011-037, PROJECT #SP13-48



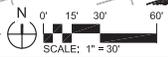
2 PLAN KEY
1" = 500'

- 3 LEGEND
- PROPERTY LINE
 - - - EASEMENT LINE
 - - - SETBACK LINE
 - ⊙ PARKING COUNT
 - |— STEEL EDGER
 - ▨ PLANTING BED

GENERAL NOTE:
1. MAINTENANCE OF THE DETACHED SIDEWALK THAT RUNS ALONG THE WEST SIDE OF PARK MEADOWS DRIVE IS THE RESPONSIBILITY OF THE DEVELOPER/OWNER. THIS MAINTENANCE WILL INCLUDE BUT NOT BE LIMITED TO REPAIRS, REPLACEMENT, AND SNOW REMOVAL.



1 SITE PLAN - BUILDING THREE
1" = 30'



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OCTOBER 7, 2014
05 OF 14

HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

A PORTION OF THE E 1/2 OF SECTION 10, TOWNSHIP 6 SOUTH, RANGE 67 WEST OF THE 6TH P.M., DOUGLAS COUNTY, COLORADO

PLANNING AREA 10 AND 12 20.101 ACRES

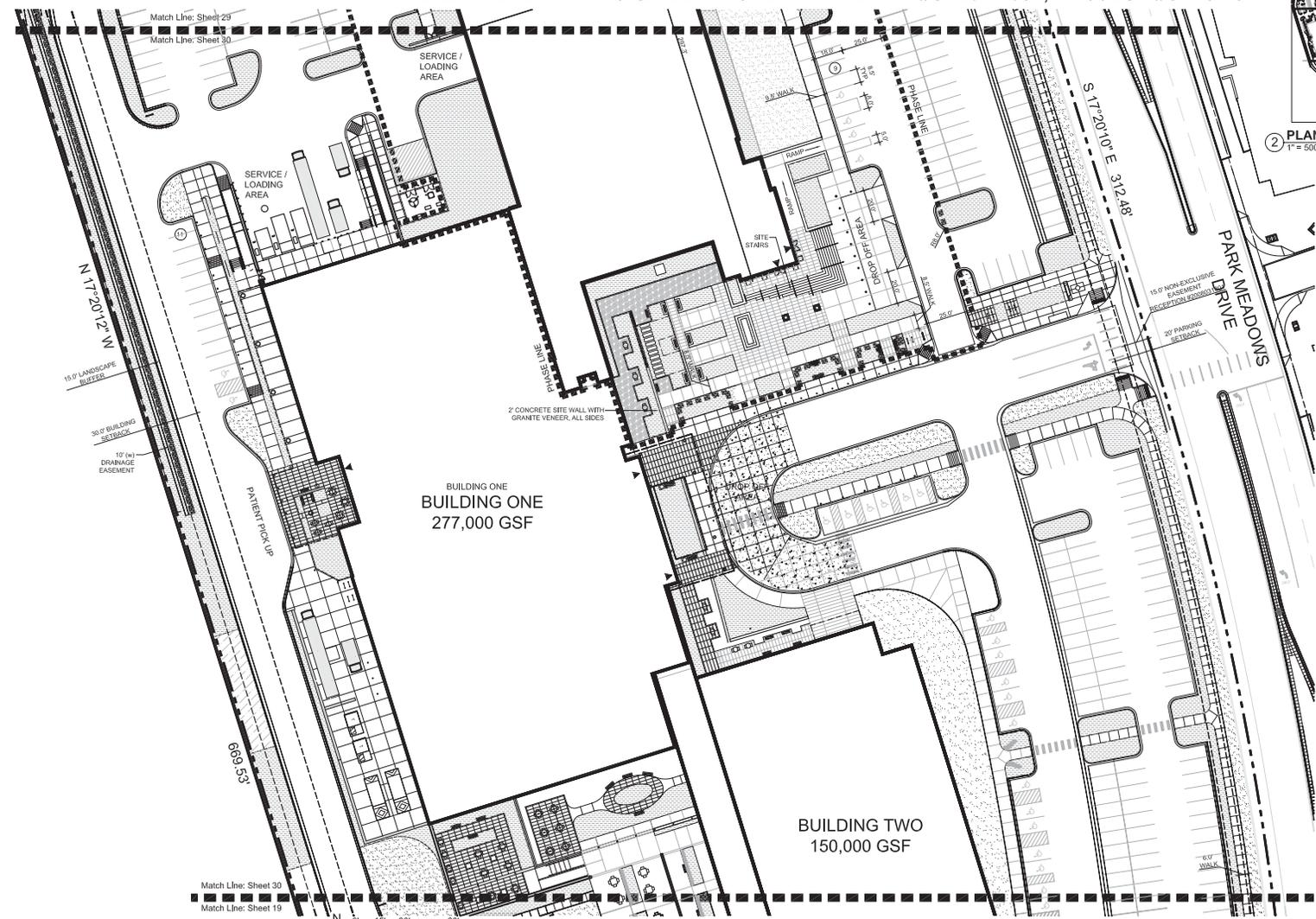
THIRD AMENDMENT TO SITE IMPROVEMENT PLAN #SP2011-037, PROJECT #SP13-48



2 PLAN KEY
1" = 500'

- 3 LEGEND
- PROPERTY LINE
 - - - EASEMENT LINE
 - - - SETBACK LINE
 - ⊙ PARKING COUNT
 - ⊙ POINT OF INGRESS/EGRESS
 - ⊙ DRIVING TABLES
 - ⊙ BENCHES
 - BOLLARDS
 - HC PARKING SIGN
 - - - STEEL EDGER
 - ▨ PLANTING BED

GENERAL NOTE:
1. MAINTENANCE OF THE DETACHED SIDEWALK THAT RUNS ALONG THE WEST SIDE OF PARK MEADOWS DRIVE IS THE RESPONSIBILITY OF THE DEVELOPER/OWNER. THIS MAINTENANCE WILL INCLUDE BUT NOT BE LIMITED TO REPAIRS, REPLACEMENT, AND SNOW REMOVAL.



1 SITE PLAN - BUILDING THREE
1" = 30'



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06 OF 14

HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

A PORTION OF THE E 1/2 OF SECTION 10, TOWNSHIP 6 SOUTH, RANGE 67 WEST OF THE 6TH P.M., DOUGLAS COUNTY, COLORADO

PLANNING AREA 10 AND 12

20.101 ACRES

THIRD AMENDMENT TO SITE IMPROVEMENT PLAN

#SP2011-037, PROJECT #SP13-48



2 PLAN KEY
1" = 500'

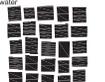
4 PLANT LIST

SYM	QTY	BOTANICAL NAME	COMMON NAME	SIZE	HIGHWATER USE
DECIDUOUS TREES					
AF	5	Acer x freemanii 'Sinner'	Silver Glen Maple	2.5' min cal.	N
FA	10	Fraxinus americana 'Autumn Purple'	Purple Ash	2.5' min cal.	N
GT	2	Gleditsia inaequalis 'Inermis Skyline'	Skyline Honeylocust	2.5' min cal.	N
PL	5	Populus x alamosa	Landscape Cottonwood	2.5' min cal.	N
QB	7	Quercus bicolor	Swamp White Oak	2.5' min cal.	N
QR	4	Quercus rubra	Northern Red Oak	2.5' min cal.	N
TC	11	Tilia cordata 'Golevein'	Golevein Linden	2.5' min cal.	N
ORNAMENTAL TREES					
AL	4	Alnus incana	Thicket Alder	1.5' high cal.	N
CL	3	Crataegus baccata 'Spartea'	Ciderus Cracked Hawthorn	1.5' high cal.	N
CR	4	Crataegus mollis	Russian Hawthorn	1.5' high cal.	N
MP	4	Malus 'Princess'	Princess Crab	1.5' high cal.	N
MS	9	Malus x 'Spring Snow'	Spring Snow Crab	1.5' high cal.	N
PN	2	Pinus riga 'Misses Kay'	PinKosee Kay Plym	1.5' high cal.	N
CONIFEROUS TREES					
AC	2	Abies concolor	White Fir	6' min height	N
PA	4	Pinus strobus 'Supersita'	Faerie Pine Norway Spruce	6' min height	N
PB	4	Pinus pungens 'Baker'	Baker Spruce	6' min height	N
PE	1	Pinus pungens 'Baby Blue Eyes'	Baby Blue Eyes Spruce	6' min height	N
PF	6	Pinus strobus	Foxfall Pine	6' min height	N
PS	3	Pinus sylvestris	Scotch Pine	6' min height	N
DECIDUOUS SHRUBS					
BT	1	Berberis thunbergii 'Atropurpurea Nana'	Ciderus Pyramy Barberry	5 gal 24" mid-cane	N
CB	55	Caryopteris x clandonensis	Blue Mist Spirea	5 gal 24" mid-cane	N
CR	17	Cornus sericea 'Baller'	Red Twig Dogwood	5 gal 24" mid-cane	N
EAB	37	Eucornus albus	Burning Bush	5 gal 24" mid-cane	N
EAC	5	Eucornus albus 'Compass'	Dwarf Burning Bush	5 gal 24" mid-cane	N
LVL	60	Ligularia vulgaris 'Lodone'	Lodone Petal	5 gal 24" mid-cane	N
KAB	4	Kolkwitzia amabilis	Beautybush	5 gal 24" mid-cane	N
DMR	35	Parthenocissis vitacea	Russian Sage	5 gal 24" mid-cane	N
PBP	3	Prunus besseyi 'Pawnee Buttes'	Pawnee Buttes Sand Cherry	5 gal 24" mid-cane	N
PRW	27	Prunus besseyi	Western Sand Cherry	5 gal 24" mid-cane	N
PFJ	63	Potentilla fruticosa 'Jackmanii'	Jackman Potentilla	5 gal 24" mid-cane	N
RAC	9	Rhus aromatica 'Green-Low'	Green Low Sumac	5 gal 24" mid-cane	N
RAS	12	Rhus aromatica	Fragrant Sumac	5 gal 24" mid-cane	N
RHL	113	Rosa 'Hardyconer'	Lifted Easy Rose	5 gal 24" mid-cane	N
RKR	59	Rosa 'Madame de Rod'	Red Madam Rose	5 gal 24" mid-cane	N
RRK	14	Rosa 'Rudazac'	Knock Out Rose	5 gal 24" mid-cane	N
RTS	8	Rhus typhina	Staghorn Sumac	5 gal 24" mid-cane	N
SBL	12	Spiraea x bumalda 'Limemound'	Limemound Spirea	5 gal 24" mid-cane	N
SPL	50	Syringa x prostrata 'James McFarlane'	Miss Kiki Lilac	5 gal 24" mid-cane	N
SPM	34	Syringa vulgaris 'Miss Klri'	Miss Kiki Lilac	5 gal 24" mid-cane	N
SVL	9	Syringa vulgaris 'Miss Klri'	Common White Lilac	5 gal 24" mid-cane	N
VLM	10	Viburnum dentatum 'Mottkan'	Mottkan Viburnum	5 gal 24" mid-cane	N
EVERGREEN SHRUBS					
CHD	36	Cotoneaster horizontalis pernyi	Ground Cotoneaster	5 gal 24" N	
CPS	25	Cyrtus purpur 'Spartan Gold'	Spanish Gold Brown	5 gal 24" N	
JCH	8	Juriponus chinensis 'Hilbert'	Hilbert Juniper	5 gal 24" N	
JHH	62	Juriponus horizontalis 'Hugger'	Hugger Juniper	5 gal 24" N	
JSB	24	Juriponus sabbia 'Broadmoor'	Broadmoor Juniper	5 gal 24" N	
JST	32	Juriponus squarrosus 'Tall Top Blue'	Tall Top Juniper	5 gal 24" N	
JHW	17	Juriponus horizontalis 'Wilbert'	Wilbert Juniper	5 gal 24" N	
PERENNIALS AND ORNAMENTAL GRASSES					
CAK	87	Calamagrostis acutiflora 'Karl Foerster'	Feather Reed Grass	5 gal shrub grass	N
FGB	194	Festuca ovina 'Elsin Blue'	Blue Fescue	1 gal shrub grass	N
MSM	71	Miscanthus sinensis 'GrassBliss'	Mistaken Grass	5 gal shrub grass	N
MSY	38	Miscanthus sinensis 'Yaku Jima'	Dwarf Mistaken Grass	5 gal shrub grass	N
PAF	37	Pennisetum alopecuroides 'Hamel'	Handy Fountain Grass	5 gal shrub grass	N

NOTE: In the event of a discrepancy between the plan graphic and the landscape legend, the plant material quantity as determined by the plan graphic shall take precedence.

The irrigation system design will consist of drip irrigation to all planting beds, and areas will have pop-up spray heads in areas less than 20' wide and rotor heads in areas greater than 20' wide. Low water requirement sods and all trees are to be zoned separately so irrigation may be controlled independently.

*Trees in Park Meadows Drive median to have 3.0' min caliper at planting



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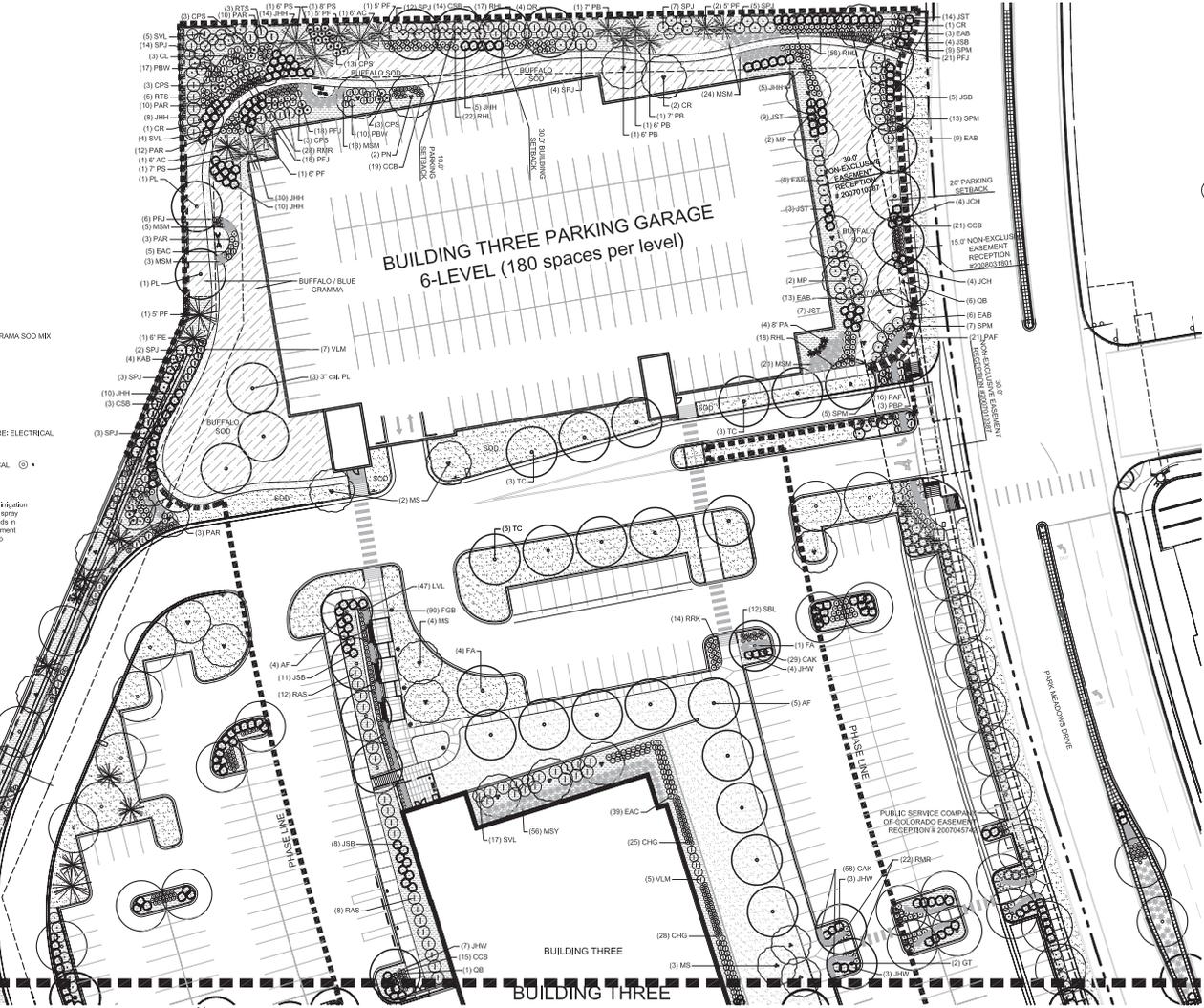
OCTOBER 7, 2014
07 OF 14

3 LEGEND

- BUFFALO GRASS/BLUE GRAMA SOD MIX
- SOD
- STEEL EDGER
- PARKING LOT LIGHTING RE: ELECTRICAL
- PEDESTRIAN LIGHTING RE: ELECTRICAL
- MONUMENT SIGN

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1 LANDSCAPE PLAN - BUILDING THREE
1" = 30'



HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

A PORTION OF THE E 1/2 OF SECTION 10, TOWNSHIP 6 SOUTH, RANGE 67 WEST OF THE 6TH P.M., DOUGLAS COUNTY, COLORADO

PLANNING AREA 10 AND 12

20.101 ACRES

THIRD AMENDMENT TO SITE IMPROVEMENT PLAN

#SP2011-037, PROJECT #SP13-48



2 PLAN KEY
1" = 500'

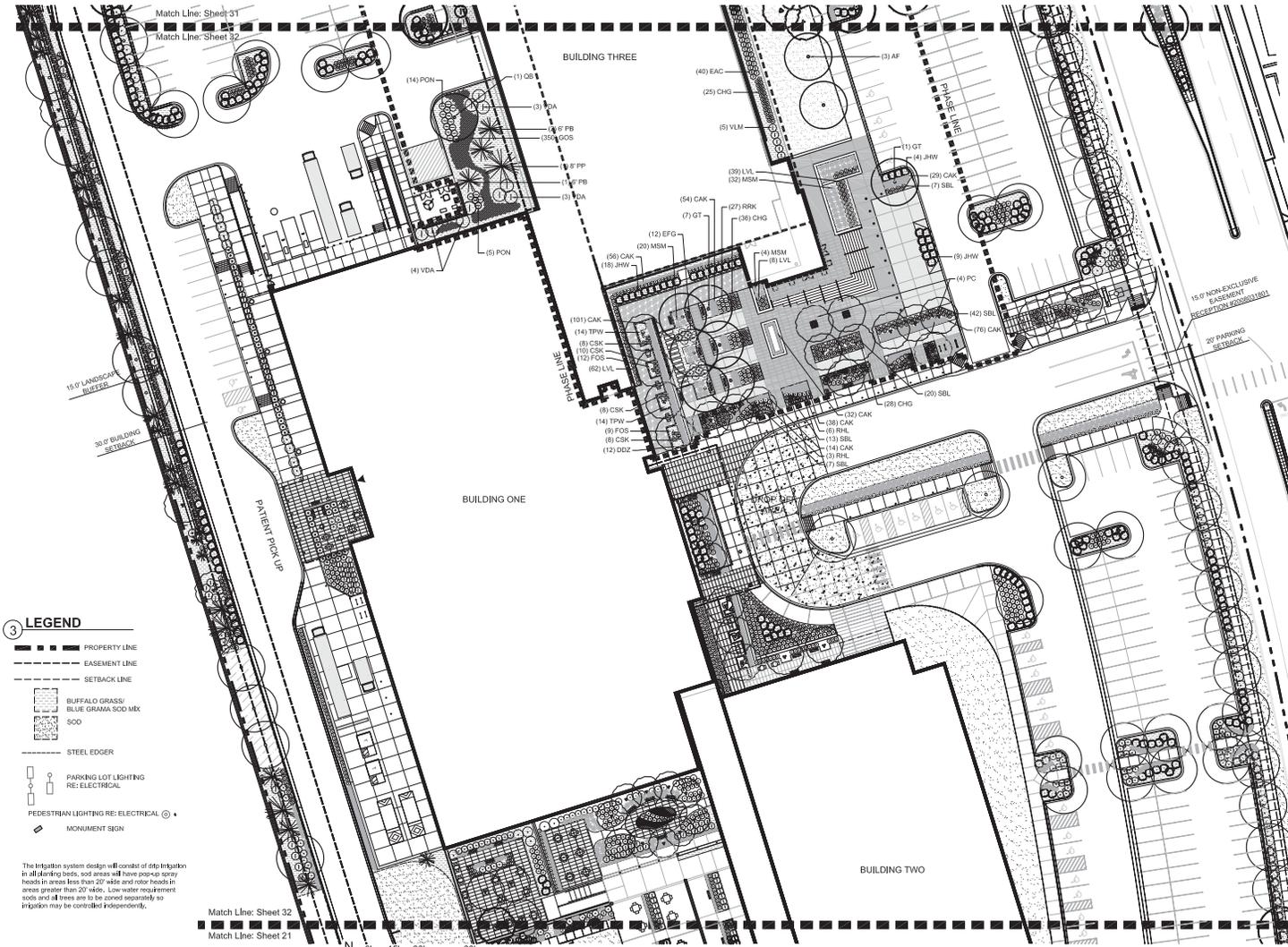
4 PLANT LIST

SYM	QTY	BOTANICAL NAME	COMMON NAME	SIZE	HIGHWATER USE
DECIDUOUS TREES					
AF	1	<i>Acer x fraxinifolium 'Spartan'</i>	Sharon Glen Maple	2.5' min cal.	N
OT	8	<i>Quercula bicolor</i>	Shiny Honeylocust	2.5' min cal.	N
OS	1	<i>Quercus bicolor</i>	Swamp/White Oak	2.5' min cal.	N
ORNAMENTAL TREES					
CC	5	<i>Cotinus cogonioides 'Lemonie'</i>	Thornless Cockspur Hawthorn	1.5' min cal.	N
PC	6	<i>Pinus californiana</i>	Chantrelle Pear	1.5' min cal.	N
CONIFEROUS TREES					
PA	2	<i>Pinus strobus 'Candorella'</i>	Frostbite Norway Spruce	6' min height	N
PB	2	<i>Pinus pungens 'Baker'</i>	Baked Spruce	6' min height	N
PE	1	<i>Pinus pungens 'Baby Blue Eyes'</i>	Baby Blue Eyes Spruce	6' min height	N
PP	1	<i>Pinus pungens</i>	Cockspur Spruce	6' min height	N
DECIDUOUS SHRUBS					
CHG	125	<i>Cotoneaster horizontalis perpusilla</i>	Ground Cotoneaster	5 gal, 24" multicaene	N
CSK	42	<i>Cornus sericea 'Walter'</i>	Walters Dogwood	5 gal, 24" multicaene	N
EAC	40	<i>Euroyonimus alatus 'Compacta'</i>	Dwarf Burning Bush	5 gal, 24" multicaene	N
LVL	45	<i>Ligustrum vulgare 'Lutescens'</i>	Lodense Privet	5 gal, 24" multicaene	N
PON	19	<i>Physocarpus opulifolius 'Nanus'</i>	Dwarf Nivea	5 gal, 24" multicaene	N
RKL	9	<i>Rosa 'Harlequin'</i>	Walt's Easy Rose	5 gal, 24" multicaene	N
RK1	100	<i>Rosa 'Blazezer'</i>	Knock Out Rose	5 gal, 24" multicaene	N
SBL	95	<i>Spiraea x bumalda 'Limemound'</i>	Limemound Spiraea	5 gal, 24" multicaene	N
VDA	10	<i>Viburnum dentatum</i>	Arrowwood Viburnum	5 gal, 24" multicaene	N
VLM	10	<i>Viburnum lantana 'Mohican'</i>	Mohican Viburnum	5 gal, 24" multicaene	N
EVERGREEN SHRUBS					
CHG	125	<i>Cotoneaster horizontalis perpusilla</i>	Ground Cotoneaster	5 gal, 24"	N
EFG	18	<i>Euroyonimus tortuosus 'Emerald Green'</i>	Emerald Green Euroyonimus	5 gal, 24"	N
JHW	19	<i>Juniperus horizontalis 'Wilton'</i>	Wilton Juniper	5 gal, 24"	N
PERENNIALS AND ORNAMENTAL GRASSES					
CAK	380	<i>Calamagrostis scottii 'Gold Foxtail'</i>	Feather Reed Grass	5 gal shrub grass	N
DDZ	12	<i>Dianthus delaboies 'Zing Rose'</i>	Zing Rose Dianthus	1 gal groundcover	N
FDS	38	<i>Fragaria 'Ogishiki'</i>	Strawberry	1 gal groundcover	N
GOS	350	<i>Galium aparinum</i>	Sweet Woodruff	5 gal groundcover	N
HSE	1	<i>Helleborus scaber</i>	Blue Avena	1 gal shrub grass	N
MSM	30	<i>Miscanthus sinensis 'Gracifolius'</i>	Madison Grass	5 gal shrub grass	N
TPW	28	<i>Thymus praecox pseudolanuginosus</i>	Woody Thyme	1 gal groundcover	N

NOTE: In the event of a discrepancy between the plan graphic and the landscape legend, the plant material quantity as determined by the plan graphic shall take precedence.

