



2. **CITY CLERK** (presenter: Terry Andrews)  
**VENDORS CODE AMENDMENT**  
**A motion to approve and order published on second reading an Ordinance Amending the Loveland Municipal Code at Chapter 12.30 Concerning Licensing of Vendors in Public Rights-of-Way and Certain Other Public Places.**  
 This is a legislative action. City Council directed Staff to draft an ordinance for consideration that would allow mobile vendors to be permitted to vend in the City of Loveland. This ordinance on second reading allows Staff to license mobile vendors in the City and defines the parameters under which the use may be permitted. Licensees will be subject to all other Restrictions in Chapter 12.30 for mobile vendors. The ordinance was approved unanimously on first reading by City Council at the November 5, 2013 regular meeting.
3. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)  
**PARK LANE ADDITION AMENDMENT**  
**A motion to approve and order published on second reading an Ordinance Amending Ordinance #1587 to Modify a Condition Set Forth Therein Pertaining to the Annexation and Zoning of the Park Lane Addition to the City of Loveland, Larimer County, Colorado.**  
 This item is a legislative action to adopt an ordinance on second reading modifying a condition on the Annexation Ordinance #1587 of the Park Lane Addition. The applicant for the request is Tribus Anstalt (property owner). The ordinance was approved unanimously on first reading by City Council at the November 5, 2013 regular meeting.
4. **FINANCE** (presenter: John Hartman)  
**SUPPLEMENTAL APPROPRIATION FOR 2013 BUDGET WRAP-UP**  
**A motion to approve and order published on second reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget.**  
 This is an administrative action. Each year in November, staff brings a “wrap-up” ordinance to address any remaining issues and insure there are sufficient appropriations to meet projected expenditures. The ordinance is necessary to resolve several year-end issues and finalize the 2013 Budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year. Revenues and fund balance of \$4,152,540 across several funds is appropriated. The appropriations are primarily funded by reserves reducing the flexibility to fund other projects. Grant and donation revenue is included that offset some of the costs. This ordinance was approved unanimously on first reading by City Council at the November 5, 2013 regular meeting.
5. **DEVELOPMENT SERVICES** (presenter: Bob Paulsen)  
**PUBLIC HEARING**  
**WEED CONTROL MODIFICATIONS**  
**A motion to approve and order published on first reading an Ordinance Repealing and Re-Enacting Chapter 7.18 of the Loveland Municipal Code Regarding Weed Control.**  
 This is a legislative action to adopt an ordinance on first reading that modifies the weed control provisions of the Loveland Municipal Code, aligning the provisions with State and County regulations, and clarifying requirements and allowances for native and ornamental grasses. The ordinance was originally scheduled for the October 15, 2013

City Council meeting, but it was withdrawn from that agenda and has since been adjusted to be in alignment with State regulations concerning the growth of industrial hemp and the outdoor growth of marijuana.

6. **HUMAN RESOURCES** (presenter: **Bettie Greenberg**)  
**CIRSA AGREEMENT AND PURCHASE ORDER**  
**A motion to Authorize the City to Continue its Intergovernmental Agreement with CIRSA for 2014 Property and Liability Insurance Coverage and Establish a Purchase Order in the Amount of \$800,000.**  
 This is an administrative action to authorize the City to continue its Intergovernmental Agreement with CIRSA for the City's 2014 Property and Liability Insurance Coverage and establish a purchase order in the amount of \$800,000. This purchase order is for the premium, claims administration, and payment of estimated claims for 2014, remaining open claims or new claims from prior years. The \$800,000 is within the approved 2014 Budget.
7. **HUMAN RESOURCES** (presenter: **Julia Holland**)  
**2014 PAY PLAN**  
**A motion to approve Resolution R#-100-2013 Adopting a Pay Plan for City Employees and Superseding All Prior Ordinances Adopting Such a Pay Plan.**  
 This is an administrative action for Council to adopt the City's 2014 Pay Plan. The City's Pay Plan assists in delivering cost efficient, high quality services to citizens by establishing a competitive market based plan, while adhering to budgetary constraints. During 2013, the City utilized the expertise of a compensation consultant to assist in a salary survey market analysis, develop 2014 pay ranges based on the data collected, and compare current rates of pay with the identified labor market to competitive pay practices, while also providing a financially sustainable plan. Costs associated with the adoption and implementation of the 2014 Pay Plan will be provided through the 2014 Budget, which included a 1% allotment for necessary adjustments.
8. **POLICE** (presenter: **Luke Hecker**)  
**PUBLIC HEARING**  
**THEFT CODE AMENDMENT**  
**A motion to approve and order published on first reading an Ordinance Amending Chapter 9.34 of the City of Loveland Municipal Code to Combine in One Section the Offenses of Theft and Theft of Rental Property and to Combine with Them the New Offense of Theft by Receiving.**  
 This is a legislative action. This ordinance combines the two different types of theft currently set forth as separate Code sections and adds a third type of theft (Theft by Receiving) into one Code section. A similar state law took effect on June 5, 2013. The Police Department would like to adopt this ordinance to be consistent with State law and to allow summonses to be issued into Municipal Court for persons committing Theft by Receiving, as well as, the two other types of theft.

## **END OF CONSENT AGENDA**

### **CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA**

#### **CITY COUNCIL**

- a. **Citizens' Report** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*
- b. **Business from Council** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*

## **Election of Mayor Pro Tem**

- c. **City Manager Report**
- d. **City Attorney Report**

## **PROCEDURAL INFORMATION**

*Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.*

## **REGULAR AGENDA**

### **CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA**

9. **CITY MANAGER** (presenter: Rod Wensing)  
**PUBLIC HEARING**  
**COMCAST FRANCHISE AGREEMENT AND CUSTOMER SERVICE STANDARDS**  
**1. A motion to approve and order published on first reading an Ordinance of the City of Loveland, Colorado Granting a Cable Franchise to Comcast of Colorado II, LLC.**  
 This is an administrative item to grant a cable franchise to Comcast of Colorado II, LLC ("Comcast"). Comcast is operating within the City of Loveland under an existing franchise effective, May 1, 2007 to December 31, 2013. This ordinance would grant Comcast a new, ten-year franchise on terms and conditions similar to the existing franchise and favorable to the City.
- 2. A motion to approve and order published on first reading an Ordinance Amending the Loveland Municipal Code at Section 13.16.030 Concerning Customer Service Standards for Cable Operators.**  
 This is a legislative item to amend the Loveland Municipal Code at Section 13.16.030 by adoption of revised customer service standards for cable operators within the City of Loveland. As required by the existing franchise, Comcast has been given an opportunity to review and comment on the revised customer service standards.
10. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)  
**TIES4LESS INCENTIVE AGREEMENT**  
**A motion to adopt Resolution R#-101-2013 Approving an Incentive Agreement for Ties4Less, LLC.**  
 This is an administrative action. The resolution would authorize the City Manager to sign the Economic Incentive Agreement with Ties4Less for an amount, not to exceed, \$14,500. The incentive would be a reimbursement for upgrades to the building infrastructure including the security systems. It will also provide partial reimbursement for certain tenant improvements that will allow the company to competitively bid on new contracts for fleet vehicle retrofits. According to the Economic Development Policy for agreements under \$20,000, this agreement is presented to Council for consideration. The briefing memorandum that was sent to Council in October is included as an attachment. The City will fund \$14,500 from the Economic Incentive Fund.
11. **CITY MANAGER** (presenter: Alan Krcmarik)  
**PENSION PLAN INCREASE FOR VOLUNTEER FIREFIGHTERS**  
**A motion to approve Resolution R#-102-2013 Authorizing an Increase in the**



**Loveland and Rural Consolidated Volunteer Fire Department Pension Plan Effective for Monthly Payment Beginning January 1, 2014.**

This is an administrative action. The proposed resolution authorizes an increase in the benefits paid to vested Plan participants (or their beneficiaries) through the Loveland and Rural Consolidated Volunteer Fire Department Pension Plan (Plan), who have served the Loveland community in the capacity of volunteer firefighters. Currently, participants with at least 20 years of service as a volunteer firefighter receive \$650 per month. This amount would be increased to \$700 per month. Other payments that are made to partially-vested retired volunteer firefighters and surviving beneficiaries of said firefighters, are adjusted proportionately according to the schedule attached to the resolution. Based on an independent actuarial study, the Plan is sufficiently funded to cover the costs of the increased payments. According to the actuarial study and discussion with the Fire & Police Pension Association, the assets of the Plan and anticipated contributions to the Plan from the State, City, and the Loveland Rural Fire Protection District will be sufficient to cover the future projected Plan cost. The increase in the normal cost is \$712 annually. The actuarial study assumes no increase in the current annual contribution from the City, the Rural District, or the Authority.

**12. FINANCE (presenter: Brent Worthington)  
September 2013 Financial Report**

This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending September 30, 2013.

**13. CITY MANAGER (presenter: Alan Krcmarik)  
Investment Report for September 2013**

This is an information only item. The budget estimate for investment earnings for 2013 is \$2,760,420. Through September, the net amount posted to the investment accounts is \$920,920, including realized gains. Actual year-to-date earnings are much lower than the budget projection. Earlier this year, several very high interest rate corporate bonds matured, so future yields will be lower. The estimated annualized yield on market value for securities held by US Bank decreased to 1.09% at the end of September, lower than the 1.14% yield reported at the end of August. The yield is still under the annual target rate of 1.20% for 2013. Reinvestment rates have risen recently after being at near record low levels. Current reinvestment rates are now higher than the budget projection target.

**ADJOURN**



## PROCLAMATION

- WHEREAS** The City of Loveland recognizes the importance of assisting Loveland families and individuals living in or near poverty in 2014; and
- WHEREAS** More than 50% of our homeless neighbors in Loveland are families in need of emergency services throughout the year; and
- WHEREAS** Funding to help our Loveland families living in poverty and affected by the recent flood is as important as ever; and
- WHEREAS** We're grateful to the generous people of Loveland who take pride that the Loveland Salvation Army Red Kettle Campaign is an all volunteer effort that insures that 90% of all donations are directly allocated to our Loveland human service agencies in their efforts to reach out to those in greatest need; and
- WHEREAS** Our primary goal is to continue assisting local programs like the House of Neighborly Service, Neighbor to Neighbor Rental Assistance, Loveland Police Chaplains, Back to School backpacks, Christ's Church of the Rockies Front Porch Meal Ministry Boys and Girls Club, Disabled Resource Service, Alternatives to Violence, The Community Kitchen and Salvation Army Special Needs Request Fund.

**NOW, THEREFORE**, we, the City Council of Loveland, do hereby proclaim Friday, the 22nd of November, 2013 as

### LOVELAND SALVATION ARMY RED KETTLE KICKOFF DAY

in Loveland, Colorado, and in so doing, urge all citizens to join us by volunteering to ring bells for two hours between Thanksgiving and Christmas Eve in a citywide effort to help us reach our goal of \$100,000 to aid and assist needy families and individuals in 2014.

Signed this 19th day of November, 2013

Cecil A Gutierrez  
 Mayor



**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 1  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Bill Cahill, City Manager  
**PRESENTER:** Bill Cahill

**TITLE:**

Reappointment of a City Commission Member to the Fire and Rescue Advisory Commission

**RECOMMENDED CITY COUNCIL ACTION:**

A motion to reappoint Paul Pfeiffer as a City Commission member on the Fire and Rescue Advisory Commission for a term effective until June 30, 2016.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action

**SUMMARY:**

This is an administrative action recommending the reappointment of a member to the Fire and Rescue Advisory Commission.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

Paul Pfeiffer has applied to be reappointed as a City Commission member on the Fire and Rescue Advisory Commission. The commission has recommended that Mr. Pfeiffer be reappointed for a term effective until June 30, 2016.

**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

**LIST OF ATTACHMENTS:**

None



**CITY OF LOVELAND**  
CITY CLERKS OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2322 • FAX (970) 962-2901 • TDD (970) 962-2620

**AGENDA ITEM:** 2  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Terry Andrews, City Clerk  
**PRESENTER:** Terry Andrews

**TITLE:**

An Ordinance on Second Reading Amending the Loveland Municipal Code at Chapter 12.30 Concerning Licensing of Vendors in Public Rights-of-Way and Certain Other Public Places

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the ordinance on second reading.

**OPTIONS**

1. Adopt the ordinance as recommended.
2. Take no action; which would allow the emergency ordinance to expire on December 31, 2013 and prohibit mobile vending on City Streets effective January 1, 2014.

**SUMMARY:**

This is a legislative action. City Council directed Staff to draft an ordinance for consideration that would allow mobile vendors to be permitted to vend in the City of Loveland. This ordinance on second reading allows Staff to license mobile vendors in the City and defines the parameters under which the use may be permitted. Licensees will be subject to all other Restrictions in Chapter 12.30 for mobile vendors. The ordinance was approved unanimously on first reading by City Council at the November 5, 2013 regular meeting.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

On August 6, 2013 City Council approved Emergency Ordinance #5798 allowing ice cream trucks to vend on City Streets through the end of 2013. Council directed Staff to bring an ordinance for consideration that would amend the Code allowing permitting of mobile vendors on public streets. This ordinance allows Staff to license mobile vendors in the City and requires them to provide proof of insurance. The ordinance prohibits mobile vendors from stopping to vend in the middle of the street; vending on major roads, i.e. Taft, US 287, etc. or within City

Parks and on roads adjacent to City Parks. Licensees will be subject to all other restrictions identified in Chapter 12.30.

If Council approves the ordinance on second reading, the ordinance will take effect on December 3, 2013.

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**REVIEWED BY CITY MANAGER:**

*William D. Cabell*

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**LIST OF ATTACHMENTS:**

1. Ordinance

**FIRST READING**      November 5, 2013

**SECOND READING** November 19, 2013

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 12.30 CONCERNING LICENSING OF VENDORS IN PUBLIC RIGHTS-OF-WAY AND CERTAIN OTHER PUBLIC PLACES**

**WHEREAS**, Chapter 12.30 of the Loveland Municipal Code concerning licensing of vendors within the City of Loveland requires persons desiring to sell goods and services within and on the City’s public rights-of-way to obtain a vendors license from the City Clerk before doing so; and

**WHEREAS**, Section 12.30.090 places several restrictions on licensed vendors selling within the City’s public rights-of-way, including the prohibition on conducting “any business out of any motor vehicle, stand, cart or otherwise upon the street portion of any public right-of-way”; and

**WHEREAS**, this prohibition prevents mobile food vendors who desire to conduct their business from their vehicles upon the street portion of the public rights-of-way from obtaining a vendors license under Chapter 12.30; and

**WHEREAS**, on August 6, 2013, the City Council adopted emergency Ordinance No. 5798 authorizing the City Clerk to issue temporary vendors licenses under Chapter 12.30 to operators of ice cream trucks; and

**WHEREAS**, in Ordinance No. 5798, the City Council directed the City Manager and the City Attorney to evaluate and review Chapter 12.30 for possible amendments that would allow, in 2014 and thereafter, the issuance of vendors licenses to operators of ice cream trucks and mobile food trucks that would permit them to conduct their businesses on the street portion of the public rights-of-way, and to report back to the City Council with proposed amendments to Chapter 12.30 by the end of 2013; and

**WHEREAS**, the City Manager and the City Attorney, in consultation with affected City departments, have evaluated and reviewed Chapter 12.30 and recommend certain amendments to permit operators of mobile food trucks, including ice cream trucks, to conduct their businesses on the street portion of the public rights-of-way pursuant to a valid vendors license issued by the City Clerk as further defined herein.

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

**Section 1.** That Chapter 12.30 of the Loveland Municipal Code is hereby amended to read as follows:

**Chapter 12.30**

**LICENSING OF VENDORS IN PUBLIC RIGHTS-OF-WAY AND CERTAIN OTHER PUBLIC PLACES**

**Sections:**

- 12.30.010 Intent.**
- 12.30.020 Definitions.**
- 12.30.030 License required.**
- 12.30.040 Exceptions.**
- 12.30.050 Application.**
- 12.30.060 Application fee.**
- 12.30.070 Review of application.**
- 12.30.080 License.**
- 12.30.090 Renewal.**
- 12.30.100 Transfer.**
- 12.30.110 Restrictions.**
- 12.30.120 Local events.**
- 12.30.130 Suspension or revocation of license.**

**12.30.010 Intent.**

It is the intent of this chapter to set forth the conditions and restrictions which shall apply to the sale of services, merchandise, and food from the streets, sidewalks, and other public rights-of-way within the city which are deemed necessary in order to regulate and limit congestion, promote a neat and wholesome atmosphere, discourage littering, encourage diversity of activity, enhance and promote a festive atmosphere, attract shoppers, provide opportunities for entrepreneurs, and advance vehicular and pedestrian traffic safety. It is the further intent of this chapter to implement the power reserved to the city council in section 5.12.040 of this code as to public rights-of-way defined in this chapter.

**12.30.020 Definitions.**

As used in this chapter, the following definitions of terms apply:

“Food” means any item intended for human consumption, including beverages.

“Licensee” means any person licensed pursuant to this chapter.

“Mobile food truck” means a motorized wheeled vehicle or wheeled vehicle designed and equipped to serve food while being towed by a motorized vehicle.

“Park” means any area, field, trail, open land, golf course, and or other recreational facility operated, managed, and supervised by the city’s parks and recreation department.

“Public right-of-way” means any public street, road, highway, alley, lane, or sidewalk, as well as any public parking lot or place of any nature open to the public and held by the public for vehicular or pedestrian travel.

“Sell” means the act of holding out a thing of value for acquisition by another upon the payment of, or the promise to pay, anything of value thereof.

“Sidewalk” means that part of the public right-of-way designated for the use of pedestrians and ordinarily used to the exclusion of motor vehicles. Such term does not include crosswalks within streets.

“Vend” means to sell, attempt to sell, or otherwise offer to provide to the public any services, merchandise, or food.

“Vendor” means any person who sells or attempts to sell, or who offers to the public free of charge, any service, merchandise, or food.

**12.30.030 License required.**

It is unlawful for any person to vend from or upon any public right-of-way without first obtaining a vendors license in compliance with the provisions of this chapter.

**12.30.040 Exceptions.**

A vendors license shall not be required under any of the following circumstances:

- A. vendors operating within the public right-of-way pursuant to a valid encroachment permit issued under section 12.28.030;
- B. vendors operating within any park or other city-owned property pursuant to a concessionaire agreement or other agreement with the city;
- C. vendors operating at a city-sponsored event pursuant to an agreement with the city; or
- D. vendors participating in a local event pursuant to a valid permit issued under chapter 12.26 of this code.

**12.30.050 Application.**

Any person desiring to obtain a vendors license shall make an application in writing to the city clerk upon forms provided by the city. Applications for new licenses may be filed at any time. Applications for renewal of existing licenses may be filed on or after December 1 of the year prior to the year for which the license is requested. The application shall contain, without limitation, the following information:

- A. name, address, and telephone number of the vendor;
- B. type of operation to be conducted, including the particular type of service, merchandise, or food to be sold;
- C. description of the design of any vehicle, pushcart, kiosk, table, chair stand, box, container, or other structure or display device to be used in the operation;
- D. for mobile food trucks, the vehicle license plate number and a photograph of each of the four sides of the vehicle;
- E. proposed days and hours of operation;
- F. proposed location of operation. For mobile food trucks, location may be specified as “within the city of Loveland.” For all other vendors, location must be specified by block or address. A separate application shall be made for each location, and in the case of mobile food trucks, for each vehicle. Specific block or address locations shall be assigned on a first-come, first-served basis. In the event the city clerk has applications filed as of December 1 for the same block or address location, preference shall be determined by lot;
- G. proof of liability insurance in an amount acceptable to the city;
- H. sales and use tax license in good standing issued by the the state, the county, and the city; and



- I. for the vending of food, all licenses and permits required by Larimer County and the State of Colorado.

**12.30.060 Application fee.**

Vendors shall pay an application fee for each application filed. The application fee shall be established by resolution of the city council. There shall be no proration of the fee where the application is for a vendors license less than one full year in duration. There shall be no refund of the fee for applications that are denied.

**12.30.070 Review of application.**

The city clerk shall endeavor to review the application and make a determination as to whether issuance of a vendors license is consistent with the requirements of this chapter and compatible with the public interest within fifteen working days of receiving a complete application and the application fee. In making such determination, the city clerk shall consider the following factors:

- A. degree of congestion of any public right-of way that may result from the proposed use, design, and location of any operation, including the probable impact of the proposed operation on the safe flow of vehicular and pedestrian traffic;
- B. proximity, size, design, and location of existing street fixtures at or near the proposed location, including, without limitation, sign posts, street lighting, bus stops, benches, planters, public art, and newspaper vending devices;
- C. probable impact of the proposed use on the maintenance, care, and security of the specified location;
- D. number and types of vendors already licensed for the proposed location; and
- E. probable impact that issuance of the vendors license would have on surrounding properties.

**12.30.080 License.**

- A. Upon determination that issuance of a vendors license is consistent with the requirements of this chapter and compatible with the public interest, the city clerk shall issue a vendors license. Subject to the licensee's compliance with the provisions of this chapter, the vendors license shall entitle the vendor and vendor's bona fide employees to operate the business at the location or locations specified in the license.
- B. Each license shall be valid for one year beginning January 1 or the date of issuance, whichever is later, and ending December 31 of the same year.
- C. Each license shall contain the following information:
  - 1. the name, address, and telephone number of the vendor;
  - 2. the type of operation;
  - 3. the length of time for which the license was issued;
  - 4. the days and hours of operation;
  - 5. the location of operation;
  - 6. a brief description of any vehicle, cart, kiosk, table, chair, stand, box, container, or other structure or display device to be used by the licensee;
  - 7. for mobile food trucks, the vehicle's license plate number;
  - 8. a statement that the license is personal to the vendor and is not transferrable in any manner;

- 9. a statement that the license is valid only when used at the location designated in the license; and
  - 10. a statement that the license is subject to the provisions of this chapter.
- D. The license must be posted and available for inspection at any time.

### **12.30.090 Renewal**

Renewal of a license shall be treated as a new application under the provisions of this chapter. Any violation by the licensee of the provisions of this chapter and chapter 3.16 shall be an additional factor to be considered in the review and approval set forth in section 12.30.070.

### **12.30.100 Transfer**

If the licensee requests the transfer of a license to a new licensee or to a new location, or requests an additional location, such request shall be treated as a new application.

### **12.30.110 Restrictions.**

The following conditions and restrictions shall apply to all licensees unless otherwise specified. Failure to abide by such conditions and restrictions shall result in suspension or revocation of the license as set forth in this chapter.

- A. No licensee shall operate in such a manner as to block any alleys, doors, fire exits, parking spaces, bus stops, taxi stands, loading zones, driveways, pedestrian crosswalks, or otherwise impede or interfere with or visually obstruct the safe movement of vehicular and pedestrian traffic.
- B. Mobile food trucks shall have an affirmative and independent duty to determine the safety, suitability, and legality of any particular stopping point or location of operation, both in general and at any particular time, and to operate in a manner reasonably calculated to avoid and prevent harm to others in the vicinity of the licensee's operations, including, without limitation, potential and actual customers, pedestrians, and other vendors and vehicles; provided, however, that in no case shall a mobile food truck stop to vend from a federal or state highway or "arterials" as this term is defined in the city's master transportation plan.
- C. Mobile food trucks shall use flashing lights and other similar warning and safety indicators when stopped to vend in the street portion of any public right-of-way.
- D. Mobile food trucks must serve the public only from the sidewalk and not from the street or adjacent parking spaces.
- E. Mobile food trucks shall not stop to vend within two hundred feet of the property boundary of any kindergarten or primary or secondary school.
- F. No licensee shall operate in such a manner as to leave less than a six-foot wide, unobstructed passageway for pedestrians along the sidewalk.
- G. No licensee shall operate within a park, on a public street or sidewalk abutting a park, or within any city-owned facility except as a concessionaire pursuant to an agreement with the city.
- H. No licensee shall operate within one hundred feet of any business with which such licensee is in direct competition unless the licensee receives prior written approval from such business.
- I. No licensee shall use any amplified music or public address system in the conduct of business in a manner that violates the sound limitations set forth in chapter 7.32 of this

code.

- J. Any licensee offering merchandise or food with throwaway or disposable wrappers or containers shall provide containers for their disposal, shall keep the area within fifty feet of such licensee's location free of all such containers and wrappers, and shall dispose of all accumulated trash in other than public trash disposal facilities.
- K. No licensee shall offer any food without all valid licenses and permits required by Larimer County and the State of Colorado.
- L. No licensee shall use or operate any open fire, barbeque, grill, or other heat source without first having obtained approval from the city's fire marshal.
- M. No licensee shall leave unattended any vehicle, pushcart, kiosk, table, chair stand, box, container, or other structure or display device or merchandise or food in the public right-of-way. Any items left unattended may be impounded by the city at the licensee's sole cost and expense.
- N. Each license, when issued, shall specify the days of the week and the hours during the day the licensee shall operate as stated in the application. The licensee shall generally operate during such hours on all of such days. Failure to operate for a period of fourteen consecutive days for which the license is issued may be deemed to be an abandonment of the licensed location, and such location shall be open for assignment to another vendor.

#### **12.30.120 Local events.**

Whenever a permit has been issued pursuant to chapter 12.26 of this code, no licensee shall operate in the area covered by such permit during the hours of such local event without also securing the written approval of the sponsor of such event.

#### **12.30.130 Suspension or revocation of license.**

The city clerk, upon five days written notice to the licensee, may suspend or revoke the vendors license for violation of any of the provisions of this chapter. The written notice shall specify the alleged violations and shall afford the licensee an opportunity to request a hearing before the city clerk. If the hearing is requested within five days of the receipt of the notice, the suspension or revocation shall be held in abeyance pending the hearing; otherwise, it shall take effect at the expiration of the five-day period. Any licensee aggrieved by the decision of the city clerk following a hearing shall have the right to appeal such decision to the city manager. The filing of such appeal shall not abate or otherwise suspend the decision of the city clerk. The city manager shall review the record of the hearing before the city clerk and shall render a decision within ten working days following the filing of the appeal. The decision of the city manager shall be final, subject to judicial review in accordance with Colorado law.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 19<sup>th</sup> day of November, 2013.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Assistant City Attorney



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 3  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Troy Bliss

**TITLE:**

An Ordinance on Second Reading Amending Ordinance #1587 to Modify a Condition Set Forth Therein Pertaining to the Annexation and Zoning of the Park Lane Addition to the City of Loveland, Larimer County, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the ordinance on second reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This item is a legislative action to adopt an ordinance on second reading modifying a condition on the Annexation Ordinance #1587 of the Park Lane Addition. The applicant for the request is Tribus Anstalt (property owner). The ordinance was approved unanimously on first reading by City Council at the November 5, 2013 regular meeting.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

Airpark North Addition was annexed into the City in August of 1977, by Ordinance #1587 (the "Annexation Ordinance"). The addition is a 6 lot, 4 acre area of land located on the west side of North Garfield Avenue between West 41<sup>st</sup> Street and West 43<sup>rd</sup> Street. The annexation ordinance was approved subject to a condition on the annexation petition that no building permit

be issued without approval of a Special Review Site Plan in accordance with Title 18 of the Municipal Code. The property owner has no plans for development and would like to market the property for sale. The associated condition creates a problem in trying to market the property by eliminating all uses permitted by right.

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**REVIEWED BY CITY MANAGER:**

*William A. Cavill*

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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Complete first reading packet from November 5, 2013 can be accessed at:  
<http://www.cityofloveland.org/index.aspx?page=20&recordid=49812>

**FIRST READING**      November 5, 2013

**SECOND READING**   November 19, 2013

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE 1587 TO MODIFY A  
CONDITION SET FORTH THEREIN PERTAINING TO THE  
ANNEXATION AND ZONING OF THE PARK LANE ADDITION TO  
THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

**WHEREAS**, the Park Lane Addition to the City of Loveland is approximately 4 acres of land located at the southwest corner of N. Garfield Avenue and W. 43<sup>rd</sup> Street, City of Loveland, Larimer County, Colorado, more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “Property”); and

**WHEREAS**, the Property was annexed by Ordinance 1587 (the “Annexation Ordinance”) adopted by the Loveland City Council on August 2, 1977 and recorded on at Reception #220087 in the real property records of the Larimer County Clerk and Recorder; and

**WHEREAS**, the Property was zoned B-Developing Business by Ordinance 1599 (the “Zoning Ordinance”) adopted by the Loveland City Council on September 6, 1977; and

**WHEREAS**, the Annexation Ordinance was subject to conditions set forth in paragraph 11 of the Petition for Annexation dated July 18, 1977 attached hereto as **Exhibit B** and incorporated herein by reference (the “Petition”), including item #“(11). (g).” which reads:

“(11). (g). There shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code.”; and

**WHEREAS**, the owner of the Property has requested that the City amend the Annexation Ordinance by removing condition #(11). (g). set forth in the Petition and incorporated therein, which removal will permit uses allowed by right in the B-Developing Business zone district without requiring a Special Review for the Property, with the understanding that all uses allowed by right must meet all City regulations and standards as they may exist from time to time; and

**WHEREAS**, the City Council desires to amend the Annexation Ordinance by removing condition #(11). (g). set forth in the Petition and incorporated into the Annexation Ordinance, which removal will permit uses by right without a Special Review, on the terms and conditions forth herein.

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

**Section 1.** That Annexation Ordinance (Ordinance 1587) is hereby amended by deletion of Section 3 in its entirety and substitution of the following in lieu thereof:

“Section 3: That the annexation of said territory is subject to the conditions set forth in Paragraph (11)(a) through (11)(f) of the Petition for Annexation of said territory filed with the City of Loveland; provided, however, that condition (11)(g) shall be deemed to be deleted from the Petition and shall have no application to said territory.”

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 3.** That this Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 4.** That the City Clerk shall record this Ordinance in the records of the Larimer County Clerk and Recorder after it becomes effective in accordance with Section 3 above.

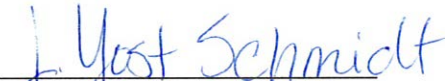
ADOPTED this 19<sup>th</sup> day of November, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney





**EXHIBIT B**PETITION FOR ANNEXATION

The undersigned, in accordance with Article 8, Chapter 31, Colorado Revised Statutes, 1973, hereby petition to the City Council of the City of Loveland, Colorado, for annexation to the City of Loveland, the following described unincorporated territory located in the County of Larimer, State of Colorado, to-wit:

Property located in Sections 1 and 2, all in Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 2 as bearing North 89°59'15" West and with all bearings contained herein relative thereto.

Beginning at the Northeast corner of said Section 2; thence along said North line of the Northeast Quarter North 89°59'15" West 400.00 feet to the East line of Ridgeview South Addition to the City of Loveland, Colorado; thence along said East line South 00°46'30" West 175.00 feet to the South line of said Ridgeview South Addition; thence along the Easterly prolongation of said South line of said Ridgeview South Addition South 89°59'15" East 50.00 feet; thence South 00°46'30" West 546.23 feet; thence North 89°59'07" East 350.00 feet to the East line of the Northeast Quarter of said Section 2; thence continuing North 89°59'07" East 51.49 feet to the Easterly right of way line of U. S. Highway No. 287; thence along said Easterly right of way line North 00°39'23" East 721.02 feet to the Easterly prolongation of the North line of said Northeast Quarter of Section 2; thence along said Easterly prolongation North 89°59'15" West 50.00 feet to the point of beginning, and hereby designated "PARK LANE ADDITION" to the City of Loveland, Colorado.

and in support of said Petition, your petitioners allege that:

(1). It is desirable and necessary that the above described territory be annexed to the City of Loveland, Colorado;

(2). That no less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the City of Loveland, Colorado;

(3). A community of interest exists between the territory proposed to be annexed and the City of Loveland, Colorado;

(4). The territory proposed to be annexed is urban or will be organized in the near future;

(5). The territory proposed to be annexed is integrated or is capable of being integrated with the City of Loveland, Colorado;

(6). The signatures of the Petition comprise one hundred per cent (100%) of the landowners of the territory to be included in the area proposed to be annexed and said landowners attesting to the facts herein contained will negate the necessity of any annexation election;

(7). No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate

(a). Is divided into separate parts or parcels without the written consent of the landowner or landowners thereof, unless such tracts or parcels are separated by a dedicated street, road or other public way;

(b). Comprising twenty (20) acres or more and which, together with the buildings and improvements situated thereon, has an assessed value in excess of Two Hundred Thousand Dollars (\$200,000.00) for ad valorem tax purposes for the year preceding the annexation, is included within the territory proposed to be annexed without the written consent of the landowner or landowners.

(8). The mailing address of each signer, the legal description of the land owned by each signer, and the date of signing of each signature are all shown on this Petition;

(9). Accompanying this Petition are four (4) prints of

the annexation map containing the following information:

- (a). A written legal description of the boundaries proposed to be annexed;
- (b). A map showing the boundary of the area proposed to be annexed, such map prepared and containing the seal of a registered engineer or land surveyor;
- (c). Within the annexation boundary map there is shown the location of each ownership tract in unplatted land, and if part or all of the area to be platted, then the boundaries and the plat number of plots or of lots and blocks are shown;
- (d). Next to the boundary of the area proposed to be annexed is drawn the contiguous boundary of the City of Loveland, and the contiguous boundary of any other municipality abutting the area proposed to be annexed;
- (e). The dimensions of the contiguous boundaries are shown on the map.

(10). The above described territory is not presently a part of any incorporated city, city and county, or town.

(11). The following conditions shall be complied with:

- (a). Water rights as required by the Municipal Code;
- (b). Five percent (5%) for recreation, to be furnished in cash;
- (c). Zoning recommended DE, Developing Business District;
- (d). That Petitions for Exception No. 115 and 116 are approved by the City Council;
- (e). That a revised Petition for Exception No. 130 should be filed requesting that a part width




**CITY OF LOVELAND**

BUDGET OFFICE

 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

**AGENDA ITEM:** 4  
**MEETING DATE:** 11/5/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

**TITLE:**

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the ordinance on second reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. Each year in November, staff brings a “wrap-up” ordinance to address any remaining issues and insure there are sufficient appropriations to meet projected expenditures. The ordinance is necessary to resolve several year-end issues and finalize the 2013 Budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year. Revenues and fund balance of \$4,152,540 across several funds is appropriated. This ordinance was approved unanimously on first reading by City Council at the November 5, 2013 regular meeting.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The appropriations are primarily funded by reserves reducing the flexibility to fund other projects. Grant and donation revenue is included that offset some of the costs.