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3 LEGEND

- PROPERTY LINE
- EASEMENT LINE
- SETBACK LINE
- BUFFALO GRASS/ BLUE GRASS SOG MIX
- SOD
- STEEL EDGER
- PARKING LOT LIGHTING RE-ELECTRICAL
- PEDESTRIAN LIGHTING RE-ELECTRICAL
- MONUMENT SIGN

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1 LANDSCAPE PLAN - BUILDING THREE
1" = 30'



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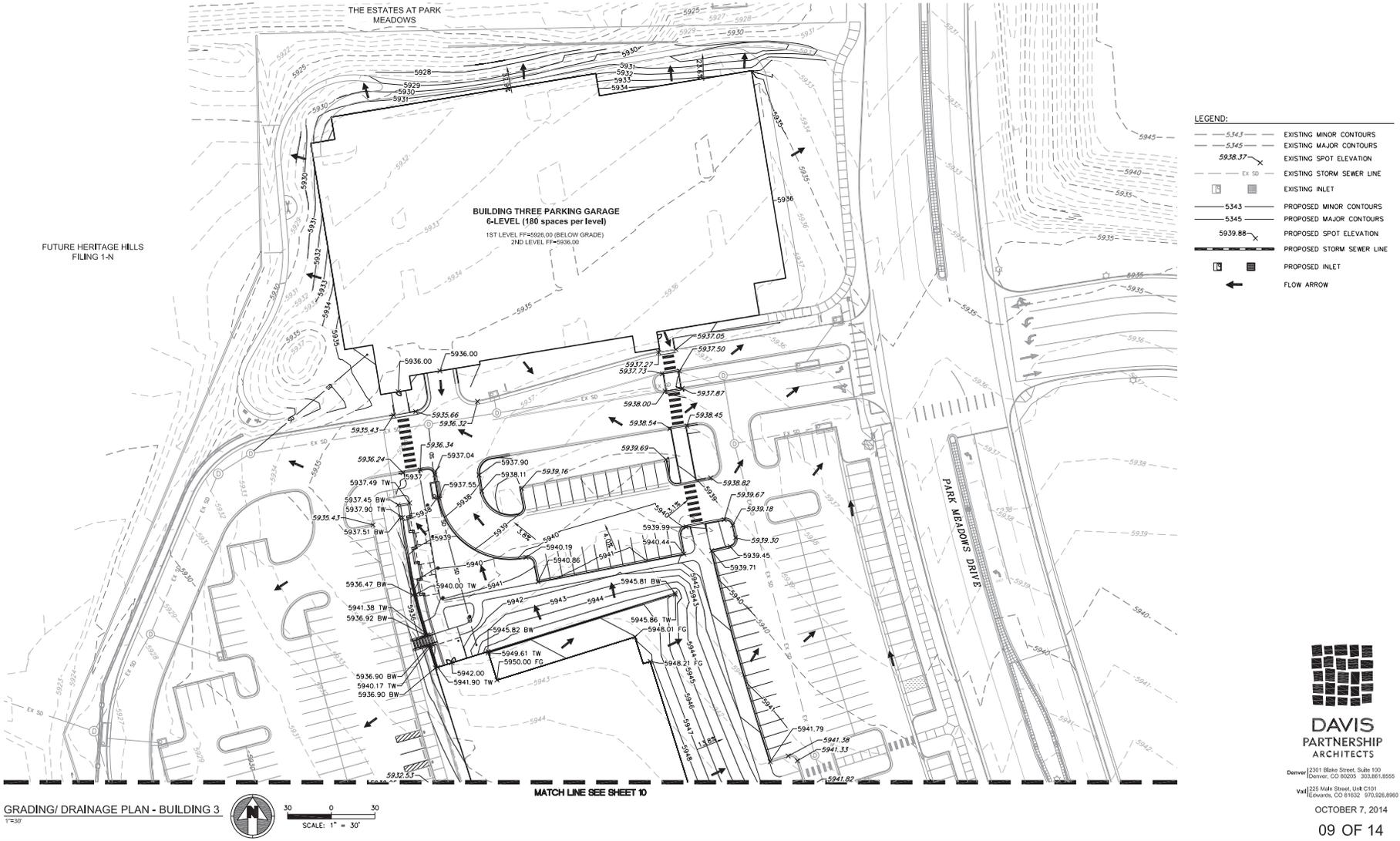
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08 OF 14

HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

A PORTION OF THE E 1/2 OF SECTION 10, TOWNSHIP 6 SOUTH, RANGE 67 WEST OF THE 6TH P.M., DOUGLAS COUNTY, COLORADO
 PLANNING AREA 10 AND 12 20.101 ACRES
 THIRD AMENDMENT TO SITE IMPROVEMENT PLAN #SP2011-037, PROJECT #SP13-48



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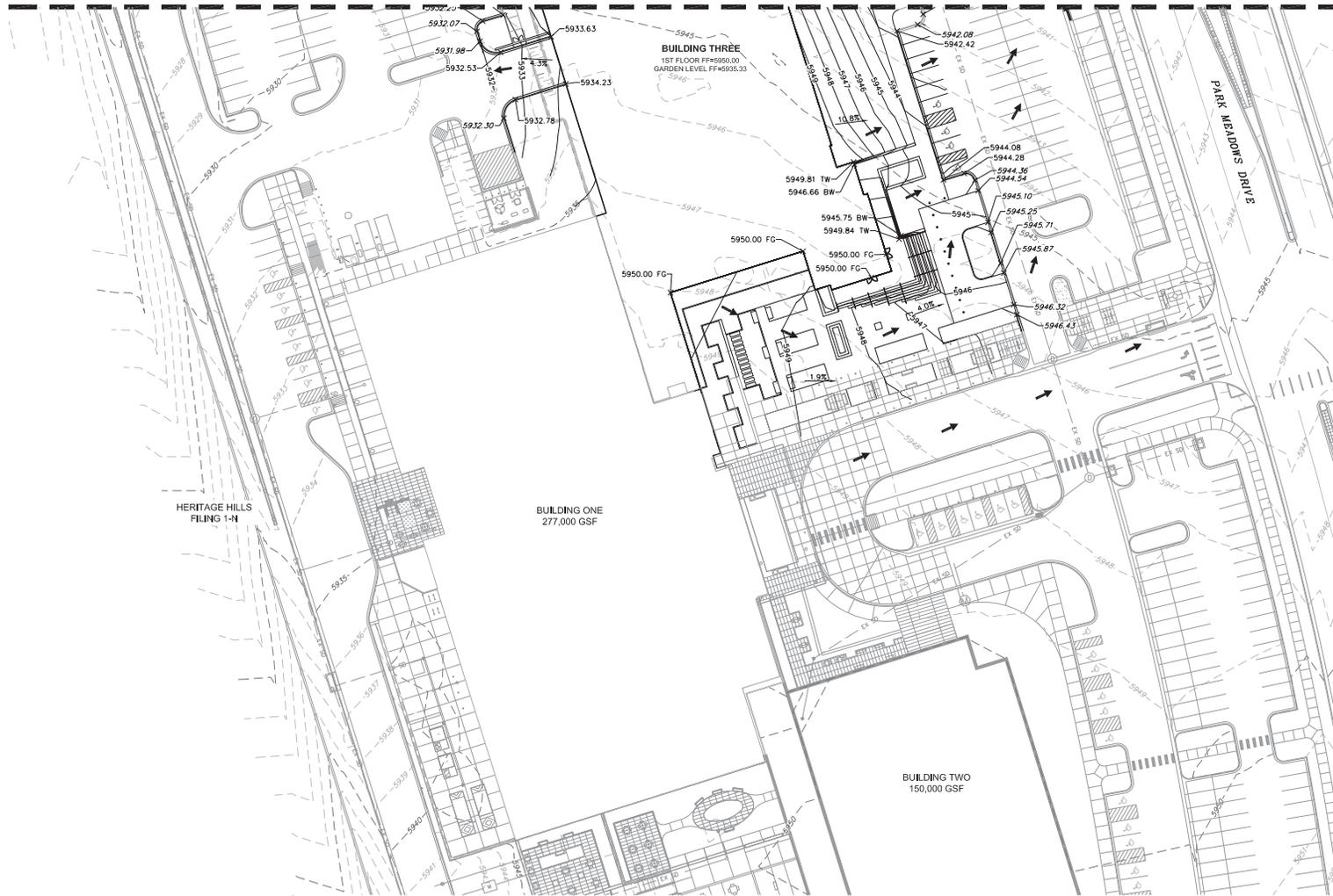
OCTOBER 7, 2014

09 OF 14

HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

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 PLANNING AREA 10 AND 12 20.101 ACRES
 THIRD AMENDMENT TO SITE IMPROVEMENT PLAN #SP2011-037, PROJECT #SP13-48

MATCH LINE SEE SHEET 08



- LEGEND:**
- 5.54.3- EXISTING MINOR CONTOURS
 - 5.54.5 EXISTING MAJOR CONTOURS
 - 59.38.37 EXISTING SPOT ELEVATION
 - EX 10 EXISTING STORM SEWER LINE
 - EXISTING INLET
 - 5.54.3 PROPOSED MINOR CONTOURS
 - 5.54.5 PROPOSED MAJOR CONTOURS
 - 59.39.88 PROPOSED SPOT ELEVATION
 - PROPOSED STORM SEWER LINE
 - PROPOSED INLET
 - ← FLOW ARROW

GRADING/ DRAINAGE PLAN - BUILDING 3
 1"=30'



0 30
 SCALE: 1" = 30'



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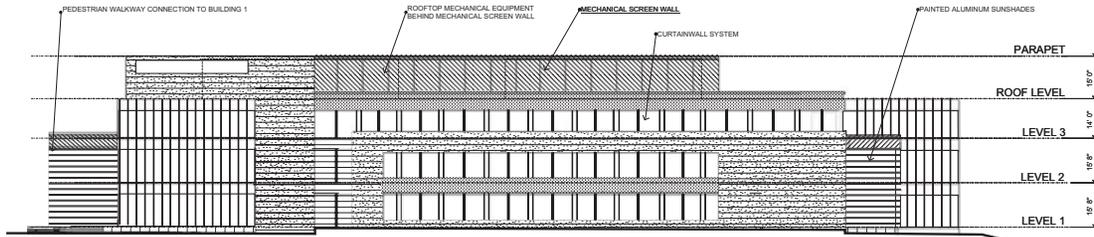
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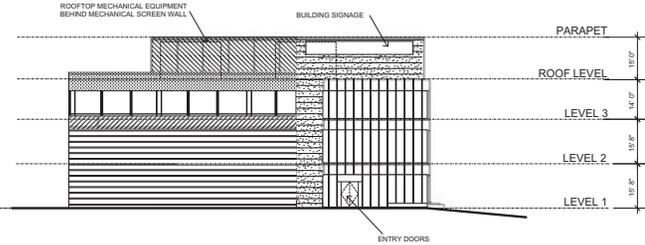
10 OF 14

HERITAGE HILLS FILING 2, 3RD AMENDMENT, LOT 9-A

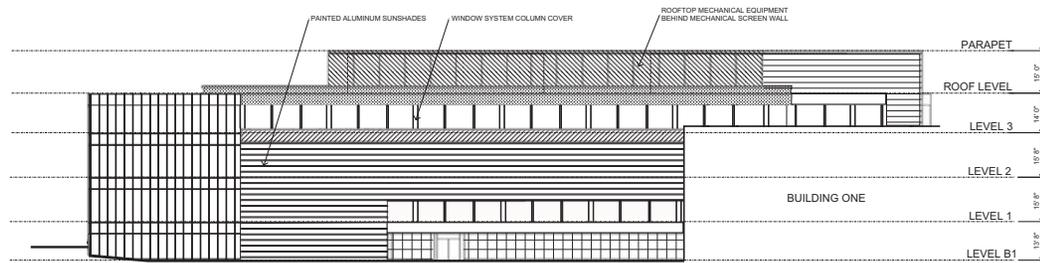
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 THIRD AMENDMENT TO SITE IMPROVEMENT PLAN #SP2011-037, PROJECT #SP13-48



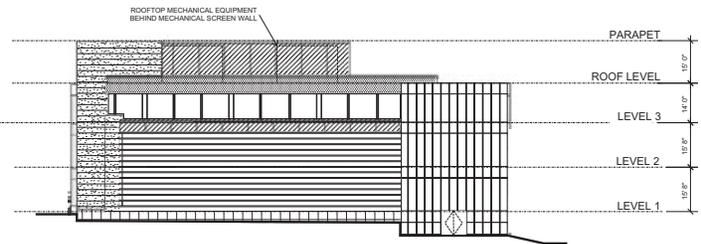
1 BUILDING 3 MOB - EAST ELEVATION
 SCALE: 1" = 20'



2 BUILDING 3 MOB - SOUTH ELEVATION
 SCALE: 1" = 20'



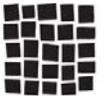
3 BUILDING 3 MOB - WEST ELEVATION
 SCALE: 1" = 20'



4 BUILDING 3 MOB - NORTH ELEVATION
 SCALE: 1" = 20'

MATERIAL LEGEND

 CURTAIN WALL SYSTEM 1 HIGH PERFORMANCE VISION AND SPANDREL GLASS VISION COLOR: CRYSTAL GRAY HORIZONTAL AND VERTICAL ALUMINUM MULLIONS *KAWNEER COLOR: STERLING GRAY *WALUSU COLOR: SILVER L770	 EXTERIOR WALL SYSTEM 3 CONCRETE MASONRY UNITS BASALITE - GROUND FACE BLOCK - COLOR 607
 EXTERIOR WALL SYSTEM 1 MASONRY UNIT SYSTEM OPTION 1 - TERRA COTTA OPTION 2 - ORANGE BRICK TO MATCH COLOR OF EXISTING GRANITE OPTION 3 - GREY BRICK TO MATCH COLOR OF EXISTING GRANITE	 EXTERIOR WALL SYSTEM 4 MASONRY UNIT SYSTEM OPTION 1 - GRANITE TO MATCH EXISTING OPTION 2 - GREY BRICK TO MATCH COLOR OF EXISTING GRANITE
 EXTERIOR WALL SYSTEM 2 COMPOSITE METAL PANEL SYSTEM *ALUCOBOND COLOR: COLOR TO MATCH ANODIC BRONZE *REYNOLND COLOR: ANODIC BRONZE	 PARAPET/MECHANICAL SCREEN WALL COMPOSITE METAL PANEL SYSTEM *ALUCOBOND COLOR: COLOR TO MATCH ANODIC SATIN *REYNOLND COLOR: ANODIC SATIN



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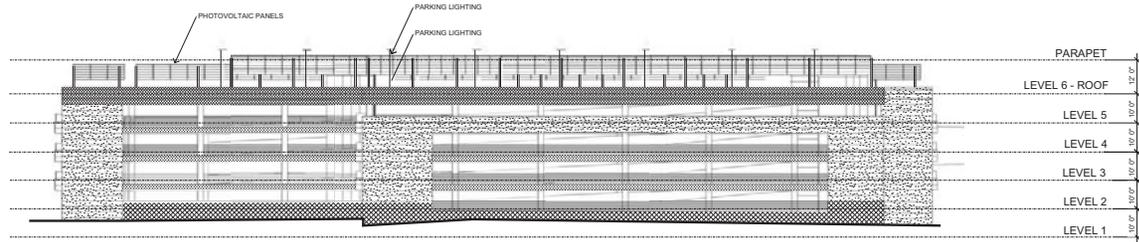
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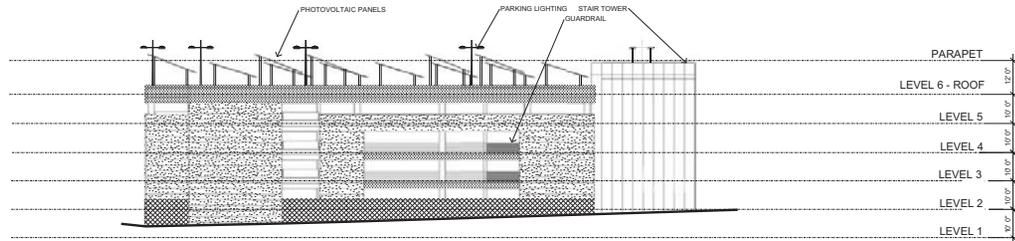
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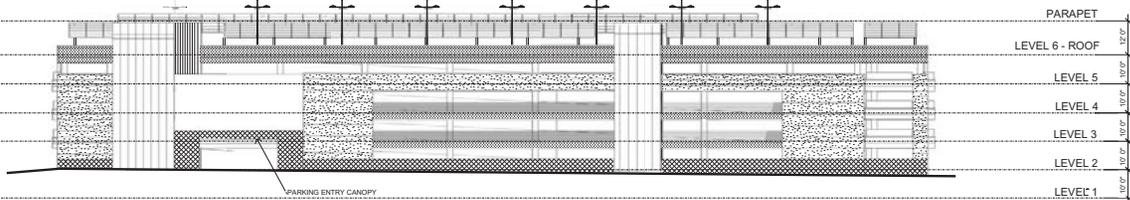
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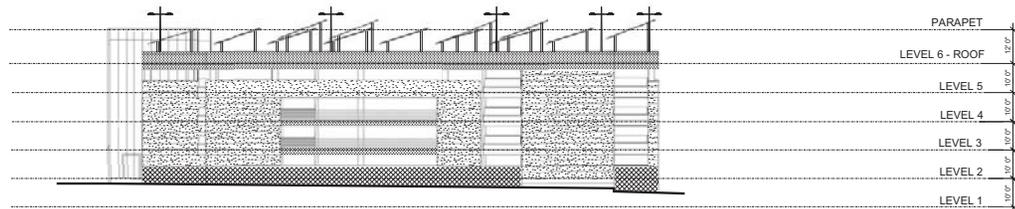
1 PARKING GARAGE - NORTH ELEVATION
 SCALE: 1" = 20'



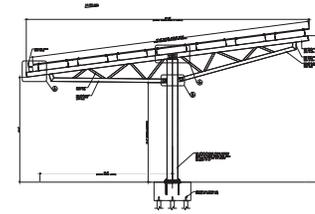
2 PARKING GARAGE - WEST ELEVATION
 SCALE: 1" = 20'



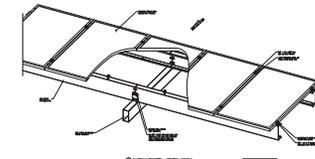
3 PARKING GARAGE - SOUTH ELEVATION
 SCALE: 1" = 20'



4 PARKING GARAGE - EAST ELEVATION
 SCALE: 1" = 20'



TYPICAL PV MODULE - ELEVATION (N.T.S.)



TYPICAL PV MODULE - ISOMET (N.T.S.)