**BACKGROUND:**

The ordinance is necessary to make adjustments in several departments. Staff has been monitoring these issues throughout the year to arrive at a single more accurate forecast. The details of the adjustments are as follows.

1. Equipment including a compressor, fans and a copier were damaged by the 2013 Flood. Funding is appropriated to the Information Technology Department and Fire & Rescue department to replace this equipment (\$13,920).
2. The repayment of incentives from the VNet agreement is appropriated back to the Economic Incentive account (\$599,000).
3. The Development Services Department has received a state historical grant to aid in the development of an application to create a Historic Downtown District (\$16,400).
4. Lodging Tax funds were appropriated for the costs associated with the Pro Cycle Challenge. The funds are transferred to the General Fund and Transportation Fund to cover costs incurred by City staff (\$34,100) and the Lodging Tax Fund budget is reduced by the same amount.
5. The Police Department has received state grants to pay for the overtime costs associated with the DUI and Seatbelt Enforcement campaigns (\$16,100).
6. Costs for the clean-up and rebuilding of infrastructure at the Fire Training Grounds is appropriated in the Facility Management Division (\$450,000).
7. Cost for the relocation and storage of the Museum history collection is included. The costs are offset by a donation of \$60,000 from the Kroh Charitable Trust (\$87,400).
8. Funding is appropriated for Summer Lagoon Series for costs not covered by donations or sponsorships (\$20,000).
9. Funding is appropriated for a contract to provide parking spaces for Museum staff to replace the parking that was available at the Home State Bank site (\$21,000).
10. The City's share of the required payment to the federal government related to the Mirasol development is appropriated (\$137,500).
11. The costs of sidewalk and road repairs related to the 2013 Flood are appropriated (\$116,770).

12. Additional funding is appropriated for traffic control costs resulting from the 2013 Flood (\$30,000).
  13. Additional funding is appropriated for payment to the Loveland Fire Rescue Authority for vehicle repairs and fuel costs that exceeding initial estimates (\$40,000).
  14. Funding for the Water Treatment Plant Expansion Project is shifted from the Water Enterprise Fund to the Water SIF Fund. Staff has determined that impact fees should cover a higher percentage of the costs (\$390,800).
  15. Funding for power infrastructure to tie substations and reroute circuits to improve reliability are appropriated. These projects had been held up by easement acquisitions and coordination with other entities, but are now ready to move forward (\$1,967,650).
  16. In the Vehicle Maintenance Fund, fuel costs and fuel usage have been higher than estimated, partially due to the 2013 Flood Response, and additional equipment needed to be leased for the Flood Response effort. Additional funding for tires is necessary due to a change in specifications for Police cruisers going from a 15" to 18" tire (\$146,000).
  17. Replacement of the north auto-gate into the secured west parking lot at the Police and Courts Building (\$50,000).
  18. Stabilization of soils on the Police and Courts Building's perimeter (\$50,000).
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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance



**FIRST READING**      November 5, 2013

**SECOND READING**   November 19, 2013

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET**

**WHEREAS**, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That revenues and/or reserves in the amount of \$4,152,540 from fund balance, grants and donations in the General Fund (\$1,657,890), Water SIF Enterprise Fund (\$390,800), Power Enterprise Fund (\$1,967,650), the Vehicle Maintenance Internal Service Fund (\$146,000) and the Loveland-Larimer Building Authority Fund 601 (\$23,000) are available for appropriation. Revenues in the total amount of \$4,152,540 are hereby appropriated for equipment at the Fire Training Grounds damaged by the 2013 Flood, economic incentives, development of a Historic Downtown District application, overtime for State grant to fund DUI and Seatbelt enforcement, costs to clean up and rebuild damaged areas at the Fire Training Grounds, costs to move and store the Museum collection, funding for the Lagoon Summer concerts, a contract for parking spaces for Museum staff, a payment to the Federal Government related to the Mirasol development, road and sidewalk repairs related to the 2013 Flood, additional funding for traffic control resulting from the 2013 Flood, power infrastructure to improve reliability, fuel and fleet maintenance costs and facility maintenance projects; and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100**

**Revenues**

Fund Balance		937,830
100-18-180-1500-35201	Unclassified Revenue	599,000
100-19-193-0000-32107	State Historical Grant	12,160
100-21-202-2113-32100	State Grant	16,100
100-52-720-0000-35305	Donations	60,000
100-00-000-0000-37206	Transfer from Lodging Tax Fund	32,800

**Total Revenue** **1,657,890**

**Appropriations**

100-16-161-0000-42015-FLD913	Computer Supply and Equipment	5,540
100-18-180-1500-43155	Economic Incentives	599,000
100-18-180-1500-43450	Professional Services	17,880
100-19-193-0000-43450	Professional Services	16,400
100-21-201-2101-41021	Overtime	9,540
100-21-202-2113-41021	Overtime	16,100
100-22-222-0000-42033	Tools & Equipment	8,380
100-23-250-1801-43569	Repair and Maintenance	200,000
100-23-250-1801-49360	Construction	250,000
100-52-720-0000-41012	temporary Salaries	3,850
100-52-720-0000-43450	Professional Services	10,050
100-52-720-0000-43648	Building Rental	73,500
100-52-720-0000-43738	Marketing	20,000
100-52-720-0000-43899	Other purchased Services	21,000
100-91-902-0000-43714	Payment to Outside agencies	214,500
100-91-902-0002-43714	Payment to Outside agencies	45,380
100-91-999-0000-47211-FLD913	Transfer to Transportation Fund	146,770

**Total Appropriations** **1,657,890**

**Supplemental Budget  
Lodging Tax Fund 206**

**Appropriations**

206-18-182-1507-43450	Professional Services	(34,100)
206-18-182-1504-47100	Transfer to General Fund	32,800
206-18-182-1504-47211	Transfer to Transportation Fund	1,300

**Total Appropriations** **-**

**Supplemental Budget  
Transportation Fund 211**

**Revenues**

211-23-232-1701-37100-FLD913	Transfer from General Fund	146,770
211-23-235-0000-37206	Transfer from Lodging Tax	1,300

**Total Revenue** **148,070**

**Appropriations**

211-23-232-1701-43569-FLD913	Repair and Maintenance	116,770
211-23-234-0000-41011	Overtime	1,300
211-23-235-0000-43899-FLD913	Other Services	30,000

**Total Appropriations** **148,070**

**Supplemental Budget  
Water Enterprise Fund 300**

**Appropriations**

300-46-318-2902-49360-W1300D	Construction	(390,800)
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**Total Appropriations** **(390,800)**

**Supplemental Budget  
Water SIF Enterprise Fund 301**

**Revenues**

Fund Balance		390,800
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**Total Revenue** **390,800**

**Appropriations**

301-46-318-2902-49352-W1300D	Engineering	390,800
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**Total Appropriations** **390,800**

**Supplemental Budget  
Power Enterprise Fund 330**

<b>Revenues</b>		
Fund Balance		1,967,650
 <b>Total Revenue</b>		
<b>Appropriations</b>		
330-47-332-2903-49399-PW913	Warehouse Withdrawals	12,900
330-47-332-2903-49371-PW913	Other Capital	12,900
330-47-3332-2903-49371-PW913A	Warehouse Withdrawals	461,530
330-47-332-2903-49371-PW913A	Other Capital	512,160
330-47-3332-2903-49371-PW914	Warehouse Withdrawals	320,200
330-47-332-2903-49371-PW914	Other Capital	647,960
 <b>Total Appropriations</b>		

**Supplemental Budget  
Vehicle Maintenance Fund 501**

<b>Revenues</b>		
Fund Balance		146,000
 <b>Total Revenue</b>		
<b>Appropriations</b>		
501-23-261-1902-42030	Motor Fuel	56,000
501-23-261-1902-42031	Oil and Lubricants	20,000
501-23-261-1902-42039	Tires and Tubes	40,000
501-23-261-1903-43776	Other Lease/Rental	30,000
 <b>Total Appropriations</b>		

**Supplemental Budget  
Loveland Larimer Building Authority Fund 601**

<b>Revenues</b>		
601-00-000-0000-32300	Larimer County Contribution	23,000
601-00-000-0000-32302	City of Loveland Contribution	77,000
 <b>Total Revenue</b>		
<b>Appropriations</b>		
601-23-250-1806-43569	Repair and Maintenance	100,000
 <b>Total Appropriations</b>		

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

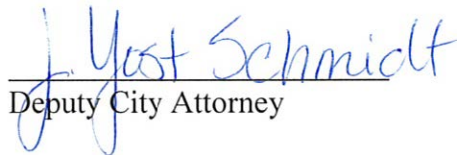
ADOPTED this 19<sup>th</sup> day of November, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



**CITY OF LOVELAND**  
 DEVELOPMENT SERVICES DEPARTMENT  
 Civic Center • 500 East 3<sup>rd</sup> Street • Loveland, Colorado 80537  
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

**AGENDA ITEM:** 5  
**MEETING DATE:** 11/15/2013  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Bob Paulsen, Current Planning Manager

**TITLE:**

An Ordinance on First Reading Repealing and Re-Enacting Chapter 7.18 of the Loveland Municipal Code Regarding Weed Control

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and adopt the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is a legislative action to adopt an ordinance on first reading that modifies the weed control provisions of the Loveland Municipal Code, aligning the provisions with State and County regulations, and clarifying requirements and allowances for native and ornamental grasses. The ordinance was originally scheduled for the October 15, 2013 City Council meeting, but it was withdrawn from that agenda and has since been adjusted to be in alignment with State regulations concerning the growth of industrial hemp and the outdoor growth of marijuana.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

This is a staff-initiated update to the City's weed control provisions. Staff members from Current Planning, Open Lands, Code Enforcement, and the City Attorney's Office have participated in the process. The purpose of the ordinance is to align the weed control requirements with the

State Noxious Weed Act and with the Larimer County Weed District regulations regarding noxious weeds. This update also clarifies weed control requirements for native and ornamental grasses. Specifically, the update allows these grasses to exceed the standard eight (8) inch height limitation when included in an approved landscape plan or located in a designated public or private natural area. This change provides the City, private property owners, and homeowner associations greater clarity in the establishment and maintenance of natural areas. Finally, the ordinance provides modifications pertaining to the growing of industrial hemp and marijuana. Industrial hemp can only be grown by persons properly registered with the State Department of Agriculture; the outdoor growth of marijuana is prohibited.

At a noticed public hearing on September 23, 2013, the Planning Commission recommended, as an item on their Consent Agenda, that City Council adopt the ordinance. Consequently, there are no accompanying minutes provided from the Planning Commission hearing.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Staff Memorandum

**FIRST READING**      November 19, 2013

**SECOND READING**      \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 7.18 OF THE LOVELAND MUNICIPAL CODE REGARDING WEED CONTROL**

**WHEREAS**, Chapter 7.18 of the Loveland Municipal Code governs weed control; and

**WHEREAS**, the provisions of Chapter 7.18 require updating to align with the Colorado Noxious Weed Act (C.R.S. §35-5.5-101 et seq.) and the Larimer County Weed District regulations regarding noxious weeds and to include provisions regarding growth of marijuana to the extent permitted by Amendment 64 to the Colorado Constitution; and

**WHEREAS**, the provisions of Chapter 7.18 also require modification to clarify provisions applicable to clarify the provisions applicable to native and ornamental grasses, particularly as they are included in landscape plans for public or private natural areas, including common areas maintained by homeowners’ associations in residential neighborhoods.

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

**Section 1.** That Chapter 7.18 of the Loveland Municipal Code is hereby repealed and is reenacted to read in full as follows:

**Chapter 7.18**

**WEED CONTROL**

**Sections:**

- 7.18.010      Intent.**
- 7.18.020      Definitions.**
- 7.18.030      Weeds, grasses, and marijuana; cutting and removal.**
- 7.18.040      Notice and order of abatement.**
- 7.18.42        City removal and assessment.**
- 7.18.050      Administrative review of assessment.**
- 7.18.060      Owners have ultimate responsibility for violations.**
  
- 7.18.010      Intent.**



It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

#### **7.18.020 Definitions.**

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1. "Approved plan" shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.
2. "Grasses" shall mean native grasses, ornamental grasses, and turf grasses, collectively.
3. "Industrial hemp" shall mean a plant of the genus *cannabis* and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent on a dry weight basis.
4. "Marijuana" shall mean all those plants of the genus *cannabis* including, without limitation, *cannabis sativa*, *cannabis indica*, and *cannabis ruderalis*, but shall not include industrial hemp.
5. "Native grasses" shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtipendule*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium-syn. andropogon scoparius*); alkali sacaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides – syn. oryzopisi hymenoides*); Arizona fescue (*festuca arizonica*); June grass (*koeleria macrantha*); and Western wheatgrass (*pascopyrum smithii – syn. agropyron smithii*).
6. "Ornamental grasses" shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides -syn. oryzopsis hymenoides*); big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea- festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prarie dropseed (*sporobolus heterolepis*).
7. "Natural area" shall mean any areas, whether public or private, that are designated:
  - a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or

- b) by the director of development services as a natural area; or
  - c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
8. “Noxious weed” shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the “weed act”) from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*); Mediterranean sage (*salvia aethiopis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvensis*); puncture vine (*tribulus terrestris*).
  9. “Owner” shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the property.
  10. “Property” shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
  11. “Turf grasses” shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
  12. “Weed” shall mean an aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: dandelion (*leontodora tavaxacum*), silverleaf povertyweed (*franseria descolor*), mouse-ear poverty weed (*iva axillaris*), fanweed (*thlaspi arvensis*), mustards (*brassiea*), purpose-flowered groundcherry (*quinquela lobata*), Russian thistle (*salsola pestifer*), fireweed (*kochia scoparia*), redroot pigweed (*amaranthus retroflexus*), sandbur (*cenchrus tribuloides*), hairy stickweed (*lappula occidentalis*), Buffaloburs (*Solanum rostratum*), common ragweed (*ambrosia elatior*), and cockleburs (*xanthium commurie*). This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered a nuisance and a detriment to the public health and safety. “Weeds” shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops, corn crops, small-grain plots (wheat, barley, oats, and rye), turf grasses, ornamental grasses, native grasses, industrial hemp or marijuana.
  13. “Weed district” shall mean the Larimer County Weed District.

**7.18.030 Weeds, grasses, industrial hemp, and marijuana; prohibition, cutting and removal.**

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit the growth of thereon:

1. noxious weeds which are required to be eradicated under the weed act, regardless of height; or

2. noxious weeds which are not required to be eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. weeds other than noxious weeds or grasses to a height of more than eight inches (8”), except as permitted in subsections B and C below; or
4. industrial hemp unless the person growing the industrial hemp is registered with the Colorado Department of Agriculture pursuant to the Industrial Hemp Regulatory Program (Title 35, Article 61 of the Colorado Revised Statutes); or
5. marijuana.

B. The eight inch (8”) height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:

1. shown on an approved plan and are being maintained in accordance with that plan; or
2. used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or
3. growing in a private or public natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any conflict between the eight inch (8”) height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, grasses or marijuana shall be disposed of so that the property is clean and orderly, and the spread of weeds and marijuana is prevented.

E. It shall be an affirmative defense to a violation of this section that the property upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife corridor, or wetlands, or that the property upon which the vegetation is growing is dedicated public or private natural area as determined by the City's Director of Development Services Division.

**7.18.040 Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property as set forth in this Section 7.18.040. Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the property is not

occupied by the owner, requiring the weeds, grasses, or marijuana to be cut, removed, or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

**7.18.042 City removal and assessment.**

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds, grasses, industrial hemp or marijuana are not cut, removed, or otherwise abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds, grasses, industrial hemp or marijuana to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting or other abatement shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the owner or agent fails to pay the charges associated with abatement within the described 30- day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

**7.18.050 Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

**7.18.060 Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the property and even though the owner has by agreement imposed on the occupant the duty of maintaining the property.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance

has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 3.** This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

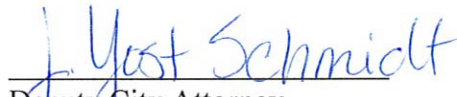
ADOPTED this \_\_\_\_\_ day of December, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney



## Development Services Current Planning

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# MEMORANDUM

**TO:** City Council  
**FROM:** Bob Paulsen, Current Planning Manager  
**DATE:** November 19, 2013  
**SUBJECT:** **Municipal Code Text Amendment Concerning Weed Control**

## I. EXHIBITS

- A. Planning Commission packet
- B. Redline version of the proposed Code changes
- C. Presentation slides

## II. AMENDMENT SUMMARY

This amendment to the Municipal Code repeals and re-enacts Chapter 7.18 (Weed Control). While the proposed additions to the text of this Chapter are fairly extensive, the changes are mostly clarifying in nature.

The primary purposes of the Weed Control amendments are as follows:

- Update and clarify the regulations
- Allow ornamental and native grasses to exceed the 8-inch height limit when included in an approved landscape plan or when growing within a designated “natural area.”
- Specify that noxious weeds must be eradicated (thereby aligning Chapter 7.18 with County and State regulations)
- Define “Industrial hemp” and restrict its growth to persons registered with the Colorado Department of Agriculture pursuant to the Industrial Hemp Regulatory Program
- Align Chapter 7.18 with the State Constitution concerning marijuana and prohibit the outdoor growth of marijuana

**EXHIBIT 2**

The amended text aligns City Code provisions with the State Noxious Weed Act and with the Larimer County Weed District regulations regarding noxious weeds. This would require property owners to eradicate noxious weeds—a requirement already being enforced by the City’s weed control administrator. In addition, the amendment allows native and ornamental grasses to exceed the standard eight (8) inch height limitation for weeds when such grasses are part of an approved landscaped plan or are located within a designated natural area. This latter provision is designed to give homeowner associations greater flexibility in establishing natural areas that require low-water and low-maintenance treatment.

Since the September 9, 2013 Planning Commission hearing on this code amendment, the text of the amendment has been adjusted to conform more precisely to limitations on the growth of marijuana plants as specified by the State of Colorado. Specifically, reference to industrial hemp and marijuana have been removed from the list of weeds in the definition section of the code provisions (Sub Section 7.18.020.12) and new sub sections 7.18.030.A.4 and 7.18.030.A.5 have been added to specify that outdoor growth of industrial hemp must be properly registered with the Colorado Department of Agriculture and that the outdoor growth of marijuana is unlawful within the City. The provisions also specify that the City has the authority to issue a Notice and Order of Abatement of marijuana, and that the City can remove and assess property owners for abatement.

### **III. KEY ISSUES**

Staff is not aware of any issues or objections associated with the text amendment.

### **IV. TITLE 18 COMMITTEE**

On Thursday, July 18, 2013, the City’s *ad hoc* Title 18 Committee evaluated the proposed amendment to Chapter 7.18 that specifies revisions to the City’s weed control regulations. The Committee had no objections to the revisions as presented. The Committee instructed staff to inform HOAs and other interested parties of the revisions and then to schedule the amendment for public hearing.

### **V. PLANNING COMMISSION**

On Monday, September 9, 2013, the proposed amendments to Chapter 7.18 of the Municipal Code addressing Weed Control were scheduled for public hearing by the Planning Commission. At the beginning of the meeting, a motion was passed to place the Weed Control amendments on the Consent Agenda. The Consent Agenda was approved, therefore the Weed Control amendments were recommended for approval to the City Council. Consequently, no meeting minutes from the Planning Commission are included in the City Council packet of materials.

## **VI. BACKGROUND**

Over the last several years there has been increasing interest in the maintenance practices for the common lands and open space areas within residential subdivisions. With the build-out of homes, maintenance responsibilities for common areas are transferred from developers to homeowners associations (HOAs). The HOAs (and property maintenance companies that they employ) may have different priorities or objectives than the original developer had. Some HOAs have become interested in reducing the irrigation and maintenance requirements for portions of their open space, amending plans to allow grasses and other plantings to go without irrigation or cutting. In other instances, the reverse is the case, and HOAs have requested permission to install a more planned or domesticated landscape within specified areas.

The Current Planning Division has been working with several HOAs in regards to the maintenance of their park spaces and open lands. The most notable instance has been the Garden Gate neighborhood where some neighbors objected to the HOA's interest in implementing minimal maintenance practices for designated open space areas. In 2011, this issue came to the forefront upon appeal of an administrative decision concerning open space maintenance practices. Current Planning staff has also worked with other neighborhoods to clarify or adjust their open space plans, including the Mineral Addition (Quarry Lake), 7 Lakes, Waterfront, Boyd Lake North and Sierra Valley. While each neighborhood situation is unique, all of the neighborhoods have sought clarity as to the rules for weed control, and the allowances for native grasses.

Weed control is a community priority. Each year, the City's weed control administrator processes over 1,000 cases. The proposed amendment brings the City's noxious weed provisions in-line with the County weed district provisions and with the state weed act. Moreover, the revisions provide expanded definitions and related adjustments needed to clarify the City code. As mentioned earlier in this memo, the revised provisions also address the passage of Amendment 64 to the State Constitution, which allows citizens to grow up to 6 marijuana plants for personal use. The amendment clarifies that outdoor growth of marijuana is unlawful within the City limits. The amendment also defines industrial hemp and limits the growth of industrial hemp to persons registered to the Colorado Department of Agriculture pursuant to the Industrial Hemp Regulatory Program.

## **VII. DESCRIPTION OF THE PROPOSED CHANGES TO CHAPTER 7.18**

The following is a description of amendments to Chapter 7.18 as identified in **Exhibit B**:

### **7.18.020 Definitions**

Several new definitions have been added and some definitions have been adjusted. The definitions tie into the regulatory portions of the chapter that follow the definitions. Note that



many of the new definitions, including “Approved plan”, “Native grasses”, “Ornamental grasses”, “Natural area”, and “Turf grasses”, relate to distinctions and allowances for native and ornamental grasses that are built into subsequent sections of this chapter. The definition for weeds specifically excludes flower and vegetable gardens, and agricultural crops. “Marijuana” and “Industrial hemp” have also been defined.

**7.18.030 Weeds and grasses, industrial hemp, and marijuana; prohibition, cutting and removal.**

This section has been significantly revised to specify requirements for the eradication of noxious weeds and cutting of other weeds to an 8 inch height maximum. The noxious weed provisions would now align with the County weed district provisions and with the state weed act. While the 8 inch height limitation exists in the current code provisions, the revisions specify that the 8 inch height limit shall not apply to ornamental and native grasses when such grasses are shown on an approved plan (as defined) or when growing in a designated natural area—either public or private.

Subsection A.4. of the ordinance specifies that a person growing industrial hemp must be registered with the Colorado Department of Agriculture pursuant to the Industrial Hemp Regulatory Program. Subsection A.5. specifies that it is unlawful to allow or permit the growth of marijuana outdoors on any property within the City.

**7.18.040 Notice and order of abatement.**

The adjusted text provides additional clarity the serving of a Notice and Order (violation).

**7.18.042 City removal and assessment.**

The adjusted text provides clarifications relating to the City’s authority to take action to abate weed violations following the issuance of a Notice and Order.

**7.18.050 Administrative review of assessment.**

A minor formatting adjustment was made to this section.

**7.18.060 Owners have ultimate responsibility for violations.**

In this section, the term “premises” has been replaced with “property” as premises may include multiple properties and multiple owners. Violations, by definition, are assigned to a specific property and a specific owner.





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**ITEM NO:** **1 - Regular Agenda**

**PLANNING COMMISSION MEETING:** September 23, 2013

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**TITLE:** Amendment to Chapter 7.18 of the Municipal Code regarding Weed Control

**APPLICANT:** City of Loveland, Current Planning Division

**STAFF CONTACTS:** Bob Paulsen, Current Planning Manager

**APPLICATION TYPE:** Amendments to the Municipal Code

**ACTION:** Legislative Action: Recommend Amendments to the Municipal Code for adoption by City Council

**STAFF RECOMMENDATION:** Subject to additional evidence at the public hearing, City Staff recommends the following motion:

*Move to recommend that City Council approve the amendments to Chapter 7.18 of the Municipal Code as specified in the September 23, 2013 Planning Commission staff report, as amended on the record.*

**I. ATTACHMENTS**

**1. Proposed Amendment to Chapter 7.18, Weed Control (REDLINE VERSION)**

This document includes incorporates proposed adjustments to the weed control provisions. Proposed revisions are specified with a redline/strike-through format.

**2. Proposed Amendment (CLEAN VERSION) to Chapter 7.18, Weed Control**

This version indicates how Chapter 7.18 would read with incorporation of the proposed revisions.

### 3. Existing Chapter 7.18

This version of Chapter 7.18, which includes the table of contents page from Title 7, is taken directly from the Municipal Code. Title 7 encompasses Health, Safety and Welfare; weed control is a portion of this title.

## II. SUMMARY

Over the last several years, Planning and Code Enforcement staff have become more deeply involved in addressing weed control and open space management issues raised by local neighborhoods and property owners. In effort to provide greater clarity and make the code more responsive to ongoing citizen concerns, staff from several offices, including Planning, Open Lands, Code Enforcement and the City Attorney's Office, have worked to revise the City's weed control requirements that are contained in Chapter 7.18 of the Municipal Code. The primary purposes of the amendment to the weed control provisions are as follows:

- Update and clarify the weed control requirements
- Specify that noxious weeds must be eradicated (aligning the code with County and State provisions)
- Allow ornamental and native grasses to exceed the 8-inch height limit when part of an approved plan or when growing within a designated "Natural Area."

## III. BACKGROUND

As Loveland's neighborhoods mature, there has been increasing interest in the maintenance practices for the common lands and open space areas within residential subdivisions. With the build-out of homes, maintenance responsibilities for common areas are transferred from developers to homeowners associations (HOAs). The HOAs (and property maintenance companies that they employ) may have different priorities or expectations than the original developer had. Some HOAs have become interested in reducing the irrigation and maintenance requirements for portions of their open space, going as far as allowing grasses and other plantings to go without irrigation or cutting. In other instances, the reverse is the case and HOAs have requested to install a more planned or domesticated landscape within specified areas.

The Current Planning Division has been working with several HOAs in regards to the maintenance of their park spaces and open lands. The most notable instance has been the Garden Gate neighborhood where some neighbors objected to the HOA's interest in employing minimal maintenance practices for designated open space areas. This issue came to the forefront upon appeal of administrative decision concerning open space maintenance practices. Current Planning staff has also worked with other neighborhoods to clarify or adjust their open space plans, including the Mineral Addition (Quarry Lake), 7 Lakes, Waterfront, Boyd Lake North and Sierra Valley. While each neighborhood situation is unique, all of the neighborhoods have sought clarity as to the rules for weed control, and the allowances for native grasses.

In addition to the maintenance issues with HOAs, an updating of the City's weed control provisions is timely and appropriate. Weed control is a community priority. Each year, the City's weed code administrator processes over 1,000 cases. The proposed amendment brings the City's noxious weed provisions in line with the County weed district provisions and with the state weed act. Moreover, the revisions provide expanded definitions and related adjustments needed to clarify the City code.

#### **IV. TITLE 18 COMMITTEE REVIEW & RECOMMENDATION**

On Thursday, July 18, 2013, the City's *ad hoc* Title 18 Committee evaluated the proposed amendment to Chapter 7.18 that specifies revisions to the City's weed control regulations. The Committee had no objections to the revisions as presented. The Committee instructed staff to inform HOAs and other interested parties of the revisions and then to schedule the amendment for public hearing.

#### **V. OUTREACH**

Public outreach regarding the proposed amendment has consisted of the following:

1. The revised weed control provisions have been posted on the Current Planning web page since mid August. The posting has included a redline version of the revisions along with a summary statement highlighting the purpose of the amendments.
2. Notification of the Planning Commission hearing was provided in the Reporter Herald on Saturday, September 7, 2013. The notification explained the purpose of the revisions and provided contact information for anyone with questions.
3. Email notice was sent out to over two dozen HOA, property management and professional contacts. The notice indicated the Planning Commission hearing date, time and place and provided an explanation of the purpose of the amendments. Recipients were given a link to the Current Planning web site and were encouraged to contact staff for further details.

Staff had prepared information to be published as part of a Reporter Herald feature article prior to the Planning Commission meeting in order to reach out more broadly to the public. Given the recent flooding disaster and related events, the newspaper article did not get published. As of filing of this staff report, no inquiries from the public have been received.

#### **VI. DESCRIPTION OF THE PROPOSED CHANGES TO CHAPTER 7.18**

The following is a description of amendments to Chapter 7.18 as identified in **Attachment 1**:

##### **7.18.020 Definitions**

Several new definitions have been added and some definitions have been adjusted. The definitions tie into the regulatory portions of the chapter that follow the definitions. Note that many of the new definitions, including "Approved plan", "Native grasses", "Ornamental grasses", "Natural area", and "Turf grasses", relate to distinctions and allowances for native and ornamental grasses that are built into subsequent sections of this chapter.

### **7.18.030 Weeds and grasses, cutting and removal.**

This section has been significantly revised to specify requirements for the eradication of noxious weeds and cutting of other weeds to an 8 inch height maximum. The noxious weed provisions would now align with the County weed district provisions and with the state weed act. While the 8 inch height limitation exists in the current code provisions, the revisions specify that the 8 inch height limit shall not apply to ornamental and native grasses when such grasses are shown on an approved plan (as defined) or when growing in a designated natural area—either public or private. Also note in subsection F. that the provisions address the growing of a limited number of Marijuana (cannabis sativa) plants; this allowance provides alignment with the Colorado Constitution.

### **7.18.040 Notice and order of abatement.**

The adjusted text provides additional clarity the serving of a Notice and Order (violation).

### **7.18.042 City removal and assessment.**

The adjusted text provides clarifications relating to the City’s authority to take action to abate weed violations following the issuance of a Notice and Order.

### **7.18.050 Administrative review of assessment.**

A minor formatting adjustment was made to this section.

### **7.18.060 Owners have ultimate responsibility for violations.**

In this section, the term “premises” has been replaced with “property” as premises may include multiple properties and multiple owners. Violations, by definition, are assigned to a specific property and a specific owner.

## **VII. CONCLUSION**

The amendment to Chapter 7.18 is a staff-initiated effort that included participation from staff from several departments. Staff believes that the revisions provide important clarifications relating to weed control and its enforcement. Staff also believes that the allowances provided for native grasses will avert complications and controversies relating to open space maintenance.

## **VIII. ACTION TO BE TAKEN BY THE PLANNING COMMISSION**

Conduct a public hearing on the proposed amendment to Chapter 7.18, taking comments from the public if requested. Following deliberation, the Commission shall vote to determine a recommendation to the City Council on the amendment. The Commission’s recommendation may include modifications to the proposed amendment. If the Commission acts on this matter on September 23<sup>rd</sup>, it is anticipated that this amendment will be scheduled for a public hearing by City Council on October 15, 2013.



## Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code

This document indicates proposed text in underlined, red font. Proposed deletions are in ~~red, strikethrough font~~.

*Original Chapter – Redlined to Show Changes per 8.16.13 CLEAN Version*

### Chapter 7.18

#### WEED CONTROL

##### Sections:

- 7.18.010      Intent.
- 7.18.020      Definitions.
- 7.18.030      Weeds, ~~cutting~~ and ~~removal~~ Grasses, Cutting and Removal.
- 7.18.040      Notice and Order of Abatement.
- 7.18.042-42      City Removal and Assessment.
- 7.18.050      Administrative ~~review~~ Review of assessment ~~Assessment.~~
- 7.18.060      Owners ~~have ultimate responsibility~~ Have Ultimate Responsibility for ~~violations~~ Violations.

##### 7.18.010-      Intent.

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

##### 7.18.020      Definitions.

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1.

1. “Approved plan” shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.

2. “Grasses” shall mean native grasses, ornamental grasses, and turf grasses, collectively.

3. “Native grasses” shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtispindle*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium-syn. andropogon scoparius*); alkali sacaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides – syn. oryzopisi*



## Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code

- hymenoides*); Arizona fescue (*festuca arizonica*); June grass (*koeleria macrantha*); and Western wheatgrass (*pascopyrum smithii* – *syn. agropyron smithii*)..
4. “Ornamental grasses” shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides* -*syn. oryzopsis hymenoides*); big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea*- *festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prairie dropseed (*sporobolus heterolepis*).
  5. “Natural area” shall mean any areas, whether public or private, that are designated:
    - a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or
    - b) by the director of development services as a natural area; or
    - c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
  6. “Noxious weed” shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the “weed act”) from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*); Mediterranean sage (*salvia aethiopis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvense*); puncture vine (*tribulus terrestris*).
  7. “Owner” shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the premisesproperty.
  8. 2. “Property” shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
  9. 3. “Turf grasses” shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
  10. “Weed” shall mean ~~Bindweed (convulvus), Dandelion (Leontodorean aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: dandelion (leontodore tavaxacum) and all weeds, grass, brush, or other rank or noxious vegetation which is in excess of eight (8) inches in height, and shall specifically include: Leafy Spurge (Euphorbia esula), Canada Thistle (Cirsium Arvense), Russian Knapweed (Centaurea pieris), Perennial Sowthistle (Sonchus Arvense), Puncture Vine (Tribulus terrestris), Silverleaf, silverleaf povertyweed (Franseriafranseria descolor), Mouse-ear poverty weed (Iva Axillaris), Fanweed (Thlaspi Arvense), Mustards (Brassiea), Purposiva axillaris), fanweed (thlaspi arvense), mustards (brassiea), purpose-flowered groundcherry (Quineula (quincula lobata), Russian Thistle (Salsolathistle (salsola pestifer), Fireweed (Koehia Scoparia), Redroot Pigweed (Amaranthusfireweed (kochia scoparia), redroot pigweed (amaranthus~~



## Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code

~~retroflexus), Sandbur (Cenchrussandbur (cenchrus tribuloides), Hairy Stickweed (Lappula Occidentalis~~ ~~hairy stickweed (lappula occidentalis),~~ Buffaloburs (Solanum rostratum), ~~Common Ragweed (Ambrosia~~ ~~common ragweed (ambrosia elatiov), Cockleburs (Xanthium Commurie), Common Sunflower (Helianthus Centicularis), Marihuana (Cannabis Sativa), or other plants or offending vegetation which is regarded as a common nuisance.~~ ~~cockleburs (xanthium commurie), marijuana (cannabis sativa).~~ This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered ~~noxious~~ ~~a nuisance~~ and a detriment to the public health and safety, ~~but.~~ “Weeds” shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops and, corn crops, small-grain plots (wheat, barley, oats, and rye), turf grasses, ornamental grasses or native grasses.