MATERIAL LEGEND

CURTAIN WALL SYSTEM 1
 HIGH PERFORMANCE GLASS AND SPANDREL GLASS
 VIRACON COLOR: CRYSTAL GRAY
 HORIZONTAL AND VERTICAL ALUMINUM MULLIONS
 *MANNER COLOR: STERLING GRAY
 *WAUSAU COLOR: SILVER LT730

EXTERIOR WALL SYSTEM 1
 MASONRY UNIT SYSTEM
 OPTION 1 - TERRA COTTA
 OPTION 2 - ORANGE BRICK TO MATCH COLOR OF EXISTING TERRA COTTA
 OPTION 3 - GREY BRICK TO MATCH COLOR OF EXISTING GRANITE

EXTERIOR WALL SYSTEM 2
 COMPOSITE METAL PANEL SYSTEM
 *ALUCOBOND COLOR: COLOR TO MATCH ANODIC BRONZE
 *REYNOLBOND COLOR: ANODIC BRONZE

EXTERIOR WALL SYSTEM 3
 CONCRETE MASONRY UNITS
 BASALITE - GROUND FACE BLOCK - COLOR 607

EXTERIOR WALL SYSTEM 4
 MASONRY UNIT SYSTEM
 OPTION 1 - GRANITE TO MATCH EXISTING
 OPTION 2 - GREY BRICK TO MATCH COLOR OF EXISTING GRANITE

PARAPET/MECHANICAL SCREEN WALL
 COMPOSITE METAL PANEL SYSTEM
 *ALUCOBOND COLOR: COLOR TO MATCH ANODIC SATIN
 *REYNOLBOND COLOR: ANODIC SATIN

NOTE:
 FINAL GRADING TO BE DETERMINED WITH CIVIL



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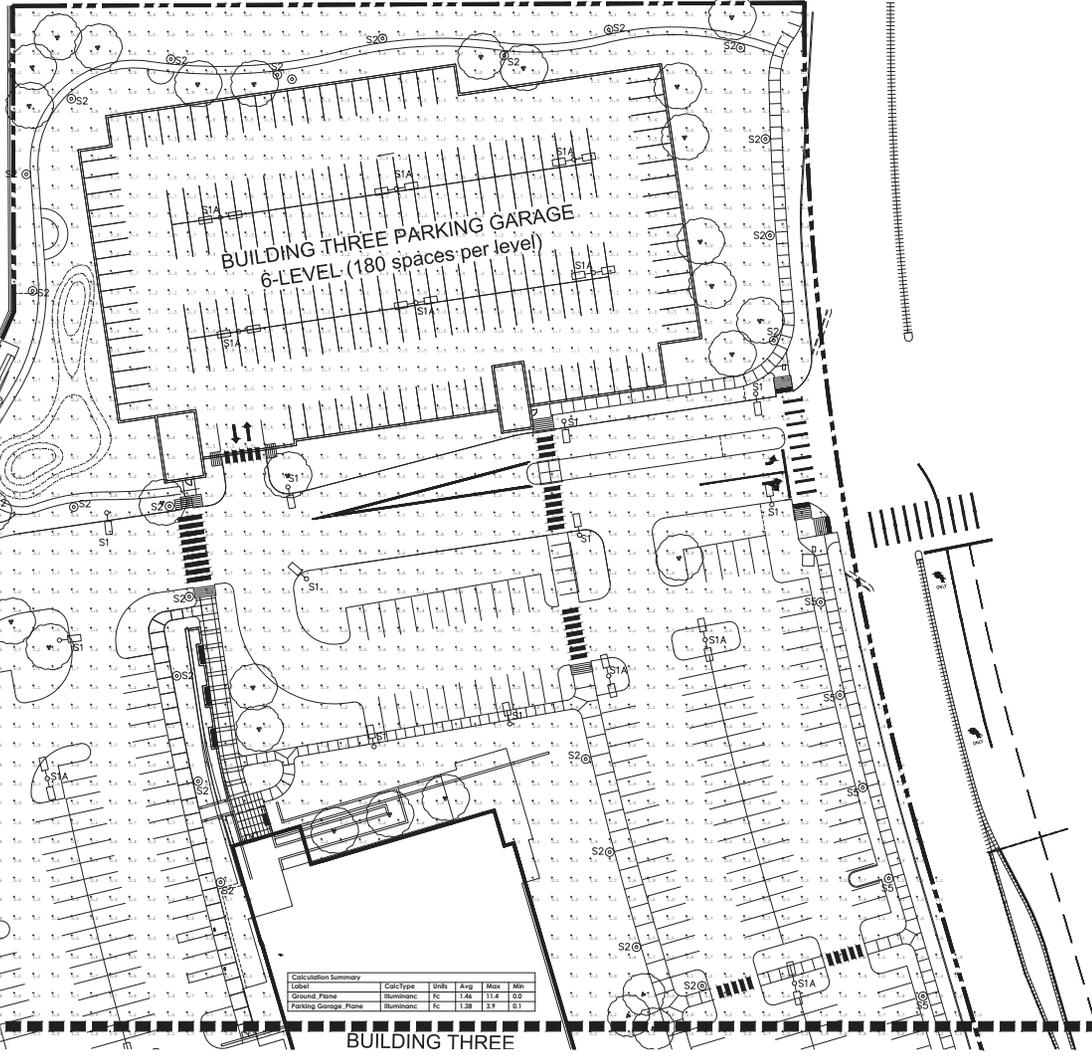
OCTOBER 7, 2014

12 OF 14

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 1" = 10' VERTICAL SCALE
 1" = 10' DIAGONAL SCALE



Calculation Summary					
Light	Calc Type	Units	Avg	Max	Min
Ground Plane	Illuminance	fc	1.46	11.4	0.0
Parking Garage Plane	Illuminance	fc	1.38	2.7	0.1

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1 SITE PLAN - BUILDING THREE



BUILDING THREE

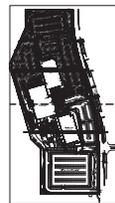
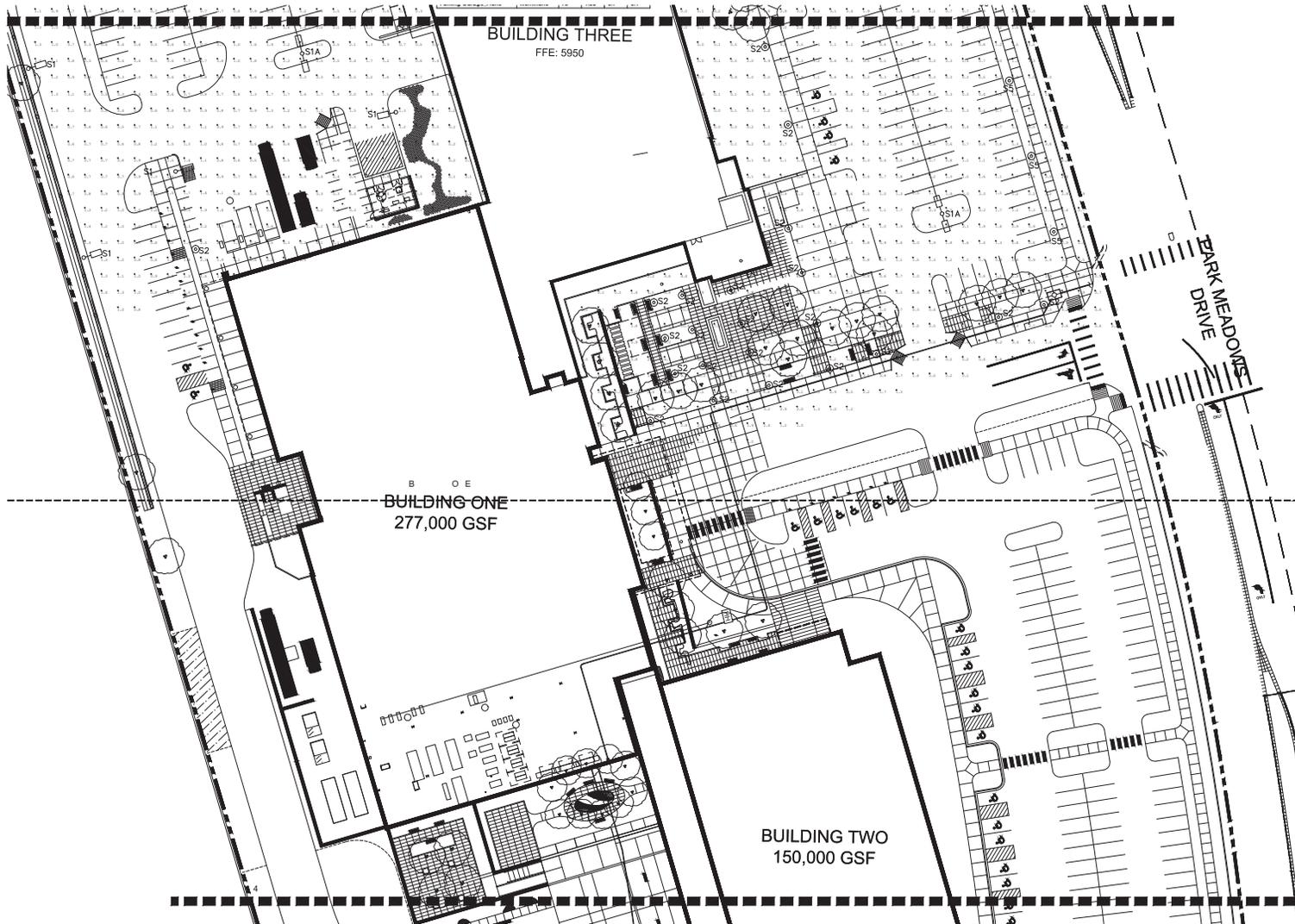


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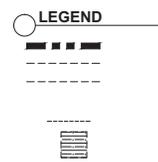
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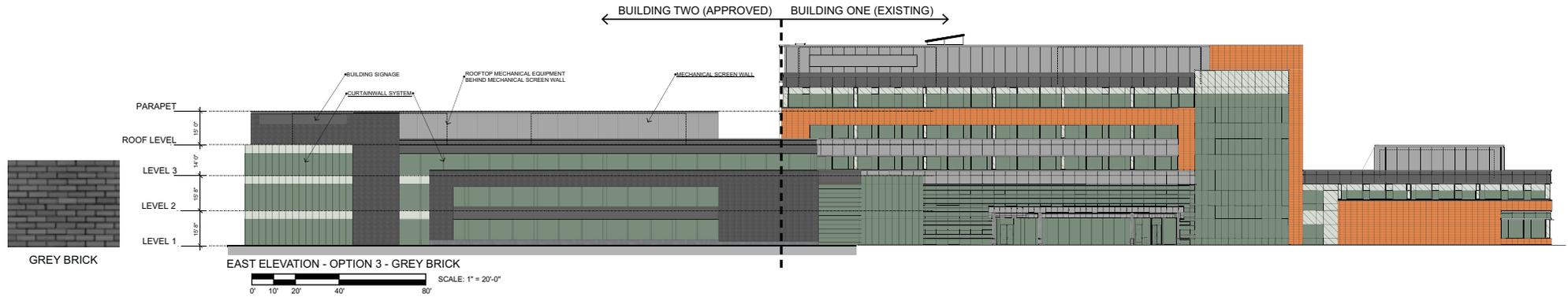
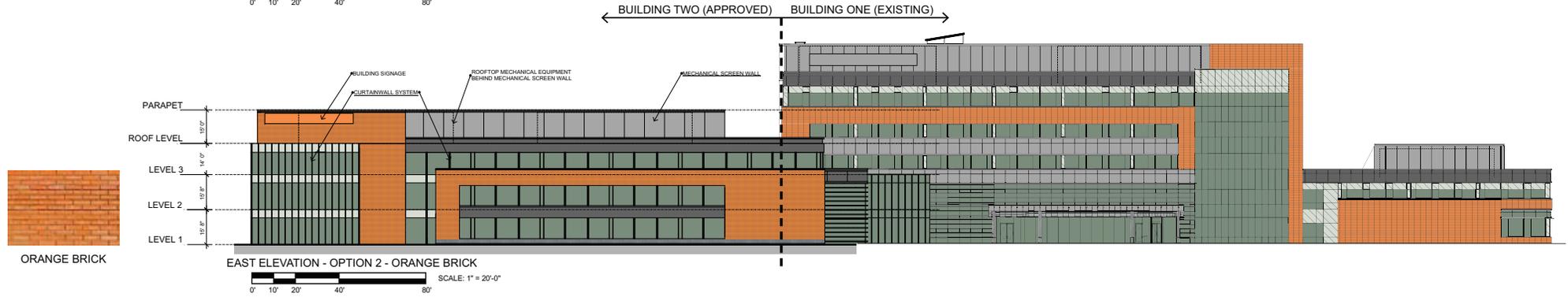
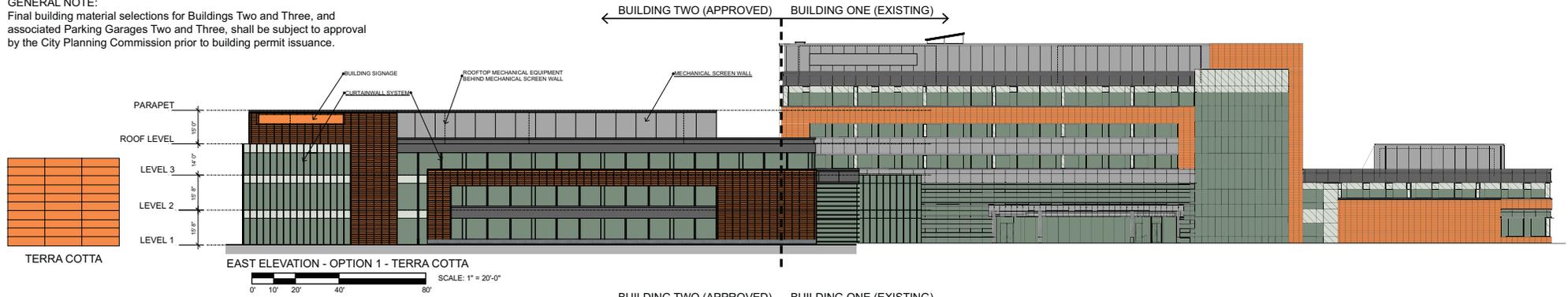
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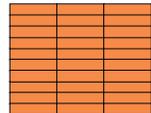
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GENERAL NOTE:
 Final building material selections for Buildings Two and Three, and associated Parking Garages Two and Three, shall be subject to approval by the City Planning Commission prior to building permit issuance.



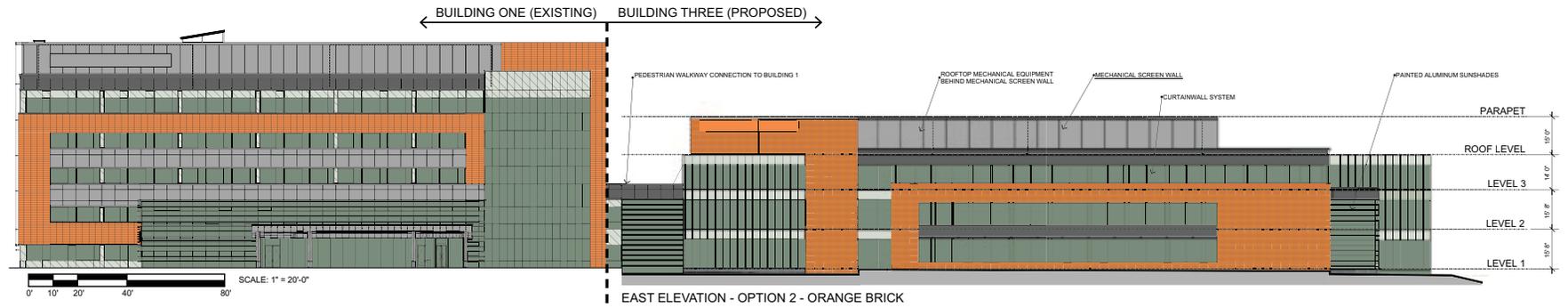
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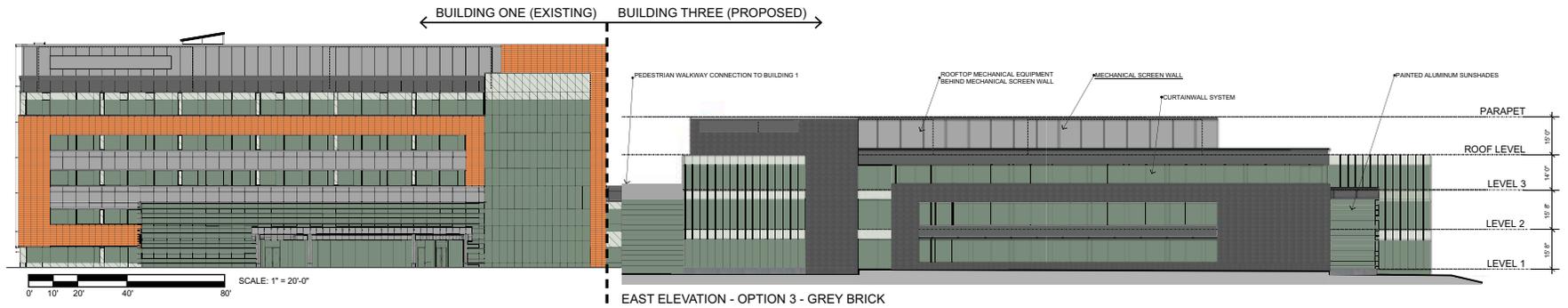
TERRA COTTA



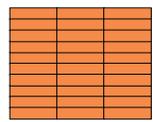
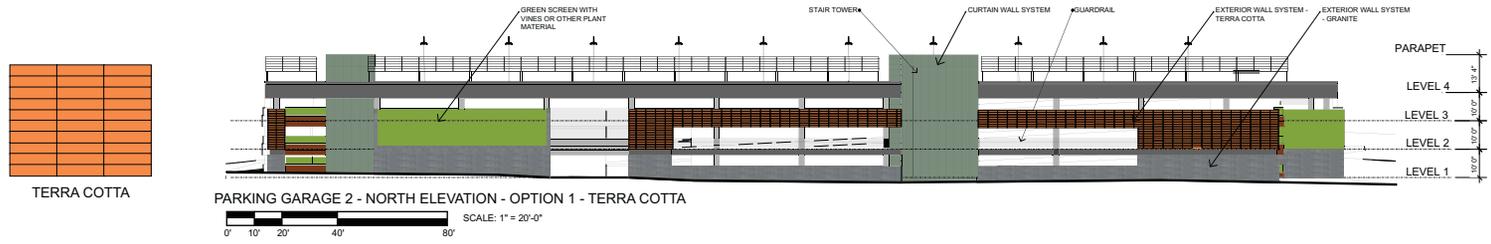
ORANGE BRICK



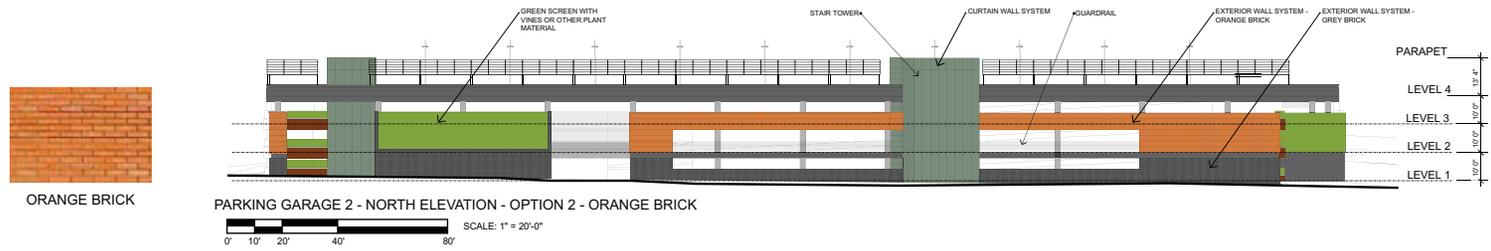
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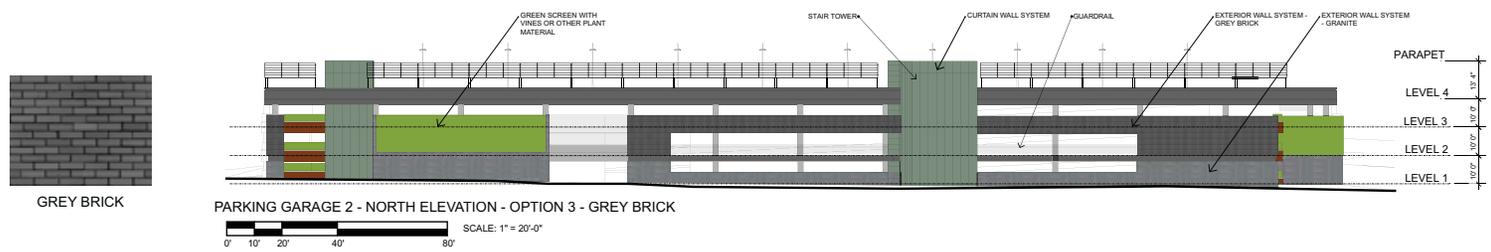
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TERRA COTTA

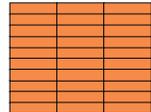
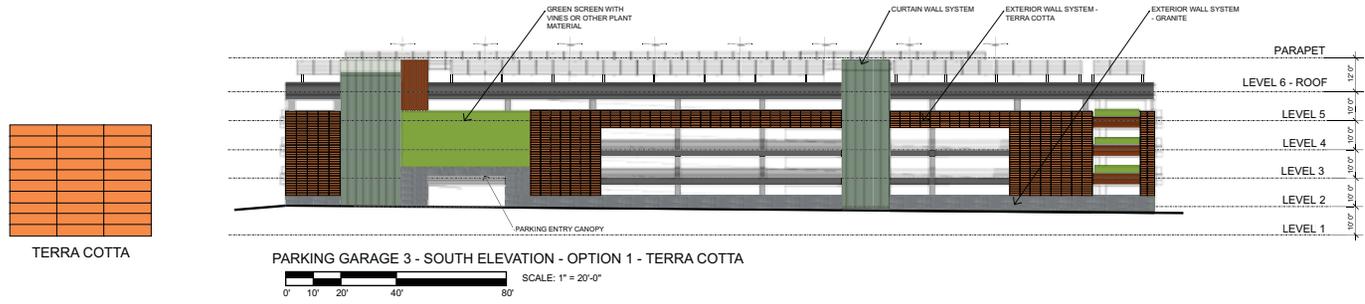


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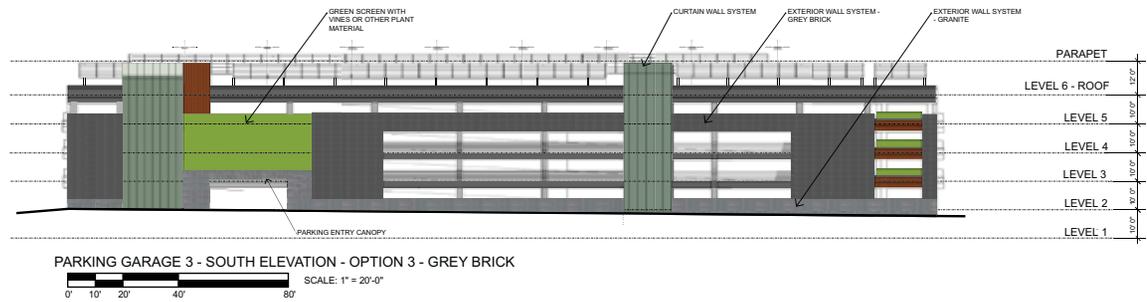
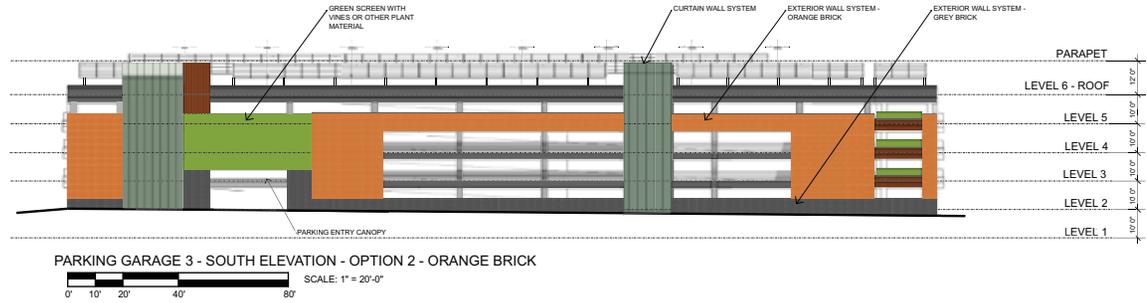
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TERRA COTTA