11. “Weed district” shall mean the Larimer County Weed District.

### 7.18.030        Weeds and grasses, cutting and removal.

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit:

1. the growth of noxious weeds to grow uncontrolled which are required to be eradicated under the weed act, regardless of height; or
2. the growth of noxious weeds which are not required to remain when grown upon the eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. the growth of weeds (other than noxious weeds) or grasses to a height of more than eight inches (8”), except as permitted in subsections B and C below.

B. The eight inch (8”) height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:

1. shown on an approved plan and are being maintained in accordance with that plan; or
2. used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or
3. growing in a private or along public natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any alleys or sidewalk areas abutting the same, conflict between the eight inch (8”) height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, or grasses shall be disposed of so that the premises are property is clean and orderly, and the spread of such weeds is prevented.

E. It shall be an affirmative defense to a violation of this section that the land property upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife



## Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code

corridor, or wetlands, or that the ~~land~~property upon which the vegetation is growing is dedicated public or private ~~open lands~~natural area as determined by the ~~manager of the City's Long Range Planning and Natural Resources~~Director of Development Services Division.

F. The growth of six (6) marijuana (cannabis sativa) plants, with three (3) or fewer of the six (6) plants being mature and flowering plants, by a person twenty-one (21) years of age or older for personal use on his or her property in an enclosed, locked space and not conducted openly or publicly in accordance with Section 16, Article XVIII or Section 14, Article XVIII of the Colorado Constitution shall not constitute a violation of this Chapter 7.18.

### 7.18.040      Notice and Order of Abatement.

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property- as set forth in this Section 7.18.040. Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the property is not occupied by the owner, requiring the weeds or grasses to be cut or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

### 7.18.042      City removal and assessment.

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds or grasses are not cut or abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and certified regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds or grasses to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting or other abatement of weeds or grasses shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the customer fails to pay the charges associated with ~~weed~~ abatement within the described 30- day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for ~~weed~~ abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

### 7.18.050      Administrative review of assessment.

Any owner who disputes the amount of assessment made against such owner's property under

## **Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code**

Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

### **7.18.060 \_\_\_\_\_ Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the ~~premises~~property and even though the owner has by agreement imposed on the occupant the duty of maintaining the ~~premises~~property.



*Weed Control Amendments: CLEAN VERSION with amendments integrated.*

*This version (8.16.13) of the proposed Weed Control provisions shows how the text of Chapter 7.18 would appear if the proposed amendments are adopted.*

**Chapter 7.18**

**WEED CONTROL**

**Sections:**

- 7.18.010 Intent.**
- 7.18.020 Definitions.**
- 7.18.030 Weeds and Grasses, Cutting and Removal.**
- 7.18.040 Notice and Order of Abatement.**
- 7.18.42 City Removal and Assessment.**
- 7.18.050 Administrative Review of Assessment.**
- 7.18.060 Owners Have Ultimate Responsibility for Violations.**

**7.18.010 Intent.**

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

**7.18.020 Definitions.**

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1. "Approved plan" shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.
2. "Grasses" shall mean native grasses, ornamental grasses, and turf grasses, collectively.
3. "Native grasses" shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtispendule*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium-syn. andropogon scoparius*); alkali saccaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides – syn. oryzopisi hymenoides*); Arizona fescue (*festuca arizonica*); June grass (*koeleria macrantha*); and Western wheatgrass (*pascopyrum smithii – syn. agropyron smithii*).
4. "Ornamental grasses" shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides -syn. oryzopsis hymenoides*);



**Weed Control Amendments: CLEAN VERSION with amendments integrated.**

- big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea-festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prairie dropseed (*sporobolus heterolepis*).
5. "Natural area" shall mean any areas, whether public or private, that are designated:
    - a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or
    - b) by the director of development services as a natural area; or
    - c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
  6. "Noxious weed" shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the "weed act") from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*); Mediterranean sage (*salvia aethiopis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvensis*); puncture vine (*tribulus terrestris*).
  7. "Owner" shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the property.
  8. "Property" shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
  9. "Turf grasses" shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
  10. "Weed" shall mean an aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: dandelion (*leontodore tavaxacum*), silverleaf povertyweed (*franseria descolor*), mouse-ear poverty weed (*iva axillaris*), fanweed (*thlaspi arvensis*), mustards (*brassiea*), purpose-flowered groundcherry (*quincla lobata*), Russian thistle (*salsola pestifer*), fireweed (*kochia scoparia*), redroot pigweed (*amaranthus retroflexus*), sandbur (*cenchrus tribuloides*), hairy stickweed (*lappula occidentalis*), Buffaloburs (*Solanum rostratum*), common ragweed (*ambrosia elatiov*), cockleburs (*xanthium commurie*), marijuana (*cannabis sativa*). This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered a nuisance and a detriment to the public health and safety. "Weeds" shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops, corn crops, small-grain plots (wheat, barley, oats, and rye), turf grasses, ornamental grasses or native grasses.
  11. "Weed district" shall mean the Larimer County Weed District.

**7.18.030 Weeds and grasses, cutting and removal.**

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit:



*Weed Control Amendments: CLEAN VERSION with amendments integrated.*

1. the growth of noxious weeds which are required to be eradicated under the weed act, regardless of height; or
2. the growth of noxious weeds which are not required to be eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. the growth of weeds (other than noxious weeds) or grasses to a height of more than eight inches (8"), except as permitted in subsections B and C below.

B. The eight inch (8") height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:

1. shown on an approved plan and are being maintained in accordance with that plan; or
2. used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or
3. growing in a private or public natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any conflict between the eight inch (8") height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, or grasses shall be disposed of so that the property is clean and orderly, and the spread of weeds is prevented.

E. It shall be an affirmative defense to a violation of this section that the property upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife corridor, or wetlands, or that the property upon which the vegetation is growing is dedicated public or private natural area as determined by the City's Director of Development Services Division.

F. The growth of six (6) marijuana (*cannabis sativa*) plants, with three (3) or fewer of the six (6) plants being mature and flowering plants, by a person twenty-one (21) years of age or older for personal use on his or her property in an enclosed, locked space and not conducted openly or publicly in accordance with Section 16, Article XVIII or Section 14, Article XVIII of the Colorado Constitution shall not constitute a violation of this Chapter 7.18.

**7.18.040 Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property as set forth in this Section 7.18.040. Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the



***Weed Control Amendments: CLEAN VERSION with amendments integrated.***

property is not occupied by the owner, requiring the weeds or grasses to be cut or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

**7.18.042 City removal and assessment.**

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds or grasses are not cut or abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds or grasses to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting or other abatement of weeds or grasses shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the customer fails to pay the charges associated with abatement within the described 30-day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

**7.18.050 Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

**7.18.060 Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the property and even though the owner has by agreement imposed on the occupant the duty of maintaining the property.

**Title 7**

**HEALTH, SAFETY AND WELFARE**

**Chapters:**

- 7.04 Health Department.**
- 7.08 Food Regulations.**
- 7.12 Nuisances-Unsanitary Conditions.**
- 7.16 Solid Waste Collection and Recycling.**
- 7.18 Weed Control.**
- 7.26 Accumulations of Waste Material.**
- 7.28 Removal and Disposal of Abandoned Property Other Than Motor Vehicles.**
- 7.29 Unclaimed Intangible Property.**
- 7.30 Graffiti.**
- 7.32 Sound Limitations.**
- 7.36 Fire Protection.**
- 7.40 Smoking in Public Places.**
- 7.50 Possession and Use of Tobacco Products By Minors.**
- 7.60 Medical Marijuana.**
- 7.65 Marijuana Establishments Prohibited.**
- 7.70 Administrative Appeals Procedure.**



## Chapter 7.18

# WEED CONTROL

### Sections:

<b>7.18.010</b>	<b>Intent.</b>
<b>7.18.020</b>	<b>Definitions.</b>
<b>7.18.030</b>	<b>Weeds, cutting and removal.</b>
<b>7.18.040</b>	<b>Notice and Order of Abatement.</b>
<b>7.18.042</b>	<b>City Removal and Assessment.</b>
<b>7.18.050</b>	<b>Administrative review of assessment.</b>
<b>7.18.060</b>	<b>Owners have ultimate responsibility for violations.</b>

### **7.18.010 Intent.**

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

### **7.18.020 Definitions.**

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1. "Owner" shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the premises.
2. "Property" shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
3. "Weed" shall mean Bindweed (*convulvus*), Dandelion (*Leontodore tavaxacum*) and all weeds, grass, brush, or other rank or noxious vegetation which is in excess of eight (8) inches in height, and shall specifically include: Leafy Spurge (*Euphorbia esula*), Canada Thistle (*Cirsium Arvense*), Russian Knapweed (*Centaurea pieris*), Perennial Sowthistle (*Sonchus Arvense*), Puncture Vine (*Tribulus terrestris*), Silverleaf povertyweed (*Franseria descolor*), Mouse-ear poverty weed (*Iva Axillaris*), Fanweed (*Thlaspi Arvense*), Mustards (*Brassiea*), Purpos-flowered groundcherry (*Quincula lobata*), Russian Thistle (*Salsola pestifer*), Fireweed (*Kochia Scoparia*), Redroot Pigweed (*Amaranthus retroflexus*), Sandbur (*Cenchrus tribuloides*), Hairy Stickweed (*Lappula Occidentalis*), Buffaloburs (*Solanum rosvatum*), Common Ragweed (*Ambrosia elatiov*), Cockleburs (*Xanthium Commurie*), Common Sunflower (*Helianthus Centicularis*), Marihuana (*Cannabis Sativa*), or other plants or offending vegetation which is regarded as a common nuisance. This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered noxious and a detriment to the public health and safety, but shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops and small grain plots (wheat, barley, oats, and rye).

### **7.18.030 Weeds, cutting and removal.**

It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit weeds to grow uncontrolled or to remain when grown upon the property or on or along any alleys or sidewalk areas abutting the same. Any waste from all destroyed or cut weeds shall be disposed of so that the premises are clean and orderly, and the spread of such weeds is prevented. It shall be an

affirmative defense to a violation of this section that the land upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, wildlife corridor, or wetlands, or that the land upon which the vegetation is growing is dedicated public or private open lands as determined by the manager of the City's Long Range Planning and Natural Resources Division.

**7.18.040 Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property. Such notice and order shall be served by personal service, by regular mail, or by posting on the property, requiring the weeds to be cut within seven days after mailing or delivery of such notice.

**7.18.042 City removal and assessment.**

- A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds are not cut within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and certified mail, which notice shall allow the City to cut the weeds and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting of weeds shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.
- B. If the customer fails to pay the charges associated with weed abatement within the described 30-day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.
- C. Failure to pay the amount assessed for weed abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code. (Ord. 5683 § 2, 2012)

**7.18.050 Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

**7.18.060 Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the premises and even though the owner has by agreement imposed on the occupant the duty of maintaining the premises. (Ord. 5305 § 1, 2008; Ord. 4649 § 9, 2001; Ord. 4274 § 1 (part), 1997)

Redline Version of proposed changes to Chapter 7.18

Chapter 7.18

WEED CONTROL

Sections:

- 7.18.010 ~~\_\_\_\_\_~~ Intent.
- 7.18.020 ~~\_\_\_\_\_~~ Definitions.
- 7.18.030 ~~\_\_\_\_\_~~ Weeds, grasses, and marijuana; cutting and removal.
- 7.18.040 ~~\_\_\_\_\_~~ Notice and ~~Order~~order of ~~Abatement~~abatement.
- 7.18.042 ~~42~~ City Removal~~removal~~ and Assessment~~assessment~~.
- 7.18.050 ~~\_\_\_\_\_~~ Administrative review of assessment.
- 7.18.060 ~~\_\_\_\_\_~~ Owners have ultimate responsibility for violations.

~~7.18.010~~ ~~\_\_\_\_\_~~ Intent.

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

~~7.18.020~~ ~~\_\_\_\_\_~~ Definitions.

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

~~1.~~

1. “Approved plan” shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.
2. “Grasses” shall mean native grasses, ornamental grasses, and turf grasses, collectively.
3. “Industrial hemp” shall mean a plant of the genus *cannabis* and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol concentration of no more than three-tenths of one percent on a dry weight basis.
4. “Marijuana” shall mean all those plants of the genus *cannabis* including, without limitation, *cannabis sativa*, *cannabis indica*, and *cannabis ruderalis*, but shall not include industrial hemp.
5. “Native grasses” shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtipendule*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium-syn. andropogon scoparius*); alkali sacaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides – syn. oryzopisi hymenoides*); Arizona fescue (*festuca arizonica*); June grass (*koeleria*

## Redline Version of proposed changes to Chapter 7.18

- macrantha*); and Western wheatgrass (*pascopyrum smithii* – *syn. agropyron smithii*).
6. “Ornamental grasses” shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides* -*syn. oryzopsis hymenoides*); big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea*- *festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prairie dropseed (*sporobolus heterolepis*).
7. “Natural area” shall mean any areas, whether public or private, that are designated:
- a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or
  - b) by the director of development services as a natural area; or
  - c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
8. “Noxious weed” shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the “weed act”) from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*); Mediterranean sage (*salvia aethiopsis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvensis*); puncture vine (*tribulus terrestris*).
- 1.9. “Owner” shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the ~~premises~~property.
- 2.10. ~~2.~~ “Property” shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
11. ~~3.~~ “Turf grasses” shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
- 3.12. “Weed” shall mean ~~Bindweed (convulvus), Dandelion (Leontodorean~~ aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: ~~dandelion (leontodore tavaxacum) and all weeds,~~ grass, brush, or other rank or noxious vegetation which is in excess of eight (8) inches in height, and shall specifically include: Leafy Spurge (*Euphorbia esula*); Canada Thistle (*Cirsium Arvensis*); Russian Knapweed (*Centaurea pieris*); Perennial Sowthistle (*Sonchus Arvensis*); Puncture Vine (*Tribulus terrestris*);

**Redline Version of proposed changes to Chapter 7.18**

~~Silverleaf), silverleaf~~ povertyweed (~~Franseriafranseria~~ *descolor*), ~~Mouse~~mouse-ear poverty weed (~~Iva Axillaris~~), ~~Fanweed~~ (~~Thlaspi Arvense~~), ~~Mustards~~ (~~Brassiea~~), ~~Purposiva axillaris~~, ~~fanweed~~ (~~thlaspi arvense~~), ~~mustards~~ (~~brassiea~~), ~~purpose~~-flowered groundcherry (~~Quineula (quincula lobata)~~), ~~Russian Thistle~~ (~~Salsolathistle (salsola pestifer)~~), ~~Fireweed~~ (~~Koehia Scoparia~~), ~~Redroot Pigweed~~ (~~Amaranthusfireweed (kochia scoparia)~~), ~~redroot pigweed~~ (~~amaranthus retroflexus~~), ~~Sandbur~~ (~~Cenehrussandbur (cenchrus tribuloides)~~), ~~Hairy Stiekweed~~ (~~Lappula Occidentalishairy stickweed (lappula occidentalis)~~), ~~Buffaloburs~~ (~~Solanum rosvatum~~), ~~Common Ragweed~~ (~~Ambrosiacommon ragweed (ambrosia elatiov)~~), ~~Cockleburs~~ (~~Xanthium Commurie~~), ~~Common Sunflower~~ (~~Helianthus Centicularis~~), ~~Marihuana~~ (~~Cannabis Sativa~~), or other plants or offending vegetation which is regarded as a common nuisance, and ~~cockleburs (xanthium commurie)~~. This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered ~~noxiosa nuisance~~ and a detriment to the public health and safety, ~~but~~. “Weeds” shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops and, corn crops, small-grain plots (wheat, barley, oats, and rye-), turf grasses, ornamental grasses, native grasses, industrial hemp or marijuana.

13. “Weed district” shall mean the Larimer County Weed District.

**7.18.030 Weeds Weeds, grasses, industrial hemp, and marijuana; prohibition, cutting and removal.**

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit ~~the growth of thereon:~~

1. ~~noxious weeds to grow uncontrolled~~which are required to be eradicated under the weed act, regardless of height; or
2. ~~noxious weeds which are not required to remain when grown upon the~~ eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. ~~weeds other than noxious weeds or grasses to a height of more than eight inches (8”), except as permitted in subsections B and C below; or~~
4. ~~industrial hemp unless the person growing the industrial hemp is registered with the Colorado Department of Agriculture pursuant to the Industrial Hemp Regulatory Program (Title 35, Article 61 of the Colorado Revised Statutes); or~~
5. ~~marijuana.~~

B. ~~The eight inch (8”) height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:~~

1. ~~shown on an approved plan and are being maintained in accordance with that plan; or~~
2. ~~used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or on~~

## Redline Version of proposed changes to Chapter 7.18

3. growing in a private or ~~along~~ public natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any ~~alleys or sidewalk areas abutting the same~~ conflict between the eight inch (8") height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, grasses or marijuana shall be disposed of so that the ~~premises are~~ property is clean and orderly, and the spread of ~~such~~ weeds and marijuana is prevented.

E. It shall be an affirmative defense to a violation of this section that the property upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife corridor, or wetlands, or that the property upon which the vegetation is growing is dedicated public or private natural area as determined by the City's Director of Development Services Division.

### **7.18.040        Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property: as set forth in this Section 7.18.040. Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the property is not occupied by the owner, requiring the weeds, grasses, or marijuana to be cut, removed, or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

### **7.18.042        City removal and assessment.**

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds ~~are not cut,~~ grasses, industrial hemp or marijuana are not cut, removed, or otherwise abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and ~~certified~~ regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds, grasses, industrial hemp or marijuana to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting ~~of weeds or~~ other abatement shall be paid by the owner of the property or agent for such

**Redline Version of proposed changes to Chapter 7.18**

owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the ~~customer~~owner or agent fails to pay the charges associated with ~~weed~~ abatement within the described 30- day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for ~~weed~~ abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

**7.18.050        Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

**7.18.060        Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the ~~premises~~property and even        though the owner has by agreement imposed on the occupant the duty of maintaining the ~~premises~~property.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this            day of December, 2013.

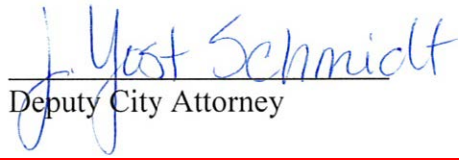
\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

**Redline Version of proposed changes to Chapter 7.18**

APPROVED AS TO FORM:

  
Deputy City Attorney

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# *Weed Control Amendments*

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City Council Public Hearing  
November 19, 2013



# *Weed Control Amendments*

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## Amendments to Chapter 7.18 of Municipal Code

- Legislative matter
- Title 18 Committee recommends approval
- Planning Commission recommends approval
- Staff initiated effort involving multiple departments:

City Legal, Open Lands, Weed Enforcement & Planning



# *Weed Control Amendments*

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## Purpose:

- Need to clarify and update Weed Control provisions
- Code enforcement: Over 1,000 weed enforcement cases annually
- Align Code with County Weed District & State Weed Act
- Growing interest among HOAs in clarifying and revising their maintenance duties for open space
- Define “Industrial hemp” restrict growth to persons registered with the State Dept of Agriculture
- Prohibit the outdoor growth of Marijuana



# *Weed Control Amendments*

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## Revisions:

- New Definitions
- Eradication of noxious weeds required
- 8” height limit for all other weeds—existing standard
- Allowance for native grasses to exceed 8” height when within a designated natural area
- Allowance for ornamental grasses to exceed 8” height when part of an approved plan
- Prohibits outdoor growth of marijuana and requires cutting and removal of marijuana and industrial hemp



**CITY OF LOVELAND**  
HUMAN RESOURCES DEPARTMENT  
Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2371 • FAX (970) 962-2919 • TDD (970) 962-2620

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**AGENDA ITEM:** 6  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Human Resources Department/Risk Management  
**PRESENTER:** Bettie Greenberg

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**TITLE:**

A Motion to Authorize the City to Continue its Intergovernmental Agreement with CIRSA for 2014 Property and Liability Insurance Coverage and Establish a Purchase Order in the Amount of \$800,000

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the motion.

**OPTIONS:**

1. Adopt the action as recommended
  2. Deny the action
  3. Adopt a modified action (specify in the motion)
  4. Refer back to staff for further development and consideration
  5. Adopt a motion continuing the item to a future Council meeting
- 

**SUMMARY:**

This is an administrative action to authorize the City to continue its Intergovernmental Agreement with CIRSA for the City's 2014 Property and Liability Insurance Coverage and establish a purchase order in the amount of \$800,000. This purchase order is for the premium, claims administration, and payment of estimated claims for 2014, remaining open claims or new claims from prior years.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The \$800,000 is within the approved 2014 Budget.

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**BACKGROUND:**

A Request for Proposal was conducted in 2012 for the City's property and liability insurance and the City selected to remain with CIRSA.

For 2014, CIRSA quoted the City's property and liability insurance at \$417,934 with a \$200,000 per occurrence deductible and \$5,000,000 in general liability limits. In 2013, the quote was \$343,821. The reason for the increase is twofold; the City's property values increased by over \$33 million, according to a 2013 Property Appraisal done by an independent appraiser hired by CIRSA; and the State of Colorado increased the limits that governmental entities could be liable under the Colorado Governmental Immunity Act, from a \$150,000/\$600,000 per person/per incident maximum to a \$300,000/\$990,000 per person/per incident maximum.

An additional premium of approximately \$60,000 is anticipated for the City's miscellaneous premium for Boiler & Machinery Coverage, Excess Crime, Fiduciary Liability, Special Events, and coverage for the Loveland Larimer Building Authority (Police and Courts). The remaining balance of \$322,066 is expected to be used for estimated claims reported in 2014 and remaining open claims from prior years.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. 2014 Quote from CIRSA

**CIRSA Property/Casualty Pool  
Preliminary 2014 Contribution Quotation for:  
Loveland**

Current Deductibles:

Liability *	Auto Liability	Physical Damage	Property **	To Continue with This Deductible Option for 2014 Initial Here:
\$200,000	\$200,000	\$200,000	\$200,000	<i>WPC</i>

(or choose another option below)

Contribution Before Reserve and Loss Experience: \$450,516  
 Reserve Fund Contribution: \$0  
 Impact of Loss Experience: (\$21,823)  
 Total 2014 Preliminary Quotation Before Credits: \$428,693

*Credit Options: You must write in the amount that you wish to use. Amounts may be split between available options.*

Credit PC Contribution	Deposit / Leave in Account	Send Check	Credit WC Contribution
(\$5,425)			
\$0			
(\$5,334)			

2013 Loss Control Audit Credit: (\$5,425)  
 Balance Remaining from Prior Year's LC Credits: \$0  
 PC Member Equity Account Adjustment: (\$5,334)

**Preliminary Quotation at Current Deductible  
With All Available Credits Applied: \$417,934**

Or, select a different deductible option:

Liability *	Auto Liability	Physical Damage	Property **	Revised Quote (Before Credits)	To Accept a New Deductible Option for 2014, Initial Next to the Option (Choose Only One):
\$150,000	\$150,000	\$150,000	\$150,000	\$470,070	
\$200,000	\$200,000	\$150,000	\$150,000	\$443,204	
\$250,000	\$250,000	\$200,000	\$200,000	\$406,141	
\$250,000	\$250,000	\$250,000	\$250,000	\$392,586	



DO NOT PAY THE AMOUNT SHOWN ON PAGE 1. AN INVOICE WILL BE SENT ON JANUARY 1, 2014.

This preliminary quotation includes all exposures reported on your entity's 2014 Property/Casualty Renewal Application and any Application Amendment Requests received by CIRSA before August 19, 2013.

\* Regarding the Liability Deductible shown on page 1, a \$500 deductible quotation is offered to members, if requested, for general liability. However, police professional and public officials errors and omissions deductibles cannot go below \$1,000.

\*\* Regarding the Property Deductible shown on page 1, an additional property deductible will apply separately to each location in a National Flood Insurance Program (NFIP) Zone A if total building and contents values at that location are in excess of \$1,000,000. The deductible will be the maximum limit of coverage which could have been purchased through NFIP, whether it is purchased or not.

Based upon the selections made in your 2014 Property/Casualty Renewal Application, the City of Loveland has elected not to participate in Uninsured/Underinsured Motorist Coverage.

\*\*\* Indicates the selection is a change from your entity's selection in 2013.

If this is incorrect, or you wish to change your selection at this time, please contact your Underwriting Representative at (800) 228-7136 or (303) 757-5475.

**The undersigned is authorized to accept this preliminary quotation on behalf of the City of Loveland.**

*We accept this preliminary quotation for January 1, 2014 to January 1, 2015. We understand our final invoice may increase or decrease depending upon the number of CIRSA Property/Casualty members for 2014, actual excess insurance premiums, and any changes made to our 2014 renewal application.*

Signature: 

Title: City Manager

Date: 10-4-13

Signature must be that of the Mayor, Manager, Clerk or equivalent (such as President of a Special District.)

Both pages of this form must be returned by Tuesday, October 1, 2013. A mailed, faxed or e-mailed copy is acceptable. Please return to:

Catherine Wegman, Underwriting Administrative Assistant  
3665 Cherry Creek North Drive  
Denver, CO 80209  
Fax: (303) 757-8950 or (800) 850-8950  
E-Mail: CatherineW@cirsas.org



**CIRSA Property/Casualty Pool  
Preliminary 2014 Contribution Quotation for:  
Loveland Larimer Building Authority**

**Current Deductibles:**

Liability *	Auto		Property **	To Continue with This Deductible Option for 2014 Initial Here:
	Auto Liability	Physical Damage		
\$2,500	\$25,000	\$25,000	\$5,000	<i>WPC</i>

(or choose another option below)

Contribution Before Reserve and Loss Experience: \$28,251  
 Reserve Fund Contribution: \$0  
 Impact of Loss Experience: \$0  
 Total 2014 Preliminary Quotation Before Credits: \$28,251

*Credit Options: You must write in the amount that you wish to use. Amounts may be split between available options.*

Credit PC Contribution	Deposit / Leave in Account	Send Check	Credit WC Contribution

2013 Loss Control Audit Credit: (\$360)  
 Balance Remaining from Prior Year's LC Credits: \$0

**Preliminary Quotation at Current Deductible  
With All Available Credits Applied: \$27,891**

Or, select a different deductible option:

Liability *	Auto		Property **	Revised Quote (Before Credits)	To Accept a New Deductible Option for 2014, Initial Next to the Option (Choose Only One):
	Auto Liability	Physical Damage			
\$2,500	\$50,000	\$50,000	\$5,000	\$28,251	
\$5,000	\$25,000	\$25,000	\$5,000	\$28,221	
\$5,000	\$50,000	\$50,000	\$5,000	\$28,221	
\$2,500	\$25,000	\$25,000	\$10,000	\$27,561	
\$2,500	\$50,000	\$50,000	\$10,000	\$27,561	
\$5,000	\$100,000	\$100,000	\$5,000	\$28,221	

DO NOT PAY THE AMOUNT SHOWN ON PAGE 1. AN INVOICE WILL BE SENT ON JANUARY 1, 2014.

This preliminary quotation includes all exposures reported on your entity's 2014 Property/Casualty Renewal Application and any Application Amendment Requests received by CIRSA before August 19, 2013.

\* Regarding the Liability Deductible shown on page 1, a \$500 deductible quotation is offered to members, if requested, for general liability. However, police professional and public officials errors and omissions deductibles cannot go below \$1,000.

\*\* Regarding the Property Deductible shown on page 1, an additional property deductible will apply separately to each location in a National Flood Insurance Program (NFIP) Zone A if total building and contents values at that location are in excess of \$1,000,000. The deductible will be the maximum limit of coverage which could have been purchased through NFIP, whether it is purchased or not.

Based upon the selections made in your 2014 Property/Casualty Renewal Application, the Loveland Larimer Building Authority has elected not to participate in Uninsured/Underinsured Motorist Coverage.

\*\*\* Indicates the selection is a change from your entity's selection in 2013.

If this is incorrect, or you wish to change your selection at this time, please contact your Underwriting Representative at (800) 228-7136 or (303) 757-5475.

**The undersigned is authorized to accept this preliminary quotation on behalf of the Loveland Larimer Building Authority.**

*We accept this preliminary quotation for January 1, 2014 to January 1, 2015. We understand our final invoice may increase or decrease depending upon the number of CIRSA Property/Casualty members for 2014, actual excess insurance premiums, and any changes made to our 2014 renewal application.*

Signature: William E. Cahill

Title: City Manager

Date: 10-4-13

Signature must be that of the Mayor, Manager, Clerk or equivalent (such as President of a Special District.)

Both pages of this form must be returned by Tuesday, October 1, 2013. A mailed, faxed or e-mailed copy is acceptable. Please return to:

Catherine Wegman, Underwriting Administrative Assistant  
3665 Cherry Creek North Drive  
Denver, CO 80209  
Fax: (303) 757-8950 or (800) 850-8950  
E-Mail: CatherineW@cirsa.org



**CITY OF LOVELAND**  
**HUMAN RESOURCES DEPARTMENT**  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2371 • FAX (970) 962-2919 • TDD (970) 962-2620

**AGENDA ITEM:** 7  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Julia Holland, Human Resources Department  
**PRESENTER:** Julia Holland

**TITLE:**

A Resolution Adopting a Pay Plan for City Employees and Superseding All Prior Ordinances Adopting Such a Pay Plan

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action for Council to adopt the City's 2014 Pay Plan. The City's Pay Plan assists in delivering cost efficient, high quality services to citizens by establishing a competitive market based plan, while adhering to budgetary constraints. During 2013, the City utilized the expertise of a compensation consultant to assist in a salary survey market analysis, develop 2014 pay ranges based on the data collected, and compare current rates of pay with the identified labor market to competitive pay practices, while also providing a financially sustainable plan.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Costs associated with the adoption and implementation of the 2014 Pay Play will be provided through the 2014 Budget, which included a 1% allotment for necessary adjustments.

**BACKGROUND:**

The City strives to remain competitive in providing employees with a total compensation plan of pay, benefits, and opportunities for development, in order to attract and retain great employees to serve our community. The City uses a merit-based pay plan. Our intent is to maintain competitive pay practices and to ensure a system that is sustainable for the future. Developing the new Pay Plan required more market survey data than past updates, and extensive involvement of City departments in analysis each position, including matching positions against validated and relevant market data.

The City used both the external market survey and internal equity to determine appropriate pay levels for the new pay plan. The updated plan also revised the salary ranges by separating the exempt and non-exempt positions into their own respective grades. This adjustment is based on the recommendation from our consultant and best practices of compensation methodology, to group jobs together within a range that are similar in skills, responsibilities, qualifications, as well as relative market rates.

After the appropriate grouping of positions was determined, ranges were built to develop minimum, midpoint, and maximum amounts for each group. Our compensation system does not include guidelines for specific placement of employee compensation within an assigned range other than to ensure employees are within the range of their position (not below the minimum or above the maximum). The range structures are set by the market and individual pay rates are based on performance and skills/experience.

To implement the new plan, employees falling below the minimum of their new range will receive a pay adjustment up to the minimum of the range. The estimated cost to implement necessary market adjustments in 2014 is expected to be \$120,000.00 for the general Exempt and Non-exempt Pay Plan and \$85,000.00 for the Police Department Pay Plan. This amount is less than the 1% budgeted for necessary adjustments in 2014.

The past use of merit-based increases is included in Attachment 3, which graphically shows the spread of pay increases for 2008, 2009, and 2013. These are years in which there was a "full" merit pool of funds available (2010, 2011 and 2012 did not have full funding of pay increases). The data show that pay increases vary according to merit, and are not uniform across the City.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution
2. 2014 Proposed Pay Plan (Exhibit A)
3. Past Merit Pay Increases

**RESOLUTION #R-100-2013**

**A RESOLUTION ADOPTING A PAY PLAN FOR CITY EMPLOYEES,  
AND SUPERSEDING ALL PRIOR ORDINANCES ADOPTING SUCH A  
PAY PLAN**

**WHEREAS**, Chapter 2.68 of the Loveland Municipal Code provides that the City Council shall from time to time adopt, by resolution, an employee pay plan setting forth pay grades and compensation ranges for city employees; and

**WHEREAS**, prior to the recent adoption of Ordinance 5806, Chapter 2.68 of the Loveland Municipal Code required that the City Council adopt an employee pay plan setting forth pay grades and compensation ranges for city employees by ordinance; and

**WHEREAS**, the City Council last adopted a pay plan by Ordinance No. 5709 for calendar year 2013; and

**WHEREAS**, City staff has presented to City Council a revised pay plan setting forth pay grades and compensation ranges for calendar year 2014, a copy of which is attached hereto as **Exhibit A** and incorporated herein by this reference (the “**2014 Pay Plan**”).

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

**Section 1.** That the pay grades and compensation ranges for employees of the City of Loveland for 2014 shall be as set forth in the 2014 Pay Plan, which shall take effect for the first pay period of 2014.

**Section 2.** That the City Manager shall maintain an administrative regulation regarding the use of employee performance bonuses.

**Section 3.** That eleven paid holidays for 2014 shall be designated by the City Manager.

**Section 4.** That this Resolution shall supersede in all respects all previous ordinances of the City Council which adopt an employee pay plan, including Ordinance 5709, as of the first pay period of 2014.

**Section 5.** That notwithstanding the foregoing, the employee pay plan as set forth in Ordinance 5709 shall continue in full force and effect from the date of this Resolution until it is superseded on or after January 1, 2014 as provided herein.

**Section 6.** This Resolution shall take effect as of the date of its adoption.

Adopted this 19<sup>th</sup> day of November, 2013.