ORANGE BRICK



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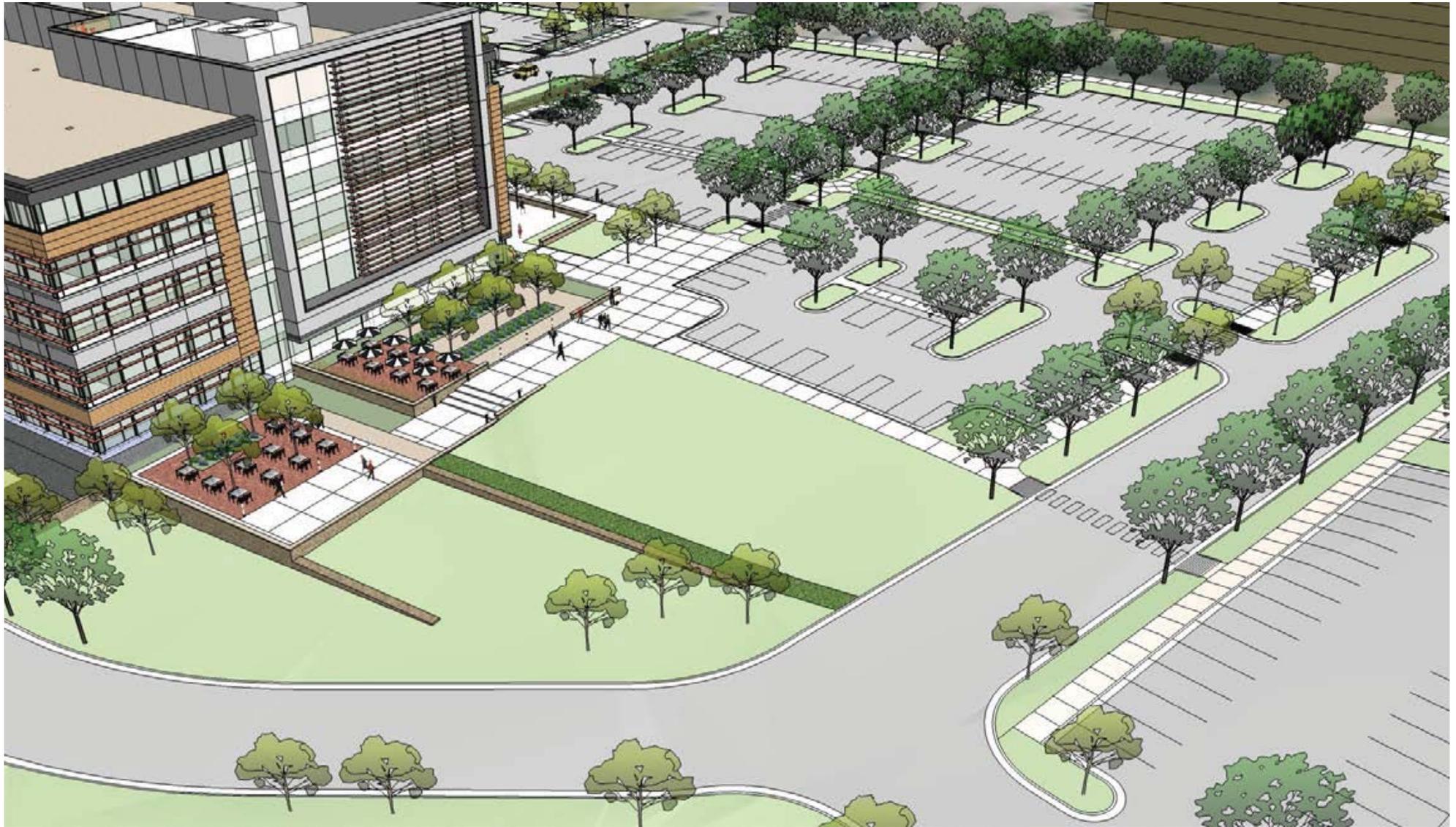


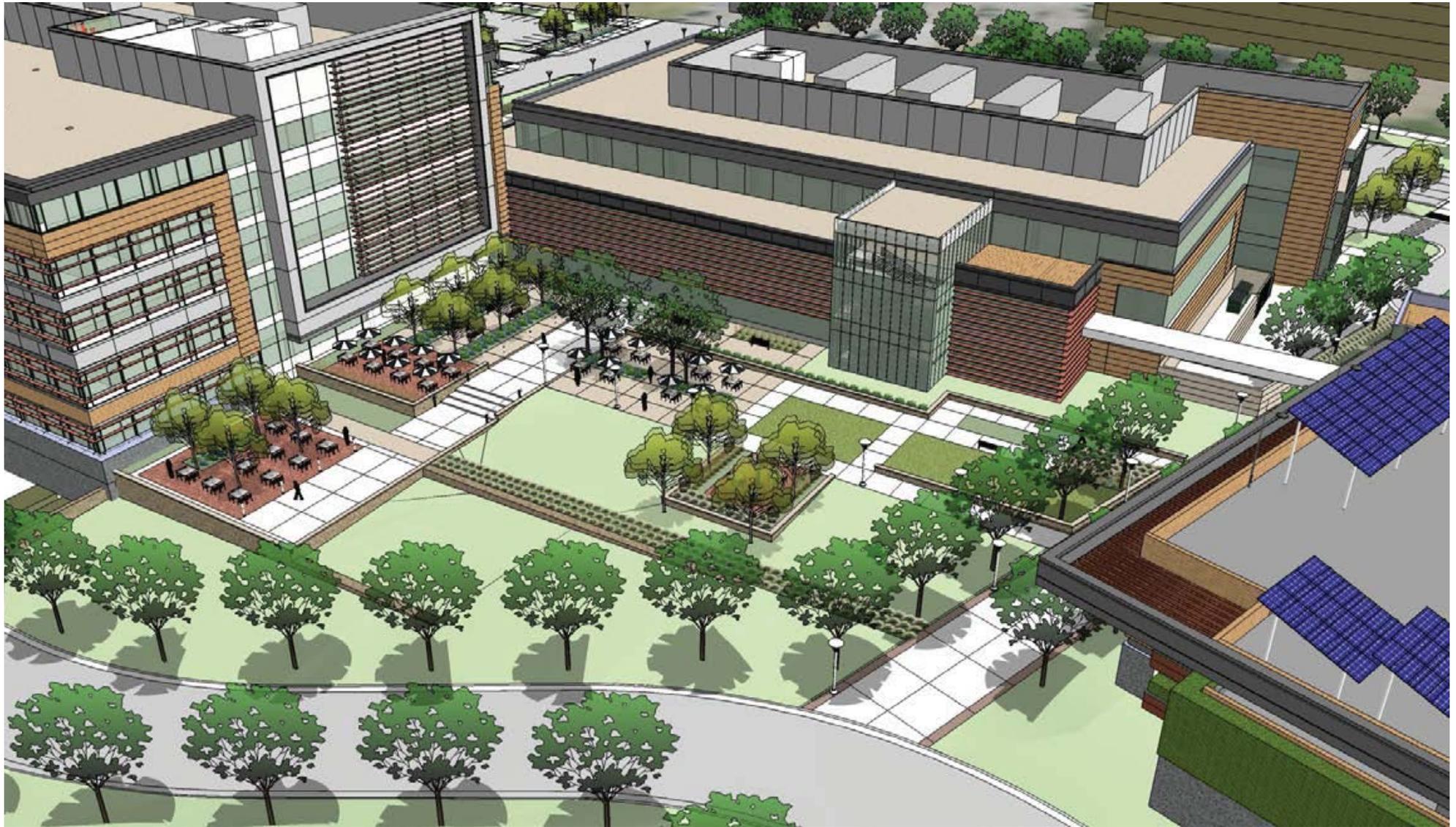














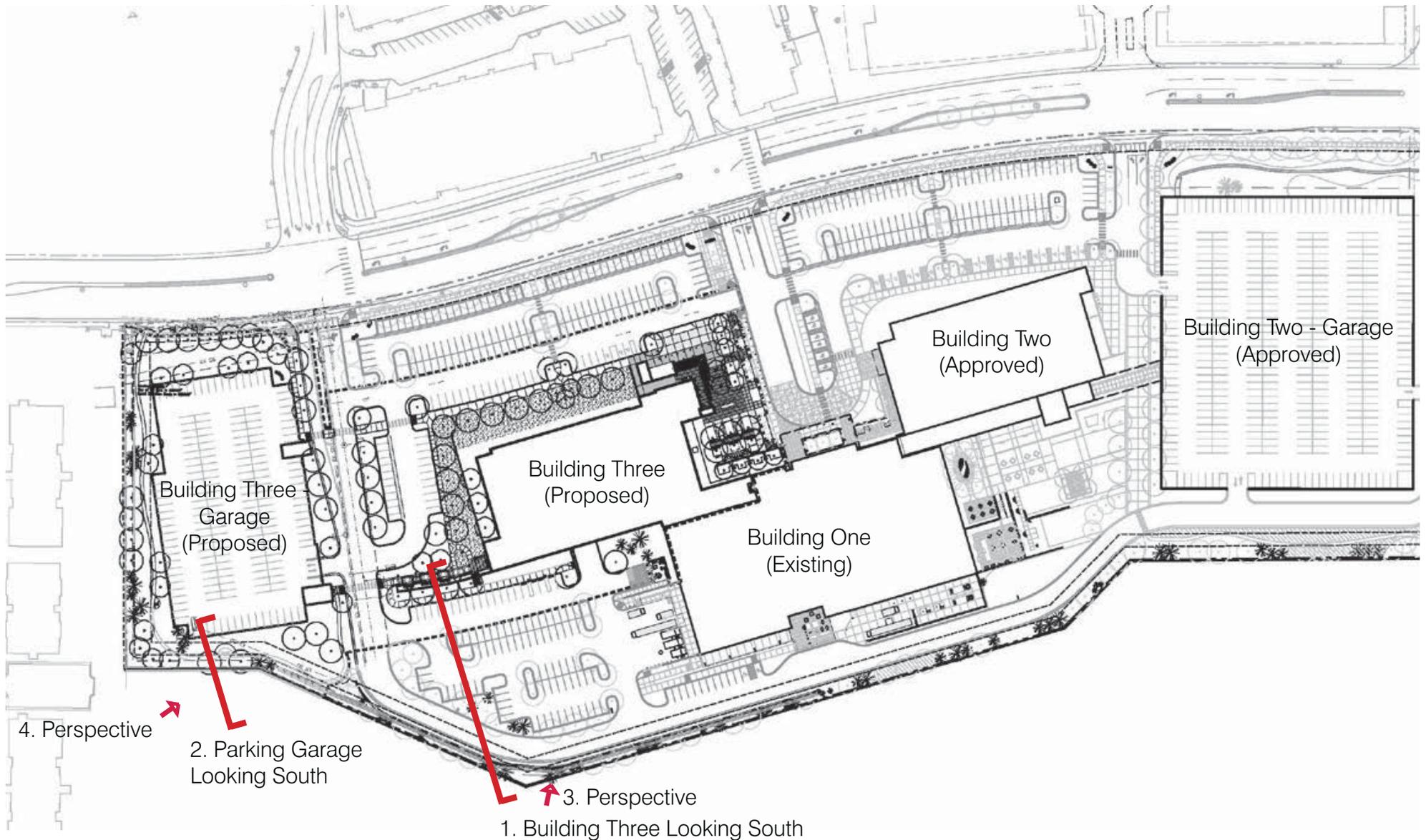


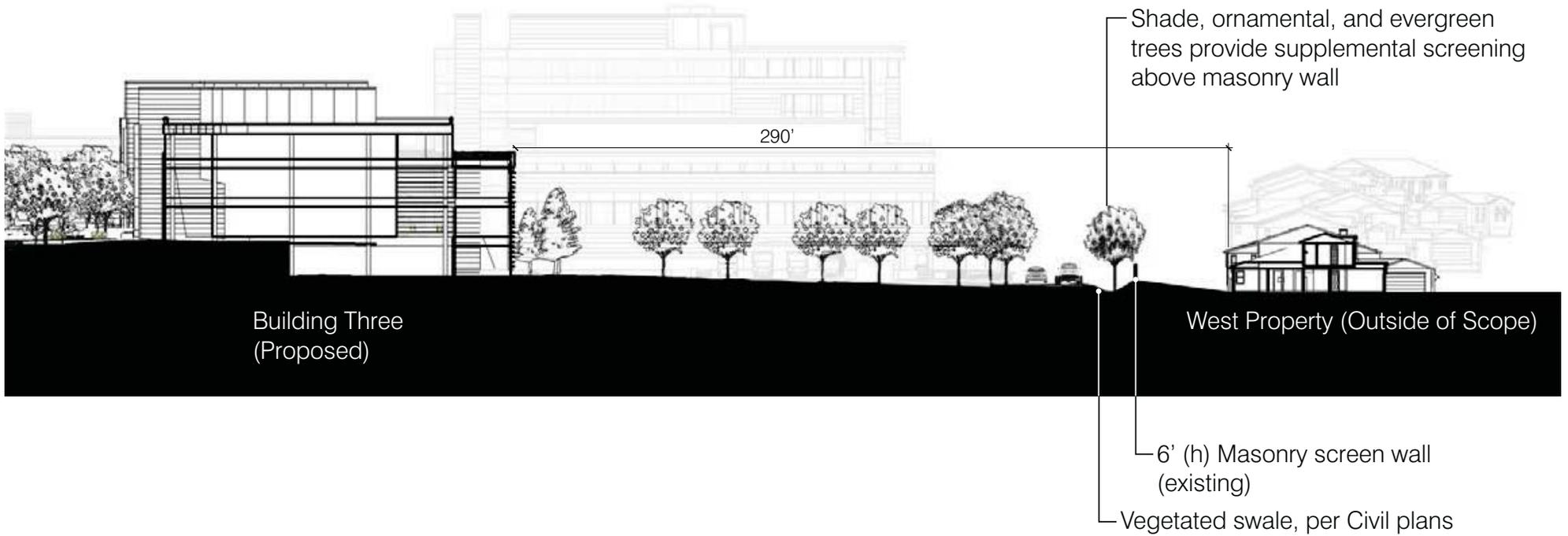


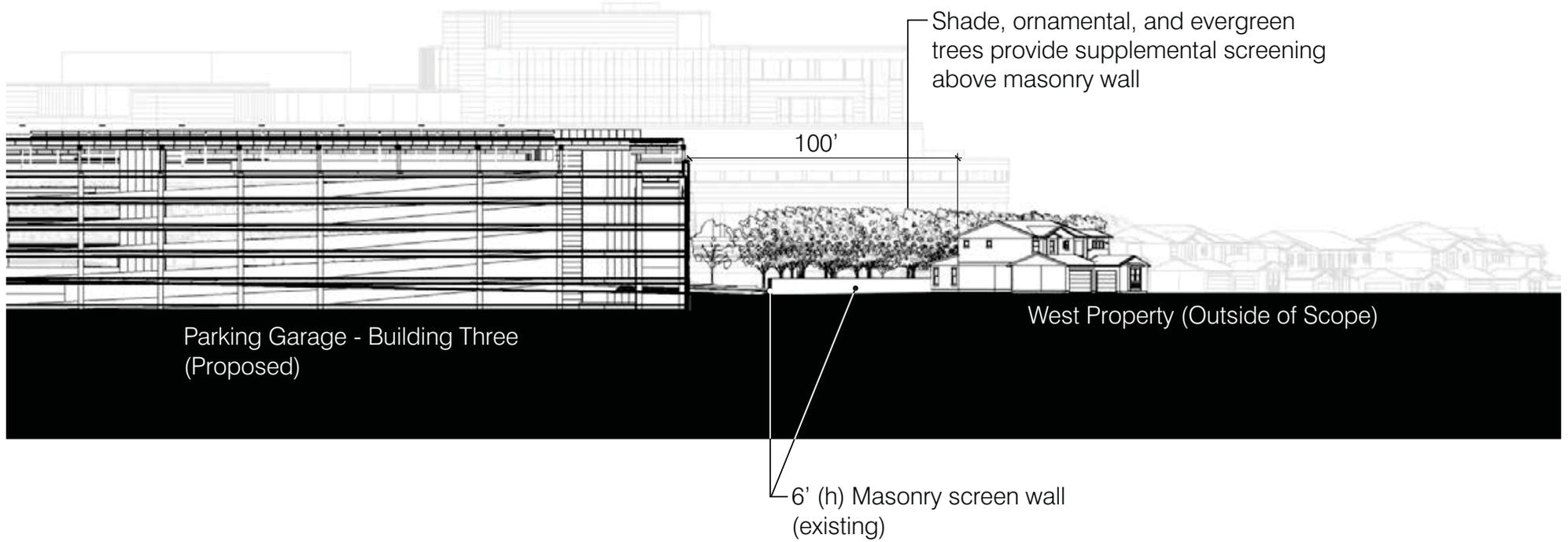














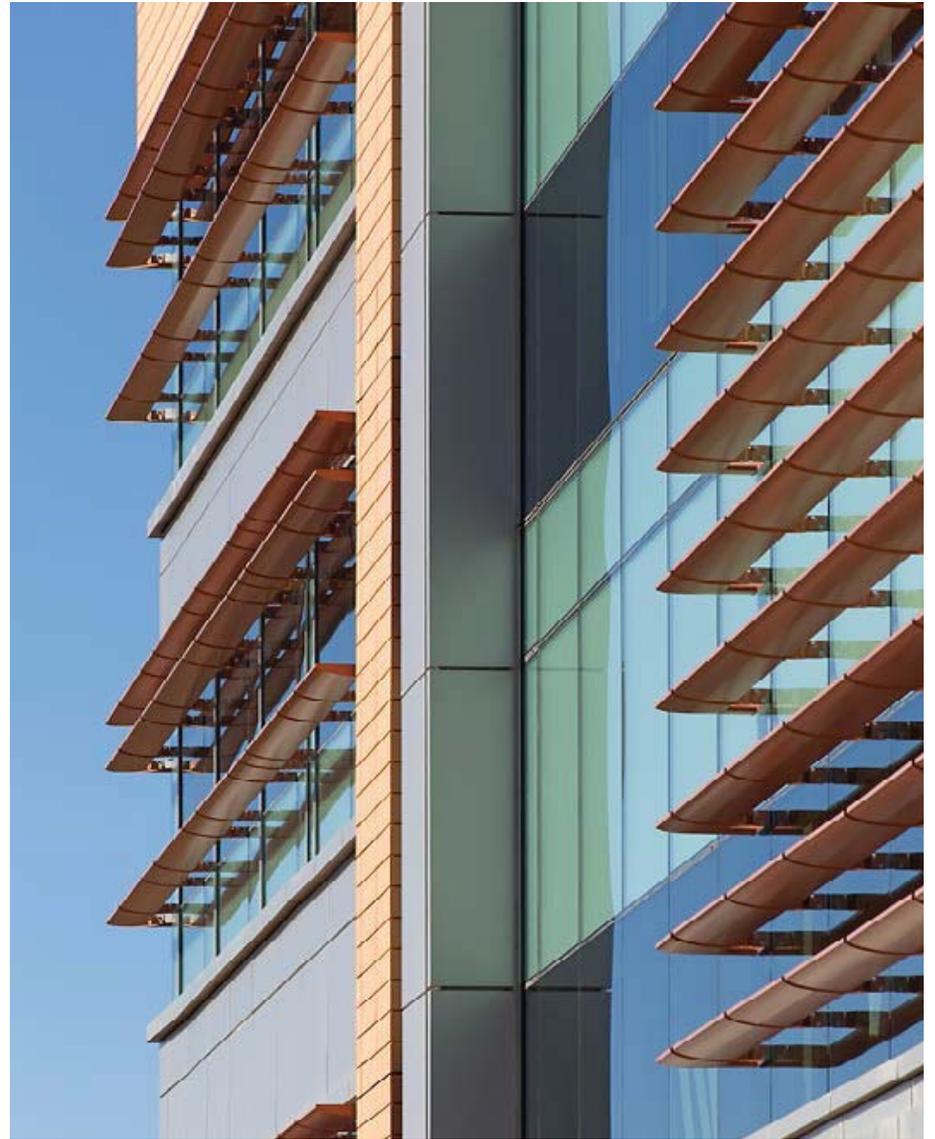






















CITY OF LONE TREE STAFF REPORT

Project Summary

- Date:** October 7, 2014 City Council Meeting
- Project Name:** First Amendment to Annexation and Development Agreement between Kaiser Foundation Hospitals and the City of Lone Tree.
- Location:** Park Meadows Drive, near the Lincoln Light Rail Station
- Project Type / #:** Vesting of Property, Project #MI14-62
- Staff Contacts:** Kelly First, Community Development Department Director
- Meeting Type:** Public Hearing
- Summary of Request:**
First amendment to the Annexation and Development Agreement approved in 2012, modifying the Effective Date of the Development Agreement to coincide with the date of Council approval of the proposed third amendment to the SIP. The duration of the vesting period would remain at 10 years.
- Planning Commission Recommendation:**
Not Applicable
- Suggested Action:**
Approval.