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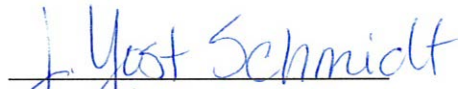
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

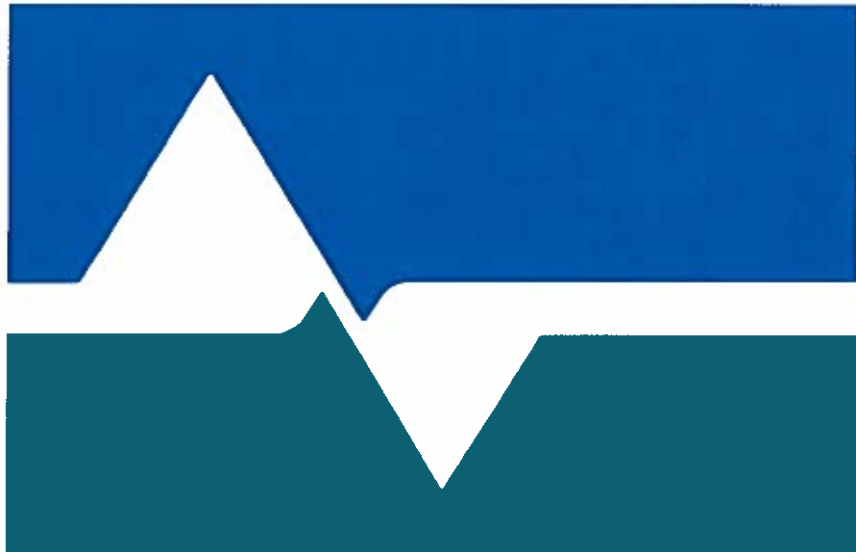
  

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Deputy City Attorney

# 2014 Proposed Pay Plan

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**City of Loveland**

## 2014 Proposed Pay Plan

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### City of Loveland Compensation Philosophy

The City's total compensation system is designed to support the organization's mission, goals and objectives. We strive to offer competitive and performance-driven compensation through a comprehensive pay and benefits package to help attract, retain and motivate competent employees.

As a public employer, the City aims to provide a competitive, market-based, and fiscally responsible compensation program.

The compensation system for City of Loveland employees is a market based pay plan that strictly adheres to operational and budgetary constraints. This market based compensation system compares an employee's actual salary to other comparable positions found at both public and private employers in the region. Two main salary survey resources are utilized for this process: Mountain States Employers Council and the Colorado Municipal League. Our goal is to annually review and when necessary, adjust the pay plan according to market fluctuations.

The City's pay plan is broken out into three sections; exempt; non-exempt and part time; and a step plan for eight (8) positions in the Police Department. Positions in all three sections are placed within a pay grade level/step based upon the individual position's market salary. Examining actual pay ensures that the salaries paid to employees are competitive with salaries paid in the market.

When market salary information is not available, the City uses internal equity by analyzing factors such as the degree of knowledge, skills, job family progression, span of control, reporting relationships, scope of decision-making authority, types of decisions made, and impact on the organization of such decisions, and autonomy. Positions are assembled together into salary grades according to like skill, responsibilities, and qualifications as well as relative market rates.

City of Loveland employee salaries are not automatically adjusted or raised to reflect range movement unless the position falls outside of the range. Employees may receive a merit increase at the end of each year based on their evaluated work performance. Supervisors have the ability to reward work performance through the City's performance management system within the following guidelines: actual employee performance plus the department budget must not exceed total dollars allowed for salaries and an employee must be paid a dollar amount within the range of their pay level classification. The performance management system is intended to ensure the City is paying and rewarding employees based on performance.



## 2014 Proposed Pay Plan

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### City of Loveland Salary/Merit Increases

#### **New Hires**

New employees are typically hired within the minimum to the midpoint of the pay level for their position. The hiring salary depends upon:

- ❖ Experience and education
- ❖ Market demand
- ❖ Internal equity with others in the same position or pay level
- ❖ Department budget

#### **End of Probation**

Employees who successfully complete their initial 6-month probationary period (12 months for Police Officers) are eligible for a salary increase. This increase will depend on:

- ❖ How well the employee is performing in the position
- ❖ Internal equity with others in the same position
- ❖ Department budget

#### **End of Year Evaluations**

All employees shall receive a year-end evaluation using the City's performance management system (unless within their probationary period) and may be eligible for a salary increase based upon:

- ❖ How well the employee met the performance expectations of the position
- ❖ Internal equity with others in the same position
- ❖ Department budget
- ❖ Range movement within the respective position pay level

If an employee is at the maximum of their pay range they are not eligible for a base pay increase with merit; however, they may be eligible for a lump sum payment based on performance. All year-end increases must coincide with a completed evaluation signed by the employee and supervisor.

## 2014 Proposed Pay Plan

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### 2014 Holiday Schedule

Wednesday, January 1	New Year's Day
Monday, May 26	Memorial Day
Friday, July 4	Independence Day
Monday, September 1	Labor Day
Tuesday, November 11	Veteran's Day
Thursday, November 27	Thanksgiving Day
Friday, November 28	Day after Thanksgiving
Thursday, December 25	Christmas Day

Employees will also receive 3 floating holidays in 2014

City of Loveland

2014 Proposed Exempt Pay Plan

<b>Exempt Pay Plan</b>			
<b>Job Title</b>	<b>Range Minimum</b>	<b>Range Midpoint</b>	<b>Range Maximum</b>

<b>Salary Grade E01</b>	<b>(Vac Level C)</b>	<b>\$39,700</b>	<b>\$50,600</b>	<b>\$61,500</b>
<b>Hourly Rate</b>		<b>\$19.09</b>	<b>\$24.33</b>	<b>\$29.57</b>

- Athletics Coordinator
- Facility Coordinator
- Marketing Coordinator
- Museum Curator
- Recreation Coordinator
- Visitor Center Manager
- Visitor Services Coordinator

<b>Salary Grade E02</b>	<b>(Vac Level C)</b>	<b>\$46,000</b>	<b>\$58,600</b>	<b>\$71,200</b>
<b>Hourly Rate</b>		<b>\$22.12</b>	<b>\$28.17</b>	<b>\$34.23</b>

- Accountant
- Benefits Administrator
- Budget Analyst
- Business Development Specialist
- Community Partnership Administrator
- Customer Relations Business Specialist
- Customer Relations Specialist
- Facilities Management Planner
- Human Resources Generalist
- Program Supervisor
- Public Art/Business Service Manager
- Sales Tax Auditor
- Senior City Planner
- Stormwater Quality Specialist
- Transit Operations Supervisor

<b>Salary Grade E03</b>	<b>(Vac Level C)</b>	<b>\$54,000</b>	<b>\$68,800</b>	<b>\$83,600</b>
<b>Hourly Rate</b>		<b>\$25.96</b>	<b>\$33.08</b>	<b>\$40.19</b>

- Airport Op. Maintenance Supervisor
- Construction Coordinator
- Crew Supervisor
- Economic Development Manager
- Financial Rate Analyst
- Golf Course Professional
- Golf Services Superintendent
- Librarian III
- Recreation Facility Manager
- Senior Accountant
- Senior Human Resources Generalist
- Staff Engineer
- Theater Manager
- Utility Financial Rate Analyst

## City of Loveland

<b>Exempt Pay Plan</b>			
<b>Job Title</b>	<b>Range Minimum</b>	<b>Range Midpoint</b>	<b>Range Maximum</b>

<b>Salary Grade E04 (Vac Level B)</b>	<b>\$60,800</b>	<b>\$77,500</b>	<b>\$94,200</b>
<b>Hourly Rate</b>	\$29.23	\$37.26	\$45.29

Civil Engineer I  
 Electrical Engineer  
 Industrial Pretreatment Coordinator  
 Library Technology Manager  
 Natural Areas Manager  
 Principal City Planner  
 Public Information Officer  
 Technical Services Superintendent  
 Water Operations Supervisor  
 Water Quality Lab Supervisor

<b>Salary Grade E05 (Vac Level B)</b>	<b>\$68,200</b>	<b>\$87,000</b>	<b>\$105,800</b>
<b>Hourly Rate</b>	\$32.79	\$41.83	\$50.87

Administrative Business Manager  
 Assistant City Attorney I  
 Civil Engineer II  
 Customer Relations Manager  
 Environmental Compliance Administrator  
 Facility Maintenance Superintendent  
 Field Engineering Supervisor  
 Fleet Services Manager  
 Police Records Supervisor  
 Senior Parks Planner  
 Support Services Superintendent  
 Traffic Operations Superintendent

<b>Salary Grade E06 (Vac Level B)</b>	<b>\$73,500</b>	<b>\$95,550</b>	<b>\$117,600</b>
<b>Hourly Rate</b>	\$35.34	\$45.94	\$56.54
<b>Fire Hourly Rate</b>	\$25.24	\$32.81	\$40.38

Budget Officer  
 Chief Building Official  
 Current Planning Manager  
 Fire Captain  
 Golf Operations Manager  
 Human Resources Manager  
 Parks Manager  
 Police Communications Manager  
 Police Lieutenant  
 Power Operations Supervisor  
 Recreation Manager  
 Revenue Manager  
 Risk Manager  
 Senior Civil Engineer  
 Senior Electrical Engineer  
 Solid Waste Mgmt. Superintendent  
 Street Maintenance Superintendent

<b>Exempt Pay Plan</b>				
<b>Job Title</b>	<b>Range Minimum</b>	<b>Range Midpoint</b>	<b>Range Maximum</b>	

<b>Salary Grade E06</b>	<b>(Vac Level B)</b>	<b>\$73,500</b>	<b>\$95,550</b>	<b>\$117,600</b>
Hourly Rate		\$0.00	\$0.00	\$0.00
Fire Hourly Rate		\$25.24	\$32.81	\$40.38

Utility Accounting Manager  
 Utility Information Manager  
 Wastewater Treatment Plant Manager  
 Water Treatment Manager

<b>Salary Grade E07</b>	<b>(Vac Level B)</b>	<b>\$80,000</b>	<b>\$104,000</b>	<b>\$128,000</b>
Regular Hourly Rate		\$38.46	\$50.00	\$61.54
Fire Hourly Rate		\$27.47	\$35.71	\$43.96

Airport Director  
 Application Services Manager  
 Assistant City Attorney II  
 Battalion Chief  
 City Clerk  
 City Traffic Engineer  
 Cultural Services Director  
 Director Economic Development  
 Executive Fiscal Advisor  
 Facilities Operations Manager  
 Infrastructure Services Manager  
 Library Director  
 Streets & Solid Waste Manager

<b>Salary Grade E08</b>	<b>(Vac Level A)</b>	<b>\$91,700</b>	<b>\$119,200</b>	<b>\$146,700</b>
Hourly Rate		\$44.09	\$57.31	\$70.53
Fire Hourly Rate		\$31.49	\$40.93	\$50.38

City Engineer  
 Deputy City Attorney  
 Director Of Development Services  
 Fire Division Chief  
 Human Resources Director  
 Information Technology Director  
 Police Captain  
 Power Operations Manager  
 Public Safety Administration Director  
 Water Utilities Manager

<b>Salary Grade E09</b>	<b>(Vac Level A)</b>	<b>\$99,800</b>	<b>\$129,700</b>	<b>\$159,600</b>
Hourly Rate		\$47.98	\$62.36	\$76.73

Assistant City Manager  
 Chief Of Police  
 Director Of Parks And Recreation  
 Director Of Public Works  
 Director Of Water & Power  
 Finance Director  
 Fire Chief

City of Loveland

2014 Proposed Non-Exempt Pay Plan

<b>Non-Exempt Pay Plan</b>			
<b>Job Title</b>	<b>Range Minimum</b>	<b>Range Midpoint</b>	<b>Range Maximum</b>

<b>Salary Grade N01</b>	<b>\$25,900</b>	<b>\$31,100</b>	<b>\$36,300</b>
<b>Hourly Rate</b>	<b>\$12.45</b>	<b>\$14.95</b>	<b>\$17.45</b>

Cashier I  
 Mail Distribution Clerk  
 Office Assistant

<b>Salary Grade N02</b>	<b>\$30,000</b>	<b>\$36,000</b>	<b>\$42,000</b>
<b>Hourly Rate</b>	<b>\$14.42</b>	<b>\$17.31</b>	<b>\$20.19</b>

Cashier II  
 Childcare Supervisor  
 Library Aide  
 Office Support Specialist  
 Scheduling Coordinator

<b>Salary Grade N03</b>	<b>\$33,100</b>	<b>\$40,550</b>	<b>\$48,000</b>
<b>Hourly Rate</b>	<b>\$15.91</b>	<b>\$19.50</b>	<b>\$23.08</b>

Accounting Clerk  
 Administrative Specialist  
 Bus Driver  
 Bus Driver Substitute  
 Maintenance Worker  
 Municipal Court Clerk  
 Parks Worker  
 Plant Operator D  
 Police Report Technician  
 Technical Assistant  
 Utility Billing Clerk  
 Vehicle Service Writer  
 Warehouse Worker

<b>Salary Grade N04</b>	<b>\$37,800</b>	<b>\$46,350</b>	<b>\$54,900</b>
<b>Hourly Rate</b>	<b>\$18.17</b>	<b>\$22.28</b>	<b>\$26.39</b>

Accounting Technician  
 Administrative Technician  
 Aquatics Supervisor  
 Assistant Golf Professional  
 Building Attendant  
 Building Supervisor  
 City Planning Technician  
 Court Administrator  
 Equipment Operator  
 Equipment Services Technician  
 Facilities Planning Specialist  
 GIS Technician  
 Help Desk Technician  
 Human Resources Technician  
 Irrigation Technician

<b>Non-Exempt Pay Plan</b>			
<b>Job Title</b>	<b>Range Minimum</b>	<b>Range Midpoint</b>	<b>Range Maximum</b>

<b>Salary Grade N04</b>	<b>\$37,800</b>	<b>\$46,350</b>	<b>\$54,900</b>
<b>Hourly Rate</b>	<b>\$18.17</b>	<b>\$22.28</b>	<b>\$26.39</b>

- Journey Water Systems Operator
- Librarian I
- Librarian I Substitute
- Meter Reader
- Revenue and Licensing Coordinator
- Senior Customer Service Representative
- Senior Utility Billing Clerk
- Technical Coordinator
- Traffic Technician
- Utility Locator
- Water Meter Technician I
- Water Quality Specialist I
- Water Quality Specialist II

<b>Salary Grade N05</b>	<b>\$42,000</b>	<b>\$51,500</b>	<b>\$61,000</b>
<b>Hourly Rate</b>	<b>\$20.19</b>	<b>\$24.76</b>	<b>\$29.33</b>

- Airport Maintenance Worker
- Business Services Coordinator
- Buyer
- City Planner I
- Code Administrator
- Computer Support Technician
- Crew Leader Cemetery
- Deputy City Clerk
- Desktop Publishing Specialist
- Evidence Technician
- Fleet Parts Buyer
- Golf Mechanic
- Graphic Designer
- Grounds Technician
- Heavy Equipment Operator
- Human Resources Analyst
- Investigative Technician
- Latent Fingerprint Examiner
- Librarian II
- Mechanic I
- Museum Preparator
- Natural Areas Technician
- Parks Crew Leader
- Parks Specialist
- Payroll Administrator
- Plant Operator B/C
- Pre-Apprentice Lineworker



## City of Loveland

<b>Non-Exempt Pay Plan</b>			
Job Title	Range Minimum	Range Midpoint	Range Maximum

<b>Salary Grade N05</b>	<b>\$42,000</b>	<b>\$51,500</b>	<b>\$61,000</b>
<b>Hourly Rate</b>	\$20.19	\$24.76	\$29.33

Public Works Inspector  
 Senior Meter Reader  
 Theater Coordinator  
 Traffic Sign Crew Leader  
 Traffic Signal Technician  
 Utility Systems Technician  
 Water Meter Technician II

<b>Salary Grade N06</b>	<b>\$45,400</b>	<b>\$56,800</b>	<b>\$68,200</b>
<b>Hourly Rate</b>	\$21.83	\$27.31	\$32.79
<b>Fire Hourly Rate</b>	\$15.59	\$19.51	\$23.42

Apprentice Lineworker I  
 City Planner II  
 Engineering Technician  
 Executive Assistant  
 Facilities Maintenance Tech  
 Facilities Maint Tech Leadworker  
 Field Engineering Coordinator  
 Field Service Representative  
 Firefighter I  
 GIS Specialist  
 Industrial Pretreatment Specialist  
 Lead Equipment Operator  
 Lead Water Systems Operator  
 Legal Assistant  
 Mechanic II  
 Parks Planner  
 Technical Services Maintenance Technician  
 Telecom Specialist  
 Traffic Marking Crew Leader

<b>Salary Grade N07</b>	<b>\$49,800</b>	<b>\$62,300</b>	<b>\$74,800</b>
<b>Hourly Rate</b>	\$23.94	\$29.95	\$35.96
<b>Fire Hourly Rate</b>	\$17.10	\$21.39	\$25.69

Administrative Analyst  
 Apprentice Lineworker II  
 Associate Engineer  
 Building Inspector  
 Computer Support Tech Group Leader  
 Cross Connection Controls Tech  
 Field Engineer  
 Firefighter II  
 Mechanical/Maintenance Tech  
 Plant Operator A  
 Safety Coordinator  
 Senior Fleet Technician  
 Technical Specialist  
 Technical Services Maintenance Specialist

<b>Non-Exempt Pay Plan</b>			
<b>Job Title</b>	<b>Range Minimum</b>	<b>Range Midpoint</b>	<b>Range Maximum</b>

<b>Salary Grade N08</b>	<b>\$53,500</b>	<b>\$68,200</b>	<b>\$82,900</b>
<b>Hourly Rate</b>	<b>\$25.72</b>	<b>\$32.79</b>	<b>\$39.86</b>
<b>Fire Hourly Rate</b>	<b>\$18.37</b>	<b>\$23.42</b>	<b>\$28.47</b>

Assistant Emergency Manager  
 Business Analyst  
 Lead Plant Operator  
 Natural Areas Coordinator  
 Network & Systems Administrator  
 Plans Reviewer  
 SCADA Progr/Instr and Controls Specialist  
 Senior Building Inspector  
 Senior GIS Specialist

<b>Salary Grade N09</b>	<b>\$58,000</b>	<b>\$74,000</b>	<b>\$90,000</b>
<b>Hourly Rate</b>	<b>\$27.88</b>	<b>\$35.58</b>	<b>\$43.27</b>

Criminalist  
 Customer Service Supervisor  
 Fire Engineer  
 Fire Inspection Technician  
 Journey Lineworker  
 Journey Meter Technician  
 Utility Billing Supervisor

<b>Salary Grade N10</b>	<b>\$68,100</b>	<b>\$86,800</b>	<b>\$105,500</b>
<b>Hourly Rate</b>	<b>\$32.74</b>	<b>\$41.73</b>	<b>\$50.72</b>
<b>Fire Hourly Rate</b>	<b>\$23.39</b>	<b>\$29.81</b>	<b>\$36.23</b>

Business Analyst Group Leader  
 Deputy Fire Marshal  
 Electric Metering Supervisor  
 Fire Lieutenant  
 Line Crew Supervisor  
 Warehouse Operations Manager

City of Loveland

2014 Proposed Part Time Pay Plan

Part Time Pay Plan		
Job Title	Range Minimum	Range Maximum

<b>Salary Grade PT1</b>	<b>\$7.78</b>	<b>\$12.25</b>
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- Batting Cage Worker
- Cart Range Worker
- Childcare Attendant
- Clerk/Cashier
- Concession Worker
- Firefighter Apprentice
- Fitness Area Supervisor/Trainer
- General Laborer I
- Golf Pro-Shop Worker
- Intern I
- Lifeguard (Pool/Beach/Chilson)
- Maintenance Worker I
- Play/Tee Manager I
- Pool Technician
- Program Instructor I
- Recycling Site Attendant
- Recycling Site Helper
- Scorekeeper
- Swim Aide
- Youth Athletics Official I

<b>Salary Grade PT2</b>	<b>\$9.00</b>	<b>\$14.00</b>
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- Activity/Day Camp Leader
- Assistant Pool/Beach Manager
- Cultural Events Assistant
- Escort Van Driver
- Facility Attendant I
- Front House/Event Coordinator
- General Laborer II
- Library Page
- Maintenance Worker II
- Museum Registrar
- Play/Tee Manager II
- Program Instructor II
- Tournament Director
- Water Safety Instructor
- Youth Athletics Coach
- Youth Athletics Official II

<b>Salary Grade PT3</b>	<b>\$11.00</b>	<b>\$17.80</b>
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- Adult Athletics Official I
- Certified Youth Athletics Official
- Day Camp Director
- Environmental Education Coordinator
- Facility Supervisor
- Intern II
- Maintenance Technician
- Master Greens Keeper

<b>Part Time Pay Plan</b>		
<b>Job Title</b>	<b>Range Minimum</b>	<b>Range Maximum</b>

<b>Salary Grade PT3</b>	<b>\$11.00</b>	<b>\$17.80</b>
Pool/Beach Manager Program Instructor III		

<b>Salary Grade PT4</b>	<b>\$17.80</b>	<b>\$35.00</b>
Adult Athletics Official II Code Enforcement/Weed Control Intern III Program Instructor IV		

## 2014 Proposed Police Department Pay Plan

Position	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Officer/Specialist	\$56,400	\$59,500	\$62,200	\$64,900	\$67,600	\$70,450	\$73,400
Police Sergeant	\$75,500	\$79,000	\$82,500	\$86,000	\$89,550	\$93,300	
Community Service Officer	\$42,800	\$45,100	\$47,200	\$49,200	\$51,400	\$53,500	\$55,600
Communication Specialist	\$42,000	\$44,300	\$46,300	\$48,300	\$50,400	\$52,500	\$54,600
Lead Communication Specialist	\$46,400	\$48,900	\$51,200	\$53,400	\$55,700	\$58,000	\$60,400
Communication Supervisor	\$57,800	\$61,000	\$63,800	\$66,500	\$69,300	\$72,200	\$75,200
Records Specialist	\$33,900	\$35,700	\$37,350	\$39,000	\$40,650	\$42,300	\$44,100
Lead Records Specialist	\$37,400	\$39,400	\$41,250	\$43,000	\$44,850	\$46,700	\$48,600

Step Key: Performance (Meets Expectations) and Months of Service			
Step 1	0 to 12 Months	Step 5	49 to 60 Months
Step 2	13 to 24 Months	Step 6	61 to 72 Months
Step 3	25 to 36 Months	Step 7	> 73 Months
Step 4	37 to 48 Months		

<b>Position Title</b>	<b>Page Number</b>	<b>Pay Level</b>
Accountant	1	E02
Accounting Clerk	4	N03
Accounting Technician	4	N04
Activity/Day Camp Leader	8	PT2
Administrative Analyst	6	N07
Administrative Business Manager	2	E05
Administrative Specialist	4	N03
Administrative Technician	4	N04
Adult Athletics Official I	8	PT3
Adult Athletics Official II	9	PT4
Airport Director	3	E07
Airport Maintenance Worker	5	N05
Airport Op. Maintenance Supervisor	1	E03
Application Services Manager	3	E07
Apprentice Lineworker I	6	N06
Apprentice Lineworker II	6	N07
Aquatics Supervisor	4	N04
Assistant City Attorney I	2	E05
Assistant City Attorney II	3	E07
Assistant City Manager	3	E09
Assistant Emergency Manager	7	N08
Assistant Golf Professional	4	N04
Assistant Pool/Beach Manager	8	PT2
Associate Engineer	6	N07
Athletics Coordinator	1	E01
Battalion Chief	3	E07
Batting Cage Worker	8	PT1
Benefits Administrator	1	E02
Budget Analyst	1	E02
Budget Officer	2	E06
Building Attendant	4	N04
Building Inspector	6	N07
Building Supervisor	4	N04
Bus Driver	4	N03
Bus Driver Substitute	4	N03
Business Analyst	7	N08
Business Analyst Group Leader	7	N10
Business Development Specialist	1	E02
Business Services Coordinator	5	N05
Buyer	5	N05
Cart Range Worker	8	PT1
Cashier I	4	N01
Cashier II	4	N02
Certified Youth Athletics Official	8	PT3



<b>Position Title</b>	<b>Page Number</b>	<b>Pay Level</b>
Chief Building Official	2	E06
Chief Of Police	3	E09
Childcare Attendant	8	PT1
Childcare Supervisor	4	N02
City Clerk	3	E07
City Engineer	3	E08
City Planner I	5	N05
City Planner II	6	N06
City Planning Technician	4	N04
City Traffic Engineer	3	E07
Civil Engineer I	2	E04
Civil Engineer II	2	E05
Clerk/Cashier	8	PT1
Code Administrator	5	N05
Code Enforcement/Weed Control	9	PT4
Community Partnership Administrator	1	E02
Computer Support Technician	5	N05
Computer Support Technician Group Leader	6	N07
Concession Worker	8	PT1
Construction Coordinator	1	E03
Court Administrator	4	N04
Crew Leader Cemetery	5	N05
Crew Supervisor	1	E03
Criminalist	7	N09
Cross Connection Controls Technician	6	N07
Cultural Events Assistant	8	PT2
Cultural Services Director	3	E07
Current Planning Manager	2	E06
Customer Relations Business Specialist	1	E02
Customer Relations Manager	2	E05
Customer Relations Specialist	1	E02
Customer Service Supervisor	7	N09
Day Camp Director	8	PT3
Deputy City Attorney	3	E08
Deputy City Clerk	5	N05
Deputy Fire Marshal	7	N10
Desktop Publishing Specialist	5	N05
Director Economic Development	3	E07
Director Of Development Services	3	E08
Director Of Parks And Recreation	3	E09
Director Of Public Works	3	E09
Director Of Water & Power	3	E09
Economic Development Manager	1	E03
Electric Metering Supervisor	7	N10



<b>Position Title</b>	<b>Page Number</b>	<b>Pay Level</b>
Electrical Engineer	2	E04
Engineering Technician	6	N06
Environmental Compliance Administrator	2	E05
Environmental Education Coordinator	8	PT3
Equipment Operator	4	N04
Equipment Services Technician	4	N04
Escort Van Driver	8	PT2
Evidence Technician	5	N05
Executive Assistant	6	N06
Executive Fiscal Advisor	3	E07
Facilities Maintenance Tech	6	N06
Facilities Maintenance Tech Leadworker	6	N06
Facilities Mgmt Planner	1	E02
Facilities Operations Manager	3	E07
Facilities Planning Specialist	4	N04
Facility Attendant I	8	PT2
Facility Coordinator	1	E01
Facility Maintenance Superintendent	2	E05
Facility Supervisor	8	PT3
Field Engineer	6	N07
Field Engineering Coordinator	6	N06
Field Engineering Supervisor	2	E05
Field Service Representative	6	N06
Finance Director	3	E09
Financial Rate Analyst	1	E03
Fire Captain	2	E06
Fire Chief	3	E09
Fire Division Chief	3	E08
Fire Engineer	7	N09
Fire Inspection Technician	7	N09
Fire Lieutenant	7	N10
Firefighter Apprentice	8	PT1
Firefighter I	6	N06
Firefighter II	6	N07
Fitness Area Supervisor/Trainer	8	PT1
Fleet Parts Buyer	5	N05
Fleet Services Manager	2	E05
Front House/Event Coordinator	8	PT2
General Laborer I	8	PT1
General Laborer II	8	PT2
GIS Specialist	6	N06
GIS Technician	4	N04
Golf Course Professional	1	E03
Golf Mechanic	5	N05

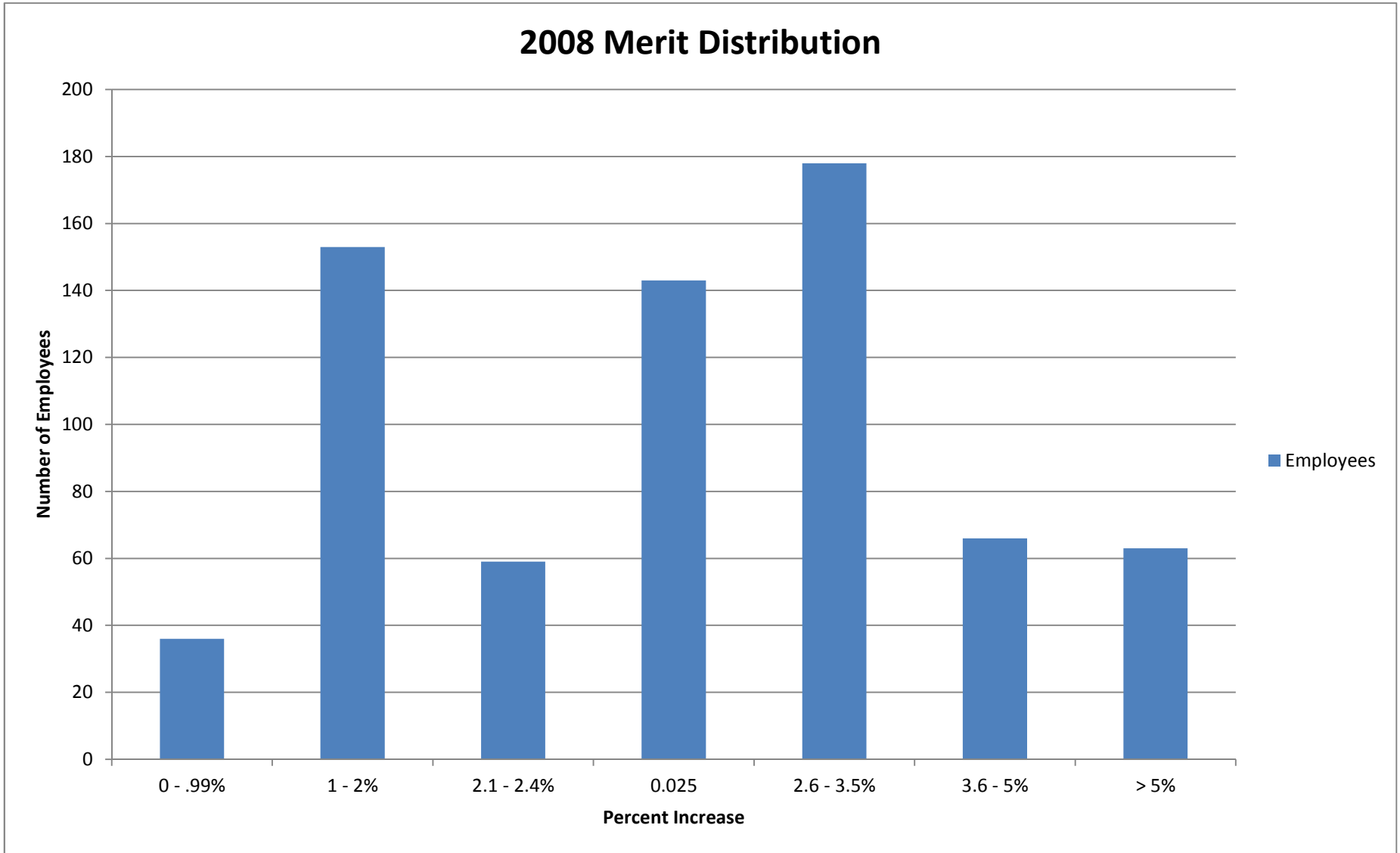
<b>Position Title</b>	<b>Page Number</b>	<b>Pay Level</b>
Golf Operations Manager	2	E06
Golf Pro-Shop Worker	8	PT1
Golf Services Superintendent	1	E03
Graphic Designer	5	N05
Grounds Technician	5	N05
Heavy Equipment Operator	5	N05
Help Desk Technician	4	N04
Human Resources Analyst	5	N05
Human Resources Director	3	E08
Human Resources Generalist	1	E02
Human Resources Manager	2	E06
Human Resources Technician	4	N04
Industrial Pretreatment Coordinator	2	E04
Industrial Pretreatment Specialist	6	N06
Information Technology Director	3	E08
Infrastructure Services Manager	3	E07
Intern I	8	PT1
Intern II	8	PT3
Intern III	9	PT4
Investigative Technician	5	N05
Irrigation Technician	4	N04
Journey Lineworker	7	N09
Journey Meter Technician	7	N09
Journey Water Systems Operator	5	N04
Latent Fingerprint Examiner	5	N05
Lead Equipment Operator	6	N06
Lead Plant Operator	7	N08
Lead Water Systems Operator	6	N06
Legal Assistant	6	N06
Librarian I	5	N04
Librarian I Substitute	5	N04
Librarian II	5	N05
Librarian III	1	E03
Library Aide	4	N02
Library Director	3	E07
Library Page	8	PT2
Library Technology Manager	2	E04
Lifeguard (Pool/Beach/Chilson)	8	PT1
Line Crew Supervisor	7	N10
Mail Distribution Clerk	4	N01
Maintenance Technician	8	PT3
Maintenance Worker	4	N03
Maintenance Worker I	8	PT1
Maintenance Worker II	8	PT2

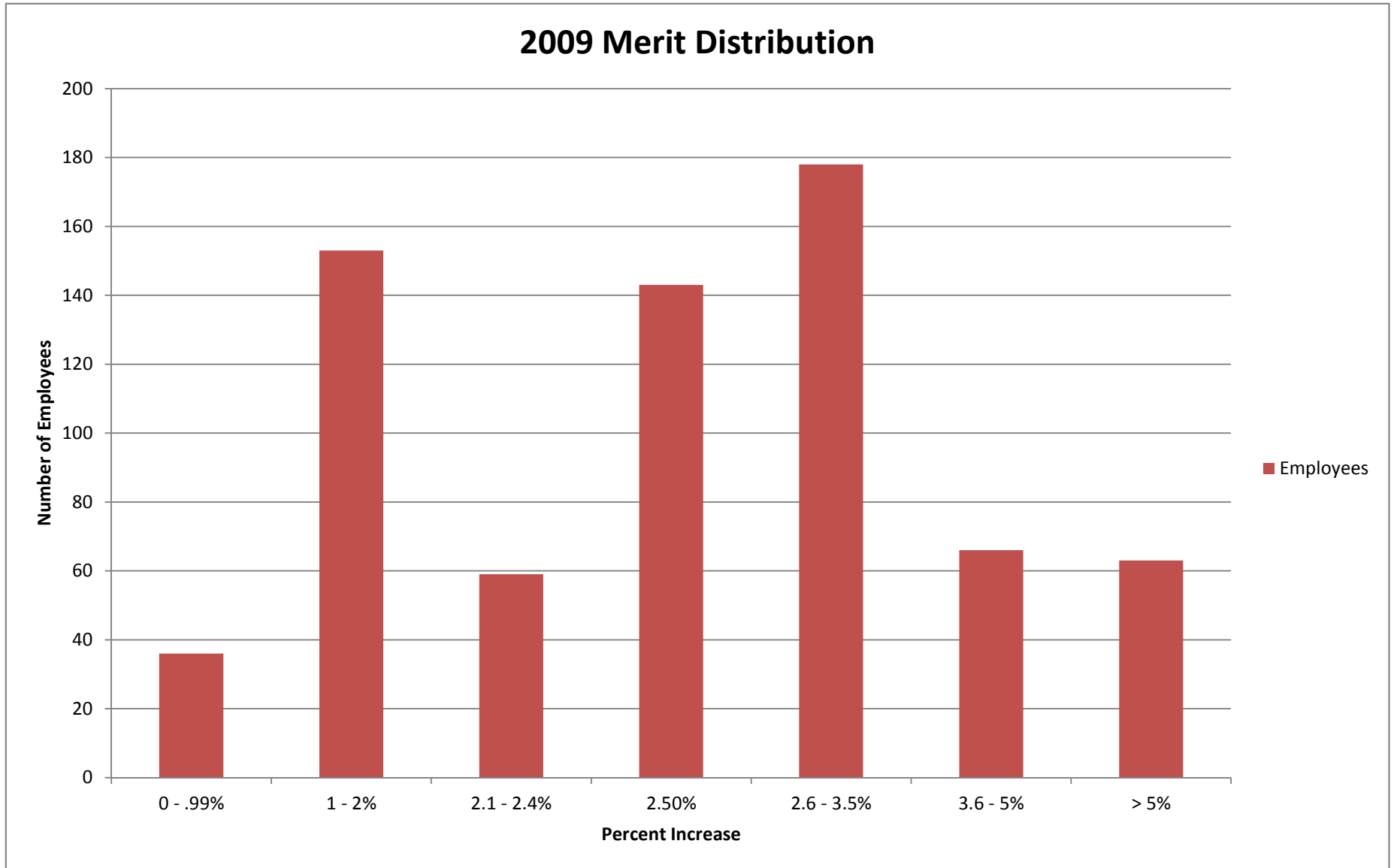
<b>Position Title</b>	<b>Page Number</b>	<b>Pay Level</b>
Marketing Coordinator	1	E01
Master Greens Keeper	8	PT3
Mechanic I	5	N05
Mechanic II	6	N06
Mechanical/Maintenance Technician	6	N07
Meter Reader	5	N04
Municipal Court Clerk	4	N03
Museum Curator	1	E01
Museum Preparator	5	N05
Museum Registrar	8	PT2
Natural Areas Coordinator	7	N08
Natural Areas Manager	2	E04
Natural Areas Technician	5	N05
Network & Systems Administrator	7	N08
Office Assistant	4	N01
Office Support Specialist	4	N02
Parks Crew Leader	5	N05
Parks Manager	2	E06
Parks Planner	6	N06
Parks Specialist	5	N05
Parks Worker	4	N03
Payroll Administrator	5	N05
Plans Reviewer	7	N08
Plant Operator A	6	N07
Plant Operator B/C	5	N05
Plant Operator D	4	N03
Play/Tee Manager I	8	PT1
Play/Tee Manager II	8	PT2
Police Captain	3	E08
Police Communications Manager	2	E06
Police Lieutenant	2	E06
Police Records Supervisor	2	E05
Police Report Technician	4	N03
Pool Technician	8	PT1
Pool/Beach Manager	9	PT3
Power Operations Manager	3	E08
Power Operations Supervisor	2	E06
Pre-Apprentice Lineworker	5	N05
Principal City Planner	2	E04
Program Instructor I	8	PT1
Program Instructor II	8	PT2
Program Instructor III	9	PT3
Program Instructor IV	9	PT4



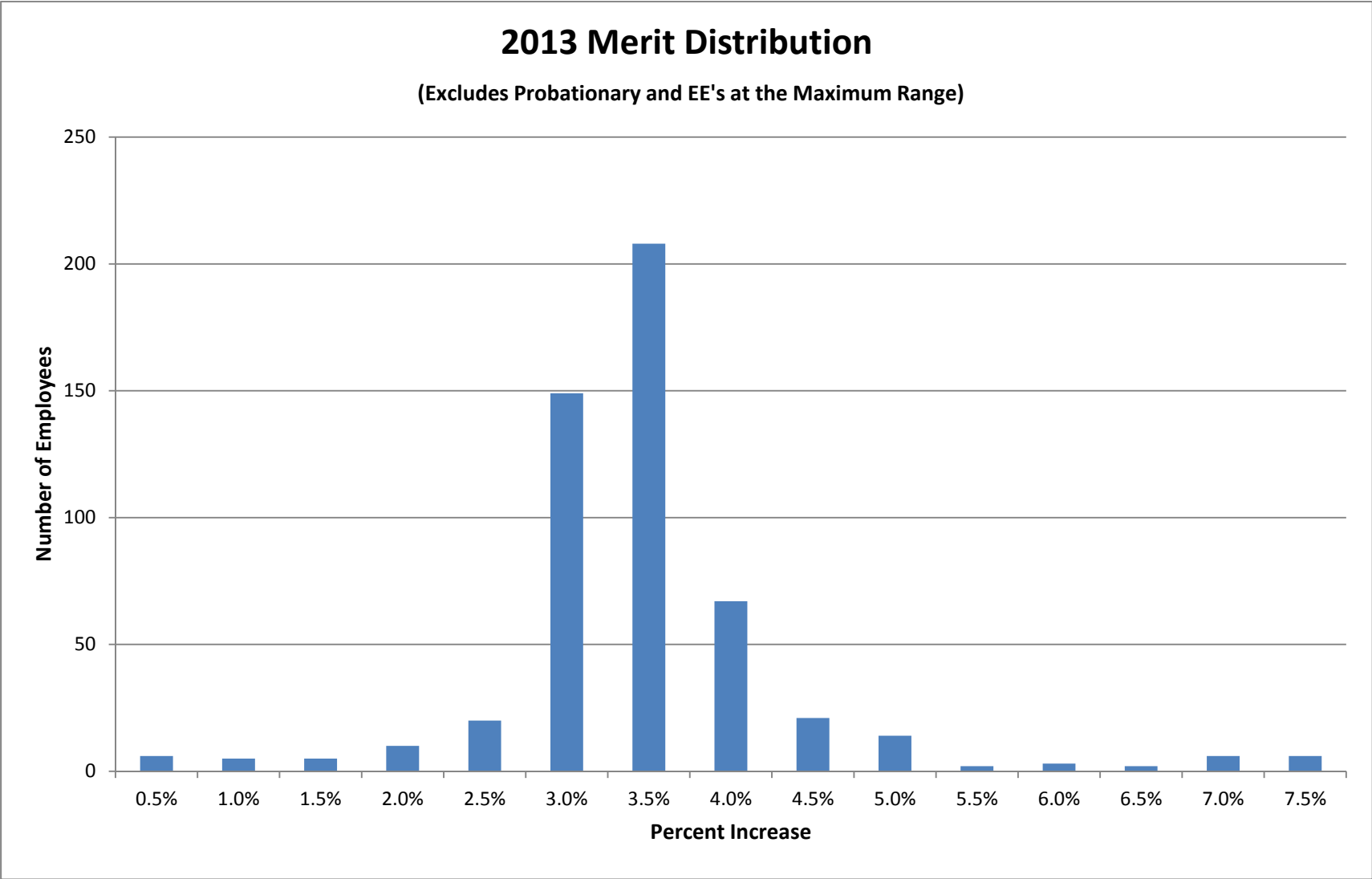
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Program Supervisor	1	E02
Public Art/Business Service Manager	1	E02
Public Information Officer	2	E04
Public Safety Administration Director	3	E08
Public Works Inspector	6	N05
Recreation Coordinator	1	E01
Recreation Facility Manager	1	E03
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Recycling Site Attendant	8	PT1
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Revenue and Licensing Coordinator	5	N04
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Scheduling Coordinator	4	N02
Scorekeeper	8	PT1
Senior Accountant	1	E03
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<b>Position Title</b>	<b>Page Number</b>	<b>Pay Level</b>
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Traffic Operations Superintendent	2	E05
Traffic Sign Crew Leader	6	N05
Traffic Signal Technician	6	N05
Traffic Technician	5	N04
Transit Operations Supervisor	1	E02
Utility Accounting Manager	3	E06
Utility Billing Clerk	4	N03
Utility Billing Supervisor	7	N09
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Utility Information Manager	3	E06
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Water Quality Specialist I	5	N04
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Water Utilities Manager	3	E08
Youth Athletics Coach	8	PT2
Youth Athletics Official I	8	PT1
Youth Athletics Official II	8	PT2











**CITY OF LOVELAND**  
POLICE DEPARTMENT

810 East 10<sup>th</sup> Street • Loveland, Colorado 80537  
(970) 667-2151 • FAX (970) 962-2917 • TDD (970) 962-2620

**AGENDA ITEM:** 8  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Teresa "Tree" Ablao  
**PRESENTER:** Luke Hecker, Chief of Police

**TITLE:**

An Ordinance on First Reading Amending Chapter 9.34 of the City of Loveland Municipal Code to Combine in One Section the Offenses of Theft and Theft of Rental Property and to Combine With Them the New Offense of Theft by Receiving

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct public hearing and approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is a legislative action. This ordinance combines the two different types of theft currently set forth as separate Code sections and adds a third type of theft (Theft by Receiving) into one Code section. A similar state law took effect on June 5, 2013. The Police Department would like to adopt this ordinance to be consistent with State law and to allow summonses to be issued into Municipal Court for persons committing Theft by Receiving, as well as, the two other types of theft.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**BACKGROUND:**

Currently, our Municipal Code contains two theft provisions: Theft and Theft of Rental Property which make the taking or retaining of a thing valued less than \$1000 unlawful. State law provides for a third type of theft that the Loveland Code does not provide, Theft by Receiving. Theft by Receiving is a criminal offense if a person receives, pawns, or buys property knowing or believing that the property was stolen.

In 2013, legislation passed to combine the various types of theft under state law. These state law provisions took effect on June 5, 2013.

---

**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance- Redlined
2. Ordinance- Clean

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 9.34 OF THE CITY OF LOVELAND MUNICIPAL CODE TO COMBINE IN ONE SECTION THE OFFENSES OF THEFT AND THEFT OF RENTAL PROPERTY AND TO COMBINE WITH THEM THE NEW OFFENSE OF THEFT BY RECEIVING**

**WHEREAS**, in 2013, the Colorado General Assembly adopted and the Governor signed into law House Bill 13-1160, which combined the offenses of theft, theft of rental property and theft by receiving into one statutory section; and

**WHEREAS**, the City, as a home rule municipality, may on its own authority as provided in Article XX, Section 6 of the Colorado Constitution enact, adopt and enforce municipal ordinances governing misdemeanor criminal violations within the City; and

**WHEREAS**, City Council, pursuant to its home rule authority, desires to protect the public’s health, safety and welfare by amending Code Section 9.34.010 to include the new offense of theft by receiving and the City’s existing offense of theft of rental property into one section with the City’s existing offense of theft to be consistent with theft-related petty and misdemeanor offenses under state law.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO as follows:**

**Section 1.** That Code Section 9.34.010 is hereby amended to read in full as follows:

**Section 9.34.010. Theft, Theft by Receiving and Theft of Rental Property.**

A. It is unlawful for any person to knowingly obtain, retain, or exercise control over anything of a value less than one thousand dollars (\$1,000.00) of another without authorization, or by threat or deception; or receive, loan money by pawn or pledge on, or dispose of anything of value or belonging to another that he or she knows or believes to have been stolen, and:

1. intend to deprive the other person permanently of the use or benefit of the thing of value; ~~or~~

2. knowingly use, conceal, or abandon the thing of value in such manner as to deprive the other person permanently of its use or benefit; ~~or~~

3. use, conceal, or abandon the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use ~~and~~ benefit; ~~or~~

4. demand any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person; or

5. knowingly fail to reveal the whereabouts of or retain the thing of value more than seventy-two (72) hours after the agreed-upon time of return in any lease or hire agreement.

B. For the purposes of this section, a thing of value is that of “another” if anyone other than the defendant has a possessory or proprietary interest therein.

C. The date or time specified in any rental or hire agreement signed by the person charged with the violation of this section shall be prima facie evidence of the time or date on which the property should have been returned.

D. This section shall not be applicable to the theft of a thing of value when such theft would constitute a felony under the laws of the state in effect at the time of such theft.

**Section 2.** That Code Section 9.34.040 is hereby repealed in its entirety.

~~9.34.040.——Theft of Rental Property~~

~~A. No person shall:~~

~~1. Obtain the temporary use of personal property of another of a value of less than one thousand dollars (\$1,000.00), which is available only for hire, by means of threat or deception, or knowing that such use is without the consent of the person providing the personal property; or~~

~~2. Having lawfully obtained possession for temporary use of the personal property of another of a value of less than one thousand dollars (\$1,000.00) which is available only for hire, knowingly fail to reveal the whereabouts of or to return the property to the owner thereof or a representative of the owner or to the person from whom the property was received within seventy two (72) hours after the time at which the person agreed to return it.~~

~~B. The date or time specified in any rental agreement signed by the person charged with the violation of this section shall be prima facie evidence of the time or date on which the property should have been returned. (Ord. 5253 § 5, 2007)~~

**Section 3.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

---

Cecil A. Gutierrez, Mayor

ATTEST:

---

City Clerk

Approved as to form:



---

Teresa Ablao  
Assistant City Attorney



First Reading: November 19, 2013

Second Reading: \_\_\_\_\_

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 9.34 OF THE CITY OF LOVELAND MUNICIPAL CODE TO COMBINE IN ONE SECTION THE OFFENSES OF THEFT AND THEFT OF RENTAL PROPERTY AND TO COMBINE WITH THEM THE NEW OFFENSE OF THEFT BY RECEIVING**

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**WHEREAS**, City Council, pursuant to its home rule authority, desires to protect the public’s health, safety and welfare by amending Code Section 9.34.010 to include the new offense of theft by receiving and the City’s existing offense of theft of rental property into one section with the City’s existing offense of theft to be consistent with theft-related petty and misdemeanor offenses under state law.

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1. intend to deprive the other person permanently of the use or benefit of the thing of value;

- 2. knowingly use, conceal, or abandon the thing of value in such manner as to deprive the other person permanently of its use or benefit;
- 3. use, conceal, or abandon the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use or benefit;
- 4. demand any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person; or
- 5. knowingly fail to reveal the whereabouts of or retain the thing of value more than seventy-two (72) hours after the agreed-upon time of return in any lease or hire agreement.

- B. For the purposes of this section, a thing of value is that of “another” if anyone other than the defendant has a possessory or proprietary interest therein.
- C. The date or time specified in any rental or hire agreement signed by the person charged with the violation of this section shall be prima facie evidence of the time or date on which the property should have been returned.
- D. This section shall not be applicable to the theft of a thing of value when such theft would constitute a felony under the laws of the state in effect at the time of such theft.

**Section 2.** That Code Section 9.34.040 is hereby repealed in its entirety.

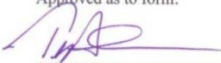
**Section 3.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

Approved as to form:  
  
Teresa Ablao  
Assistant City Attorney



**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 9  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Rod Wensing, Assistant City Manager  
 Sharon Citino, Assistant City Attorney  
**PRESENTER:** Rod Wensing

**TITLE:**

1. An Ordinance of the City of Loveland, Colorado Granting A Cable Franchise to Comcast of Colorado II, LLC
2. An Ordinance Amending the Loveland Municipal Code at Section 13.16.030 Concerning Customer Service Standards for Cable Operators

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing; and

1. Approve the ordinance on first reading.
2. Approve the ordinance on first reading.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

1. This is an administrative item to grant a cable franchise to Comcast of Colorado II, LLC ("Comcast"). Comcast is operating within the City of Loveland under an existing franchise effective, May 1, 2007 to December 31, 2013. This ordinance would grant Comcast a new, ten-year franchise on terms and conditions similar to the existing franchise and favorable to the City.
2. This is a legislative item to amend the Loveland Municipal Code at Section 13.16.030 by adoption of revised customer service standards for cable operators within the City of Loveland. As required by the existing franchise, Comcast has been given an opportunity to review and comment on the revised customer service standards.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible
- 

**BACKGROUND:**

Comcast currently serves its cable customers within the City of Loveland pursuant to a franchise agreement, effective May 1, 2007 to December 31, 2013. Comcast timely notified the City of its intent to seek renewal of the franchise agreement as required by federal law. Under federal law, Comcast is entitled to a franchise renewal if Comcast offers and has the legal, technical, and financial ability to comply with a franchise agreement that meets the future cable-related needs of the community. Comcast has complied with the existing franchise agreement, which staff believed was an appropriate place to begin negotiations.

During negotiations, staff sought to: (1) maintain benefits provided by the existing agreement; (2) eliminate regulatory provisions from the agreement that are no longer relevant; and (3) address issues of changing technology and changing regulations in a manner that benefits the City and its citizens. In addition to addressing key issues such as; the definition of “gross revenues,” the City’s ability to monitor and audit future franchise fee payments, and competitive equity with other cable providers serving customers in Loveland, the proposed agreement also provides for up to five public, educational, and government (“PEG”) access channels. Three of the PEG channels are currently broadcasting in standard-definition and are used by the City, the Thompson School District, and Aims Community College. Two of the PEG channels will be high-definition (“HD”) channels, one of which will be available to the City upon 120 days’ written notice to Comcast, and one of which will be available to the schools, after January 1, 2016, upon 120 days’ written notice to Comcast. Staff believes the proposed agreement addresses the community’s future cable-related needs and improves upon the existing agreement.

One of the primary areas of concern expressed by the citizens and members of City Council is customer service. Throughout the negotiations, Comcast was unwilling to consent to language in the franchise agreement that would provide the City with greater control over the means and methods Comcast employs to serve its Loveland customers. Therefore, to address the citizens’ and City Council’s concerns, staff has proposed a number of updates to the City’s customer service standards, which are codified in the Loveland Municipal Code at Section 13.16.030. Those updates require, among other things, that cable operators maintain a local office to be open weekdays, some weekend and evening hours, and provide their customers with the option to speak to a live customer service representative who can communicate clearly in English or Spanish, as requested by the customer.

---

**REVIEWED BY CITY MANAGER:**


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**LIST OF ATTACHMENTS:**

1. Ordinance Granting Cable Franchise Agreement
2. Franchise Agreement (Exhibit A to the Ordinance)
3. Ordinance Amending Section 13.16.030 Concerning Customer Service
4. Redline Draft Showing Changes From Existing Code

**FIRST READING**      November 19, 2013

**SECOND READING**      \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF LOVELAND, COLORADO  
GRANTING A CABLE FRANCHISE TO COMCAST OF COLORADO II,  
LLC**

**WHEREAS**, the City of Loveland desires to grant to Comcast of Colorado II, LLC a ten-year cable franchise, and Comcast of Colorado II, LLC desires to accept such grant, on the terms and conditions set forth in the “Cable Franchise Agreement Between the City of Loveland, Colorado and Comcast of Colorado II, LLC,” attached hereto as Exhibit A and incorporated herein by reference (“Franchise Agreement”).

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

**Section 1.** That the Franchise Agreement is hereby approved.

**Section 2.** That the Mayor and the City Clerk are hereby authorized and directed to execute the Franchise Agreement on behalf of the City of Loveland.

**Section 3.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this \_\_\_\_\_ day of December, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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Assistant City Attorney



**COMCAST OF COLORADO II, LLC AND  
THE CITY OF LOVELAND, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

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EXHIBIT A: Customer Service Standards

EXHIBIT B: Report Form

**COMCAST OF COLORADO II, LLC AND  
CITY OF LOVELAND, COLORADO**

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**CABLE FRANCHISE AGREEMENT**

**SECTION 1. DEFINITIONS AND EXHIBITS**

**(A) DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

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

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

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

1.12 “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

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

operating its electric utility systems.

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

1.15 “City” is the City of Loveland, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.16 “City Council” means the Loveland City Council, or its successor, the governing body of the City of Loveland, Colorado.

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

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

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

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

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

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

1.23 “FCC” means the Federal Communications Commission.

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

1.25 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the City and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.



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

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

1.28 “Grantee” means Comcast of Colorado II, LLC or its lawful successor, transferee or assignee.

1.29 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast Spotlight (“Spotlight”) or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee’s calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.29 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.29(E) below.

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

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

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

1.32 “Manager” means the City Manager of the City or designee.

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

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

1.35 “Residential Subscriber” means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

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

1.37 “State” means the State of Colorado.

1.38 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee’s Cable System, and who is in compliance with Grantee’s regular and nondiscriminatory terms and conditions for receipt of service.

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

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

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

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

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

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

## **(B) EXHIBITS**

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

- 1) *Exhibit A*, entitled Customer Service Standards.
- 2) *Exhibit B*, entitled Report Form.

## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

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

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

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the City, and the ordinances and regulations enacted

pursuant thereto. The Charter and Municipal Code of the City, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the City may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

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

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

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

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

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

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

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

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

## **2.2 Use of Rights-of-Way**

(A) Subject to the City’s supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City’s Rights-of-Way in compliance with all applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

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

## **2.3 Effective Date and Term of Franchise**

This Franchise and the rights, privileges and authority granted hereunder shall take effect on January 1, 2014 (the “Effective Date”), and shall terminate on December 31, 2024 unless terminated sooner as hereinafter provided.

## **2.4 Franchise Nonexclusive**

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

## 2.5 Police Powers

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

## 2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City. If the City grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this Franchise, then the City agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to the City regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the City, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the City and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the



parties. If the City and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the City shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if the City and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the City grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the City shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the City shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the City.

(F) Notwithstanding any provision to the contrary, at any time that non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then:

(1) Grantee may negotiate with the City to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

## **2.7 Familiarity with Franchise**

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

## **2.8 Effect of Acceptance**

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

## **SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

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

### **3.2 Payments**

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

### **3.3 Acceptance of Payment and Recomputation**

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

### **3.4 Quarterly Franchise Fee Reports**

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

### **3.5 Annual Franchise Fee Reports**

Grantee shall, within sixty (60) days after the end of each year, furnish to the City a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

### **3.6 Audits**

On an annual basis, upon thirty (30) days prior written notice, the City, including the City's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. Pursuant to subsection 1.29, as part of the Franchise Fee audit/review the City shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for City subscribers during the audit period. To the extent that the City does not believe that the relevant data supplied is sufficient for the City to complete its audit/review, the City may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the City to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by four percent (4%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the City related to audits), Grantee shall pay the total cost of the audit/review, such cost not to exceed three thousand dollars (\$3,000) for each year of the audit period. The City's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the City.

### **3.7 Late Payments**

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

### **3.8 Underpayments**

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

### **3.9 Alternative Compensation**

In the event the obligation of Grantee to compensate the City through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the City compensation equivalent to the compensation paid to the City by other similarly situated users of the City's Rights-of-Way for Grantee's use of the City's Rights-of-Way, provided that

in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

### **3.10 Maximum Legal Compensation**

The parties acknowledge that, at present, applicable federal law limits the City to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the City is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the City to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the City hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the City of such amendment, so long as all cable operators in the City are paying the same Franchise Fee amount.

### **3.11 Additional Commitments Not Franchise Fee Payments**

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

### **3.12 Tax Liability**

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

### **3.13 Financial Records**

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

### **3.14 Payment on Termination**

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

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

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

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

### **4.2 Rates and Charges**

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

### **4.3 Rate Discrimination**

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

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

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

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

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

#### **4.4 Filing of Rates and Charges**

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

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

#### **4.5 Cross Subsidization**

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

#### **4.6 Reserved Authority**

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

#### **4.7 Time Limits Strictly Construed**

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

#### **4.8 Franchise Amendment Procedure**

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the City and Grantee shall

meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the City Council for its approval. If so approved by the City Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

#### **4.9 Performance Evaluations**

(A) The City may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than once every two (2) years. All such evaluation sessions shall be conducted by the City.

(B) Special evaluation sessions may be held at any time by the City during the term of this Franchise, upon ninety (90) days written notice to Grantee.

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

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

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

#### **4.10 Late Fees**

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

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



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

#### **4.11 Force Majeure**

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the City and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

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

### **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

#### **5.1 Indemnification**

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

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

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

(1) The lawful actions of the City in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

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

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

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

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

## **5.2 Insurance**

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

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

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

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

### **5.3 Deductibles / Certificate of Insurance**

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

(A) Endorsements.

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

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

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

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

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

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

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

#### **5.4 Letter of Credit**

(A) If there is a claim by the City of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the City may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the City, to the City as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of fifty thousand dollars (\$50,000.00).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at fifty thousand dollars (\$50,000.00) until the allegations of the uncured breach have been resolved.

(C) As an alternative to the provision of a Letter of Credit to the City as set forth in Subsections 5.4 (A) and (B) above, if the City is a member of CCUA, and if Grantee provides a Letter of Credit to CCUA in an amount agreed to between Grantee and CCUA for the benefit of its members, in order to collectively address claims reference in 5.4 (A), Grantee shall not be required to provide a separate Letter of Credit to the City.

(D) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

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

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

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

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

(E) 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.

(F) Grantee shall have the right to appeal to the City Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the City erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

## **SECTION 6. CUSTOMER SERVICE**

### **6.1 Customer Service Standards**

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

### **6.2 Subscriber Privacy**

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

### **6.3 Subscriber Contracts**

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

#### **6.4 Advance Notice to City**

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

#### **6.5 Identification of Local Franchise Authority on Subscriber Bills**

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 thirty (30) days written request and subject to Applicable Law:

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

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

(3) Current Subscriber Records and information;

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

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

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

### **7.4 Annual Reports**

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

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

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

and Premium);

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

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

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

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

### **7.5 Copies of Federal and State Reports**

Within thirty (30) days of a written request, Grantee shall submit to the City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the City. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

### **7.6 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the City during normal business hours at Grantee's local business office.

(B) Within thirty (30) days of a written request, Grantee shall provide the City a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

(1) A summary of service calls, identifying the number and nature of the requests and their disposition;

(2) A log of all service interruptions;

(3) A summary of customer complaints referred by the City to Grantee; and,

(4) Such other information as reasonably requested by the City.



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

### **7.7 Failure to Report**

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

### **7.8 False Statements**

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

## **SECTION 8. PROGRAMMING**

### **8.1 Broad Programming Categories**

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

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

## **8.2 Deletion or Reduction of Broad Programming Categories**

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

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

## **8.3 Obscenity**

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

## **8.4 Parental Control Device**

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

## **8.5 Continuity of Service Mandatory**

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

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

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

## **8.6 Services for the Disabled**

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

## **SECTION 9. ACCESS**

### **9.1 Designated Access Providers**

(A) The City shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access").

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

### **9.2 Channel Capacity and Use**

(A) Grantee shall make available to City up to five (5) Downstream Channels for PEG use as provided for in this Section.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for PEG use, within sixty (60) days after a written request for such use is submitted to City, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to three (3) Channels provided to City. If a Channel allocated for PEG use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. City shall request return of such Channel space by delivering written notice to Grantee stating that the

institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition (“SD”) Digital Access Channels.

(1) Grantee shall provide three (3) Activated Downstream Channels for PEG Access use in a standard definition (“SD”) digital format in Grantee’s Basic Service (“SD Access Channel”). Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point at the designated point of origination for the SD Access Channel. Grantee shall transport and distribute the SD Access Channel signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications Commission Rules & Regulations, including without limitation Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry a SD Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point which for the purposes of this Section 9.2 (C)(3), shall mean up to and including the modulator where the City signal is converted into a format to be transmitted over a fiber connection to Grantee. The City or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

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

(D) High Definition (“HD”) Digital Access Channels.

(1) After the Effective Date, and with at least one hundred twenty (120) days of written notice to Grantee, the City may request, and the Grantee shall activate and provide on its Cable System, one (1) HD Access Channel for which the City may provide Access Channel signals in HD format to the demarcation point at the designated point of origination for the

Access Channel. After the second anniversary of the Effective Date, upon one hundred twenty (120) days written notice to Grantee, the City may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for PEG Access use in a High Definition (“HD”) digital format (“HD Access Channel or Channels”). Activation of HD Access Channels shall only occur after the following conditions are satisfied:

(a) The City shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing and will produce programming in an HD format for the newly activated HD Access Channel(s); and,

(b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for each HD Access Channel.

(2) The City shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of either 720p or 1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

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

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

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

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

(E) Grantee shall simultaneously carry the two (2) HD Access Channels provided for in Section 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the SD Access Channels provided pursuant to Subsection 9.2(C).

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the City believes that Grantee fails to meet this standard, City will notify Grantee of such concern, and Grantee will respond to and resolve any complaints in a timely manner.

### **9.3 Access Channel Assignments**

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the CCUA members served by the same Headend as City for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to Subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

### **9.4 Relocation of Access Channels**

Grantee shall provide City a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days' notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed.

## **9.5 Support for Access Costs**

During the term of this Franchise Agreement, Grantee shall provide fifty cents (\$0.50) per month per Residential Subscriber (the “PEG Contribution”) to be used solely for capital costs related to Public, Educational and Governmental Access, or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment or to evaluate whether the City’s PEG Access capital costs have reduced with time, the City and Grantee may meet no more than three times after the Effective Date to discuss whether to increase or to decrease the PEG Contribution. The primary purpose of such meetings will be for the parties to review prior expenditures and future capital plans to determine if the current PEG Contribution is reasonably appropriate to meet future needs. The City and Grantee may suggest to each other, based upon their own assessments of reasonable past practices and future anticipated needs, whether the current level of PEG Contribution is appropriate. If either party believes that the PEG Contribution should be modified in a reasonable amount to address such future needs the parties shall share all relevant information supporting their positions and negotiate in good faith to determine if the PEG Contribution should be increased or decreased, and if so, in what amount. Such discussions regarding potential adjustment to the PEG Contribution will be conducted pursuant to the Franchise amendment procedures in Section 4.8 of this Franchise. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than thirty (30) days following the end of the quarter. City shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise shall provide City discretion to utilize Access payments for new internal network connections and enhancements to the City’s existing network.

## **9.6 Access Support Not Franchise Fees**

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee’s obligations to pay Franchise Fees to City. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee’s Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

## **9.7 Access Channels On Basic Service or Lowest Priced HD Service Tier**

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

## **9.8 Change In Technology**

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of City's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the City implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the City implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the City shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

## **9.9 Technical Quality**

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from City's facilities for the Access Channels provided under this Franchise Agreement, including the business class broadband equipment and services necessary for the video on demand and streaming service described in Section 9.5. Grantee shall also provide, if requested in advance by the City, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the City's side of the demarcation point. The City shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The City shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of City staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff. The City will be responsible for the cost of repairing and/or replacing any HD PEG Access and web-based video on demand transmission equipment that Grantee maintains that is used exclusively for transmission of the City's and/or its Designated Access Providers' HD Access programming.

## **9.10 Access Cooperation**

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as City



in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by City.

### **9.11 Return Lines/Access Origination**

(A) Grantee shall continuously maintain the return lines previously constructed to the City Council Chambers throughout the Term of the Franchise, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels; provided however that Grantee's maintenance obligations with respect to this location shall cease if this location is no longer used in the future by the City to originate Access programming.

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

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

### **10.1 Right to Construct**

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

### **10.2 Right-of-Way Meetings**

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

### **10.3 Joint Trenching/Boring Meetings**

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

## 10.4 General Standard

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

## 10.5 Permits Required for Construction

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

## 10.6 Emergency Permits

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

## 10.7 Compliance with Applicable Codes

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

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

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

## **10.8 GIS Mapping**

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

## **10.9 Minimal Interference**

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

## **10.10 Prevent Injury/Safety**

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

## **10.11 Hazardous Substances**

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

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

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

### **10.12 Locates**

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

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

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

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

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

### **10.13 Notice to Private Property Owners**

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

### **10.14 Underground Construction and Use of Poles**

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

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the City or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the City's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

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

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

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

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

### **10.15 Undergrounding of Multiple Dwelling Unit Drops**

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

### **10.16 Burial Standards**

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

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

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

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

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

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

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

#### **10.17 Cable Drop Bonding**

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

#### **10.18 Prewiring**

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

#### **10.19 Repair and Restoration of Property**

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

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

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

itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the City.

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

## **10.20 Use of Conduits by the City**

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

## **10.21 Common Users**

(A) For the purposes of this subsection:

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

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

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

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

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use

within two (2) years from the date of a request for use.

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

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

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

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

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

(3) Vacate the needed Ducts or Conduit; or

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

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

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

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



## **10.22 Acquisition of Facilities**

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

## **10.23 Discontinuing Use/Abandonment of Cable System Facilities**

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

## **10.24 Movement of Cable System Facilities For City Purposes**

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

located within the Rights-of-Way, the City shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

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

### **10.25 Movement of Cable System Facilities for Other Franchise Holders**

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

### **10.26 Temporary Changes for Other Permittees**

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

### **10.27 Reservation of City Use of Right-of-Way**

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

### **10.28 Tree Trimming**

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

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

### **10.29 Inspection of Construction and Facilities**

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

### **10.30 Stop Work**

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

(B) The stop work order shall:

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

### **10.31 Work of Contractors and Subcontractors**

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

damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

## **SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING**

### **11.1 Subscriber Network**

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

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

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

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

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

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

### **11.2 Technology Assessment**

(A) The City may notify Grantee on or after five (5) years after the Effective Date, that the City will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the City to provide necessary non-confidential and proprietary information upon the City's reasonable request as part of the technology assessment.

(C) At the discretion of the City, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the City pursuant to 47 U.S.C. §546.

### **11.3 Standby Power**

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the City no later than thirty (30) days following receipt of a request.

### **11.4 Emergency Alert Capability**

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the City shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

### **11.5 Technical Performance**

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

### **11.6 Cable System Performance Testing**

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

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and
- (3) All other tests as otherwise specified in this Franchise.