**CITY OF LONE TREE
STAFF REPORT**

TO: Mayor Gunning and City Council

FROM: Kelly First, Community Development Director

DATE: September 30, 2014

FOR: October 7, 2014 City Council meeting

**SUBJECT: First Amendment to Annexation and Development Agreement
between Kaiser Foundation Hospitals and the City of Lone Tree.**

Owner:
Kaiser Foundation Health Plan of Colorado
Mike Schultz
10350 East Dakota Ave
Denver, CO 80247

Representative:
Davis Partnership Architects
Jeff Stoecklein
2301 Blake Street Suite 100
Denver, CO 80205

City Council Public Hearing Date:

October 7, 2014

A. REQUEST:

Kaiser is requesting an amendment to the Annexation and Development Agreement between Kaiser and the City to modify the Effective Date of the Development Agreement to coincide with the date of Council approval of the proposed third amendment to the SIP. This means that the 10 year Vested Property Rights would expire in year 2024, rather than 2022. Kaiser is requesting this change to allow adequate time to develop the campus in accordance with the SIP.

B. BACKGROUND:

The Kaiser property consists of 20 acres west of Park Meadows Drive and 5 acres east of Park Meadows Drive, both of which were annexed into the City of Lone Tree on March 7, 2012. The Annexation and Development

Agreement between Kaiser and the City grants vested property rights for 10 years from the recording date of the Annexation and Development Agreement, or until March 7, 2022.

C. DESCRIPTION

Kaiser is seeking to amend the Annexation and Development Agreement to extend the duration of the vested property right to coincide with the approval date of the third amendment to the SIP (see also #SP13-48). If the SIP is approved by the Council on October 7, the 10 –year vesting period would extend from March 7, 2022 to October 7, 2024. Kaiser has no immediate plans to begin construction of additional development on the campus. They are requesting the additional two and a half years to provide an adequate time period to develop the property in accordance with the third amendment to the SIP

The duration of property rights vesting is the only element of the Agreement affected by this request. All other terms and conditions of the Agreement would remain in effect.

The draft amended agreement has been reviewed by the City Attorney.

D. STAFF FINDINGS AND RECOMMENDATION:

Staff finds that the request is consistent with Article XXXIV of the Lone Tree Zoning Code regarding Vested Property Rights and complies with the criteria and procedural requirements of that Article. Notice of this public hearing was posted in accordance with public noticing requirements.

Approval of the First Amendment to the Annexation and Development Agreement between Kaiser Foundation Hospitals and the City of Lone Tree, subject to approval of the Heritage Hills Filing 2, 3rd Amendment, Lot 9-A (Kaiser South Multi-Specialty Care Center), Project #SP13-48.

END

FIRST AMENDMENT
TO
ANNEXATION AND DEVELOPMENT AGREEMENT
KAISER FOUNDATION HOSPITALS
CITY OF LONE TREE, COLORADO

This Agreement creates a Vested Property
Right Pursuant to C.R.S. Section 24-68-103, as amended and
Pursuant to the Terms Hereof.

**FIRST AMENDMENT
TO ANNEXATION AND DEVELOPMENT AGREEMENT
KAISER FOUNDATION HOSPITALS
CITY OF LONE TREE, COLORADO**

THIS FIRST AMENDMENT TO ANNEXATION AND DEVELOPMENT AGREEMENT (the “Amendment”) is made and entered into as of this _____ day of _____, 2014, by and between KAISER FOUNDATION HOSPITALS, a California non-profit public benefit corporation, with offices located at 10350 East Dakota Avenue, Denver Colorado 80231-1314 (“Kaiser”), and the CITY OF LONE TREE with offices located at 9220 Kimmer Drive, Suite 100, Lone Tree, Colorado 80124, a home rule municipal corporation and political subdivision of the State of Colorado (“City”).

RECITALS

WHEREAS, Kaiser and City previously entered into that certain Annexation and Development Agreement with an Effective Date of February 7, 2012 (the “Development Agreement”) whereby the terms and conditions for the annexation of the “Property,” as defined in the Development Agreement, would take place; and

WHEREAS, the Property was annexed into the City pursuant to City Ordinance 12-02 which was approved by City on February 7, 2012 and recorded in the office of the Douglas County Clerk and Recorder on February 21, 2012 at Reception No. 2012012235; and

WHEREAS, the Development Agreement further provided for the creation of certain Vested Property Rights as defined by C.R.S. Section 24-68-101(5), and as more particularly described in Article IV of the Development Agreement, which Vested Property Rights will continue for a period of ten (10) years from the Effective Date of the Development Agreement; and

WHEREAS, Kaiser is currently working with the City to obtain approval of a third amendment to the Site Plan for Heritage Hills Filing 2, Third Amendment, Lot 9-A, which is consistent with the Lot 9A SIP Amendment, as defined in Section II.C. of the Development Agreement, a copy of which is attached hereto as Exhibit A (the “Third Site Plan Amendment”); and

WHEREAS, City has determined that development of the Property has contributed, and is expected to continue to contribute, to economic growth and an increase in tax revenues to the City and that it is in the best interests of the City, Kaiser and the Property that the Vesting Period, as set forth in Section IV.C.4. of the Development Agreement, should be revised to allow Kaiser with an adequate time period to develop the Property in accordance with the Third Site Plan Amendment.

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Kaiser and City agree as follows:

AGREEMENT

I. AMENDMENT TO SECTION IV.C.4.D.

City and Kaiser agree that Section IV.C.4.D. of the Development Agreement shall be and hereby is amended in its entirety to read as follows:

D. Duration. For purposes of this Agreement, the above-referenced Vested Property Right shall run with the land and remain in full force and effect for ten (10) years subsequent to the date on which the City approves the Third Site Plan Amendment as evidenced by the signature of the City’s Mayor on the Third Site Plan Amendment (the “Vesting Period”), on condition of Kaiser’s faithful performance of this Agreement. By its execution of this Agreement, City finds the duration of Vested Property Rights throughout the Vesting Period to be warranted in light of all relevant circumstances, including, but not limited to, the substantial size of the Property, the scale and phasing of the development of the Property, and economic cycles and market conditions. Expiration of the Vesting Period shall not affect any common law vested rights obtained prior to such termination, or any right, whether characterized as vested or otherwise, arising from this Agreement, the City PDD, or from City permits, approvals or other entitlements for the Property that were granted or approved prior to, subsequent to, concurrently, or in conjunction with the approval of the Framework Plan, the Heritage Hills PD, the Site Improvement Plans, the Lot 9A SIP Amendment and this Agreement.

II. VESTED PROPERTY RIGHTS

A. The Development Agreement as amended by this Amendment shall be considered a “Development Agreement” as that term is used in C.R.S. Section 24-68-101. A notation of the existence of a Vested Property Right shall be made on this Amendment Within 14 days after City has approved this Agreement, and City shall cause to be published a notice of Vested Property Rights in the official newspaper for City public notices in accordance with C.R.S. Section 24-68-103(1)(c).

III. MISCELLANEOUS

A. Capitalized Terms. Unless otherwise defined herein, capitalized terms used in this Amendment shall have the same meaning as capitalized terms defined in the Agreement.

B. Conflict. As used herein, and in the Development Agreement, the term “Agreement” shall mean the Development Agreement, as amended by this Amendment. In the event of a conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall control.

C. Effective Date of Amendment. This Amendment shall be effective as of the date first set forth above.

D. Integration. This Amendment constitutes the entire understanding between Kaiser and City with respect to the subject matter hereof. No amendments, waivers or modifications of this Amendment shall be made or deemed to have been made unless in writing and executed by both Kaiser and City.

E. Counterparts. This Amendment may be executed in several counterparts, all of which taken together shall be considered to be one document. Facsimile signatures shall be binding and accepted as originals.

(Signatures on following page.)

EXHIBIT A

Copy of Third Site Plan Amendment



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: John P. Cotten, P.E.

DATE: October 2, 2014

FOR: October 7th Council Meeting

SUBJECT: PMMD Master IGA Amendment

Summary

This amendment to the master project IGA that the City has with Park Meadows Metropolitan District (PMMD) formalizes the agreement with PMMD to provide \$180,000 to the City to be used to partially fulfill the City's agreement with CDOT to fund \$430,000 toward the I-25 Lane Balance project.

Cost

There is no direct cost to the City for this IGA. The amendment is solely for the purpose of documenting the agreement for PMMD to provide these funds. The City will, pending budget authorization, be providing an additional \$250,000 in 2015 to fulfill the total of the \$430,000.

Suggested Motions

I move to approve the amendment to the PMMD Master IGA.

Background

Prior to bidding the Lane Balance project, CDOT requested that the City fund additional work on the project that would allow for two lanes of Lincoln Avenue to access the eastbound to northbound loop ramp. According to CDOT, the cost of this work, including additional directional signage is \$430,000. The City agreed to provide funding for this work pending budget authorization. City staff then approached PMMD with a request to fund \$180,000 of that cost, which the PMMD Board approved. These funds will be transferred to the City.

The \$180,000 contribution from PMMD, along with the City's \$250,000, pending budget authorization, will be transferred to Douglas County based on an IGA for the transfer. That IGA is currently being drafted by Douglas County. The proposed Douglas County IGA will call for the City to transfer \$430,000 to Douglas County. Douglas County, per the proposed IGA will then combine the

City/PMMD funds with additional Douglas County funding and transfer the total of those funds to CDOT for use on the Lane Balance project.

This, seemingly complicated chain of IGAs and transfers is actually simplifying the process of the three party funding by eliminating the need to the City and PMMD to enter into separate IGAs with CDOT. The CDOT IGA process is considerably complex and this reduces both the City's and PMMD's time and effort in this funding.

PUBLIC IMPROVEMENT PROJECT DESIGNATION ADDENDUM NO. 1

MASTER
INTERGOVERNMENTAL AGREEMENT
BETWEEN PARK MEADOWS METROPOLITAN DISTRICT AND
CITY OF LONE TREE REGARDING PUBLIC IMPROVEMENTS

This Public Improvement Project Designation Addendum No. 1 authorizes the Parties to initiate the Public Improvements described below pursuant to the terms hereof and the terms of the above-named Intergovernmental Agreement. The terms of this Public Improvement Project Designation Addendum supplement the Intergovernmental Agreement.

1. PUBLIC IMPROVEMENTS. The Parties hereby agree to cooperate in the funding, design, construction, operation and/or maintenance of the Public Improvements described below:

The District will pay \$180,000 to the City for widening of the eastbound to northbound I-25 ramp at Lincoln Avenue. The District funds, along with \$250,000 from the City, for a total of \$430,000 will be paid to Douglas County. Douglas County will in turn pay this \$430,000 along with additional funds committed by Douglas County, to the Colorado Department of Transportation (CDOT). These funds will be used by CDOT as partial funding for the widening of the above referenced ramp to two lanes and to install additional ramp guidance signage on Lincoln Avenue as a part of CDOT's Lane Balancing Program on I-25.

2. TIME FOR PERFORMANCE. The Parties acknowledge and agree that the above-described District payment shall be made to the City within thirty (30) days following receipt by the District of a request for the payment.

3. MAINTENANCE OF PUBLIC IMPROVEMENTS. The District shall have no responsibility for any form of maintenance on the improvements constructed by CDOT.

CITY OF LONE TREE, COLORADO, a home rule municipal corporation of the State of Colorado

Date: _____

By: _____
_____, Mayor

ATTEST:

By: _____
_____, City Clerk

**PARK MEADOWS METROPOLITAN
DISTRICT**, a quasi-municipal corporation and
political subdivision of the State of Colorado

Date: _____

By: _____
_____, President

ATTEST:

By: _____
_____, Secretary



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: John P. Cotten, P.E.

DATE: September 29, 2014

FOR: October 7, 2014 Council meeting

**SUBJECT: Revised IGA with Douglas County for Snow Removal on
Lincoln Avenue and County Line Road**

Summary

This IGA is the annual update of the snow removal services that Douglas County provides on Lincoln Avenue, County Line Road, Surrey Drive and Havana Street (I-25 frontage road).

Cost

The cost of these services is \$235,672.07, which is an increase of \$4,856.40 from the previous year. The cost increase is due to materials cost increase of both granular de-icer and liquid de-icer. These material cost increases are similar to cost increases Public Works is experiencing with direct purchase of similar material(s). There is no increase of costs for equipment or manpower.

Douglas County has requested a change in the terms of payment for these services requesting a portion of these costs (\$104,743.14) be paid on or before December 1, 2014 and the remaining balance (\$130,928.93) be paid on or before January 1, 2015. Historically, this payment has been a single, lump sum payment due at the beginning of the year. Douglas County has requested this change to account for payment of work completed in 2014.

Suggested Motion or Recommended Action

I move that City Council approve the IGA with Douglas County regarding snow removal services on Lincoln Avenue, County Line Road, Havana Street and Surrey Drive within the City.

Background

The cost of Douglas County's services are less than the City could contract with Terracare, our snow removal contractor.

INTERGOVERNMENTAL AGREEMENT

by and between

THE CITY OF LONE TREE, COLORADO

and

THE BOARD OF COUNTY COMMISSIONERS

OF THE COUNTY OF DOUGLAS

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) dated this ____ day of _____, 2014, by and between the City of Lone Tree, Colorado, (the “City”) and the Board of County Commissioners of the County of Douglas (the “County”) (collectively, the “Parties”).

RECITALS

WHEREAS, pursuant to Colorado Constitution Article XIV, Section 18(2)(a), and Section 29-1-202, C.R.S., the City and the County may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, the City and the County will benefit from the County performing snow removal on Lincoln Avenue, County Line Road, South Havana Street and Surrey Drive for a period of time;

NOW, THEREFORE, it is hereby mutually agreed as follows:

AGREEMENT

1. **SERVICES**. The County shall maintain certain roads within the boundaries of the City for the period from September 1, 2014 to May 31, 2015, as set forth in Exhibit A, attached hereto and incorporated herein ("Services"), at the City's expense.

A. The County shall perform only the Services on those roadways listed on Exhibit A. The County shall perform the Services consistent with current County maintenance practices for urban arterials. Notwithstanding the foregoing, the County shall exercise its reasonable discretion to provide the Services in the manner that the County deems appropriate under the then existing circumstances.

B. The County shall follow all applicable statutes, rules, and regulations of the State of Colorado, and all policies, procedures, resolutions, and ordinances of the County relating to the subject matter of this Agreement.

2. TERM OF AGREEMENT. The term of this Agreement shall commence on, and is retroactive to, September 1, 2014, and shall continue in full force and effect up to and including May 31, 2015, unless otherwise agreed to in writing.

3. COST. The total cost of performing the Services for the term stated in section 2 herein is \$235,672.07. This amount shall be payable by the City to the County as a lump sum on or before December 1, 2014. The total payment of \$235,672.07 may be split in two payments, \$104,743.14 representing September through December 2014 due on or before December 1, 2014; and \$130,928.93 representing January through May 2015, due on or before January 1, 2015.

4. SUBSEQUENT ANNEXATIONS. In the event that the City annexes additional property subsequent to the execution of this Agreement; the County reserves the right to refuse to provide services to the annexed property.

5. INDEPENDENT CONTRACTOR. The County is an independent contractor, and nothing herein contained shall constitute or designate the County or any of its employees or agents as employees of the City. It is agreed that the County shall have direct control with respect to the manner and performance of Services.

6. ADDITIONAL SERVICES. In the event the City desires services in addition to the Services defined in this Agreement, the City may make a written request, which will then be addressed and resolved with reasonable promptness and on mutually acceptable terms between the Parties. Such resolution shall be in writing.

7. EACH PARTY RESPONSIBLE FOR ITS OWN ACTIONS. In any action by any third party brought against either Party in connection with the provision of the Services under this Agreement, neither Party shall be liable for the acts or omissions of the other, and each Party shall bear its own costs with respect to the defense thereof.

8. APPROPRIATION. The Parties' obligations under this Agreement are conditioned on the prior appropriation of good and sufficient funds for such purpose. The Parties agree to use good faith efforts to cause appropriation of good and sufficient funds for performance of the obligations herein. This Agreement and/or any extensions to the original term of this Agreement shall be contingent upon annual funding being appropriated, budgeted, and otherwise made available for such purposes by the City, and the notice of such appropriation, budgeting, and availability being provided to the County on or before October 15 of the current term.

9. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties hereto relating to the work specified in Exhibit A and sets forth the rights, duties, and obligations of each to the other as of the effective date hereof.

Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except, by a writing executed by both the City and the County.

10. BINDING AGREEMENT. This Agreement shall inure to and be binding on successors and assigns of the Parties hereto.

11. ASSIGNMENT. The County shall not have the right or power to assign or delegate its duties under this Agreement without the express prior written consent of the City. Any attempt by the County to assign this Agreement without such consent shall be null and void. However, the County is allowed to subcontract portions of the work without the prior or subsequent permission of the City.

12. NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

13. CONTROLLING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any legal proceedings shall be in the Douglas County District Court.

14. NOTICES. Except as otherwise provided herein, all notices or payments required to be given under this Agreement shall be in writing and shall be hand delivered or sent by first class mail postage prepaid, to the following addresses:

City of Lone Tree:

City of Lone Tree, Colorado
9220 Kimmer Drive, Suite 100
Lone Tree, CO 80124

cc: Gary R. White, Esq. White, Bear and Ankele, P.C.
2154 E. Commons Avenue, Suite 2000
Centennial, CO 80122

Douglas County:

Rod Meredith
Douglas County Public Works Operations
P.O. Box 1390
Castle Rock, CO 80109

cc: Lance J. Ingalls, Esq.
Douglas County Attorney
100 Third Street
Castle Rock, CO 80104

All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received one (1) day after hand delivery or three (3) days after mailing. Either Party, by written notice so provided, may change the address to which future notices shall be sent.

15. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT. The parties hereto understand and agree that the County and City, and each of their commissioners, officials, officers, directors, agents, and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act (the "CGIA"), §§ 24-10-101 to 120, C.R.S., or otherwise available to the County or the City. To the extent the CGIA imposes varying obligations or contains different waivers of immunity for Cities and Counties, both the City and the County agree that each will remain liable for the independent obligations under the CGIA whether due to acts or omissions or property interests, and neither party shall be the agent of the other or liable for the obligations of the other under the provisions of the CGIA.

16. NO THIRD PARTY BENEFICIARIES. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the County and City, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written which shall hereafter be deemed to have an effective date of September 1, 2014. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF LONE TREE, COLORADO

By: _____
JAMES D. GUNNING, Mayor

ATTEST:

City Clerk

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

By: _____
Roger Partridge, Chair

ATTEST:

MELISSA A. PELLETIER, Deputy Clerk

APPROVED AS TO CONTENT:

By: _____
Douglas J. Debord, County Manager

DATE: _____

APPROVED AS TO FISCAL CONTENT:

**Andrew Copland
Director of Finance**

Date: _____

APPROVED AS TO LEGAL FORM:

**Nick Pijoan
Senior Assistant County Attorney**

Date: _____

EXHIBIT A

SERVICES TO BE PROVIDED

Under this Agreement the County shall provide only the following services: snow removal for Lincoln Avenue, County Line Road, and the portions of S. Havana Street and Surrey Drive that lie within the boundaries of the City as they existed as of October 1, 2014. Lanes added after this effective date are not covered under this Agreement IGA. The portion of Lincoln Avenue that is subject to this Agreement is that portion of Lincoln Avenue which is situated between First Street and the west City Limit of Lone Tree approximately 1 mile west of Yosemite Street. All lanes of Lincoln Avenue within these limits are subject to this Agreement. The portion of County Line Road that is subject to this Agreement is that portion of County Line Road which is situated between Quebec Street and Interstate 25. Only the eastbound lanes of County Line Road are subject to the terms of this Agreement. The portion of S Havana Street that is subject to this Agreement is that portion of S Havana Street between the Schweiger underpass of Interstate 25, north to the intersection with Ridgeway Blvd. Both lanes of S Havana Street are subject to the terms of this Agreement. The portion of Surrey Drive subject to this Agreement is the portion of Surrey Drive from S Havana Street west to the Lone Tree City Limit. Both lanes of Surrey Drive are subject to the terms of this Agreement.

The Services that Douglas County will perform include and are limited to:

1. Snow Removal
2. Salt treatment for snow and/or ice (at the discretion of the County)

All work shall be consistent with the County's snow removal procedures for arterial roadways.

In its sole discretion, but consistently with its snow removal practice for arterial roadways situated in unincorporated Douglas County, Douglas County will: (a) use liquid de-icing products and granular de-icing products where possible to avoid residue from sanding; (b) use aggregate products when required to provide for skid resistance and roadway safety.

Sweeping of aggregate product is not part of this Agreement and will be performed by the City at its discretion.

City of Lone Tree; 2014-2015 Estimated Cost of Snow Removal

Lane mile calculations		Lane Miles
Lincoln Ave East of I-25	full width	14.73
Lincoln Ave West of I-25	full width	11.13
County Line Road	full width	<u>6.06</u>
		31.92 Total lane miles
		(use previous IGA calculation = 31.5)
So. Havana Street	full width	2.70
Surry Drive	full width	<u>1.14</u>
		3.84 Total lane miles

Materials usage

Given data:

Ave. # cycles per event =	6 cycles
Ave. # snow events per year =	30 events
Ave. amount granular de-icer applied per lane mi. =	160 lbs per lane mile
Cost of granular de-icer =	\$ 101.66 per ton
Ave. amount of liquid de-icer per lane mi. =	40.00 gal. per lane mile
Cost of liquid de-icer =	\$ 0.83 per gal.
Number of cycles for liquid de-icer	3.00 cycles
Number of lane miles being treated =	31.50 lane mi.

Granular materials=

(((31.5 lane miles)(160 lbs/lane mi.)(30 events)(6cycles per event))/2000 lbs per ton)(\$101.66/ton)
Total annual granular materials cost = \$ 46,112.98

Liquid de-icer =

((31.5 lane miles)(40 gal./lane mi.)(30 events)(3cycles per event)(\$0.83/gal.))
Total annual liquid de-icer cost = \$94,122.00

Labor and Equipment

Given data:

Ave. # cycles per event =	9.00 cycles	(6 cycles granular & 3 cycles liquid)
Ave. # of hours per cycle	3 hours	
Ave. # snow events per year =	30 events	
Labor & Equipment cost per cycle=	99.21 per hr	
	(Each 1 hr cycle requires labor@ \$31.81/hr., and truck/tractor @ \$67.40/hr. = \$99.21)	

(30 events)(9 cycles)(3 Hr/Cycle)(\$99.21/Hr)
\$ 80,360.10

Travel for product loading

Given data:

Ave. # cycles per event =	4 cycles
Volume of granular material/truck	12 tons
Time needed per cycle	1 hours
	(.5 hr/cycle for loading and transport, and .5 hour for application)

(30 events)(4 cycles)(1 Hr/Cycle) (\$99.21/Hr)
\$ 11,905.20

S Havana & Surry Drive materials only

((2.6 Ln Mi.)(160 Lb/Ln Mi.)(30 events)(5cycles/event)/2000)(\$101.66/Ton)
\$ 3,171.79

\$ 26,185.79 per month
 \$ 104,743.14 2014
 \$ 130,928.93 2015

\$ 235,672.07



CITY OF LONE TREE
STAFF REPORT

TO: Mayor Gunning and City Council

FROM: Neil Rutledge

DATE: September 11, 2014

FOR: September 16, 2014 City Council Meeting

SUBJECT: Ordinance 14-04, Amending, Restating and Approving a Franchise Agreement with Qwest Broadband Services Inc., d/b/a CenturyLink, to Provide Cable Services in the City

Summary

CenturyLink (Qwest) currently has a Franchise Agreement with the City for cable services that covers only RidgeGate. It is for 15 years and expires April 2, 2020. CenturyLink provides coverage to residences in RidgeGate through an exclusive agreement with HOAs. CenturyLink is seeking approval of a restated Franchise Agreement extending cable coverage over the whole of the City of Lone Tree with new franchise terms. This Franchise Agreement is based largely on the Colorado Communications and Utility Alliance (“CCUA”) model agreement.

Build out by CenturyLink will not be everywhere at once, but by stages. CenturyLink is seeking approval for a minimum 15% build out in areas outside of RidgeGate within 3 years. If subscriptions reach 27.5% in the build out area (even if it is more than the minimum 15%), then CenturyLink agrees to another 15% build out over the next 2 years. This build out/subscription ratio continues throughout the agreement.

As to the length of the franchise agreement, CenturyLink wants its termination in 2020 to be extended to November, 2022, at its option, if cable build out outside of RidgeGate is 25% in 3 years (2017). Additionally, the agreement may be extended to November, 2025, at its option, if build out outside of RidgeGate is 50% in 5 years (2019).

Cost

There is no cost to the City.

Suggested Motion

I move to approve on First Reading Ordinance 14-04, Amending, Restating and Approving a Franchise Agreement with Qwest Broadband Services Inc., d/b/a CenturyLink, to Provide Cable Services in the City.

Background

Federal law regulates cable television franchises and permits local control at the local level. Local governments must comply with the federal requirement that franchise licenses cannot be exclusive, and local governments cannot unreasonably refuse a grant for new service. The principal goals of federal regulations for cable television are to preserve and encourage free market competition among providers and ensure local broadcast service and equitable distribution of services to consumers. Colorado state regulations also explicitly seek to protect free market competition among cable providers.

A cable operator pays franchise fees as compensation for the use of public property – similar to paying a lease for City rights-of-way. The franchise fee is equivalent to 5% of gross revenues derived from the operation of the cable system. Franchise fees may be passed through directly to subscribers by the cable operator.

CenturyLink, following negotiations with the City, has offered a revised Franchise Agreement for Council consideration. The negotiated franchise agreement is based largely on the Colorado Communications and Utility Alliance (“CCUA”) model agreement. The model agreement was developed among member jurisdictions, legal counsel, and the industry. The CCUA is comprised of Colorado local government agencies. The members of CCUA work collaboratively to address local telecommunications and utility issues, including franchising. This work includes the development of model franchise agreements for its members to utilize. The model franchises allow municipalities and cable providers to negotiate a single set of terms in compliance with state and federal regulations – providing flexibility where necessary while creating a standard foundation. This Franchise Agreement uses the CCUA model.

CenturyLink is required to establish rates without regard to race, color, ethnic or national origin, religion, age, sex, or sexual orientation, and may not set different rates based on geographic location within the City. Rates must be established in a non-discriminatory manner in accordance with federal, state, and local laws. This provision does not prohibit CenturyLink from offering discounts to senior citizens or economically-disadvantaged citizens.

**ORDINANCE OF THE
CITY OF LONE TREE**

Series of 2014

Ordinance No. 14-04

**AN ORDINANCE AMENDING, RESTATING AND APPROVING
A FRANCHISE AGREEMENT WITH QWEST BROADBAND SERVICES INC.,
d/b/a CENTURYLINK, TO PROVIDE CABLE SERVICES IN THE CITY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,
COLORADO:**

ARTICLE 1 – AUTHORITY

The City of Lone Tree (the "City") is a home rule municipality operating under the Lone Tree Home Rule Charter (the "Charter") adopted on May 5, 1998 and a Municipal Code (the "Code"), codified and adopted on December 7, 2004. Pursuant to the Charter, the Municipal Code and the authority given home rule cities, the City may adopt and amend Ordinances.

ARTICLE 2 – FINDINGS OF FACT

The City has negotiated with Qwest Broadband Services, Inc. ("QBSI"), d/b/a/CenturyLink, Inc., a franchise agreement (the "Franchise Agreement") granting QBSI the right to make reasonable and lawful use of the rights-of-way within the City, to construct, operate, maintain, reconstruct, rebuild and upgrade a cable system for the purpose of providing cable service subject to the terms and conditions set forth in the Franchise Agreement. Upon completion of the negotiations for the Franchise Agreement, City staff has recommended and City Council has determined that the granting and adoption by Ordinance of the Franchise Agreement is desirable and necessary.

ARTICLE 3 – AMENDMENT AND ADOPTION OF QBSI FRANCHISE AGREEMENT

The franchise agreement approved by Ordinance No. 05-03, granting a franchise to QBSI, is hereby amended and restated as provided in the attached Franchise Agreement. The attached Franchise Agreement is hereby approved and adopted in its entirety and the terms and conditions thereof are incorporated herein by this reference. Ordinance No. 10-07, approving the transfer of parent-level change in control of the franchise to CenturyLink, Inc. is hereby ratified and re-affirmed.

ARTICLE 4 - PROVISIONS EFFECTIVE

The provisions of this Ordinance shall go into effect on November 6, 2014.

ARTICLE 5 – SAFETY CLAUSE

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

ARTICLE 6 – CAUSES OF ACTION RETAINED

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby amended, repealed or replaced; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance. This Ordinance shall not be construed nor shall it be deemed to constitute any waiver or release of any legal rights, authority, permits, franchises or written agreements that the City of Lone Tree may have with QBSI, CenturyLink, Inc. or any of its subsidiaries.

ARTICLE 7 – SEVERABILITY

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 8 - EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days after publication following second reading if changes are made upon second reading.

INTRODUCED, READ AND ORDERED PUBLISHED ON SEPTEMBER 16, 2014.

PUBLISHED IN THE DOUGLAS COUNTY NEWS PRESS ON SEPTMBER 25, 2014, LEGAL NOTICE NO. 926041-926044.

APPROVED AND ADOPTED WITH NO CHANGES ON SECOND READING ON OCTOBER 7, 2014, TO BECOME EFFECTIVE ON OCTOBER 25, 2014.

CITY OF LONE TREE

James D. Gunning, Mayor

ATTEST:

(S E A L)

Jennifer Pettinger, CMC, City Clerk

EXHIBIT A
Franchise Agreement

**QWEST BROADBAND SERVICES, INC., d/b/a CENTURYLINK AND
THE CITY OF LONE TREE, COLORADO**

CABLE FRANCHISE AGREEMENT

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EXHIBIT A: Report Form

EXHIBIT B: Alternate Gross Revenues Definition

**QWEST BROADBAND SERVICES, INC. d/b/a CENTURYLINK AND
THE CITY OF LONE TREE, COLORADO**

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

d. “Governmental Access Video-on-Demand Service” or “GAVOD Service” means the transmission of Public, Educational, and Government Programming to an individual and unique Subscriber upon the demand of that unique and individual Subscriber.

e. “Governmental Access Video-on-Demand System” or “GAVOD System” means the hardware, software, and all related connections and support systems necessary to offer GAVOD Service to Subscribers and to receive, store, catalog, search, and transmit PEG programming via GAVOD Service.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law, that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” means any Cable Service Tier which includes, at a minimum, the retransmission of local television Broadcast Signals and local Access programming.

1.8 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.9 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.10 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.11 “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. To the extent consistent with Applicable Law, Cable Service shall include interactive services such as, but not limited to, game Channels, information services and enhanced services made available to Subscribers by the Grantee.

1.12 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such

facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.13 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.14 “City” is the City of Lone Tree, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.15 “City Council” means the Lone Tree City Council, or its successor, the governing body of the City of Lone Tree, Colorado.

1.16 “Colorado Communications and Utility Alliance” or “CCUA” means the non-profit entity formed by franchising authorities and/or local governments in Colorado or its successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.17 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.18 “Designated Access Provider” means the entity or entities designated now or in the future by the City to manage or co-manage Access Channels and facilities. The City may be a Designated Access Provider.

1.19 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.20 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.21 “Expanded Basic Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.22 “FCC” means the Federal Communications Commission.

1.23 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service or Institutional Network service by means of electric lightwave impulses.

1.24 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the

authorization granted, including references, specifications, requirements and other related matters.

1.25 “Franchise Area” means the area within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise.

1.26 “Franchise Fee” means that fee payable to the City described in subsection 3.1 (A).

1.27 “Grantee” means Qwest Broadband Services, Inc., d/b/a CenturyLink or its lawful successor, transferee or assignee.

1.28 “Gross Revenues” means any and all revenue received by the Grantee, or by any other entity that is a Cable Operator of the Cable System including Grantee’s Affiliates, from the operation of the Grantee’s Cable System to provide Cable Services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Basic Service; any expanded Tiers of Cable Service; optional Premium Services; installation, disconnection, reconnection and change-in-service fees; Leased Access Channel fees; remote control rental fees; all Cable Service lease payments from the Cable System; late fees and administrative fees; fees, payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System; revenues from rentals or sales of converters or other Cable System equipment; advertising revenues; launch fees; the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service; revenues from program guides; revenue from data transmissions to the extent these transmissions are considered Cable Services under federal law; additional outlet fees; Franchise Fees; revenue from interactive services to the extent they are considered Cable Services under federal law; revenue from the sale or carriage of other Cable Services; and revenue from home shopping, bank-at-home Channels and other revenue-sharing arrangements. Gross Revenues shall include revenue received by Grantee or any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (i) Bad Debt; provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) the Capital Contributions specified in subsections 9.1 and 9.2; or (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise Fee is not such a tax.

The parties intend for the definition of Gross Revenues to be as inclusive as possible consistent with existing applicable law. If there is a change in federal law subsequent to the Effective Date of this Franchise, such change shall not impact this Gross Revenues definition unless the change specifically preempts the affected portion of the definition above.

Upon ninety (90) days’ written notice from City that the incumbent wireline provider of Cable Services in the City has included in its franchise the definition of Gross Revenues, as set forth on Exhibit B hereto, Grantee shall utilize the definition of Gross Revenues as set forth on Exhibit B for purposes of calculating Franchise Fees pursuant to Section 3 herein for the remaining duration of the term of the Franchise.

1.29 “Headend” means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.30 “Interconnect” or “Interconnection” means the linking of the Cable System with another cable system, or communications system or network, including technical, engineering, physical, financial and other necessary components to accomplish, complete and adequately maintain such linking, in a manner that permits the transmission and receiving of electronic or optical signals between the Cable System and other cable system, communications system or network; or the necessary components to accomplish, complete and adequately maintain pathways that permit the transmission and receiving of electronic or optical signals between locations connected to portions of the Cable System outside the Franchise Area and those portions of the Cable System inside the Franchise Area.

1.31 “Leased Access Channel” means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.32 “Living Unit” means a distinct address in the Qwest Corporation, d/b/a/ CenturyLink, (QC) network inventory where QC currently has, had in the past, or had planned to provide service to a customer. This includes but is not limited to, single family homes, multi-dwelling units and business locations.

1.33 “Manager” [or “Administrator”] means the City Manager [Administrator] of the City or designee.

1.34 “Person” means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.35 “Premium Service” means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.36 “Remote DSLAM or RT” means a Digital Subscriber Line Access Multiplexer installed by Grantee and capable of providing Cable Service to Subscribers.

1.37 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units. Regardless of whether Multiple Dwelling Units are billed on a bulk-billing basis, each residential unit receiving Cable Service shall be considered a separate Residential Subscriber.

1.38 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks,

easements, rights-of-way and similar public property and areas.

1.39 “State” means the State of Colorado.

1.40 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System.

1.41 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.42 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.43 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.44 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.45 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.46 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

(B) EXHIBITS

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

- 1) **Exhibit A**, Report Form
- 2) **Exhibit B**, Alternate Gross Revenues Definition

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The City hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the City to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set

forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable City ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise. However, the parties acknowledge that Qwest Communications (“QC”), an affiliate of Grantee, will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC’s installation and maintenance of facilities in the Rights-of-Way is governed by Applicable Law. To the extent Grantee constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained herein.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the City an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Rights-of-Way

(A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow City established requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect on November 6, 2014 (the "Effective Date"), and shall terminate on November 5, 2020 unless

terminated sooner as hereinafter provided. If, at the end of the third year after the Effective Date, Grantee offers Cable Services to 25% of the residential units in the City, exclusive of the RidgeGate development, the Grantee, at its option, may elect to extend the term of the franchise for an additional two (2) years to November 5, 2022. If, at the end of the fifth year after the Effective Date, Grantee offers Cable Services to 50% of the residential units in the City, exclusive of the RidgeGate development, the Grantee, at its option, may elect to extend the term of the franchise for an additional three (3) years to November 5, 2025

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the City deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

2.6 Grant of Other Franchises

In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the City's Rights-of-Way for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Franchise Area, in which the Grantee is actually providing Cable Service under the terms and conditions of this Franchise or is required to extend Cable Service to under the provisions of this Franchise, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of

the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

(A) As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's Rights-of-Way, Grantee shall pay as a Franchise Fee to the City, throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues. Accrual of such Franchise Fee shall commence as of the Effective Date of this Franchise.

(B) If the City believes that the Grantee has established a pricing structure for Cable Services the effect of which is to reduce the amount of Franchise Fees which would have otherwise been payable based upon fair market value of the Cable Services, such claims shall be resolved by arbitration. A three-person arbitration panel shall conduct the arbitration. Each party shall select one arbitrator, and the two arbitrators so selected shall agree upon the third. All three arbitrators shall be persons engaged in the practice of law. In general, the arbitrators shall follow the then current rules of the American Arbitration Association (the "AAA"). There shall be no discovery other than the exchange of information that is provided to the arbitration panel by the parties; provided however, that each party shall provide to the panel and to each other, all documentation in its possession or control that relates to the subject matter of the dispute. In all events, unless waived by the parties, the arbitration panel shall conduct an arbitration hearing at which the parties and their counsel shall be present and have the opportunity to present evidence and examine evidence presented by the other party. The proceedings at the arbitration hearing shall, unless waived by the parties, be conducted under oath and before a court reporter. If the panel finds that the Grantee established a pricing structure for Cable Services the effect of which is to reduce the amount of Franchise Fees which would have otherwise been payable based upon fair market value of the Cable Services, the panel shall determine the appropriate amount that should have been paid, and make its award accordingly. The parties shall cooperate in good faith to permit a conclusion of the arbitration hearing no later than ninety (90) days following the submission of the dispute to arbitration. The panel's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof. The foregoing provision for arbitration shall apply only to Section 3.1. All other claims and disputes arising out of this Agreement shall not be subject to arbitration, absent the express agreement to the contrary.

Nothing in this Section 3.1 shall prohibit Grantee from offering reasonable temporary promotional or marketing plans offering Cable Services at a discounted rate. For the purposes of this Section 3.1 “temporary” means no more than twelve (12) consecutive months.

Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the forgoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

3.2 Payments

Grantee's Franchise Fee payments to the City shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the City, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period. Such statement shall be audited by a certified public accountant, who may also be the chief financial officer or controller of Grantee, prior to submission to the City.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the City, including the City’s Auditor or his/her authorized representative, shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 3.1 (B), as part of the Franchise Fee audit the City shall

specifically have the right to review records related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit shows that Franchise Fee payments have been underpaid by two and one half percent (2 ½%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits), Grantee shall pay the total cost of the audit, such cost not to exceed ten thousand dollars (\$10,000) for each year of the audit period. The City's right to audit and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the City receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the City.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Rights-of-Way for Grantee's use of the City's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise).

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect

an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the City, nor do they represent an increase in Franchise Fees to be passed through to Subscribers pursuant to any federal law, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the City upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the City deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The City shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent including, but not limited to, the CCUA, in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the City to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or

(C) The offering of rate discounts for Cable Service; or

(D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns. As used in this subsection, no rate or charge shall be considered temporary if Subscribers have the ability over a period greater than twelve (12) consecutive months (or such other period as may be approved by the City) to purchase Cable Services at such rate or charge.

(B) Upon request of the City, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the City reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

(A) The City may hold performance evaluation sessions within thirty (30) days of the biennial anniversary dates of the Effective Date of this Franchise. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in a newspaper of general circulation in the City. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the City, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the City or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the City and shall provide such information and documents as the City may reasonably require to perform the evaluation.

4.10 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the City without regard to the neighborhood or income level of the Subscriber.

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which

are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the City to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the City with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the City while conducting its defense of the City.

(B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the City arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the City.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law. These obligations include any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the City, regardless of the outcome of such proceeding;

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The City may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for City's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the City without the City's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and City/City/Grantee desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then City/City/Grantee shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The City's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the City Attorney or his/her assistants or any employees of the City or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee. Notwithstanding the foregoing, the parties agree that the City may utilize at any time, at its own cost and expense, its own City Attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in subsection (C)(1) above.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the City. The policy shall contain a severability of interests provision.

(B) Each policy shall provide that the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the City, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the City.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The City, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VIII."

(C) Verification of Coverage. The Grantee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and

endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance In the alternative to providing a certificate of insurance to the City certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and City, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the City.

5.4 Letter of Credit

(A) No later than the Effective Date of this Franchise, Grantee shall establish and provide to the City, on behalf of the City and all other members of the CCUA , as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of one hundred thousand dollars (\$100,000).

(B) The letter of credit shall be maintained at one hundred thousand dollars (\$100,000) throughout the term of this Franchise, provided that once every three (3) years, the City shall have the right to increase this amount to reflect increases in the Denver Metropolitan Area Consumer Price Index during the prior three (3) year period.

(C) The letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the City sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the City to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and

(4) Failure to comply with the Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

(D) The City shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(E) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully

withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

(F) If the City withdraws from the CCUA, Grantee shall obtain a letter of credit solely on behalf of the City, in the amount of twenty five thousand dollars (\$25,000.00), within sixty (60) days of receiving written notice from the City. In this event, the City will also be removed from the CCUA letter of credit.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the City, as the same may be amended from time to time by the City Council acting by ordinance or resolution. Any requirement in Customer Service Standards for a “local” telephone number may be met by the provision of a toll-free number. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the City a sample of the Subscriber contract or service agreement then in use.

6.4 Advance Notice to City

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the City in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the City, Grantee shall place the City’s phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City, including the City’s Auditor

or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the City access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The City may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the City inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate for the performance of any of the City's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the City aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the City receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the City shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the City agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the City for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the City's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the City. These maps shall be certified as

accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the City;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the City is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within sixty (60) days after the end of the calendar year, Grantee shall submit to the City a written report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information for the City:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Expanded Basic Service, and Premium); and

(C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;

(D) A statement of planned construction, if any, for the next year;

(E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

The parties agree that the City's request for these annual reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports annually, until further written notice from the City to the contrary.

7.5 Copies of Federal and State Reports

Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s),

to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall submit such documents to the City no later than thirty (30) days after filing, mailing, publication, or completion. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all documents provided to any federal, State, or local regulatory agency as a routine matter in the due course of operating Grantee's Cable System within the City, Grantee shall make such documents available to the City upon request.

7.6 Complaint File and Reports

Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain open to the City during normal business hours. Grantee shall provide the City a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information:

- (A) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (B) A log of all service interruptions;
- (C) A summary of customer complaints referred by the City to Grantee; and
- (D) Such other information as reasonably requested by the City, provided that Grantee is given thirty (30) days prior written notice of such request before the beginning of the applicable quarter.

7.7 Failure to Report

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise or such other reports as the City may reasonably request (not including clerical errors or errors made in good faith), may, at the City 's option, be deemed a breach of this Franchise.

7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the City under this Franchise or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;
- (H) Science/documentary;
- (I) National news, weather and information; and
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the City.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

8.3 Ascertainment of Programming and Customer Satisfaction

Upon request of the City, the Grantee shall, at the sole expense of Grantee, undertake a biennial survey of community views of cable operations in the City, including but not limited to programming, response to community needs, satisfaction and dissatisfaction with Cable Services offered by Grantee, and customer service. Grantee shall consult and cooperate with the City in developing and implementing an ascertainment methodology. The final form and content of the survey shall be as mutually agreed upon by the Grantee and the City. Grantee shall provide the results of such survey to the City within two (2) months after completing the survey. Upon request, Grantee shall also provide a copy of results from any other survey of Subscribers in the City conducted independently by the Grantee within the previous year. Any survey results conducted within the City which are intended for external publication shall also be provided to the City. Nothing herein shall be construed to limit the right of the City to conduct its own

surveys at its own expense.

8.4 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.5 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.6 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the City, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the City may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the City or a permanent Cable Operator is selected. If the City is required to fulfill this obligation for Grantee, Grantee shall reimburse the City for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.7 Services for the Disabled

Grantee shall comply with the Americans With Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, and allowing Access resources under this Section. City may designate Access providers to control and manage the use of any Access Facilities provided by Grantee under this Franchise Agreement, including, without limitation, the operation of Interconnected Access Channels to the extent of such designation by City, as between the designated Access provider and Grantee, the designated Access provider shall have sole and exclusive responsibility for operating and managing such Access Facilities.

(B) Grantee shall cooperate with City in City's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) At the time the first cable subscriber is connected, Grantee shall make available to City one (1) Downstream Channels for Public, Educational, or Governmental ("PEG") use. Upon at least 120 day written notice to Grantee, a Designated Access Provider may provide Access Channel Signals in HD format to the demarcation point at the designated point of origination for the Access Channel. Grantee shall simultaneously carry the Access Channels in high definition (HD) format Channels on the Downstream Residential Network for PEG Access use, in addition to simultaneously carrying the standard definition (SD) digital Access Channels. Grantee shall carry all components of the HD and SD format Access Channel Signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. The Designated Access Provider shall be responsible for providing the Access Channel Signal in an HD format to the demarcation point at the designated point of origination for the Access Channel. Grantee shall transport and distribute the Access Programming without degradation. Consistent with this requirement, Grantee shall provide all necessary equipment outside the demarcation point at the Designated Access Provider Channel origination point, at its Headend and throughout its distribution system to deliver the Access Channel(s) in the HD and SD format to Subscribers. Grantee shall not discriminate against PEG Access Channels with respect to the functionality, signal quality, and features from those of the local Broadcast HD and SD Channels carried on the Cable System. With respect to signal quality, Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall distribute the Access Channel Signal without degradation.