- (B) At a minimum, Grantee's tests shall include:
- (1) Cumulative leakage index testing of any new construction;
  - (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
  - (3) Tests in response to Subscriber complaints;
  - (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and
  - (5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.
- (C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the City upon reasonable request.
- (D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the City upon request.
- (E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the City contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide City with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If City notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the City.
- (F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

### **11.7 Additional Tests**

Where there exists other evidence which in the judgment of the City casts doubt upon the reliability or technical quality of Cable Service, the City shall have the right and authority to

require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the City in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

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

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

### **12.1 Service Availability**

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the City. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a 125 foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the City;

(3) At non-discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the City and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

(C) Customer Charges for Extensions of Service. Grantee agrees to extend its Cable System to all persons living in areas with a residential density of twenty-five (25) residences per mile of Cable System plant. If the residential density is less than twenty-five (25) residences per 5,280 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 5,280 cable-bearing strand feet of its trunk or distribution cable and whose denominator equals twenty-five (25). Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

## **12.2 Connection of Public Facilities**

Grantee shall, at no cost to the City, provide one outlet of Basic Service and Digital Starter Service to all City owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are already served or are located within 150 feet of its Cable System. For purposes of this subsection, “school” means all State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of City buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic and Digital Starter Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

## **SECTION 13. FRANCHISE VIOLATIONS**

### **13.1 Procedure for 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;
- (2) cure the default; or,



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

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

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

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,
- (3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

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

## **13.2 Revocation**

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

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

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

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

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

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

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

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

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

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

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

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

### **13.3 Procedures in the Event of Termination or Revocation**

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the City may, subject to Applicable Law:

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

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

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the City may order the removal of the above-ground Cable System facilities and such underground facilities from the City at Grantee's sole expense within a reasonable period of time as determined by the City. In removing its plant, structures and equipment, Grantee shall refill, at 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 (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, City shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the City in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

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

### **13.9 Effect of Abandonment**

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

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

### **13.10 What Constitutes Abandonment**

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

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

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

## **SECTION 14. FRANCHISE RENEWAL AND TRANSFER**

### **14.1 Renewal**

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

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

### **14.2 Transfer of Ownership or Control**

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

(B) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word “control” as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented in writing thereto.

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

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

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

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

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the City may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The City shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The City and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the City fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the City agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the City, Grantee shall file with the City a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and

will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist 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:

Comcast of Colorado II, LLC  
8000 E. Iliff Ave.  
Denver, CO 80231  
Attn: Government Affairs

The City's address shall be:

City of Loveland  
500 E. Third Street, Suite 330  
Loveland, CO 80537

### **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 Larimer 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 Loveland, Colorado this \_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:	CITY OF LOVELAND, COLORADO:
_____	_____
City Clerk	Cecil Gutierrez, Mayor

APPROVED AS TO FORM:	RECOMMENDED AND APPROVED:
_____	_____
City Attorney	William D. Cahill, City Manager

Accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:	COMCAST OF COLORADO II, LLC
_____	_____
Public Notary	Name/Title: _____

**EXHIBIT A:  
CUSTOMER SERVICE STANDARDS**

**EXHIBIT B**

**Report Form**

Comcast  
 Quarterly Executive Summary - Escalated Complaints  
 Section 7.6 (B) of our Franchise Agreement  
 Quarter Ending \_\_\_\_\_, Year  
 CITY OF LOVELAND

<u><b>Type of Complaint</b></u>	<u><b>Number of Calls</b></u>
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
<b><u>TOTAL</u></b>	<b>0</b>

Compliments

**FIRST READING**      November 19, 2013

**SECOND READING**      \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTION 13.16.030 CONCERNING CUSTOMER SERVICE STANDARDS FOR CABLE OPERATORS**

**WHEREAS**, Section 552 of Title 47 of the United States Code authorizes local franchising authorities to establish and enforce customer service requirements upon cable operators within their jurisdictions; and

**WHEREAS**, pursuant to paragraph 6.1 of the “Cable Franchise Agreement Between the City of Loveland, Colorado and Comcast of Colorado II, LLC” effective May 1, 2007 through December 31, 2013 (“Franchise Agreement”), Comcast shall comply with the customer service standards of the City adopted by ordinance; and

**WHEREAS**, whereas the City last amended its customer service standards on July 3, 2007 by Ordinance No. 5206, which amendments were codified in Section 13.16.030 of the City Code; and

**WHEREAS**, the City desires to amend the customer service standards to reflect current industry standards and best practices; and

**WHEREAS**, Comcast was given notice of the amended customer service standards and was provided an opportunity to comment on the amendments; and

**WHEREAS**, the City Council believes it is in the best interests of the citizens of Loveland to enact the amended customer service standards to regulate cable operators within the City.

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

**Section 1.** That Section 13.16.030 of the Loveland Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

**13.16.030      Customer service standards.**

A. Policy.

1. The cable operator should resolve citizen complaints without delay and interference from the city. Where a given complaint is not addressed by the cable operator to the citizen’s satisfaction, the city should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the standards is identified, the city

should prescribe a cure and establish a reasonable deadline for implementation of the cure. If the noncompliance is not cured within established deadlines, monetary sanctions should be imposed to encourage compliance and deter future non-compliance.

2. These standards are intended to be of general application and are expected to be met under normal operating conditions; however, the cable operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the franchise area. The cable operator is free to exceed these standards to the benefit of its customers and such shall be considered performance for the purposes of these standards.
  3. These standards supersede any contradictory or inconsistent provision in federal, state, or local law (source: 47 U.S.C. § 552(a)(1) and (d)); provided, however, that any provision in federal, state, or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these standards, shall not be considered contradictory or inconsistent with these standards. In the event of a conflict between these standards and a franchise agreement, the franchise agreement shall control.
  4. These standards apply to the provision of any cable service provided by a cable operator over a cable system within the city of Loveland, Colorado.
- B. Definitions. When used in these customer service standards (the “standards”), the following words, phrases, and terms shall have the meanings given below.

“Adoption” shall mean the process necessary to formally enact the standards within the city’s jurisdiction under applicable ordinances and laws.

“Affiliate” shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a cable operator and provides any cable service or other service.

“Applicable law” shall mean, with respect to these standards and any cable operator’s privacy policies, any statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law that determines the legal standing of a case or issue.

“Cable operator” shall mean any person or group of persons who: (a) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (b) otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system (source: 47 U.S.C. § 522(5)).

“Cable service” shall mean: (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service (source: 47 U.S.C. § 522(6)). For purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station (source: 47 U.S.C. § 522(20)). “Other programming service” is information that a cable operator makes available to all subscribers generally (source: 47 U.S.C. § 522(14)).

“Cable system” shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to

multiple subscribers within a community, but such term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) a facility that serves subscribers without using any public right-of-way. (source: 47 U.S.C. § 522(7)).

“City” shall mean the city of Loveland, Colorado.

“Contractor” shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

“Customer” shall mean any person who receives any cable service from a cable operator.

“Customer service representative” shall mean any person employed with or under contract or subcontract to a cable operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers’ questions in person, receiving and processing payments, or performing any other customer service-related tasks.

“Escalated complaint” shall mean a complaint that is referred to a cable operator by the city.

“Necessary” shall mean required or indispensable.

“Non-cable-related purpose” shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a cable service or other service provided by a cable operator to a customer. Market research, telemarketing, and other marketing of services or products that are not related to a cable service or other service provided by a cable operator to a customer shall be considered non-cable-related purposes.

“Normal business hours” shall mean those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include at least some evening hours one night per week, and include some weekend hours (source: 47 C.F.R. § 76.309).

“Normal operating conditions” shall mean those service conditions which are within the control of a cable operator. Conditions which are not within the control of a cable operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a cable operator include, but are not necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade to the cable system.

“Other service(s)” shall mean any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service.

“Personally identifiable information” shall mean specific information about an identified customer, including, but not limited to, a customer’s: (a) login information for the use of cable service and management of a customer’s cable service account; (b) extent of viewing of video programming or other services; (c) shopping choices; (d) interests and opinions; (e) energy uses; (f) medical information; (g) banking data or information; or (h) any other personal or private information. “Personally identifiable information” shall not mean any aggregate information about customers which does not identify particular persons, or information gathered by a cable operator necessary to install, repair, or service equipment or cable system facilities at a customer’s premises.

“Service interruption” or “interruption” shall mean the loss or substantial impairment of picture and/or sound on one or more cable television channels.

“Service outage” or “outage” shall mean a loss or substantial impairment in reception on all channels.

“Subcontractor” shall mean a person or entity that enters into a contract to perform part or all of the obligations of another’s contract.

“Writing” or “written” as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

C. Customer service.

1. Courtesy. Cable operator employees, contractors, and subcontractors shall be courteous, knowledgeable, and helpful and shall provide effective and satisfactory service in all contacts with customers.
2. Accessibility.
  - a. A cable operator shall provide customer service centers/business offices (“service centers”) which are conveniently located and which are open during normal business hours. Service centers shall be fully staffed with customer service representatives offering the following services to customers who come to the service center: bill payment, equipment exchange, processing of change of service requests, and response to customer inquiries and request. Unless otherwise requested by the city, a cable operator shall post a sign at each service center, visible from the outside of the service center, advising customers of its hours of operation and of the telephone number at which to contact the cable operator if the service center is not open at the times posted. The cable operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology in order to respond to the growing demand of customers who wish to interact with the cable operator on the customer’s own terms and timeline and at their own convenience, without having to travel to a service center. Without limitation, examples of self-help tools or technology may include self-installation kits to customers upon request, pre-paid mailers for the return of equipment upon customer request, an automated phone option for customer bill payments, and equipment exchanges at a customer’s residence in the event of damaged equipment. A cable operator shall provide free exchanges of faulty equipment at the customer’s address if the equipment has not been damaged in any manner due to the fault or negligence of the customer.
  - b. A cable operator shall maintain local telephone access lines that shall be available twenty-four hours a day, seven days a week for service/repair requests and billing/service inquiries. Customers shall be provided an option, through the local telephone access lines, to speak to a live customer service representative, able to converse clearly with the customer, in either English or Spanish, at the customer’s option.
  - c. A cable operator shall have dispatchers and technicians on call twenty-four hours a day, seven days a week, including legal holidays.



- d. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer's concern, the recorded message must provide the customer the option to connect to and speak with a customer service representative within sixty seconds of the commencement of the recording. During normal business hours, a cable operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty seconds or less from the time a customer chooses a menu option to speak directly with a customer service representative or chooses a menu option that pursuant to the automated voice message, leads to a direct connection with a customer service representative. Under normal operating conditions, this thirty second telephone answer time requirement standard shall be met no less than ninety percent of the time measured quarterly.
  - e. Under normal operating conditions, a customer shall not receive a busy signal more than three percent of the time. This standard shall be met ninety percent or more of the time, measured quarterly.
3. Responsiveness.
- a. Guaranteed seven day residential installation.
    - i. A cable operator shall complete all standard residential installations or modifications to service requested by customers within seven business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the cable operator determines that a nonstandard residential installation is required, the cable operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.
    - ii. All underground cable drops to the home shall be buried at a depth of no less than twelve inches, or such other depth as may be required by the franchise agreement or local code provisions, or if there are no applicable franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the cable operator and the customer.
  - b. Residential installation and service appointments.
    - i. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four hour time block between the hours of 8:00 a.m. and 6:00 p.m., six days per week. A cable operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of customers. For purposes of this subsection "appointment window" means the period of time in which the representative of the cable operator must arrive at the customer's location.

- ii. A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment, unless the customer's issue has otherwise been resolved.
  - iii. If a cable operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the cable operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within normal business hours or as may be otherwise agreed to between the customer and cable operator.
  - iv. A cable operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the cable operator. In such circumstances, the cable operator shall contact the customer within forty-eight hours.
- c. Residential service interruptions.
- i. In the event of system outages resulting from cable operator equipment failure, the cable operator shall correct such failure within two hours after the third customer call is received.
  - ii. All other service interruptions resulting from cable operator equipment failure shall be corrected by the cable operator by the end of the next calendar day.
  - iii. Records of complaints.
    - (a) A cable operator shall keep an accurate and comprehensive file of any complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the cable operator's actions in response to those complaints. These files shall remain available for viewing by the city during normal business hours at the cable operator's business office, and shall be retained by the cable operator for a period of at least three years.
    - (b) Upon written request a cable operator shall provide the city an executive summary quarterly, which shall include information concerning customer complaints referred by the city to the cable operator and any other requirements of a franchise agreement, but no personally identifiable information. These summaries shall be provided within fifteen days after the end of each quarter. Once a request is made, it need not be repeated, and quarterly executive summaries shall be provided by the cable operator until notified in writing by the city that such summaries are no longer required.
    - (c) Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the cable operator for each quarter and submitted to the city by the fifteenth day of the month after each calendar quarter. Once a request is made, it need not be repeated, and quarterly summary of service requests shall be provided by the cable operator until notified in writing by the city that such summaries are no longer required. Complaints shall be

- broken out by the nature of the complaint and the type of cable service subject to the complaint.
- iv. Records of service interruptions and outages. A cable operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the city quarterly, upon written request, within fifteen days after the end of each quarter. Such records shall be submitted to the city with the records identified in subsection C.3.c.3.b. above if so requested in writing, and shall be retained by the cable operator for a period of three years.
  - v. All service outages and interruptions for any cause beyond the control of the cable operator shall be corrected within thirty-six hours, after the conditions beyond its control have been corrected.
- d. Television reception.
- i. A cable operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (“FCC”). A cable operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and 6:00 a.m.
  - ii. If a customer experiences poor video or audio reception attributable to a cable operator’s equipment, the cable operator shall:
    - (a) assess the problem within one day of notification;
    - (b) communicate with the customer regarding the nature of the problem and the expected time for repair; and
    - (c) complete the repair within two days of assessing the problem unless circumstances exist that reasonably require additional time.
  - iii. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in subsection C.3.b.1. At the customer’s request, the cable operator shall repair the problem at a later time convenient to the customer, during normal business hours or at such other time as may be agreed to by the customer and cable operator. A cable operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing so that the customer is advised of the status of the cable operator’s efforts to address the problem.
- e. Problem resolution. A cable operator’s customer service representatives shall have the authority to provide credit for interrupted service, waive fees, schedule service appointments, and change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within four hours and resolve the problem within forty-eight hours or within such other time frame as is acceptable to the customer and the cable operator.
- f. Billing, credits, and refunds.

- i. In addition to other options for payment of a customer's service bill, a cable operator shall make available a telephone payment option where a customer without account irregularities can enter payment information through an automated system, without the necessity of speaking to a customer service representative.
  - ii. A cable operator shall allow at least thirty days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the cable operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the cable operator in attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five days of the beginning date of the applicable service period, the cable operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two days of the beginning date of the applicable service period, the cable operator may disconnect the customer's service, provided it has provided two weeks' notice to the customer that such disconnection may result.
  - iii. The cable operator shall issue a credit or refund to a customer within thirty days after determining the customer's entitlement to a credit or refund.
  - iv. Whenever the cable operator offers any promotional or specially-priced service(s), its promotional materials shall clearly identify and explain the specific terms of the promotion, including, but not limited to, the manner in which any payment credit will be applied.
- g. Treatment of property. To the extent that a franchise agreement does not contain the following procedures for treatment of property, a cable operator shall comply with the procedures set forth in this section.
- i. A cable operator shall keep tree trimming to a minimum. Trees and shrubs or other landscaping that are damaged by a cable operator, or any employee or agent of a cable operator, during installation or construction shall be restored to their prior condition or replaced within seven days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.
  - ii. A cable operator shall, at its own cost and expense, and in a manner approved by the property owner and the city, restore any private property to as good condition as before the work causing such disturbance was initiated. A cable operator shall repair, replace, or compensate a property owner for any damage resulting from the cable operator's installation, construction, service, or repair activities. If compensation is requested by the customer for damage caused by any cable operator activity, the cable operator shall reimburse the property owner one hundred percent of the actual cost of the damage.

iii. Except in the case of an emergency involving public safety or service interruption to a large number of customers, a cable operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided, however, that in the case of construction operations, such notice shall be delivered or provided at least twenty-four hours prior to entry, unless such notice is waived by the customer. For purposes of this subsection, “reasonable notice” shall be considered:

- (a) for pedestal installation or similar major construction, seven days.
- (b) for routine maintenance, such as adding or dropping service, tree trimming, and the like, reasonable notice given the circumstances. Unless a franchise agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant before entry is made onto that person’s property.
- (c) for emergency work a cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property owner or tenant can receive more information about the emergency work.

Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

iv. Cable operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

#### 4. Services for customers with disabilities.

- a. For any customer with a disability, a cable operator shall deliver and pick up equipment at the customer’s home at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up, and ensure that it is working properly, and shall return the defective equipment to the cable operator.
- b. A cable operator shall provide either TTY, TDD, TYY, VRS service, or other similar service that is in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the cable operator’s customer service representatives for any hearing-impaired customer at no charge.
- c. A cable operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with subsection C.4.d.) customers.
- d. Any customer with a disability may request the special services described above by providing a cable operator with a letter from the customer’s physician stating the need, or by making the request to the cable operator’s installer or service technician where the need for the special services can be visually confirmed.

#### 5. Cable services information.

- a. At any time a customer or prospective customer may request, a cable operator shall provide the following information, in clear, concise, written form, easily accessible and located on the cable operator’s website (and in Spanish, when requested by the customer):

- i. products and services offered by the cable operator, including its channel lineup;
  - ii. the cable operator's complete range of service options and the prices for these services;
  - iii. the cable operator's billing, collection, and disconnection policies;
  - iv. privacy rights of customers;
  - v. all applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the cable operator and the FCC;
  - vi. use and availability of parental control/lock out device;
  - vii. special services for customers with disabilities; and
  - viii. the days and times of operation and locations of the service centers;
- b. At a customer's request, a cable operator shall make available either a complete copy of these standards and any other applicable customer service standards, or a summary of these standards, in a format to be approved by the city, which shall include, at a minimum, the URL address of a website containing these standards in their entirety; provided however, that if the city does not maintain a website with a complete copy of these standards, a cable operator shall be under no obligation to do so. If acceptable to a customer, a cable operator may fulfill customer requests for any of the information listed in this section by making the requested information available electronically, such as on a website or by electronic mail.
  - c. Upon written request, a cable operator shall meet annually with the city to review the format of the cable operator's bills to customers. Whenever the cable operator makes substantial changes to its billing format, it will contact the city at least thirty days prior to the time such changes are to be effective in order to inform the city of such changes.
  - d. Copies of notices provided to the customer in accordance with subsection C.5.e. shall be filed (by fax or email acceptable) concurrently with the city.
  - e. A cable operator shall provide customers with written notification of any change in rates for nondiscretionary cable services, and for service tier changes that result in a deletion of programming from a customer's service tier, at least thirty days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other cable services that a customer has subscribed to at the time the change in rates are announced by the cable operator.
  - f. All officers, agents, and employees of the cable operator or its contractors or subcontractors who are in personal contact with customers, and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph and identifying them as representatives of the cable operator. The cable operator shall account for all identification cards at all times. Every vehicle of the cable operator shall be clearly visually identified to the public as working for the cable operator. Whenever a cable operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the cable operator.

- g. Each customer service representative, technician, or employee of the cable operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.
6. Customer privacy.
- a. Cable customer privacy. In addition to complying with the requirements in this subsection, a cable operator shall fully comply with all obligations under 47 U.S.C. Section 551.
  - b. Collection and use of personally identifiable information.
    - i. A cable operator shall not use the cable system to collect, monitor, or observe personally identifiable information without the prior affirmative written or electronic consent of the customer unless, and only to the extent, that such information is: (a) used to detect unauthorized reception of cable communications; or (b) necessary to render a cable service or other service provided by the cable operator to the customer and as otherwise authorized by applicable law.
    - ii. A cable operator shall take such actions as are necessary using then-current industry standard practices to prevent any affiliate from using the facilities of the cable operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an affiliate unauthorized access to personally identifiable information on equipment of a customer (regardless of whether such equipment is owned or leased by the customer or provided by a cable operator) or on any of the facilities of the cable operator that are used in the provision of cable service. This subsection shall not be interpreted to prohibit an affiliate from obtaining access to personally identifiable information to the extent otherwise permitted by this subsection.
    - iii. A cable operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the cable operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to personally identifiable information on equipment of a customer (regardless of whether such equipment is owned or leased by the customer or provided by a cable operator) or on any of the facilities of the cable operator that are used in the provision of cable service.
  - c. Disclosure of personally identifiable information. A cable operator shall not disclose personally identifiable information without the prior affirmative written or electronic consent of the customer, unless otherwise authorized by applicable law.
    - i. A minimum of thirty days prior to making any disclosure of personally identifiable information of any customer for any non-cable-related purpose as provided in this subsection, where such customer has not previously been

- provided the notice and choice provided for in subsection C.6.i, the cable operator shall notify each customer (that the cable operator intends to disclose information about) of the customer's right to prohibit the disclosure of such information for non-cable-related purposes. The notice to customers may reference the customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection C.6.i.
- ii. A cable operator may disclose personally identifiable information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the customer.
  - iii. To the extent authorized by applicable law, a cable operator may disclose personally identifiable information pursuant to a subpoena, court order, warrant, or other valid legal process authorizing such disclosure.
- d. Access to information. Any personally identifiable information collected and maintained by a cable operator shall be made available for customer examination within thirty days of receiving a request by a customer to examine such information about himself or herself at the local offices of the cable operator or other convenient place within the city designated by the cable operator, or electronically, such as over a website. Upon a reasonable showing by the customer that such personally identifiable information is inaccurate, a cable operator shall correct such information.
- e. Privacy notice to customers
- i. A cable operator shall annually mail or provide a separate written or electronic copy of the privacy statement to customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a customer a copy of such statement at the time the cable operator enters into an agreement with the customer to provide cable service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general information provided to customers about their account as it appears on either paper or electronic customer communications.
  - ii. In or accompanying the statement required by subsection C.6.e.i, a cable operator shall state substantially the following message regarding the disclosure of customer information: "Unless a customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a cable service or other service, is limited to:
    - (a) Disclosure pursuant to valid legal process authorized by applicable law.
    - (b) Disclosure of the name and address of a customer subscribing to any general programming tiers of service and other categories of cable services provided by the cable operator that do not directly or indirectly disclose:
      - (i) a customer's extent of viewing of a cable service or other service provided by the cable operator;
      - (ii) the extent of any other use by a customer of a cable service;
      - (c) the nature of any transactions made by a customer over the cable system; or
      - (d) the nature of programming or websites that a customer subscribes to or views (i.e., a cable operator may



only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a customer in connection with programming available from their account for cable services.”

The notice shall also inform the customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection C.6.c.i. If a customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection C.6.c.i. or this subsection, such prohibition against disclosure shall remain in effect, unless and until the customer subsequently changes their disclosure preferences as described in subsection C.6.i below.

- f. Privacy reporting requirements. The cable operator shall include in its regular periodic reports to the city required by its franchise agreement information summarizing:
  - i. The type of personally identifiable information that was actually collected or disclosed by cable operator during the reporting period.
  - ii. For each type of personally identifiable information collected or disclosed, a statement from an authorized representative of the cable operator certifying that the personally identifiable information collected or disclosed was: (a) collected or disclosed to the extent necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator; (b) used to the extent necessary to detect unauthorized reception of cable communications; (c) disclosed pursuant to valid legal process authorized by applicable law; or (d) a disclosure of personally identifiable information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.
  - iii. The standard industrial classification codes or comparable identifiers pertaining to any entities to whom such personally identifiable information was disclosed, except that a cable operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law.
  - iv. The general measures that have been taken to prevent the unauthorized access to personally identifiable information by a person other than the customer or the cable operator. A cable operator shall meet with city if requested to discuss technology used to prohibit unauthorized access to personally identifiable information by any means.
- g. Nothing in this subsection C.6. shall be construed to prevent the city from obtaining personally identifiable information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551, and applicable laws.
- h. Destruction of personally identifiable information. A cable operator shall destroy any personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or

orders for access to such information under subsection C.6.d., pursuant to a court order or other valid legal process, or pursuant to applicable law.

- i. Notice and choice for customers. The cable operator shall at all times make available to customers one or more methods for customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection C.6. These methods may include, for example, online website “preference center” features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the customer’s monthly bill for cable service, the privacy notice specified in subsection C.6.e., or such other comparable methods as may be provided by the cable operator. Website “preference center” features shall be easily identifiable and navigable by customers, and shall be in a comparable size font as other billing information provided to customers on a cable operator’s website. A customer who provides the cable operator with permission to disclose personally identifiable information through any of the methods offered by a cable operator shall be provided follow-up notice, no less than annually, of the customer’s right to prohibit these disclosures and the options for the customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the cable operator’s bill (or other direct mail piece) to the customer or a notice or message printed on the cable operator’s bill to the customer, and on the cable operator’s website when a customer logs in to view his or her cable service account options. The form of such notice shall also be provided on an annual basis to the city. These methods of notification to customers may also include other comparable methods as submitted by the cable operator and approved by the city in its reasonable discretion
7. Safety. A cable operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a cable operator receives notice that an unsafe condition exists with respect to its equipment, the cable operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.
8. Cancellation of new services. In the event that a new customer requests installation of cable service and is unsatisfied with their initial cable service, and provided that the customer so notifies the cable operator of their dissatisfaction within thirty days of initial installation, then such customer can request disconnection of cable service within thirty days of initial installation, and the cable operator shall provide a credit to the customer’s account consistent with this section. The customer will be required to return all equipment in good working order. If the equipment is returned in good working order, then the cable operator shall refund the monthly recurring fee for the new customer’s first thirty days of cable service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their cable service, to discretionary cable service such as pay-per-view or movies

purchased and viewed on demand, or to customer moves and/or transfers of cable service. The service credit shall be provided in the next billing cycle.

D. Complaint procedure.

1. Complaints to a cable operator.

- a. A cable operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts, and shall have such procedures printed and disseminated at the cable operator's sole expense, consistent with subsection C.5.a.v. of these standards.
- b. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a cable operator that it has violated any provision of these customer service standards, any terms or conditions of the customer's contract with the cable operator, or reasonable business practices. If a representative of the city notifies the cable operator of a customer complaint that has not previously been made by the customer to the cable operator, the complaint shall be deemed to have been made by the customer as of the date of the city's notice to the cable operator.
- c. At the conclusion of the cable operator's investigation of a customer complaint, but in no more than ten calendar days after receiving the complaint, the cable operator shall notify the customer of the results of its investigation and its proposed action or credit.
- d. A cable operator shall also notify the customer of the customer's right to file a complaint with the city in the event the customer is dissatisfied with the cable operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the city.
- e. A cable operator shall immediately report all customer escalated complaints that it does not find valid to the city.
- f. A cable operator's complaint procedures shall be filed with the city prior to implementation.

2. Complaints to the city.

- a. Any customer who is dissatisfied with any proposed decision of the cable operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the city.
- b. The customer may initiate the review either by calling the city or by filing a written complaint together with the cable operator's written decision, if any, with the city.
- c. The customer shall make such filing and notification within twenty days of receipt of the cable operator's decision or, if no decision has been provided, within thirty days after filing the original complaint with the cable operator.
- d. If the city decides that further evidence is warranted, the city shall require the cable operator and the customer to submit, within ten days of notice thereof, a written statement of the facts and arguments in support of their respective positions.
- e. The cable operator and the customer shall produce any additional evidence, including any reports from the cable operator, which the city may deem necessary to an understanding and determination of the complaint.

- f. The city shall issue a determination within fifteen days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.
  - g. The city may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.
3. Security fund or letter of credit. A cable operator shall comply with any franchise agreement regarding letters of credit. If a franchise agreement is silent on letter of credit the following shall apply:
    - a. Within thirty days of the written notification to a cable operator by the city that an alleged franchise violation exists, a cable operator shall deposit with an escrow agent approved by the city fifty thousand dollars or, in the sole discretion of the city, such lesser amount as the city deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the cable operator's discretion, it may provide to the city an irrevocable letter of credit in the same amount. The escrowed funds or letter of credit shall constitute the "security fund" for ensuring compliance with these standards for the benefit of the city. The escrowed funds or letter of credit shall be maintained by a cable operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these standards, until any claims related to the alleged franchise violation(s) are paid in full.
    - b. The city may require the cable operator to increase the amount of the security fund if it finds that new risk factors exist which necessitate such an increase.
    - c. The security fund shall serve as security for the payment of any penalties, fees, charges, or credits as provided for herein and for the performance by a cable operator of all its obligations under these customer service standards.
    - d. The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding, or exercise of a right with respect to same shall in any way affect or diminish any other right the city may otherwise have.
  4. Verification of compliance. A cable operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the city.
  5. Procedure for remedying violations.
    - a. If the city has reason to believe that a cable operator has failed to comply with any of these standards, or has failed to perform in a timely manner, the city may pursue the procedures in its franchise agreement to address violations of these standards in a like manner as other franchise violations are considered.
    - b. Following the procedures set forth in any franchise agreement governing the manner to address alleged franchise violations, if the city determines in its sole discretion that the noncompliance has been substantiated, in addition to any remedies that may be provided in the franchise agreement, the city may:
      - i. impose assessments of up to one thousand dollars per day, to be withdrawn from the security fund in addition to any franchise fee until the non-compliance is remedied; and/or

- ii. order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these standards; and/or
  - iii. reverse any decision of the cable operator in the matter; and/or
  - iv. grant a specific solution as determined by the city; and/or
  - v. except for in emergency situations, withhold licenses and permits for work by the cable operator or its subcontractors in accordance with applicable law.
- E. Non-waiver. Failure to enforce any provision of these standards shall not operate as a waiver of the obligations or responsibilities of a cable operator under said provision, or any other provision of these standards.

**Section 2.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this \_\_\_\_ day of December, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

**13.16.030 Customer service standards.****A. A. Policy.**

~~1.~~ 1. The cable operator should ~~be permitted the option and autonomy to first~~ resolve citizen complaints without delay and interference from the ~~franchising authority~~.

~~2.~~ 2. ~~city.~~ Where a given complaint is not addressed by the cable operator to the citizen's satisfaction, the ~~franchising authority~~city should intervene. In addition, where a pattern of unremedied complaints or noncompliance with the standards is identified, the ~~franchising authority~~city should prescribe a cure and establish a ~~thirty (30) day~~reasonable deadline for implementation of the cure. If the noncompliance is not cured within ~~thirty (30) days~~established deadlines, monetary sanctions should be imposed to encourage compliance; ~~and deter future non-compliance.~~

~~3.~~ 2. These standards are intended to be of general application ~~and are expected to be met under normal operating conditions~~; however, the cable operator shall be relieved of any obligations hereunder if it is unable to perform due to a region-wide natural emergency or in the event of force majeure affecting a significant portion of the ~~city~~franchise area. The cable operator is free to exceed these standards to the benefit of its customers and such shall be considered performance for the purposes of these standards.

3. These standards supersede ~~any contradictory or inconsistent provision in federal, state, or local law (source: 47 U.S.C. § 552(a)(1) and (d)); provided, however, that any provision in federal, state, or local law, or in any original franchise agreement or renewal agreement, that imposes a higher obligation or requirement than is imposed by these standards, shall not be considered contradictory or inconsistent with these standards. In the event of a conflict between these standards and a franchise agreement, the franchise agreement shall control.~~

4. These standards apply to the provision of any cable service provided by a cable operator over a cable system within the city of Loveland, Colorado.

**B. B. Definitions.** When used in these customer service standards (the "standards"), the following words, phrases, and terms shall have the meanings given below.

1. "Adoption" shall mean the process necessary to formally enact the standards within the ~~franchising authority's~~city's jurisdiction under applicable ordinances and laws.

~~2.~~ 2. "Cable operator" shall ~~mean any person granted a franchise to operate, or operating, a cable television, data transfer, or telecommunications system within any area of jurisdiction of the franchising authority, or such person's employees, agents, contractors, or subcontractors and/or the grantee.~~

"Affiliate" shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a cable operator and provides any cable service or other service.

"Applicable law" shall mean, with respect to these standards and any cable operator's privacy policies, any statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law that determines the legal standing of a case or issue.

"Cable operator" shall mean any person or group of persons who: (a) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (b) otherwise controls or is responsible for,

through any arrangement, the management and operation of such a cable system (source: 47 U.S.C. § 522(5)).

3. “Cable ~~service~~service” shall mean: (a) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. (source: 47 U.S.C. § 522(6)). For purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station (source: 47 U.S.C. § 522(20)). “Other programming service” is information that a cable operator makes available to all subscribers generally (source: 47 U.S.C. § 522(14)).

“Cable system” shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; or (b) a facility that serves subscribers without using any public right-of-way. (source: 47 U.S.C. § 522(7)).

4. “City” shall mean the city of Loveland, Colorado.

“Contractor” shall mean a person or entity that agrees by contract to furnish materials or perform services for another at a specified consideration.

5. “Customer” shall mean any person who receives any cable service ~~of any sort~~ from ~~the~~ cable operator.

6. “Customer service representative” (~~or “CSR”~~) shall mean any person employed ~~by the~~with or under contract or subcontract to a cable operator to assist, or provide service to, customers, whether by ~~answering public~~ telephone lines, writing service or installation orders, answering customers’ questions in person, receiving and processing payments, or performing any other customer service-related tasks.

~~“Franchising authority~~Escalated complaint” shall mean a complaint that is referred to a cable operator by the city.

“Necessary” shall mean required or indispensable.

“Non-cable-related purpose” shall mean any purpose that is not necessary to render or conduct a legitimate business activity related to a cable service or other service provided by a cable operator to a customer. Market research, telemarketing, and ~~or~~ other marketing of services or products that are not related to a cable service or other service provided by a cable operator to a customer shall be considered non-cable-related purposes.

7. “Normal business hours” shall mean those hours during which most similar businesses in the ~~grantor~~community are open to serve customers. In all cases, “normal business hours” must include at least some evening hours one night per week, and include some weekend hours (source: 47 C.F.R. § 76.309).

“Normal operating conditions” shall mean those service conditions which are within the control of a cable operator. Conditions which are not within the control of a cable operator include, but are not necessarily limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of a cable operator include, but are not

necessarily limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade to the cable system.