(B) High Definition Access Channels

(1) For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(2) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the City, Grantee shall verify signal delivery to Subscribers with the City, consistent with the requirements of this Section 9.2(B).

(3) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which HD channels are made available. Grantee is not required to provide free HD equipment to Subscribers, including complimentary government and educational accounts, nor modify its equipment or pricing policies in any manner.

(4) The City or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(5) Grantee shall cooperate with the City to procure and provide, at City's/City's/County's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The City shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The City and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise.

(C) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to City, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if

unduplicated programming is delivered over it more than an average of 28 hours per week over a six (6) month period. Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to City. If a Channel allocated for Public, Educational, or Governmental Access use is used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. City shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof, shall be returned to such institution within sixty (60) after receipt by Grantee of such written notice.

(D) If the City or its Designated Access Provider is programming an active Government or Educational Access Channel, within one hundred eighty (180) days of written request from the City, Grantee shall make available as part of Basic Service to all Subscribers a Government Access Video-on Demand (GAVOD) Service and maintain a GAVOD system. The GAVOD system shall be connected by the Grantee such that:

(1) Twenty (20) hours of programming per channel, or such greater amount as may be mutually agreed to by the parties, as designated and supplied by the City or its Designated Access Provider to the Grantee may be electronically transmitted and/or transferred and stored on the GAVOD system; and

(2) a database of that programming may be efficiently searched and a program requested and viewed over the GAVOD system by any Subscriber in the City; and

(3) programming submitted for placement on the GAVOD system, shall be placed on and available for viewing from the GAVOD system within forty-eight (48) hours of receipt of said programming;

(4) The hardware and software described in Subsection (D) below, shall be in all respects of the same or better technical quality as the hardware and software utilized by Grantee in the provision of any other video on demand services offered over the Cable System, and shall be upgraded at Grantee's cost, when new hardware or software is utilized on Grantee's Cable System for other video on demand services. Grantee shall provide reasonable technical assistance to allow for proper use and operation when encoding hardware or software is installed and/or upgraded at City's facilities.

(E) To ensure compatibility and interoperability, the Grantee shall supply and maintain all necessary hardware and software to encode, transmit and/or transfer Government Access programming from the City to the GAVOD system. The City shall be responsible for all monitoring of any equipment provided under this Section 9.2(D), and notifying Grantee of any problems. Grantee shall provide all technical support and maintenance for the equipment provided to the City by Grantee under this Section 9.2 (D). After notification of any equipment problems, Grantee shall diagnose and resolve the problem within forty eight (48) hours. Major repairs which can't be repaired within the forty eight (48) hour timeframe shall be completed

within seven (7) days of notice, unless, due to Force Majeure conditions, a longer time is required. "Major repairs" are those that require equipment to be specially obtained in order to facilitate the repairs. The quality of signal and the quality of service obtained by a Subscriber utilizing the GAVOD service shall meet or exceed the quality standards established for all other programming provided by the Grantee and as established elsewhere in this Franchise Agreement

9.3 Access Channel Assignments

Grantee shall maintain or provide for the government Channel the current assignment of Channel 8 as designated on the Comcast cable system on the date of execution of this Franchise Agreement. To the extent that it is legally and technically feasible, Grantee will use its best efforts to institute common Channels among the CCUA members for the remaining Public, Educational, and Governmental Access Channels provided pursuant to this Franchise Agreement. The Grantee shall maintain common access channel designations with all other cable service providers serving the Franchise Area. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2 in a location on its HD Channel line-up that is easily accessible to Subscribers.

Upon ninety (90) days written notice to the City, Grantee, at its sole discretion, may elect to utilize a mosaic to display Access Channels. When a mosaic format is used, all Access Channels associated with a common theme (e.g., government or education) appear in a picture in a picture format on a single channel. If Grantee decides to use the mosaic format, the Access Channels will be made available to viewers on Channel 8. The viewer clicks on the picture in a picture he/she wishes view and is immediately routed to the individual channel assigned to that particular Access Channel.

9.4 Relocation of Access Channels

Grantee shall provide City a minimum of sixty (60) days' notice, and use its best efforts to provide one-hundred and twenty (120) days notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed. In addition, Grantee shall pay to City an amount equal to City's costs in remarketing the location of the Access Channels and managing the relocation administratively and technologically, up to a maximum of fifty cents (\$.TBD) per Subscriber. Any such amounts paid by Grantee may be added, at Grantee's discretion and in accordance with the applicable FCC regulations, to the price of Cable Services and collected from such Subscribers as "external costs" as such term is used in 47 C.F.R. Section 76.922, if Grantee's decision to relocate such Access Channels is required by federal, State, or local law. Grantee, at Grantee's expense, will place City's notices of the Channel change on its regular monthly billings, upon City's request. Despite any language to the contrary, and in order to maintain continuity of Channel position, no Access Channel shall be moved from its current position, as designated on the Comcast cable system.

9.5 Access Interconnections

(A) Subject to Section 12.3 of this Franchise Agreement, Grantee shall establish all Interconnections of Access Channels in effect on the effective date of this Franchise Agreement

unless otherwise agreed by Grantee and City. City or its designated Access provider shall have the right to control and schedule the operation of all Interconnected Access Channels. In addition, City shall have the right to use, at its sole discretion and at no cost to City, any existing Access Channels or any Access Channels to be provided under this Franchise Agreement for Access Interconnection or as Closed Channels, provided, however, that the City shall be responsible for the cost of any internal equipment necessary for such usage.

(B) Grantee shall, subject to Sections 9.3 and 12.3 of this Franchise Agreement, cooperate with City, and other members of the CCUA, in the establishment and continuance of a common Access Channel covering the entire metropolitan area.

(C) Grantee shall take all necessary technical steps to ensure that state-of-the-art signal quality and automated routing/switching systems are initially and continuously provided for all Access Interconnections throughout the duration of this Franchise Agreement. The cost for any equipment or maintenance dedicated to such Access Interconnection shall be the responsibility of the Grantee. The Grantee acknowledges that at certain times during the year, the City places metro wide programming on Channel 8. Since Grantee is technically unable to switch the individual Channel 8s to a metro wide Channel 8, Grantee agrees to provide an additional Government Access Channel on its basic service tier. Such Channel shall be available to the City for metro wide programming. The Designated Access Provider for this regional Channel is the CCUA. The host site for the Channel shall be at any CCUA member's Government Access location where Grantee is providing a direct fiber feed to Access origination facilities as described in Section 12.3. If Grantee is not providing a direct fiber feed to any CCUA Access origination facility, Grantee shall, at its cost, take necessary steps to facilitate a host site for the regional Channel.

9.6 Support for Access Costs

During the term of this Franchise Agreement, Grantee shall provide zero (\$0.00) per month per Residential Subscriber (the "PEG Contribution") to be used solely for Public, Educational and Governmental Access and internal network costs. Grantee shall make such payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter. City shall have sole discretion to allocate the expenditure of such payments for any PEG Access and/or internal network costs. The parties agree that this Franchise shall provide City discretion to utilize Access payments for new internal network connections and enhancements to the City's existing network.

9.7 Access Support Not Franchise Fees

Grantee agrees that financial support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be

offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement.

9.8 Access Channels On Lowest Non-broadcast Tier

All Access Channels and the GAVOD Service provided to Subscribers under this Franchise Agreement shall be included by Grantee, without limitation, as a part of every tier containing basic Cable Service offered by Grantee on its Cable System.

9.9 Change In Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

9.10 Technical Quality

Grantee shall maintain all upstream and downstream Access services, Channels, Interconnections and GAVOD Service at the same level of technical quality and reliability required by this Franchise Agreement and all other Applicable Laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement.

9.11 Access Cooperation

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access services, Facilities, equipment or Channel operations hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as City in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

9.12 Showcase Channel

Unless the Federal Communications Commission determines in MB Docket No. 09-13, CSR-8126 or a similar proceeding that such treatment of PEG channels would be discriminatory, Grantee may, after notice to the City and subscribers, consolidate all PEG channels to a single channel on the Basic Service Tier, so that all PEG channels could be accessed either as an application on a menu or as choices on the assigned channel; provided however, that any such change shall require, at a minimum that:

(A) At the sole discretion of the City, the single channel assignment will be Channel 8, or whatever channel number is utilized by the City's Government Access Channel.

(B) To the extent any existing Access Channels are re-assigned to the single channel referenced herein, the relocation requirements of Section 9.4 shall apply.

(C) The single channel application shall not in any way modify Grantee's obligations to comply with all interconnection obligations contained in Section 9.5.

(D) The single channel application shall not in any way modify Grantee's obligations to comply with all technical quality standards described in Section 9.5. Grantee shall transport and distribute the all Access Channel signals on its Cable System without visible or audible degradation of signal quality, and shall not discriminate against PEG Access Channels with respect to the functionality, signal quality, and features from those of the local broadcast digital format Channels carried on the Cable System.

(E) The Grantee shall include appropriate designation of the PEG channels on channel cards and other channel listings provided to Subscribers.

9.13 Return Lines/Access Origination

Grantee shall, at its expense, shall construct and maintain Fiber Optic return line(s) to the Headend from the City's production facilities located at a site to be determined by the City (future address). Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the City. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the City or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the City or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to Applicable Laws, regulations, rules, resolutions and ordinances of the City and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Right-of-Way Meetings

Grantee will regularly attend and participate in meetings of the City, of which the Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

10.3 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of the City, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the City.

10.4 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

10.5 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite City permits received by Grantee.

10.6 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.7 Compliance with Applicable Codes

(A) City Construction Codes. Grantee shall comply with all applicable City construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all federal, State and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.8 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the City regarding geographic information mapping systems for users of the Rights-of-Way.

10.9 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.10 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the City's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.11 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the City may inspect Grantee's facilities in the

Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by Grantee's Cable System.

10.12 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the City and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any City bureau or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.13 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by Ordinance or resolution.

10.14 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations or rules of the City or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such

relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles and conduit wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. All poles of Grantee shall be located as designated by the proper City authorities.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person. Copies of agreements for the use of poles, conduits or other utility facilities must be provided upon request by the City.

(F) The Grantee and the City recognize that situations may occur in the future where the City may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the City in any construction by the Grantee that involves trenching or boring, provided that the City has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the City to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the City shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The City shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

10.15 Undergrounding of Multiple Dwelling Unit Drops

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

10.16 Burial Standards

(A) Depths. Unless otherwise required by law, Grantee, and its contractors, shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

Underground cable drops from the curb shall be buried at a minimum depth of twelve (12) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of eighteen (18) inches.

Trunk lines shall be buried at a minimum depth of thirty-six (36) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.17 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded to the electrical power ground at the home, consistent with applicable code requirements. All non-conforming or non-performing cable drops shall be replaced by Grantee as necessary.

10.18 Prewiring

Any ordinance or resolution of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.19 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration

work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the City may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the City's Customer Service Standards, as the same may be amended from time to time by the City Council acting by ordinance or resolution.

10.20 Use of Conduits by the City

The City may install or affix and maintain wires and equipment owned by the City for City purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places, without charge to the City, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. This right shall not extend to affiliates of Grantee who have facilities in the right-of-way for the provision of non-cable services. For the purposes of this subsection, "City purposes" includes, but is not limited to, the use of the structures and installations for City fire, police, traffic, water, telephone, and/or signal systems, but not for Cable Service in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the City.

10.21 Common Users

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System. These do not include conduit or other facilities owned by an affiliate of Grantee in the right-of-way to provide non-cable services.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the City to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the City determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the City may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the City must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

10.22 Acquisition of Facilities

Upon Grantee's acquisition of Cable System facilities in any City Right-of-Way, or upon the addition to the City of any area in which Grantee owns or operates any facility, Grantee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such facilities shall immediately be subject to the terms of this Franchise.

10.23 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the City's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the City may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City. Until such time as Grantee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the City may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

10.24 Movement of Cable System Facilities For City Purposes

The City shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the City in the event of an emergency or when reasonable public convenience requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the City for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the City shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the City which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the City shall provide at least sixty (60) days' written notice to Grantee.

Following notice by the City, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the City. If the City requires Grantee to relocate its facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the City's satisfaction, the City may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the City due to Grantee's delay. In such event, the City shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the City.

10.25 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.26 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.27 Reservation of City Use of Right-of-Way

Nothing in this Franchise shall prevent the City or public utilities owned, maintained or operated by public entities other than the City from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.28 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the City's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the City regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-

of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.29 Inspection of Construction and Facilities

The City may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

10.30 Stop Work

(A) On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;
- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

10.31 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors

or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Laws governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Where Grantee chooses to install a Remote Terminal and to activate its Cable System, said System infrastructure shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than one hundred ten (110) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats. In the case of AM/FM radio transmission, the above specifications, where applicable, shall apply.

(C) All construction shall be subject to the City's permitting process.

(D) Grantee and City shall meet, at the City's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 State of the Art

Grantee shall, every three (3) years following the Effective Date of this Franchise, provide detailed information to the City about Cable Services offered in "similarly situated" Cable Systems as the Cable System in the City. For purposes of this subsection, "similarly situated" Cable Systems shall mean the sixteen (16) largest Cable Systems, based upon the number of Subscribers within a single franchising area, owned and operated by Grantee or its Affiliates in the United States. If such Cable Services are not also being offered on Grantee's Cable System in the City, Grantee shall provide information on why such Cable Services are not being offered in the City and the cost to supply such Cable Services. If the identified Cable Services are being offered to Subscribers by Grantee or its Affiliates in eight (8) or more of the

similarly-situated Cable Systems, the City may require that Grantee make available such Cable Services on the Cable System in the City. Should the City determine that Grantee shall commence provision of such Cable Services, the City and Grantee shall negotiate a schedule for deployment that takes into consideration the impact on Subscriber rates, the ability of Grantee to recover the cost of such increased capacity or Cable Services over the remaining life of the Franchise from the incremental revenue derived from such additional Cable Services and the financial condition of Grantee. In addition, the City shall not be restricted from holding any hearing at any time to review whether or not the Cable System and the Cable Services offered by the Grantee are meeting demonstrated community needs. The parties recognize that, as of the Effective Date, the City is not permitted to require the provision of specific video programming pursuant to this subsection.

11.3 Standby Power

Grantee shall not begin providing Cable Service in the City until it provides the City its process for standby power for the Remote DSLAMs in Grantee's Cable System. However, Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

11.4 Emergency Alert Capability

(A) Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. The City may use the EAS, under procedures established between the City and the Grantee which are consistent with Grantee's State and federal EAS requirements, to transmit an emergency alert signal, including the ability to override the audio and video on all Channels throughout the City from the City's Emergency Operations Center or other location as may be designated by the City. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

(B) The City shall permit only appropriately trained and authorized Persons to operate the EAS equipment provided pursuant to this subsection.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The City shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.6 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

(1) All tests required by the FCC;

(2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and

(3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

(1) Cumulative leakage index testing of any new construction;

(2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;

(3) Tests in response to Subscriber complaints;

(4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and

(5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by

representatives of the City.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

11.7 Additional Tests

Where there exists other evidence which in the judgment of the City casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

(A) The parties acknowledge that Grantee is the second entrant into the wireline video market in the City. As a second entrant, investment in and expansion of Grantee's Cable System should be driven by market success, and not a contractual requirement for ubiquitous coverage. To demonstrate its commitment to provide Cable Service to the City, Grantee agrees that within three (3) years from the Effective Date of this Franchise, Grantee shall make a minimum initial investment in the Cable System to ensure that Grantee has the capability to offer Cable Services to 15% of the Living Units ("Initial Coverage Threshold") in the City, exclusive of the RidgeGate development. Grantee shall not be obligated under this Franchise to expand its Cable System beyond the Initial Coverage Threshold until 27.5% of the Living Units in the Initial Coverage Threshold purchase Cable Services from Grantee ("Initial Subscription Threshold"). If, on the third anniversary of the grant of this Franchise, Grantee's investment exceeds the Initial Coverage Threshold, then the Initial Subscriber Threshold shall apply to all Living Units, exclusive of the RidgeGate development, capable of being served by Grantee, not just the Initial Coverage Threshold. Once the Grantee achieves the Initial Subscription Threshold, Grantee agrees that within two (2) years from the date Grantee meets the Initial Subscription Threshold,

Grantee shall make a further investment in the Cable System to ensure that Grantee has the capability to offer Cable Services to an additional 15% of the Living Units (“Additional Coverage Threshold”) in the City, exclusive of the RidgeGate development. Grantee shall not be obligated under this Franchise to expand its Cable System beyond the Additional Coverage Threshold until 27.5% of the Living Units in the Additional Coverage Threshold, purchase Cable Services from Grantee (“Additional Subscription Threshold”). If Grantee’s investment exceeds the Additional Coverage Threshold prior to the meeting the Additional Subscriber Threshold, then the Additional Subscriber Threshold shall apply to all Living Units capable of being served by Grantee, exclusive of the RidgeGate development, not just the Additional Coverage Threshold. Thereafter, this process of increasing the Additional Coverage Threshold by 15% when the prior Subscription Threshold is met will be continued until Grantee is capable of offering Cable Services to all Living Units in the City.

(B) In General. Except as otherwise provided herein, where Grantee chooses to activate a Remote Terminal, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City provided that any such Person is within 4,000 cable feet of and activated Remote Terminal. For purposes of this subsection, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Grantee shall provide such service at non-discriminatory monthly rates for Residential Subscribers, consistent with Applicable Law.

(C) Service to Multiple Dwelling Units. The Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(D) While Grantee is granted a franchise to serve the entire City, subject to the provisions of this subsection, the parties acknowledge that Grantee shall have the sole discretion to determine where and when to activate a Remote Terminal and offer Cable Services to Subscribers.

12.2 Interconnection With Other Cable Systems

(A) The Cable System shall be Interconnected with other contiguous, CCUA area cable systems that are owned and operated by Grantee or an Affiliate, provided that such systems are served by the same Headend that serves the Franchise Area.

(B) Grantee shall, in accordance with this subsection, Interconnect the Access Channels of the Cable System with any other contiguous cable system not owned or operated by Grantee or an Affiliate of Grantee upon the directive of the City. Interconnection of Channels may be done by direct cable connection, microwave link, satellite or other appropriate methods. In the alternative, Grantee may provide a direct fiber feed to Access origination facilities in order

to provide any Designated Access Provider with Access programming origination capabilities. The City shall not direct Interconnection except under circumstances where it can be accomplished without undue burden or excessive costs to the Subscribers. Grantee shall not be required to Interconnect with the other cable system unless the operator of that system is willing to do so and pays for its own cost of constructing and maintaining the Interconnect up to the demarcation point.

(C) Grantee shall only be required to Interconnect Access Channels with an overbuilder in the City in the event that the City determines in its sole discretion that it would be economically burdensome to its Subscribers to construct and maintain return lines directly from the origination point(s) of the Access Channel(s) versus Interconnecting with Grantee. In the event Grantee receives a directive from the City to Interconnect with an overbuilder, Grantee shall immediately initiate negotiations with the other affected cable system or systems and shall report to the City the results of such negotiations no later than sixty (60) days after such initiation. The overbuilder shall be responsible for Grantee's costs in constructing and maintaining the Interconnect. If the parties cannot reach agreement on the terms of the Interconnect, including compensation and timing, the dispute shall be submitted to the City for determination and resolution. Additionally, Grantee shall only be required to Interconnect with an overbuilder if the overbuilder is providing similar support for Access as required of Grantee pursuant to this Franchise.

(D) Grantee shall explore with any public interconnection authority, regional interconnection authority or City, County, State or federal regulatory agency which may hereafter be established for the purpose of regulating, financing or otherwise providing for the Interconnection of cable systems beyond the boundaries of the City, the possibility of further Interconnects.

12.3 Connection of Public Facilities

Grantee shall, at no cost to the City, provide one outlet of Basic Service and Expanded Basic Service to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are located within four thousand (4,000) feet of an activated Remote Terminal. For purposes of this subsection, "school" means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Expanded Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remediating Franchise Violations

(A) If the City reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the City, contesting the City's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below; or

(2) cure the default; or

(3) notify the City that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the City in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the City may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the City orders a meeting in accordance with subsection (A)(3), the City shall set a meeting to investigate said issues or the existence of the alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the City determines that a default exists, the City shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the City shall determine. In the event Grantee does not cure within such time to the City's reasonable satisfaction, the City may:

(1) Withdraw an amount from the letter of credit as monetary damages;

(2) Pursue the revocation of this Franchise pursuant to the procedures in subsection 13.2; or

(3) Pursue any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the City, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the City may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the City and Grantee;

(2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the City or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the City shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the City Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The City Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the City Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the City Council determines are reasonable under the circumstances. If the City determines that the Franchise is to be revoked, the City shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the City's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The City Council may at its sole discretion take any lawful action which it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the City's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the City's satisfaction, after written notice to Grantee, the City may cause the work to be done and Grantee shall reimburse the City for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the City may recover the costs through the letter of credit provided by Grantee.

(D) The City may seek legal and equitable relief to enforce the provisions of this Franchise.

13.4 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the City shall have the option to purchase the Cable System.

(B) The City may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the City within which to accept or reject the offer.

(C) In any case where the City elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the City's audit of a current profit and loss statement of Grantee. The City shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.5 Receivership and Foreclosure

(A) At the option of the City, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the City may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

13.6 No Monetary Recourse Against the City

Grantee shall not have any monetary recourse against the City or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the City under this Franchise are in addition to, and shall not be read to limit, any immunities the City may enjoy under federal, State or local law.

13.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.8 Assessment of Monetary Damages

(A) The City may assess against Grantee monetary damages up to five hundred dollars (\$500.00) per day for general construction delays, up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and-in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by City of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the City, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the City, or until the Franchise is

revoked and a new franchisee is selected by the City; or obtain an injunction requiring the Grantee to continue operations. If the City is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the City or its designee for all reasonable costs, expenses and damages incurred.

13.10 What Constitutes Abandonment

The City shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the City authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) The City and Grantee agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the City agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and City agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the City may grant a renewal thereof. Grantee and City consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the City, which consent shall be by the City Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in

whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the City for its approval of a sale or transfer and furnish all information required by law and the City.

(D) In seeking the City's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and

Grantee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the City shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the City and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the City; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the City or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Qwest Broadband Services, Inc., d/b/a CenturyLink

1801 California Street,
10th Floor
Denver, CO 80202

The City's address shall be:

City of Lone Tree
Attn: Seth Hoffman/Kristen Knoll
9220 Kimmer Drive, Suite 100
Lone Tree, CO 80124

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the City for all costs incurred in publishing this Franchise, if such publication is required.

16.5 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of the City at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.10 Jurisdiction

Venue for any judicial dispute between the City and Grantee arising under or out of this Franchise shall be in Douglas County District Court, Colorado, or in the United States District Court in Denver.

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Lone Tree, Colorado this 7th day of October, 2014.

ATTEST:

CITY OF LONE TREE COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

City Attorney

City Manager/Administrator

Accepted and approved this _____, 2014.

ATTEST:

QWEST BROADBAND SERVICES, INC., d/b/a/
CENTURYLINK

Public Notary

Name/Title: Steve Davis, EVP Public Policy and
Government Relations

UNCONDITIONAL ACCEPTANCE OF FRANCHISE

The undersigned, _____, hereby accepts Ordinance/Resolution No. _____, passed and adopted by the City of Lone Tree pursuant to which Qwest Broadband Services, Inc., d/b/a CenturyLink is granted a Franchise to operate a cable system in the City of Lone Tree in accordance with the terms of such Franchise, and does hereby unconditionally agree that it will comply with and abide by all the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law., and that as written and to the best of its knowledge, all terms of the Franchise are consistent with federal, state and local law, as of the date this acceptance is signed.

Accepted and approved this _____, 2014.

ACKNOWLEDGED:

QWEST BROADBAND SERVICES, INC.

Public Notary

Name/Title: Steve Davis, EVP Public Policy
and Government Relations

EXHIBIT A

Report Form

Quarterly Executive Summary - Escalated Complaints

Section 7.6 (B) of our Franchise Agreement

Quarter Ending _____, Year

Lone Tree

Type of Complaint	Number of Calls
Accessibility	
Billing, Credit and Refunds	
Courtesy	
Drop Bury	
Installation	
Notices/Easement Issues (Non-Rebuild)	
Pedestal	
Problem Resolution	
Programming	
Property Damage (Non-Rebuild)	
Rates	
Rebuild/Upgrade Damage	
Rebuild/Upgrade Notices/Easement Issues	
Reception/Signal Quality	
Safety	
Service and Install Appointments	
Service Interruptions	
Serviceability	
<u>TOTAL</u>	

Compliments

EXHIBIT B

Alternate Definition of Gross Revenues

Gross Revenues means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee’s calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.27 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.27(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the forgoing, the City reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.



**CITY OF LONE TREE
STAFF REPORT**

TO: Mayor Gunning and City Council

FROM: Torie Brazitis, Management Analyst

DATE: Tuesday, September 30, 2014

FOR: Tuesday, October 1, 2014 City Council Meeting

SUBJECT: IGA with Southeast Public Improvement Metro District to support the Lone Tree Link circulator shuttle service

Summary

At Council direction and as authorized in the FY2014 City budget, the City formed a public-private partnership with two public entities and three major employers along Park Meadows Drive to offer circulator shuttle service to employees and the public. This service, which was developed and designed collaboratively through coordination among the six partnering organizations, is called the Lone Tree Link. The Link started serving riders at its six designated stops along Park Meadows Drive as scheduled on Wednesday, September 17, 2014.

The IGA presented today is with Southeast Public Improvement Metropolitan District (SPIMD), a special district that supports transportation improvements along the Southeast Corridor and promotes transit options. SPIMD provides funds and support to the Denver South Transportation Management Association (Denver South TMA), whose staff members serve as the City's SPIMD contacts for this project. This IGA will allow SPIMD to reimburse the City up to \$100,000 in the first service year for costs for this project that are paid for from City funds (not private funds contributed to the project). SPIMD chose to support this project because its Board sees the Lone Tree Link as an important pilot project for this region, in that it pioneers a new way of providing last-mile transit solutions to business corridors that could be replicated elsewhere if successful.

The remaining IGA and shuttle service agreements with the other four partners (Charles Schwab, Sky Ridge Medical Center, Kaiser Permanente Colorado, and OmniPark Metropolitan District/ParkRidge Corporate Center) have already been approved, so this IGA is the final major legal agreement to be approved for the shuttle's first year in service.

Cost

The operations budget for the project is \$550,000. Approval of this IGA will allow SPIMD to reimburse the City \$100,000 to pay for a share of those expenses.

Suggested Motion or Recommended Action

Staff requests that Council approve the IGA with Southeast Public Improvement Metropolitan District for circulator shuttle services in 2014-2015.

**SOUTH I-25 URBAN CORRIDOR CAPITAL PROJECT IMPLEMENTATION
AGREEMENT**

Lone Tree Shuttle Bus Project

This Project Implementation Agreement (the “Agreement”) is made, effective as of this _____ day of _____, 2014 (the “Effective Date”) by and between the SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“SPIMD”), and THE CITY OF LONE TREE (“Applicant”), hereinafter collectively referred to as the “Parties.”

WHEREAS, the Parties are legally empowered under their respective organizational documents and the laws of the State of Colorado to enter into this Agreement; and

WHEREAS, the Parties recognize the need for transportation connectivity for travel in and around Lone Tree for the public and employees in the District; and

WHEREAS, Park Meadows Drive is a major travel corridor in the City, connecting the Lincoln Light Rail Station with major institutions and businesses that provide work for thousands of employees; and

WHEREAS, the ability of residents, visitors, shoppers and employees to access these institutions and businesses by means of a shuttle bus service will mean better transportation to jobs and amenities throughout the corridor and will reduce dependency on the single occupant automobile, facilitate the movement of traffic and minimize traffic congestion in the shuttle area; and

WHEREAS, the City formed a public-private partnership (the “Partnership”) with institutions, businesses and organizations along the Park Meadows Drive corridor to provide a circulator shuttle bus service in locations and at times and upon days as specified on the Project Scope attached hereto as Exhibit A; and

WHEREAS, The South I-25 Urban Corridor Transportation Management Association (the “TMA”) and its member jurisdictions have developed a strategy for mitigation of impacts on the South I-25 urban corridor (the “Corridor”) and the Corridor's transportation system, said strategy having been articulated in the Vision 2025 Plan adopted by the TMA and its member jurisdictions; and

WHEREAS, the commercial areas within the Corridor desired to establish a means of equitably mitigating their proportionate development impacts on the area's regional transportation system, and SPIMD has been formed specifically to provide a mechanism for commercial properties to voluntarily impose a property tax on themselves to raise funds for this purpose; and

WHEREAS, SPIMD has to date invested or committed approximately \$50 million in funding to partner with local jurisdictions in implementing qualified capital improvements and mitigation projects within the Corridor, inclusive of a commitment of up to \$36 million in matching funds to support the TMA's Vision 2025 Plan Capital Projects program; and

WHEREAS, SPIMD levies a property tax on commercial properties within the corridor to provide such funding; and,

WHEREAS, the Parties have in turn agreed to acknowledge that SPIMD funds are in part considered as mitigation for transportation impacts attendant to new commercial development within the Corridor; and,

WHEREAS, the Applicant has previously requested review of the Project by the TMA for conformance with the TMA's Vision 2025 Policy and criteria, and the currently adopted TMA multiyear project funding plan, and has received a favorable response from the TMA; and

WHEREAS, based on the foregoing SPIMD has agreed, as set forth in the Resolution of Intend attached hereto as Exhibit B and incorporated herein by this reference, to financially participate in the Project conditioned on adherence to the terms and conditions set forth below; and

WHEREAS, Applicant has requested SPIMD's funding assistance for this project in the amount of up to \$200,000, and Applicant acknowledges that SPIMD's provision of such funds is conditioned upon said amount being credited proportionately as regional transportation system mitigation offsets for the commercial properties within SPIMD; and

WHEREAS, based on the foregoing SPIMD hereby agrees to financially participate in the Project conditioned on adherence to the terms and conditions set forth herein; and

WHEREAS, Applicant will act as project manager and cause the Project to be conducted, and

WHEREAS, the Parties have budgeted capital funding to perform the Project; and

WHEREAS, the Parties wish to state herein their understanding as to how the Project will be financed and implemented;

NOW THEREFORE, as full consideration for and in furtherance of the goals and intents and purposes of this Agreement, the Parties hereby agree as follows:

1. Purpose. The purpose of this Agreement is to memorialize SPIMD's agreement to financially participate in the Project and to establish the process by which SPIMD's participation will be accomplished. The total costs associated with the Project (collectively "Estimated Project Costs") are currently estimated at Seven Hundred and Seventy Five Thousand Dollars (\$775,000.00). The actual Eligible Costs expended for the Project shall be the "Actual Project Cost." Eligible Costs shall include payment of contractors, including consultants,

contracted to perform the Project, pursuant to their contracts and shall not include the overhead or other internal costs and expenditures of any participant. No participant will be entitled to include in-kind costs for credit or project cost purposes.

2. SPIMD Contribution. SPIMD’s contribution toward the completion of the Project shall be, as matching funds to dollars contributed solely by the Applicant (as opposed to private third parties), an amount up to Two Hundred Thousand Dollars (\$200,000.00) and shall be paid to the Applicant in accordance with Paragraph 4 and Paragraph 5 of this Agreement (the “SPIMD Contribution”). As a condition of receipt of SPIMD’s project matching funds as provided for herein, as a *quid pro quo*, the Applicant hereby states its intent to participate in the future, as equal partners with SPIMD and other jurisdictions within SPIMD, in future funding efforts through both Denver South Economic Development Partnership and TMA programs/activities as are deemed of mutual benefit. SPIMD’s contributions are allocated, \$100,000 to Zone 6 and \$100,000 to Zone 7.

3. Allocated Shares of Estimated Project Costs. The annual Estimated Project Costs as between the Parties and the Applicant’s contributing participants (“Participants”) are set forth below:

Participant	Participant Share of the Estimated Project Cost (Annual)
Applicant	\$250,000
OmniPark Metropolitan District	\$100,000
Charles Schwab	\$125,000
Sky Ridge Medical Center	\$100,000
Kaiser Permanente Colorado	\$100,000
TOTAL (without SPIMD contribution)	\$675,000

SPIMD has committed up to \$100,000 for 2014-2015 and up to \$100,000 in 2015-2016 for a total contribution of up to \$200,000. SPIMD’s contribution toward the completion of the Project shall be matched dollar for dollar against the dollars contributed solely by the Applicant (as opposed to private third parties) up to \$100,000 annually.

If the Actual Project Cost is lower than the Estimated Cost, then SPIMD shall retain the remaining funds for that year's annual contribution to the SPIMD Project Fund. The Applicant certifies that the above sources and amounts of funds are the sole and only sources and amounts, and acknowledges and agrees that if additional funding sources or amounts are made available to the Applicant for the Project, then SPIMD's financial commitment will be reduced proportionately. The Applicant has informed SPIMD herein of all reimbursement or cost sharing with the other participants that may reduce the Applicant's cost share as set forth herein.

4. Financing.

A. SPIMD's obligation to fund the SPIMD Contribution shall be contingent on the Applicant awarding a contract for the completion of the Project to a contractor following a competitive request for proposals process and the Applicant issuing a notice to proceed to the contractor selected by the Applicant. The Applicant shall provide SPIMD with written confirmation that it has awarded the contract and has issued the notice to proceed to the contractor.

B. Upon satisfaction of the requirements of paragraph 4.A, the Applicant, Participants and SPIMD shall each contribute the amounts of capital to the overall Project as set forth above in paragraph 3. The Applicant shall deposit funds equal to its share of the Project costs according to paragraph 3 of this Agreement, into an account designated for the Project work and draws on this account to fund the Applicant's share of the Project costs shall be made in accordance with the terms of this Agreement. Within fifteen (15) days following SPIMD's receipt of the Applicant's confirmation that it has awarded the contract, SPIMD shall deposit its share of the Project Funds into an account earmarked for the Project (the "SPIMD Project Fund"). Draws from the SPIMD Project Fund to pay for costs associated with the Project shall be made in accordance with the terms of this Agreement, and shall be made concurrent with draws from the Project fund of Applicant.

C. The Applicant will maintain full and complete records of Actual Project Costs incurred in accordance with generally accepted accounting principles. The Applicant shall provide metrics on shuttle ridership to SPIMD and the TMA on a monthly basis. SPIMD reserves the right to audit the Applicant's financial and operations records related to the Project during and upon completion of the Project.

D. SPIMD shall have no obligation to commit any additional funds in the event that the Actual Project Costs exceed the Estimated Project Costs. This Agreement establishes SPIMD's maximum contribution toward the completion of the Project. Any unspent portion of the SPIMD Project Fund remaining at the completion of the Project shall be retained by SPIMD.

5. Project Implementation.

A. The Applicant anticipates that the Project will commence in September of 2014 and be completed in approximately twelve (12) months. Applicant will be responsible for all implementation and oversight of the Project, inclusive of the retention of any necessary consultants and contractors to perform the work necessary to complete the Project. In that

regard, Applicant has obligated itself alone by a contract, in the Applicant's name, with a reliable, high quality shuttle bus service provider, for twelve (12) months, commencing on or about, as nearly as practicable, September 17, 2014 through September 16, 2015 with an option to renew annually. SPIMD shall have input into the selection process of the shuttle bus service contractor along with the other Participants.

B. The Applicant shall assure that the Project is completed in accordance with the applicable laws, rules, and regulations of all governmental entities having proper jurisdiction over the Project.

C. All invoices for payment of Actual Project Costs, including a final invoice resulting from the completion of the Project or termination of a contract with the contractor for the Project, shall require the approval of both Parties. All invoices or other cost documentation for Actual Project Costs shall be directed to the Applicant on a quarterly basis and the Applicant shall distribute them together with a pay request approved by the Applicant Representative identified in Paragraph 11.A. to the SPIMD Representative identified in Paragraph 11.B. Each pay request submitted by the Applicant Representative to the SPIMD Representative shall be accompanied by: (1) Project invoices or other documentation of Actual Project Costs; and (2) such other documentation supporting or explaining the pay request as the Applicant Representative may choose to include in his discretion. The Applicant Representative may submit pay requests to the SPIMD Representative either in hard copy or electronically (via email). Upon receipt of each pay request, the SPIMD Representative will review the same and provide approval of the pay request or provide comments on the pay request within eight (8) calendar days. If the SPIMD Representative does not provide comment on the pay request within said eight (8) day review period, the pay request shall be deemed approved. Following approval of each pay request, SPIMD shall immediately cause funds to be disbursed from the SPIMD Project Fund to the Applicant. As set forth above, SPIMD shall have no obligation to commit any funds in excess of the SPIMD Contribution.

D. The Applicant shall keep accurate records of the progress of the Project and shall provide status reports to the SPIMD Representative identified in Paragraph 11.B. on a monthly basis, including progress updates, notice of any problems with the Project or any consultant, contractor, or subcontractor and a record of the payments made to any consultant, contractor, or subcontractor. Said status reports shall include updates to the Actual Project Costs expended and projected to be expended through Project completion, and any variance from the Estimated Project Costs, as well as any adjustments to the time schedule for Project completion.

6. Character of SPIMD Role. SPIMD will be responsible for working with the Applicant and the Project contractor(s), if and to the extent necessary to facilitate the Project, including without limitation acting as liaison with the Project area stakeholders such as Park Meadows Metropolitan District and Denver South Economic Development Partnership in order to keep all affected local governments apprised of the process, and to receive and convey any feedback to the Applicant in order to resolve any real or perceived issues with the Project's progress; provided that SPIMD shall have no obligation to complete, or liability for or arising from the Project. SPIMD shall not be liable for any claims, demands, losses, damages, expenses, injuries, and liabilities arising from the death or injury of any person or persons, including any

claims of the Applicant or other funding entities, or from any damage to or destruction of property caused by or in connection with the Project, or any negligent act or omission of the Applicant, any other funding entities or the Project contractor. To the extent allowed by law, the Applicant shall indemnify, save and hold harmless SPIMD, its officers, employees and agents, against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney fees incurred as a result of any negligent act or omission of the Applicant, or its employees, agents, subcontractors or assignees related to this Agreement or the completion of the Project.

7. Good Faith and Fair Dealing. SPIMD and the Applicant agree that the Applicant shall have a fiduciary duty to SPIMD in the performance of this Agreement. This fiduciary duty accepted by the Applicant shall include, but not be limited to, the highest duties of good faith, fair dealing, disclosure of all information to SPIMD as described herein, avoidance of conflicts of interest, and avoidance of the appearance of conflicts of interest in carrying out the goals and objectives of this Agreement.

8. Insurance. SPIMD and the Applicant shall insure themselves separately against liability, loss and damages arising out of the operation of and performance under this Agreement and the construction, use or operation of the Improvements.

9. Term of Agreement and Termination.

A. This Agreement shall be effective as of the Effective Date identified above and shall terminate upon the completion and close out of the Project by the Applicant, and a final accounting of the Actual Project Costs being provided by the Applicant to SPIMD; provided that, in the absence of the prior and express written consent of SPIMD the obligation to cause funds to be disbursed from the SPIMD Project Fund to the Applicant shall terminate on October 1, 2016 whether or not the Project has been completed.

B. Either party shall have the right to terminate this Agreement after thirty (30) days written notice to the other party in the event of a default which is not cured within twenty (20) days after delivery of the written notice of default. Termination shall not be effective if reasonable action to cure the breach has been taken by the defaulting party before the effective date of the termination, and such actions are pursued diligently to a successful completion within twenty (20) days from inception of the actions. If such actions are not successful within said period of time, the nondefaulting party shall have the right to terminate this Agreement upon written notice to the other party.

C. In the event of termination, cancellation or assumption of the services by RTD, the Applicant shall settle all accounts with the Project contractor engaged to perform the work necessary to complete the Project, close out the contract with such contractor and then remit any money recovered from or refunded by contractor(s) pro rata to the contributors thereof.

D. The Applicant's obligation to share pro-rata Project cost savings with SPIMD, the Applicant's accounting obligations, the Applicant's assurance of compliance with

applicable laws, and the Applicant's preservation of records pertaining to the Project shall survive termination of this Agreement.

10. Assignment. Neither Party shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other Party. Any attempt to assign this Agreement or parts hereof in the absence of such written consent shall be null and void ab initio.

11. Project Management.

A. Applicant Representative. The Applicant hereby designates Torie Brazitis (torie.brazitis@cityoflonetree.com) as the Applicant's representative to coordinate all communication with SPIMD related to the Project, including issues arising under this Agreement.

B. SPIMD Representative. SPIMD hereby designates one of its Board members whom is also a member of the TMA's Technical Advisory Committee (Pat Mulhern, P.E.; pat@mulhernmre.com) as SPIMD's representative to coordinate all communication with the Applicant related to the Project, including issues arising under this Agreement.

12. Miscellaneous.

A. It is the intention of the Parties that the Applicant shall be, and remain, an independent contractor. The Parties do not intend and nothing contained in this Agreement shall be deemed to create a partnership, co-tenancy, joint venture or agency of any kind.

B. Any Party in default under this Agreement shall pay the reasonable attorney's fees of the other party incurred in order to enforce its rights under this Agreement.

C. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the parties to this Agreement, the exclusive venue for dispute resolution shall be the District Court for and in Arapahoe Colorado, Colorado.

D. This Agreement shall inure to the benefit of, and be binding upon the parties to this Agreement and their respective successors and permitted assigns. This Agreement is solely between and for the benefit of SPIMD and the Applicant, and no design consultant, contractor, any subcontractor nor any other person is a third-party beneficiary to or under this Agreement.

E. This Agreement contains the entire agreement of the Parties with respect to its subject matter; and it cannot be amended or supplemented except by a writing signed by both parties. Any amendments or modifications to this Agreement must be in writing executed by the Parties in order to be valid and binding. Each Party to this Agreement represents and warrants that they have made full disclosure of any and all contingencies, conditions, or

reimbursement agreements related to their financial participation in the project as described in paragraph 3, above.

F. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

F. SPIMD and the Applicant are political subdivisions of the State of Colorado and, as such, (1) any and all financial obligations described hereunder are subject to annual budget and appropriations requirements, and (2) no consultants, contractors or subcontractors shall have lien rights against the Parties, nor against any property lying within the boundaries of the Parties in the event of nonpayment of any amount due under this Agreement.

G. The Applicant and SPIMD, and their respective elected officials, directors, officials, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as the same may be amended from time to time.

H. No elected official, director, officer, agent or employee of SPIMD or the Applicant shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

I. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Capital Project Implementation Agreement as of the day and year first above written.

**SOUTHEAST PUBLIC IMPROVEMENT
METROPOLITAN DISTRICT**

ATTEST:

Secretary

President

APPLICANT

ATTEST:

(Authorized Signatory)

(Authorized Signatory)

EXHIBIT A SCOPE

The City has issued a Request for Proposal to provide reliable, high-quality shuttle service from an independent contractor for one (1) year, with the option to renew annually. The City provided experienced project management staff to manage the RFP for this project as well as a marketing RFP, coordinated with area transit and planning agencies to advise on project design, established the provision of shuttle services, and provided oversight to ensure the shuttle services meet the City's high standards for delivery of public services, all at no extra cost to the Partnership.

In consultation with and input from all Participants, including SPIMD, the City will provide a shuttle service of three (3) continuously operating 14-passenger shuttle busses running Monday through Friday, exclusive of holidays, between Sky Ridge Medical Center in the south and the Entertainment District in the north, with stops in-between. Enhanced service with three (3) busses from the Lincoln Light Rail Station to major employers on the south end of the corridor in morning commute hours will be provided.

There will be six stops overall along this route, which are the end-of-line Lincoln Light Rail Station, the Entertainment District, Sky Ridge Medical Center, an OmniPark Metropolitan District stop, Kaiser Permanente Colorado, and the new Charles Schwab campus. All Participants shall receive the same level of service for the same payment, with the exception of Charles Schwab which is contributing an additional fee for enhanced morning service to its campus.

Shuttle service shall run weekdays from 6:00 a.m. until approximately 7:00 p.m., exclusive of holidays. The exact end time of the service shall be determined in consultation with the Participants and SPIMD. At this time, holidays are considered to be the following:

- Thanksgiving (Thursday, November 27, 2014)
- Christmas (Thursday, December 25, 2014)
- New Years Day (Thursday, January 1, 2015)
- Martin Luther King, Jr. Day (Monday, January 19, 2015)
- President's Day (Monday, February 16, 2015)
- Memorial Day (Monday, May 25, 2015)
- Independence Day (Saturday, July 4, 2015)
- Labor Day (Monday, September 7, 2015)