“Other service(s)” shall mean any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service.

“Personally identifiable information” shall mean specific information about an identified customer, including, but not limited to, a customer’s: (a) login information for the use of cable service and management of a customer’s cable service account; (b) extent of viewing of video programming or other services; (c) shopping choices; (d) interests and opinions; (e) energy uses; (f) medical information; (g) banking data or information; or (h) any other personal or private information. “Personally identifiable information” shall not mean any aggregate information about customers which does not identify particular persons, or information gathered by a cable operator necessary to install, repair, or service equipment or cable system facilities at a customer’s premises.

“Service interruption” or “interruption” shall mean the loss or substantial impairment of picture and/or sound on one or more cable television channels.

“Service outage” or “outage” shall mean a loss or substantial impairment in reception on all channels.

“Subcontractor” shall mean a person or entity that enters into a contract to perform part or all of the obligations of another’s contract.

“Writing” or “written” as the term applies to notification shall include electronic communications.

Any terms not specifically defined in these standards shall be given their ordinary meaning, or where otherwise defined in applicable federal law, such terms shall be interpreted consistent with those definitions.

C. C. Customer Serviceservice.

1. Courtesy. AllCable operator employees—of the cable operator—, contractors, and subcontractors shall be courteous, knowledgeable, and helpful and shall provide effective and satisfactory service in all contacts with customers.

2. Accessibility.

- a. ~~Within sixty (60) days of the effective date of these standards, the A~~ cable operator shall provide, ~~at sites acceptable to the franchising authority,~~ customer service centers/business offices (“service centers”) ~~such that no customer shall be which are conveniently located further than ten (10) miles away from a service center. Except as otherwise approved by the franchising authority, all service and which are open during normal business hours. Service centers shall be open Monday through Friday from 8:00 a.m. to 6:00 p.m., and from 9:00 am to 1:00 p.m. Saturdays, and~~ shall be fully staffed with customer service representatives offering the following services to customers who come to the service center: bill payment, equipment exchange, processing of change of service requests, and response to customer inquiries and requests. ~~The franchising authority may approve alternatives for service centers offering lesser services at any site to which request. Unless otherwise requested by the public has general access. The city,~~ a cable operator shall post a sign at each service center, visible from the outside of the service center, advising customers of its hours of operation and of



the ~~addresses and~~ telephone ~~numbers~~number at which to contact the ~~franchising authority and the~~ cable operator if the service center is not open at the times posted. ~~—~~The cable operator shall use commercially reasonable efforts to implement and promote “self-help” tools and technology in order to respond to the growing demand of customers who wish to interact with the cable operator on the customer’s own terms and timeline and at their own convenience, without having to travel to a service center. Without limitation, examples of self-help tools or technology may include self-installation kits to customers upon request, pre-paid mailers for the return of equipment upon customer request, an automated phone option for customer bill payments, and equipment exchanges at a customer’s residence in the event of damaged equipment. A cable operator shall provide free exchanges of faulty ~~converter~~equipment at the customer’s address and at the service centers if the equipment has not been damaged in any manner due to the fault or negligence of the customer.

- b. ~~The~~A cable operator shall maintain local telephone access lines that shall be available twenty-four ~~(24)~~ hours a day, seven ~~(7)~~ days a week for service/repair requests and billing/service inquiries. Customers shall be provided an option, through the local telephone access lines, to speak to a live customer service representative, able to converse clearly with the customer, in either English or Spanish, at the customer’s option.
  - c. ~~The~~A cable operator shall have dispatchers and technicians on call twenty-four ~~(24)~~ hours a day, seven ~~(7)~~ days a week, including legal holidays.
  - d. ~~The~~If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer’s concern, the recorded message must provide the customer the option to connect to and speak with a customer service representative within sixty seconds of the commencement of the recording. During normal business hours, a cable operator shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to technical service/repair and billing/service inquiry lines are answered by a customer service representative within thirty ~~(30)~~ seconds or less, and from the time a customer chooses a menu option to speak directly with a customer service representative or chooses a menu option that any transfers are made withinpursuant to the automated voice message, leads to a direct connection with a customer service representative. Under normal operating conditions, this thirty ~~(30)~~ seconds. ~~These standards~~second telephone answer time requirement standard shall be met no less than ninety ~~(90)~~ percent of the time measured ~~monthly~~quarterly.
  - e. ~~The total number of calls receiving busy signals~~Under normal operating conditions, a customer shall not exceedreceive a busy signal more than three ~~(3)~~percent of the ~~total telephone calls time~~. This standard shall be met ninety ~~(90)~~ percent or more of the time, measured ~~monthly~~quarterly.
3. 3. Responsiveness.
- a. a. ~~Guaranteed Seven-Day Residential Installation~~seven day residential installation.

- i. ~~Thei.~~ A cable operator shall complete all standard residential installations or modifications to service requested by customers within seven ~~(7)~~ business days after the order is placed, unless a later date for installation is requested. ~~–“Standard” residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the cable operator determines that a nonstandard residential installation is required, the cable operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion. For all standard residential installations not completed within the seven (7) business days or by the requested later date, the cable operator shall provide the customer free installation or a credit of one (1) month basic service on the first month’s bill, if the installation fee has been waived for promotional reasons.~~
- ii. All underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches (12”). Weather, or such other depth as may be required by the franchise agreement or local code provisions, or if there are no applicable franchise or code requirements, at such other depths as may be agreed to by the parties if other construction concerns preclude the twelve inch requirement, and ground conditions permitting, all underground cable drops shall be buried within no more than one calendar week from the initial installation, or at a time mutually agreed upon between the cable operator and the customer.

~~b.~~ b. Residential Installation and Service Appointments.

~~Customers requesting installation of cable and service or appointments.~~

- i. The “appointment window” alternatives for specific installations, service to an existing calls, and/or other installation activities will be either a specific time, or at a maximum, a four hour time block between the hours of 8:00 a.m. and 6:00 p.m., six days per week. A cable operator may choose any of the following blocks of time for the schedule service calls and other installation appointment: 8:00 a.m. to 12:00 noon; 12:00 noon to 4:00 p.m.; 4:00 p.m. to 8:00 p.m.; or a four hour block activities outside of the above days and hours for the express convenience of customers. For purposes of time mutually agreed upon by the customer and this subsection “appointment window” means the period of time in which the representative of the cable operator. The cable operator shall schedule such installation appointments Monday-Friday and may schedule such appointments on Saturday and Sunday. They must arrive at the customer’s location.
- i.ii. A cable operator may not cancel an appointment with a customer after 5:00 p.m. the close of business on the business day before prior to the scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call unless the customer’s issue has otherwise been resolved.
- ii. ~~The cable operator shall contact by telephone, mail, or in person, every customer within two weeks after installation to assure the customer’s satisfaction with the work completed. All responses shall be recorded, and~~

~~retained by the cable operator, and made easily available to the franchising authority upon request.~~

~~iii. The~~iii. If a cable operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the cable operator shall take reasonable efforts to contact the customer promptly, but in no event later than the end of the appointment window. The appointment will be rescheduled, as necessary at a time that is convenient to the customer, within normal business hours or as may be otherwise agreed to between the customer and cable operator.

~~iii.~~iv. A cable operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time, and a copy of that notification is kept by the cable operator. ~~In such circumstances, the cable operator shall re-contact the customer within forty-eight (48) hours.~~

~~iv. If the cable operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, or fails to arrive within the agreed upon time, the customer shall be contacted. The appointment shall be rescheduled, as necessary, to a time which is convenient for the customer within the time periods as stated in (C)(3)(b)(1). The cable operator shall provide the customer a five dollar (\$5.00) credit on the first month's bill in order to assist in compensating the customer for the inconvenience the rescheduling may have caused.~~

e. c. Residential Service Interruptions~~service interruptions.~~

~~i. i.~~ i. In the event of system outages (loss of reception on all channels) resulting from cable operator equipment failure affecting five or more customers, the cable operator shall respond to correct such failure within two hours after the 3rd~~third~~ customer call is received in order to correct the problem.

~~ii. ii.~~ ii. All other service interruptions resulting from cable operator equipment failure shall be corrected by the cable operator by the end of the next calendar day.

~~The~~iii. Records of complaints.

(a) A cable operator shall keep an accurate and comprehensive file of any ~~and all~~ complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the cable operator's actions in response to those complaints. ~~These files shall remain open to the franchising authority and the public available for viewing by the city during normal business hours. Grantee at the cable operator's business office, and shall be retained by the cable operator for a period of at least three years.~~

(b) Upon written request a cable operator shall provide grantor~~the city~~ an executive summary monthly~~quarterly~~, which shall include information concerning customer complaints. A referred by the city to the cable operator and any other requirements of a franchise agreement, but no

personally identifiable information. These summaries shall be provided within fifteen days after the end of each quarter. Once a request is made, it need not be repeated, and quarterly executive summaries shall be provided by the cable operator until notified in writing by the city that such summaries are no longer required.

~~iii.~~ (c) Upon written request a summary of service requests, identifying the number and nature of the requests and their disposition, shall also be completed by the cable operator for each ~~month~~quarter and submitted to the ~~franchising authority city~~ by the ~~tenth (10th)~~fifteenth day of the ~~succeeding month~~. A log ~~month~~ after each calendar quarter. Once a request is made, it need not be repeated, and quarterly summary of ~~all~~service ~~interruptions~~requests shall be ~~maintained and provided to the franchising authority quarterly~~. ~~All~~by the cable operator until notified in writing by the city that such summaries are no longer required. Complaints shall be ~~submitted to the franchising authority's city clerk's office~~broken out by the nature of the complaint and the type of cable service subject to the complaint.

iv. Records of service interruptions and outages. A cable operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of cable service interrupted, including the reasons for the interruptions. A log of all service interruptions shall be maintained and provided to the city quarterly, upon written request, within fifteen days after the end of each quarter. Such records shall be submitted to the city with the records identified in subsection C.3.c.3.b. above if so requested in writing, and shall be retained by the cable operator for a period of three years.

~~iv.~~ v. All service outages and interruptions for any cause beyond the control of the cable operator shall be corrected within thirty-six ~~(36)~~hours, after the conditions beyond its control have been corrected.

~~d. TV Reception.~~

~~The~~d. Television reception.

~~i.~~ i. A cable operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission ~~(the~~“(FCC”)). ~~The~~A cable operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and ~~six a.m.~~(6:00 a.m.).

ii. If a customer experiences poor video or audio reception attributable to ~~the~~ cable operator's equipment, the cable operator shall ~~repair~~:

(a) assess the problem ~~no later than the~~ within one day following of notification;

(b) communicate with the customer ~~each~~ regarding the nature of the problem and the expected time for repair; and

- (c) complete the repair within two days of assessing the problem unless circumstances exist that reasonably require additional time.
- ~~ii.iii.~~ If an appointment is necessary, to address any video or audio reception problem, the customer may choose the same blocksa block of time described in (subsection C)(3)(b)(1). At the customer's request, the cable operator shall repair the problem at a later time convenient to the customer, during normal business hours or at such other time as may be agreed to by the customer and cable operator. A cable operator shall maintain periodic communications with a customer during the time period in which problem ascertainment and repair are ongoing so that the customer is advised of the status of the cable operator's efforts to address the problem.
- e. Problem Resolution.—Theresolution. A cable operator's customer service representatives shall have the authority to provide credit for interrupted service, ~~to~~ waive fees, ~~to~~ schedule service appointments, and ~~to~~ change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor, who shall contact the customer within four ~~(4)~~ hours, and resolve the problem within forty ~~eight (48)~~ hours or within such other time frame as is acceptable to the customer and the cable operator.
- f. Billing, Creditscredits, and Refundsrefunds.
- ~~i.~~ TheIn addition to other options for payment of a customer's service bill, a cable operator shall use the anniversary billedmake available a telephone payment option where a customer without account irregularities can enter payment information through an automated system or similar system of billing. The, without the necessity of speaking to a customer service representative.
- ~~ii.iii.~~ A cable operator shall allow at least thirty ~~(30)~~ days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the cable operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the cable operator in attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five ~~(45)~~ days of the beginning date of the applicable service period, the cable operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two ~~(52)~~ days of the beginning date of the applicable service period, the cable operator may disconnect the customer's service, only ifprovided it has provided two ~~(2)~~ weeksweeks' notice to the customer that such disconnection may result.
- ~~ii.iii.~~ The cable operator shall issue a credit or refund to a customer within thirty ~~(30)~~ days after determining the customer's entitlement to a credit or refund.
- ~~g.~~ Treatment of Property.
- ~~iv.~~ TheWhenever the cable operator offers any promotional or specially-priced service(s), its promotional materials shall clearly identify and explain the

- specific terms of the promotion, including, but not limited to, the manner in which any payment credit will be applied.
- g. Treatment of property. To the extent that a franchise agreement does not contain the following procedures for treatment of property, a cable operator shall comply with the procedures set forth in this section.
- i. A cable operator shall keep tree trimming to a minimum; ~~trees.~~ Trees and shrubs or other landscaping that are damaged by ~~the~~ cable operator, or any employee or agent of ~~the~~ cable operator, during installation or construction shall be restored to their prior condition or replaced— within seven days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven days after conditions permit. Trees and shrubs on private property shall not be removed without the prior permission of the owner or legal tenant of the property on which they are located. ~~—This provision shall be in addition to, and shall not supersede, any requirement in any franchise agreement.~~
  - ii. A cable operator shall, at its own cost and expense, and in a manner approved by the property owner and the city, restore any private property to as good condition as before the work causing such disturbance was initiated. A cable operator shall repair, replace, or compensate a property owner for any damage resulting from the cable operator’s installation, construction, service, or repair activities. If compensation is requested by the customer for damage caused by any cable operator activity, the cable operator shall reimburse the property owner one hundred percent of the actual cost of the damage.
  - iii. Except in the case of an emergency involving public safety or service interruption to ~~more than twenty five (25) subscribers, the~~ a large number of customers, a cable operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided, however, that in the case of construction operations, such notice shall be delivered or provided at least twenty-four ~~(24)~~ hours prior to entry—, unless such notice is waived by the customer. For ~~the~~ purposes of this subsection, “reasonable notice” shall be considered:
 
    - (a) for pedestal installation ~~of pedestals or othersimilar~~ major construction, seven days.
    - (b) for routine maintenance, such as adding or ~~installation projects, dropping~~ service, tree trimming, and the like, reasonable notice given the circumstances. Unless a franchise agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owners shall also be notified by mail at least one week in advance. ~~In the case of an owner or tenant before entry is made onto that person’s property.~~
    - (c) for emergency, ~~the work~~ a cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Door hangars must describe the issue and provide contact information where the property



owner or tenant can receive more information about the emergency work.  
~~The cable~~Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

~~ii.~~iv. Cable operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

~~4.~~ 4. Services for Customers~~customers~~ with Disabilities~~disabilities~~.

~~a.~~ a. For any customer with a disability, the cable operator shall ~~at no charge~~ deliver and pick up ~~converters at customers' homes.~~equipment at the customer's home at no charge unless the malfunction was caused by the actions of the customer. In the case of ~~a~~-malfunctioning ~~converter~~equipment, the technician shall provide ~~another converter~~replacement equipment, hook it up, and ensure that it is working properly, and shall return the defective ~~converter~~equipment to the cable operator.

~~b.~~ Theb. A cable operator shall provide either TTY, TDD, TYY, VRS service, or other similar service that is in compliance with the Americans With Disabilities Act and other applicable law, with trained operators who can provide every type of assistance rendered by the cable operator's customer service representatives for any hearing-impaired customer at no charge.

~~c.~~ Thec. A cable operator shall provide free use of a remote control unit to mobility-impaired customers—(if disabled, in accordance with (subsection C)(4)(d).) customers.

~~d.~~ d. Any customer with a disability may request the special services described above by providing the cable operator with a letter from the customer's physician stating the need, or by making the request to the cable operator's installer or service technician; where the need for the special services can be visually confirmed.

~~5. Customer Information:~~

~~Upon installation, and at~~5. Cable services information.

~~a.~~ a. At any time the customer or prospective customer may request, ~~the~~ cable operator shall provide the following information, in clear, concise, written form; easily accessible and located on the cable operator's website (and in Spanish, when requested by the customer):

~~i.~~ i. Products products and services offered by the cable operator, including its channel lineup;

~~ii.~~ ii. the cable operator's complete range of service options and the prices for these services;

~~iii.~~ iii. These standards, and any other applicable customer service standards;

~~iv.~~ iv. Instruction on the use of cable TV service and on standard VCR hookups;

~~v.~~ v. The cable operator's billing, collection, and disconnection policies;

~~vi.~~ vi. Customer iv. privacy requirementsrights of customers;

~~vii.~~ vii. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the cable operator; ~~the FCC, and the franchising authority to whom the complaints should be addressed~~ and the FCC;

- ~~viii. Use and availability of A/B switches;~~
  - ~~ix. Use~~vi. use and availability of parental control/lock out device;
  - ~~x. Special~~vii. special services for customers with disabilities; and
  - ~~xi. Days,~~viii. the days and times of operation, and locations of the service centers.;
- b. At a customer's request, a cable operator shall make available either a complete copy of these standards and any other applicable customer service standards, or a summary of these standards, in a format to be approved by the city, which shall include, at a minimum, the URL address of a website containing these standards in their entirety; provided however, that if the city does not maintain a website with a complete copy of these standards, a cable operator shall be under no obligation to do so. If acceptable to a customer, a cable operator may fulfill customer requests for any of the information listed in this section by making the requested information available electronically, such as on a website or by electronic mail.
- c. Upon written request, a cable operator shall meet annually with the city to review the format of the cable operator's bills to customers. Whenever the cable operator makes substantial changes to its billing format, it will contact the city at least thirty days prior to the time such changes are to be effective in order to inform the city of such changes.
- ~~b.~~ d. Copies of all notices provided to the customer in accordance with subsection C.5.e. shall be filed (by fax or email acceptable) concurrently with the franchising authoritycity.
- ~~e.~~ Thee. A cable operator shall provide customers with written notification of any change in rates, for nondiscretionary cable services, and for service tier changes that result in a deletion of programming, or channel positions from a customer's service tier, at least thirty (30) days before the effective date of change. For purposes of this section, "nondiscretionary" means the subscribed tier and any other cable services that a customer has subscribed to at the time the change in rates are announced by the cable operator.
- ~~d.~~ f. All officers, agents, and employees of the cable operator or its contractors or subcontractors who are in personal contact with cable customers, and/or when working on public property, shall wear on their outer clothing identification cards bearing their name and photograph as approved byand identifying them as representatives of the franchising authoritycable operator. The cable operator shall account for all identification cards at all times. Every vehicle of the cable operator shall be clearly visually identified to the public as working for the cable operator. All customer service representatives shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. Whenever a cable operator work crew is in personal contact with customers or public employees, a supervisor must be able to communicate clearly with the customer or public employee. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor and further identified as contracting or subcontracting for the cable operator.



- e. ~~CSRg.~~ Each customer service representative, technician, or employee of the cable operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.
- 6. 6. Customer Privacyprivacy.
  - ~~Thea.~~ Cable customer privacy. In addition to complying with the requirements in this subsection, a cable operator shall fully comply with all obligations under 47 U.S.C. Section 551.
  - b. Collection and use of personally identifiable information.
    - i. A cable operator shall not use the cable system to collect, monitor—cable television signals to determine the individual viewing patterns, or practices of any customer—observe personally identifiable information without the prior affirmative written or electronic consent from thatof the customer, except unless, and only to the extent, that such information is: (a) used to detect unauthorized reception of cable communications; or (b) necessary to render a cable service or other service provided by the cable operator to the customer and as otherwise authorized by applicable law.
    - ~~a-~~ ii. A cable operator shall take such actions as are necessary using then-current industry standard practices to prevent any affiliate from using the facilities of the cable operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an affiliate unauthorized access to personally identifiable information on equipment of a customer (regardless of whether such equipment is owned or leased by the customer or provided by a cable operator) or on any of the facilities of the cable operator that are used in the provision of cable service. This subsection shall not be interpreted to prohibit an affiliate from obtaining access to personally identifiable information to the extent otherwise permitted by the applicable franchise this subsection.

~~The cable operator shall not sell or otherwise make available customer lists or other personally identifiable customer-iii.~~ A cable operator shall take such actions as are necessary using then-current industry standard practices to prevent a person or entity (other than an Affiliate) from using the facilities of the cable operator in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to personally identifiable information on equipment of a customer (regardless of whether such equipment is owned or leased by the customer or provided by a cable operator) or on any of the facilities of the cable operator that are used in the provision of cable service.
  - c. Disclosure of personally identifiable information. A cable operator shall not disclose personally identifiable information without the prior affirmative written customer or electronic consent, except as of the customer, unless otherwise

~~permitted by the franchise or by law. The cable operator is permitted to disclose such information if such authorized by applicable law.~~

- ~~i. A minimum of thirty days prior to making any disclosure of personally identifiable information of any customer for any non-cable-related purpose as provided in this subsection, where such customer has not previously been provided the notice and choice provided for in subsection C.6.i, the cable operator shall notify each customer (that the cable operator intends to disclose information about) of the customer's right to prohibit the disclosure of such information for non-cable-related purposes. The notice to customers may reference the customer to his or her options to state a preference for disclosure or non-disclosure of certain information, as provided in subsection C.6.i.~~
- ~~b. ii. A cable operator may disclose personally identifiable information only to the extent that it is necessary to render, or conduct, a legitimate business activity related to, a cable service or other service provided by the cable operator to its customers the customer.~~
- ~~iii. To the extent authorized by applicable law, a cable operator may disclose personally identifiable information pursuant to a subpoena, court order, warrant, or other valid legal process authorizing such disclosure.~~
- d. Access to information. Any personally identifiable information collected and maintained by a cable operator shall be made available for customer examination within thirty days of receiving a request by a customer to examine such information about himself or herself at the local offices of the cable operator or other convenient place within the city designated by the cable operator, or electronically, such as over a website. Upon a reasonable showing by the customer that such personally identifiable information is inaccurate, a cable operator shall correct such information.
- e. Privacy notice to customers
  - i. A cable operator shall annually mail or provide a separate written or electronic copy of the privacy statement to customers consistent with 47 U.S.C. Section 551(a)(1), and shall provide a customer a copy of such statement at the time the cable operator enters into an agreement with the customer to provide cable service. The written notice shall be in a clear and conspicuous format, which at a minimum, shall be in a comparable font size to other general information provided to customers about their account as it appears on either paper or electronic customer communications.
  - ii. In or accompanying the statement required by subsection C.6.e.i, a cable operator shall state substantially the following message regarding the disclosure of customer information: "Unless a customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a cable service or other service, is limited to:
    - (a) Disclosure pursuant to valid legal process authorized by applicable law.
    - (b) Disclosure of the name and address of a customer subscribing to any general programming tiers of service and other categories of cable services

provided by the cable operator that do not directly or indirectly disclose: (i) a customer's extent of viewing of a cable service or other service provided by the cable operator; (ii) the extent of any other use by a customer of a cable service; (b) the nature of any transactions made by a customer over the cable system; or (d) the nature of programming or websites that a customer subscribes to or views (i.e., a cable operator may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming), provided that with respect to the nature of websites subscribed to or viewed, these are limited to websites accessed by a customer in connection with programming available from their account for cable services." The notice shall also inform the customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection C.6.c.i. If a customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection C.6.c.i. or this subsection, such prohibition against disclosure shall remain in effect, unless and until the customer subsequently changes their disclosure preferences as described in subsection C.6.i below.

- f. Privacy reporting requirements. The cable operator shall include in its regular periodic reports to the city required by its franchise agreement information summarizing:
- i. The type of personally identifiable information that was actually collected or disclosed by cable operator during the reporting period.
  - ii. For each type of personally identifiable information collected or disclosed, a statement from an authorized representative of the cable operator certifying that the personally identifiable information collected or disclosed was: (a) collected or disclosed to the extent necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator; (b) used to the extent necessary to detect unauthorized reception of cable communications; (c) disclosed pursuant to valid legal process authorized by applicable law; or (d) a disclosure of personally identifiable information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically, or as otherwise authorized by applicable law.
  - iii. The standard industrial classification codes or comparable identifiers pertaining to any entities to whom such personally identifiable information was disclosed, except that a cable operator need not provide the name of any court or governmental entity to which such disclosure was made pursuant to valid legal process authorized by applicable law.
  - iv. The general measures that have been taken to prevent the unauthorized access to personally identifiable information by a person other than the customer or the cable operator. A cable operator shall meet with city if requested to discuss technology used to prohibit unauthorized access to personally identifiable information by any means.

- g. Nothing in this subsection C.6. shall be construed to prevent the city from obtaining personally identifiable information to the extent not prohibited by Section 631 of the Communications Act, 47 U.S.C. Section 551, and applicable laws.
  - h. Destruction of personally identifiable information. A cable operator shall destroy any personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection C.6.d., pursuant to a court order or other valid legal process, or pursuant to applicable law.
  - i. Notice and choice for customers. The cable operator shall at all times make available to customers one or more methods for customers to use to prohibit or limit disclosures, or permit or release disclosures, as provided for in this subsection C.6. These methods may include, for example, online website “preference center” features, automated toll-free telephone systems, live toll-free telephone interactions with customer service agents, in-person interactions with customer service personnel, regular mail methods such as a postage paid, self-addressed post card, an insert included with the customer’s monthly bill for cable service, the privacy notice specified in subsection C.6.e., or such other comparable methods as may be provided by the cable operator. Website “preference center” features shall be easily identifiable and navigable by customers, and shall be in a comparable size font as other billing information provided to customers on a cable operator’s website. A customer who provides the cable operator with permission to disclose personally identifiable information through any of the methods offered by a cable operator shall be provided follow-up notice, no less than annually, of the customer’s right to prohibit these disclosures and the options for the customer to express his or her preference regarding disclosures. Such notice shall, at a minimum, be provided by an insert in the cable operator’s bill (or other direct mail piece) to the customer or a notice or message printed on the cable operator’s bill to the customer, and on the cable operator’s website when a customer logs in to view his or her cable service account options. The form of such notice shall also be provided on an annual basis to the city. These methods of notification to customers may also include other comparable methods as submitted by the cable operator and approved by the city in its reasonable discretion
7. 7. Safety. ~~The~~A cable operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever ~~the~~a cable operator receives notice that an unsafe condition exists with respect to its equipment, the cable operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.
8. ~~Satisfaction Guaranteed. The cable operator shall guarantee customer satisfaction for every customer who requests new installation of cable service or adds any additional programming service to the customer’s cable subscription. Any such customer who requests disconnection of such service within thirty (30) days from its date of~~

- ~~activation shall receive a credit to his/her account in the amount of one month's subscription charge for the service that has been disconnected.~~
8. Cancellation of new services. In the event that a new customer requests installation of cable service and is unsatisfied with their initial cable service, and provided that the customer so notifies the cable operator of their dissatisfaction within thirty days of initial installation, then such customer can request disconnection of cable service within thirty days of initial installation, and the cable operator shall provide a credit to the customer's account consistent with this section. The customer will be required to return all equipment in good working order. If the equipment is returned in good working order, then the cable operator shall refund the monthly recurring fee for the new customer's first thirty days of cable service and any charges paid for installation. This provision does not apply to existing customers who request upgrades to their cable service, to discretionary cable service such as pay-per-view or movies purchased and viewed on demand, or to customer moves and/or transfers of cable service. The service credit shall be provided in the next billing cycle.
- ~~D. D. Complaint Procedure~~
1. 1. Complaints to Cable Operator a cable operator.
- a. ~~Thea. A~~ A cable operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts ~~without interventions by the franchising authority,~~ and shall ~~publicize~~have such procedures ~~through printed documents and disseminated~~ at the cable operator's sole expense, consistent with subsection C.5.a.v. of these standards.
- b. b. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to ~~thea~~ cable operator that it has violated any provision of these customer service standards, any terms or conditions of the customer's contract with the cable operator, or reasonable business practices. If a representative of the city notifies the cable operator of a customer complaint that has not previously been made by the customer to the cable operator, the complaint shall be deemed to have been made by the customer as of the date of the city's notice to the cable operator.
- e. c. At the conclusion of the cable operator's investigation of a customer complaint, but in no more than ~~fifteen (15)~~ten calendar days after receiving the complaint, the cable operator shall notify ~~in writing~~ the customer of the results of its investigation and its proposed action or credit.
- d. ~~The d.~~ A cable operator shall also notify the customer of the customer's right to file a complaint with the ~~franchising authority~~city in the event the customer is dissatisfied with the cable operator's decision, and shall thoroughly explain the necessary procedures for filing such complaint with the ~~franchising authority~~city.
- e. ~~Thee.~~ A cable operator shall immediately report all customer escalated complaints that it does not find valid to the ~~franchising authority~~city.
- f. ~~The f.~~ A cable operator's complaint procedures shall be filed with ~~and approved by the franchising authority~~the city prior to implementation.
2. 2. Complaints to the Franchising Authority city.
- a. ~~After a complaint has been submitted to the cable operator, any.~~ Any customer who is dissatisfied with any proposed decision of the cable operator or who has

not received a decision within the ~~fifteen (15) daytime~~ period ~~as required set forth below~~ shall be entitled to have the complaint reviewed by the ~~franchising authority~~city.

- ~~b. b. \_\_\_\_\_~~ The customer may initiate the review either by calling the ~~franchising authority's city manager's office~~city or by filing a written complaint together with the cable operator's written decision, if any, with the ~~franchising authority's city manager's office~~city.
  - ~~e. c. \_\_\_\_\_~~ The customer shall make such filing and notification within twenty ~~(20)~~ days of receipt of the cable operator's decision or, if no decision has been provided, within thirty ~~(30)~~ days after filing the original complaint with the cable operator.
  - ~~d. d. \_\_\_\_\_~~ If the ~~franchising authority's city manager's office or its delegate~~ decides that further evidence is warranted, the ~~franchising authority's city manager's office or its delegate~~city shall require the cable operator and the customer to submit, within ten ~~(10)~~ days of notice thereof, a written statement of the facts and arguments in support of their respective positions.
  - ~~e. e. \_\_\_\_\_~~ The cable operator and the customer shall produce any additional evidence, including any reports from the cable operator, which the ~~franchising authority's city manager's office or its delegate~~city may deem necessary to an understanding and determination of the complaint.
  - ~~f. f. \_\_\_\_\_~~ The ~~franchising authority's city manager's office or its delegate~~ shall issue a determination within fifteen ~~(15) days~~days of receiving the customer complaint, or after examining the materials submitted, setting forth, ~~in writing,~~ its basis for the determination.
  - ~~g. The franchising authority's city manager's office or its delegate. The city~~ may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.
  - ~~h. If the franchising authority's city manager's office or its delegate determines that the customer's complaint is valid and that the cable operator did not provide the complaining customer with the proper solution and/or credit, the franchising authority's city manager's office or its delegate may reverse any decision of the cable operator in the matter and/or require the cable operator to grant a specific solution as determined by the franchising authority's city manager's office or its delegate in its sole discretion, and/or any credit provided for in these standards.~~
  - ~~i. The cable operator and/or the customer may appeal the franchising authority's determination pursuant to Rule 106.~~
3. Security fund or letter of credit. A cable operator shall comply with any franchise agreement regarding letters of credit. If a franchise agreement is silent on letter of credit the following shall apply:
- a. Within thirty days of the written notification to a cable operator by the city that an alleged franchise violation exists, a cable operator shall deposit with an escrow agent approved by the city fifty thousand dollars or, in the sole discretion of the city, such lesser amount as the city deems reasonable to protect subscribers within its jurisdiction. Alternatively, at the cable operator's discretion, it may provide to the city an irrevocable letter of credit in the same amount. The escrowed funds or

- letter of credit shall constitute the “security fund” for ensuring compliance with these standards for the benefit of the city. The escrowed funds or letter of credit shall be maintained by a cable operator at the amount initially required, even if amounts are withdrawn pursuant to any provision of these standards, until any claims related to the alleged franchise violation(s) are paid in full.
- b. The city may require the cable operator to increase the amount of the security fund if it finds that new risk factors exist which necessitate such an increase.
  - c. The security fund shall serve as security for the payment of any penalties, fees, charges, or credits as provided for herein and for the performance by a cable operator of all its obligations under these customer service standards.
  - d. The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding, or exercise of a right with respect to same shall in any way affect or diminish any other right the city may otherwise have.
- ~~3. 4. Verification of Compliance. The compliance. A cable operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the franchising authority city.~~
- ~~4. Overall Quality of Service. The franchising authority may evaluate the overall quality of customer service provided by the cable operator to customers:~~
- ~~a. In conjunction with any performance review provided for in the franchise agreement; and~~
  - ~~b. At any other time, at its sole discretion, based on the number of customer complaints received by the cable operator and the franchising authority, and the cable operator’s response to those complaints.~~
- ~~5. Non-Compliance with Customer Service Standards. Non-compliance with any provision of these standards is a violation of these standards.~~
- ~~6. 5. Procedure for Remedying Violations:remedying violations.~~
- ~~a. a. If the franchising authority city has reason to believe that thea cable operator has failed to comply with any of these standards, or has failed to perform in a timely manner, the franchising authority may demand in writing that the cable operator remedy the alleged noncompliance. If the alleged noncompliance is denied or not remedied to the satisfaction of the franchising authority, the franchising authority may opt to follow the following procedurecity may pursue the procedures in its franchise agreement to address violations of these standards in a like manner as other franchise violations are considered.~~
  - ~~b. An informal meeting may be held to reviewb. Following the alleged noncompliance. If this meeting does not resultprocedures set forth in a resolution satisfactory to the franchising authority, the cable operator may request or the franchising authority may require an administrative hearing to determine if the noncompliance occurred. The cable operator shall be provided with ten (10) days written notice of the time and the place of the hearing, the allegations of noncompliance and the possible consequences of the noncompliance if substantiated.~~



- ~~e. After the administrative hearing, the franchising authority shall determine whether the noncompliance has been substantiated. If the noncompliance is substantiated, the franchising authority may order the cable operator to correct or remedy the noncompliance within thirty (30) days (except where the noncompliance constitutes a material safety hazard) and in any franchise agreement governing the manner and on the terms and conditions that the franchising authority establishes, or, in its sole discretion, the franchising authority may find a material violation of these standards.~~
- ~~d. If the franchising authority to address alleged franchise violations, if the city determines in its sole discretion that the noncompliance has been substantiated, the franchising authority in addition to any remedies that may be provided in the franchise agreement, the city may:~~
- ~~i. Impose~~i. impose assessments of up to one thousand dollars ~~(\$1,000.00)~~ per day, to be withdrawn from the security fund in addition to any franchise fee until the non-compliance is remedied; and/or
  - ~~ii. Order, after further hearing,~~ii. order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these standards; and/or
  - ~~iii. In its sole discretion, declare a violation of the franchise agreement, and in such case, the noncompliance shall be a violation of the franchise agreement for the purposes of the franchise agreement, triggering all available obligations and remedies under the franchise agreement; and/or~~  
~~Withhold~~iii. reverse any decision of the cable operator in the matter; and/or
  - ~~iv. grant a specific solution as determined by the city; and/or~~
  - ~~iv. v. except for in emergency situations, withhold~~ licenses and permits for work by the cable operator or its subcontractors in accordance with applicable law; and/or.
  - ~~v. Pursue~~E. Non-waiver. Failure to enforce any ~~other legal or equitable remedy available under any applicable franchise agreement or law.~~

~~Any assessment or remedy provision of these standards shall not constitute~~operate as a waiver ~~by of~~ the franchising authority of any other right or remedy it may have under any applicable franchise agreement or law including any right to recover from the ~~obligations or responsibilities of a cable operator any additional damages, losses, costs, and expenses, including actual attorney's fees that are incurred by the franchising authority by reason of, or arise out of noncompliance with these standards.~~ under said provision, or any other provision of these standards.





**CITY OF LOVELAND**  
**ECONOMIC DEVELOPMENT OFFICE**  
 Civic Center • 500 East Third • Loveland, Colorado 80537  
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 10  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Economic Development Department  
**PRESENTER:** Mike Scholl, Economic Development Manager

**TITLE:**

A Resolution Approving an Incentive Agreement for Ties4Less, LLC

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. The resolution would authorize the City Manager to sign the Economic Incentive Agreement with Ties4Less for an amount, not to exceed, \$14,500. The incentive would be a reimbursement for upgrades to the building infrastructure including the security systems. It will also provide partial reimbursement for certain tenant improvements that will allow the company to competitively bid on new contracts for fleet vehicle retrofits.

According to the Economic Development Policy for agreements under \$20,000, this agreement is presented to Council for consideration. The briefing memorandum that was sent to Council in October is included as an attachment.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The City will fund \$14,500 from the Economic Incentive Fund.

**BACKGROUND:**

Ties4Less wholesales and retails wiring, fuses and other electronic parts and components for police and fire vehicles, recreational vehicles, boats and other fleet vehicles. In addition, the company does custom retrofits for individuals and municipalities. In fact, the company has contracts with a supply to Hertz Rent-a-Car for GPS kits and with the Weld County Sheriff's Department. The company also wholesales electronic components to Super Vac for the assembly of fire vehicles.

The incentive request for the system upgrades and tenant improvement will greatly aid the company in bidding for contracts with police and fire departments and other municipalities. The company needs the assistance for building improvements so that they can comfortably invite potential clients to the facility. They have been growing so rapidly (25 percent growth year to date over 2012) that working capital is an issue and they need additional resources to complete the tenant improvements. Staff has visited the facility and reviewed the financial statements.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Resolution and Exhibit A (Agreement)
2. Staff Memorandum with Economic Impact Analysis
3. Request Letter
4. Project Checklist

**RESOLUTION #R-101-2013****A RESOLUTION APPROVING AN INCENTIVE AGREEMENT FOR  
TIES FOR LESS, INC.**

**WHEREAS**, Ties4Less, Inc., a Colorado corporation (“**Ties4Less**”) wholesales and retails electronic components, wiring and fuses for use in municipal fleet vehicles, police and fire vehicles, recreational vehicles, boats and other automobiles from its location in Loveland; and

**WHEREAS**, Ties4Less does custom installations of emergency lighting, electronics, computers and other components for police and fire vehicles, municipal fleet vehicles, recreational vehicles, boats and other automobiles from its location in Loveland; and

**WHEREAS**, Ties4Less has recently relocated to a larger facility at 205 SW 12<sup>th</sup> Street to accommodate the growth of the business and is in the process of renovating and improving the building (the “**Premises**”) for the purposes of expanding its wholesale and retail operation and its custom installation business; and

**WHEREAS**, Ties4Less currently has contracts with the Weld County Sheriff’s Department for custom installations of its police vehicles, Enterprise Rent A Car for vehicle GPS kits, and with Super Vac of Fort Collins to wholesale electronic components for assembly of fire vehicles; and

**WHEREAS**, Ties4Less will be adding one (1) employee to the Premises and will be better able to compete for contracts with police, fire and other municipal departments in the Front Range for custom installation contracts; and

**WHEREAS**, Ties4Less is investing a total of Sixty Thousand Dollars (\$60,000) in tenant improvements and has signed a five year lease; and

**WHEREAS**, Ties4Less has requested from the City certain economic incentives to help defray some of its costs to modify the Premises to house its wholesale and retail business and production facilities, specifically Fourteen Thousand Five Hundred Dollars (\$14,500) to be used to improve the electrical and security infrastructure and for certain tenant improvements that will assist with obtaining contracts for custom installations; and

**WHEREAS**, provision of an incentive such as the incentive requested by Ties4Less is authorized under City Code Section 3.04.090 for all public purposes to the full extent authorized by the Colorado Constitution, which includes the public purposes of producing significant economic, cultural and social benefits to the citizens of Loveland; and

**WHEREAS**, the City Council believes that the expansion and relocation of Ties4Less to and the improvement of the Premises will serve the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased tax revenues and, therefore, the monetary incentives granted in this Agreement are in the best interests of the public and the City.

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

**Section 1.** That the City Council hereby finds that providing assistance to Ties4Less in the form of an incentive payment to defray some of the costs to renovate and modify the Premises for its expansion and use will provide significant social, cultural and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased property tax revenues to the City.

**Section 2.** That the Ties4Less, Inc. Economic Incentive Agreement attached hereto as “**Exhibit A**” and incorporated by reference (the “**Agreement**”) is hereby approved.

**Section 3.** That the City Manager is authorized, following consultation with the City Attorney, to modify the Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 4.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Loveland.

**Section 5.** That this Resolution shall be effective as of the date of its adoption.

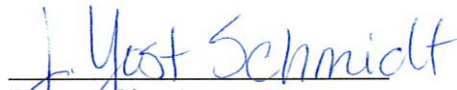
ADOPTED this 19<sup>th</sup> day of November, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney

## **EXHIBIT A**

### **TIES4LLESS, LLC ECONOMIC INCENTIVE AGREEMENT**

**THIS TIES4LLESS, INC. ECONOMIC INCENTIVE AGREEMENT (“Agreement”)** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the **CITY OF LOVELAND**, a Colorado municipal corporation (the “**City**”), and **TIES4LLESS, LLC**, a Colorado limited liability company (“**Ties4Less**”). The City and Ties4Less may be referred to in this Agreement individually as a “**Party**” or collectively as the “**Parties**”.

**WHEREAS**, Ties4Less wholesales and retails electronic components, wiring and fuses for use in municipal fleet vehicles, police and fire vehicles, recreational vehicles, boats and other automobiles from its location in Loveland; and

**WHEREAS**, Ties4Less does custom installations of emergency lighting, electronics, computers and other components for police and fire vehicles, municipal fleet vehicles, recreational vehicles, boats and other automobiles from its location in Loveland; and

**WHEREAS**, Ties4Less has recently relocated to a larger facility at 205 SW 12<sup>th</sup> Street, Loveland, Colorado (the “**Premises**”) to accommodate the growth of its business and is in the process of renovating and improving the facility for the purposes of expanding its wholesale and retail operation and its custom installation business; and

**WHEREAS**, Ties4Less currently has contracts with the Weld County Sheriff’s Department for customization of its police vehicles, Enterprise Rent A Car for vehicle GPS kits, and with Super Vac of Fort Collins to sell at wholesale electronic components for assembly of fire vehicles; and

**WHEREAS**, Ties4Less will be adding one (1) employee to the Premises and will be better able to compete for contracts with police, fire and other municipal departments in the Front Range for custom installation contracts; and

**WHEREAS**, Ties4Less is investing a total of Sixty Thousand Dollars (\$60,000) in tenant improvements to and has signed a five year lease for the Premises; and

**WHEREAS**, Ties4Less has requested from the City certain economic incentives to help defray some of its costs to modify the Premises to house its wholesale and retail business and production facilities, specifically Fourteen Thousand Five Hundred Dollars (\$14,500) to be used to improve the electrical and security infrastructure and for certain tenant improvements that will assist with obtaining contracts for custom installations; and

**WHEREAS**, by the adoption of Resolution #R-\_\_\_\_-2013, the City Council made a finding that the expansion and relocation of Ties4Less Premises will serve the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased tax revenues and, therefore, the monetary incentives granted in this Agreement are in the best interests of the public and the City.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**Economic Incentive Payment**

As an economic incentive for Ties4Less' expansion of its operations to the Premises, the City agrees to reimburse Ties4Less for a portion of the reasonable costs it incurs to renovate and relocate to the Premises in a total amount not-to-exceed Fourteen Thousand Five Hundred Dollars (\$14,500). This reimbursement obligation shall be subject to all of the following terms and conditions:

- A. The following costs incurred by Ties4Less to renovate the Premises shall be eligible for reimbursement under this Agreement ("**Eligible Costs**"): (1) One Hundred (100) percent of costs to obtain and install upgrades to the electrical systems and security systems in the Premises (including parts and installation); plus (2) Fifty (50) percent of costs incurred for tenant improvements to the lobby, front office, reception and conference room in the Premises (including parts and installation).
- B. Before the City shall be obligated to reimburse Ties4Less for Eligible Costs under this Agreement, Ties4Less must: (i) obtain the necessary building permit(s) to renovate the Premises to house its facilities and operations; (ii) complete the improvements and obtain a certificate of occupancy no later than July 31, 2014; and (iii) submit to the City such documentation as may be required by the City Manager to determine that Ties4Less has incurred and paid, prior to July 31, 2014, Eligible Costs to be reimbursed under this Agreement. Ties4Less shall submit a written request for reimbursement, accompanied by documentation of the Eligible Costs, a W-9, and such other documentation requested by the City, to the City Manager no later than August 31, 2014 (the "**Reimbursement Request**").
- C. If Ties4Less fails to complete the improvements and obtain a temporary or permanent certificate of occupancy for the Premises on or before July 31, 2014, or deliver a Reimbursement Request to the City on or before August 31, 2014, then the City's obligation to reimburse Ties4Less for its Eligible Costs under this Agreement shall expire at that time and the City shall have no further obligation to make any payment to Ties4Less. Ties4Less may request an extension of the deadlines set forth herein, in writing and delivered on or before the applicable deadline and for good cause shown the City Manager may extend that date by written notice to Ties4Less.
- D. Within thirty (30) days after receipt, on or before August 31, 2014, of the Reimbursement Request from Ties4Less the City shall reimburse Ties4Less for Eligible Costs up to a total cumulative amount of Fourteen Thousand Five Hundred Dollars (\$14,500).

- E. In no event shall the City be obligated under this Agreement to reimburse Ties4Less for a total cumulative amount of Eligible Costs of more than Fourteen Thousand Five Hundred Dollars (\$14,500).
- F. The City shall have the right to have its representatives physically inspect the Premises to confirm Eligible Costs have in fact been incurred by Ties4Less to complete the work contemplated under this Agreement. Ties4Less' failure to allow such inspection or its use of any of the reimbursement funds for any purpose not authorized under this Agreement shall each be deemed a material default under this Agreement.

### **Remedies upon Default**

Ties4Less shall be deemed in default under this Agreement as a result of any material breach of any term or condition of this Agreement including, without limitation, the following:

- A. Ties4Less' use of any of the reimbursement funds for any purpose not authorized under this Agreement;
- B. The failure to allow the City's inspection of Ties4Less' Premises as required under Section 1.F;
- C. Ties4Less' transfer of its interests under this Agreement without the prior written consent of the City as required in Section 7.

Upon the occurrence of any event of default and the failure by Ties4Less to cure such default within thirty (30) days of receiving written notice from the City of the default then the City may pursue any and all remedies available to it under the law or in equity to collect any or all of the amounts owed to it under this Agreement, which shall include, without limitation, the right to recover all or part of the Fourteen Thousand Five Hundred Dollars (\$14,500) paid to Ties4Less under this Agreement.

### **Expenses and Costs of Collection**

In the event that Ties4Less is in default under this Agreement and, as a result, the City pursues collection efforts through suit or otherwise, Ties4Less agrees to pay all reasonable expenses and costs of collection incurred by the City in connection with any such collection efforts and/or suit, in addition to any other amounts owed under this Agreement, which expenses and costs of collection shall include, without limitation, the following: attorneys' fees; receiver's fees and costs; expert witness fees; deposition costs; filing fees; the cost of mailing notices and other documents; the cost of serving process, notice and other documents; and copy costs.

### **Default Interest**

Upon Ties4Less' default under this Agreement to timely pay any or all of the amounts owed to the City under this Agreement, which amounts shall include, without limitation, the costs and expenses of collection as described in Section 3 above, such amounts in default shall bear interest at the default rate of eight percent (8%) per annum compounded annually from the date of default until paid in full.

### **Applicable Law and Venue**

This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the Parties hereto acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the City by its Charter and Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall any of the Parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall be in the District Court for Larimer County, Colorado.

### **Time is of the Essence**

Time shall be of the essence for the performance of all obligations under this Agreement.

### **Assignment**

Ties4Less shall not assign or transfer any or all of its interests, rights, or obligations under this Agreement without the prior written consent of the City Council. Any such assignment or transfer without the City Council's prior written consent shall be deemed null and void and of no effect.

### **Construction**

This Agreement shall be construed according to its fair meaning and as if it was prepared by both of the parties hereto and shall be deemed to be and contain the entire Agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations expressed or implied, concerning this Agreement, unless set forth in writing and signed by the City and Ties4Less.

### **Headings**

Paragraph headings used in this Agreement are used for convenience of reference only and shall in no way define, limit, control, or affect the meaning or interpretation of any provision of this Agreement.

### **Notices**

Any written notice given under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested, to the following addresses:



If to the City: William D. Cahill  
City Manager  
City of Loveland  
500 East Third Street, Suite 330  
Loveland, CO 80537

With Copy to: John R. Duval  
City Attorney  
City of Loveland  
500 East Third Street, Suite 330  
Loveland, CO 80537

If to Ties4Less: Brian Foley  
Ties4Less, LLC  
205 SW 12<sup>th</sup> Street  
Loveland, CO 80537

Any party hereto may at any time designate a different address or person receiving notice by so informing the other party in writing.

**Binding Effect**

This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the personal representatives, estates, heirs, successors and assigns of the respective parties hereto.

**Severability**

If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those in which it was held invalid, shall not be affected.

**No Waiver**

In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

**Multi-Year Fiscal Obligation**

The City's obligations to reimburse Ties4Less provided in this Agreement may extend beyond December 31, 2013 and is therefore considered a multi-year fiscal obligation under Article X, Section 20 of the Colorado Constitution and the City's Charter Section 11-6, subject to annual appropriation by the Loveland City Council. The City shall have no obligation to reimburse Ties4Less as provided in this Agreement if the reimbursement is being sought or is to be paid on

or after December 31, 2013 unless the necessary appropriation has been made by the City Council to authorize such payment. However, the City agrees that the Economic Development Director shall include in the proposed 2014 annual budget for the City Council’s consideration the necessary appropriation to pay up to a total of Fourteen Thousand Five Hundred Dollars (\$14,500) for the reimbursement as provided in Section 1 above.

**Right to Offset**

Ties4Less agrees that the City shall have the right to withhold from and set off against any amounts which may become payable to Ties4Less by the City under this Agreement any amounts which Ties4Less may owe to the City, whether arising under this Agreement or otherwise. For example, but not by way of limitation, if Ties4Less fails to pay any amounts due to the City but not related to this Agreement, such as amounts due for utility or other services, the City shall have the right to withhold payment of and set off against any amounts that may be due by the City to Ties4Less under this Agreement, any amounts that may be due to the City by Ties4Less for such utility or other services.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

**TIES4LESS, LLC,**  
a Colorado limited liability Company

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

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

**CITY OF LOVELAND,**  
a Colorado municipal corporation

By: \_\_\_\_\_  
William D. Cahill, City Manger

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney



**CITY OF LOVELAND**  
ECONOMIC DEVELOPMENT OFFICE  
Civic Center • 500 East Third • Loveland, Colorado 80537  
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## Memorandum

**To:** Loveland City Council  
**From:** Mike Scholl, Economic Development Manager  
**Date:** November 15, 2013  
**RE:** Economic Incentive Request – Ties4Less (REVISED)

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### REVISION:

Please note, when the briefing memorandum was sent to Council the incentive deal included a sales tax rebate. After further consultation with Ties4Less, the agreement was revised and that portion was removed. The total value of the incentive package decreased from \$19,050 to \$14,500. Also, the company, based on continued growth, will be hiring two additional employees by the end of the year.

### Background:

Ties4Less, a local company has requested an incentive from the City of Loveland. Ties4Less wholesales and retails wiring, fuses and other electronic parts and components for police and fire vehicles, recreational vehicles, boats and other fleet vehicles. In addition, the company does custom retrofits for individuals and municipalities. In fact, the company has contracts with a supply to Hertz Rent a Car for GPS kits and with the Weld County Sheriff's Department. The company also wholesales electronic components to Super Vac for the assembly of fire vehicles.

They have completed work for the Loveland Police Department and for the Public Works Department. Chief of Police, Luke Hecker provided the following commentary:

*"This shop (Ties4Less) wired my new police vehicle this spring and did a great job. It was a pleasure to have the services locally rather than shipping our new police vehicles out of the city for wiring. This is a company that started in a home garage and has expanded based upon excellent customer service and competent job skills. Their growth history reflects the American way for the formation of a business – ingenuity, honesty, hard work, perseverance, personal financial risk to meet a personal business objective of quality service. I hope that this business continues to grow in Loveland and provide jobs for residents."*

The company just expanded into its current location at 205 SW 12<sup>th</sup> Street to keep up with demand. The incentive will help the company offset some of the cost of electrical and security infrastructure. In

addition, the incentive would provide some limited assistance tenant finish. The total package is valued at \$14,500. As per adopted City policy, the incentive can come before Council without prior Study Session or Council review. This memorandum serves that purpose.

For more information:

<http://www.ties4less.com>

**Incentive Request:**

<u>Incentive</u>	<u>Value Not to Exceed</u>
100 percent of cost for electrical and security systems	\$14,500
50 percent of cost for certain tenant improvements	
<b>TOTAL</b>	<b>\$14,500</b>

If approved by Council, the company will need to demonstrate that the work has been completed and paid for prior to requesting the reimbursement from the City. City staff conducts field verifications and processes the payment as per standard City policy.

The incentive request for the system upgrades and tenant improvement will greatly aid the company in bidding for contracts with police and fire departments and other municipalities. The company needs the assistance for building improvements so that they can comfortably invite potential clients to the facility. They have been growing so rapidly (25 percent growth year to date over 2012) that working capital is an issue and they need additional resources to complete the tenant improvements. Staff has visited the facility and reviewed the financial statements.

The incentive will also help the company hire up to two additional employees over the next 12 months.

**Economic Impact Analysis/Return on Investment:**

The chart below shows the five year Economic Impact Analysis. The chart excludes both the impact of two new employees and the potential sales tax revenue. Ties4Less expects to grow the retail over time, but in the absence of clear projections, staff decided to exclude it from the analysis.

	2013	2104	2015	2016	2017	2018
Cash Reimbursement	(\$14,500)	\$0	\$0	\$0	\$0	\$0
<i>Subtotal</i>	(\$14,500)	\$0	\$0	\$0	\$0	\$0
Real Property Tax	\$2,358	\$2,358	\$2,358	\$2,358	\$2,358	\$2,358
Return on Investment	(\$12,142.00)	(\$9,784)	(\$7,426)	(\$5,068)	(\$2,710)	(\$352)

**From:** Brian Foley [<mailto:Brian.Foley@ties4less.com>]  
**Sent:** Tuesday, September 24, 2013 2:47 PM  
**To:** Mike Scholl  
**Cc:** Marcie Erion; Betsey Hale  
**Subject:** Proposal

Mike

I would like to start off by thanking you for all your help the past few days, as we truly appreciate it. I thought I would send an email with a few things I wanted you to know about.

I understand some/many items on our "wish list" may not fall under the criteria of assistance, but I wanted to see if I could provide some type of case to get some of them. As I mentioned, we are a small but rapidly growing company (65% up this year alone) and as we have grown, we needed a much larger facility as we have turned down quoting work, which we have never done before. We had to turn down quoting as we didn't have enough physical space in the building we were in. I also understand the increase in our lease isn't something that is looked at, however to us, this is one of the larger things we are investing in. We will be spending \$31,200 more in lease during the next 12 months which is almost double, which is a very big deal for us being a small business. In acquiring a larger facility, our invest dollars are going to rent instead of trying to get the essential supplies/computers/conference room/lobby/etc that we truly need to be successful. Not to mention, if we were to purchase the essentials, we then couldn't spend money on an employee we need very quickly.

Just a couple bullet points I would like to make:

- We currently do "some" work for the City of Loveland vehicles, which means we are keeping some of the business right here local paying local folks, instead of the work going to Denver.
- We currently get Weld County vehicles (we won this business over a Greeley company) so we are bringing in work from another city to our local folks (also, in around 4 weeks, we will be getting 15 public works vehicles to get lighting installed here in our new facility
- Even though Super Vacuum has left the City of Loveland, we here locally are employing people to take care of the supplying of electrical components to Super Vacuum, very large part of our business.
- Needing new computers/software to be able to grow our business by supplying drawings for vehicles to provide to the agencies
- We need to get our lobby/reception/conference room up to snuff to provide a great atmosphere to gain the business of other City agencies so we can do their work here in Loveland

- Long term goal/forecast, we are hopeful that in three years to build to suit our own building in Loveland, which means more business, more employees, more money for the City.
- Forecast is for 2 employees at minimum for each rolling 12 months for the next few years.
- Currently supply Larimer County Fleet with their electrical consumables.

Again, thank you for your time and consideration.

Brian Foley  
Ties4Less, LLC  
205 SW 12TH ST  
Loveland, CO 80537

City of Loveland Economic Development Policy Project Checklist			November 5, 2013
Company Name : Ties4Less		Incentive Type:	Commercial and Retail Development
Requirement	Meets (y/n)	Date	Details
Met with the Economic Development Manager	Yes	9/2013	
Letter of Intent/Request Received	Yes	9/24/2013	
Economic Impact Analysis Data Submitted	Yes		included with revised Staff Memo dated 11/8
Impact Analysis shows Positive Net New Revenue	Yes		
Pays 80% of Employee Health Ins. Premium	N/A		
Offers Group Health Ins. Coverage to Dependents	N/A		
Incentive Agreement	Yes		
Minimum investment of \$500,000	N/A		
Net New Jobs to Loveland	Yes		two
Project Budget Submitted	Yes		Investing \$60,000 in tenant improvements and signed a three year lease.
<b>Study Session</b>		<\$20,000; Not Required	Staff memo sent to City Council in October, 2013.
<b>Council Meeting and Approval</b>			Submitted for Council consideration at the 11/5/2013 meeting.
Average Annual Wages Company wide	Meets (y/n)	Details	
110% of Larimer County Ave Annual Wage	n/a		
120% of Larimer County Ave Annual Wage	n/a		
130% of Larimer County Ave Annual Wage	n/a		
140% of Larimer County Ave Annual Wage	n/a		
150% or > Larimer County Ave Annual Wage	n/a		
Encouraged but not required	Meets (y/n)	Details	
Located in an Enterprise Zone	No		
Located in Downtown Loveland	No		
Reuse of an existing vacant facility	Yes	205 SW 12th Street	
Clean Energy Company	No		
Health Care	No		
Aerospace/Aviation	No		
Bio-Science	No		
Arts/Sculpture Related	No		
Rocky Mountain Innovation Initiative Client	No		
<b>Proposed Incentive</b>			<b>\$14,500</b>





**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 11  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Alan Krcmarik, Executive Fiscal Advisor  
**PRESENTER:** Alan Krcmarik

**TITLE:**

A Resolution Authorizing an Increase in the Loveland and Rural Consolidated Volunteer Fire Department Pension Plan Effective for Monthly Payment Beginning January 1, 2014

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

**SUMMARY:**

This is an administrative action. The proposed resolution authorizes an increase in the benefits paid to vested Plan participants (or their beneficiaries) through the Loveland and Rural Consolidated Volunteer Fire Department Pension Plan (Plan), who have served the Loveland community in the capacity of volunteer firefighters. Currently, participants with at least 20 years of service as a volunteer firefighter receive \$650 per month. This amount would be increased to \$700 per month. Other payments that are made to partially-vested retired volunteer firefighters and surviving beneficiaries of said firefighters, are adjusted proportionately according to the schedule attached to the resolution. Based on an independent actuarial study, the Plan is sufficiently funded to cover the costs of the increased payments.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

According to the actuarial study and discussion with the Fire & Police Pension Association, the assets of the Plan and anticipated contributions to the Plan from the State, City, and the Loveland Rural Fire Protection District will be sufficient to cover the future projected Plan cost.

The increase in the normal cost is \$712 annually. The actuarial study assumes no increase in the current annual contribution from the City, the Rural District, or the Authority.

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**BACKGROUND:**

The Plan is a defined benefit pension plan. Benefits under the plan are earned by years of service, with 20 years considered to be the required number of years to qualify for full benefit. The Plan membership consists of 11 active members, 50 retired members, 13 beneficiaries, and 5 terminated vested members. The Plan does not contain a provision for an automatic cost of living adjustment. The Board of Trustees for the Plan reviews the funding status of the Plan and periodically requests benefit increases to help the full and partially-vested Plan participants and their surviving beneficiaries meet the rising costs of living. Every two years, the Fire & Police Pension Association completes an actuarial study of the Plan to determine funding levels. Upon request of the Trustees, the actuarial study also investigates alternative benefit levels.

In the 2013 Actuarial Study, the Board of Trustees requested evaluation of a \$13 monthly benefit increase, a \$26 monthly benefit increase, and a \$50 monthly benefit increase. The Board of Trustees recommends the increase of \$50 for the monthly benefit for qualifying participants from the current \$650 per month to \$700 per month, a 7.7% increase. Other benefits under the plan for partially-vested retirees and for surviving beneficiaries are to be proportionately adjusted.

The Board of Trustees based their recommendation for the 7.7% increase on five reasons:

1. The last increase for the retirees and beneficiaries of this Plan was 2011, effective January 1, 2012. Since that time, the economy has made only a modest recovery from the Great Recession. Persons on fixed incomes, like the retirees and beneficiaries of the Consolidated Plan, have experienced challenges in meeting their cost of living needs. An estimate of the increase for health care costs since the last pension increase is 5.6% per year or 11.5% over the last two years. Interest rates on retiree savings continue to be at historically record lows, yielding far less income than retirees had projected. Recent studies show that retirees and seniors are “more vulnerable than previous generations, and it’s requiring them to utilize every tool in the toolbox . . . from creative uses of home equity to re-employment to extended employment.” (National Council on Aging, Ramsey Alwin)
2. While the benefits to the Plan members have increased in 2009 and 2011, benefits offered in comparable surrounding communities, remain higher. For example, Windsor volunteer retirees receive \$750 per month, Johnstown volunteer retirees receive \$900 per month; and Fort Lupton volunteer retirees receive \$850 per month.
3. The last time that an increase was provided for the Plan vested participants and beneficiaries, the amount of the increase was less than the corresponding increase in the cost of living adjustment provided by the Social Security Program. In effect, the pension benefit increase was 1.15% lower than the Social Security cost of living adjustment.

4. Despite the moderation in the increase in the Consumer Price Index in recent years, there is an expectation that once the economy recovers inflation will quickly follow. Advice received from the past City Councils recommended the Board of Trustees not wait too long for the next increase or get too far behind the inflationary pressures because it is easier to make timely small adjustments rather than a very large adjustment over a longer period of time.
5. The Board of Trustees responsibility is to recommend changes to the annual benefits that are in the best interest of the vested participants and beneficiaries **and** to be fiscally responsible. The actuarial study shows that there are sufficient assets to recommend the increase to \$700. The Trustees also believe that because there will be fewer future additions to the total membership count due to changes in the management of volunteers; the Actuarial study is providing a very conservative result.

City staff supports the Board of Trustees' recommendation to increase the pension benefit of vested participants and beneficiaries from \$650 per month to \$700 per month.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution with Exhibit A and Exhibit B

**RESOLUTION #R-102-2013**

**A RESOLUTION AUTHORIZING AN INCREASE IN THE LOVELAND AND RURAL CONSOLIDATED VOLUNTEER FIRE DEPARTMENT PENSION PLAN EFFECTIVE JANUARY 1, 2014**

**WHEREAS**, the Loveland and Rural Consolidated Volunteer Fire Department Pension Plan (Fire and Police Pension Association Plan # 5153-5) is a pension plan created and existing pursuant to C.R.S. 31-30-1101, et seq., for the purposes of providing retirement benefits to qualifying volunteer firefighters and their survivors (the “Pension Fund”); and

**WHEREAS**, the Pension Fund is funded through contributions from the City of Loveland (the “City”), the State of Colorado, and the Loveland Rural Fire Protection District (the “LRFPD”); and

**WHEREAS**, proposed changes to the Pension Fund benefits were considered within the biannual actuarial report identified as the Fire and Police Pension Association Actuarial Valuation as of January 1, 2013 – Loveland and Rural Consolidated Volunteer Fire Department Pension fund prepared by Gabriel Roeder Smith and Company (the “Report”); and

**WHEREAS**, on August 15, 2013, the Consolidated Volunteer Fire Department Pension Board of Trustees unanimously approved a motion to recommend a benefit increase commencing on January 1, 2014 that includes (1) an increase from \$650/month to \$700/month for volunteer firefighters with at least 20 years of service, (2) a prorated increase for those with at least ten years, but less than 20 years of service, and (3) an increase in survivor and funeral benefits as identified in the Report’s Proposed Plan B of the Actuarial Valuation Information Checklist which is attached hereto as Exhibit A and incorporated by reference herein; and

**WHEREAS**, the increase in the benefit amount is not effective until and unless the City and the LRFPD agree to the proposed change in benefits as provided by C.R.S. 31-30-1122(1); and

**WHEREAS**, the City Council desires to increase the Pension Fund benefit effective January 1, 2014 with benefits to such date, and as required by C.R.S. 31-30-1122(1), having reviewed the pertinent sections of the Report, specifically the Comparison of Actuarial Results Based on Alternate Benefit Levels, attached hereto as Exhibit B and incorporated by reference herein, and confirmed that the proposed benefit increase is actuarially sound.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:**

**Section 1.** That the City Council hereby authorizes an increase in the Pension Fund benefit amount as set forth in the Proposed Plan B of the Actuarial Valuation Information Checklist of Exhibit A with an effective date of January 1, 2014, and with benefits effective to such date.

**Section 2.** That the City Manager is authorized to take all appropriate steps to implement such benefit increase.

**Section 3.** That this Resolution shall be effective upon the date and time of its adoption.

**ADOPTED** this 19th day of November, 2013.

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

## EXHIBIT A

**Loveland and Rural Consolidated Volunteer Fire Department  
Pension Fund  
Actuarial Valuation as of January 1, 2013**

Table 14

**Actuarial Valuation Information Checklist**

	Current Plan	Proposed Plan A	Proposed Plan B	Proposed Plan C	Maximum Per State Statute
Normal Retirement Benefit (monthly):					
a. Regular	\$650.00	\$663.00	\$676.00	\$700.00	None
b. Extended Service Amount Per Year of Service	\$0.00	\$0.00	\$0.00	\$0.00	5% of Regular, for 10 Additional years
Vested Retirement Benefit (monthly):					
a. With 10 to 20 Years of Service Amount Per Year of Service per Minimum Vesting Years	\$32.50	\$33.15	\$33.80	\$35.00	Pro rata Share of Regular 20 Years
b. Minimum Vesting Years	10	10	10	10	
Disability Retirement Benefit (monthly):					
a. Short Term Disability for line of duty injury Amount payable for not more than 1 year	\$0.00	\$0.00	\$0.00	\$0.00	½ of Regular or \$225, whichever is greater
b. Long Term Disability for line of duty injury Lifetime Benefit	\$0.00	\$0.00	\$0.00	\$0.00	Regular or \$450 whichever is greater
Survivor Benefits (monthly):					
a. Following Death before Retirement Eligible; Due to death in line of duty as a volunteer firefighter	\$325.00	\$331.50	\$338.00	\$350.00	½ of Regular or \$225, whichever is greater
b. Following Death after Normal Retirement	\$325.00	\$331.50	\$338.00	\$350.00	50% of Regular
c. Following Death after Normal Retirement with Extended Service Amount Per Year of Service	\$0.00	\$0.00	\$0.00	\$0.00	50% of Extended
d. Following Death after Vested Retirement with 10 to 20 Years of Service Amount Per Year of Service per Minimum Vesting Years	\$16.25	\$16.58	\$16.90	\$17.50	50% of Vested
e. Following Death after Disability Retirement	\$0.00	\$0.00	\$0.00	\$0.00	50% of Disability
f. Optional Survivor Benefit Following Death before or after Retirement Eligible; Due to death on or off duty as a volunteer firefighter (Purchase of Life Insurance Required)	\$0.00	\$0.00	\$0.00	\$0.00	100% of Regular
Funeral Benefits (Required Benefit):					
a. Funeral Benefit Lump Sum, one time only	\$500.00	\$500.00	\$500.00	\$500.00	2 x Regular

**EXHIBIT B**

**Table 15**  
**Loveland and Rural Consolidated Volunteer Fire Department Pension Fund**  
**Actuarial Valuation as of January 1, 2013**

**Comparison of Actuarial Results Based on Alternate Benefit Levels**

	Current Plan (1)	Plan A (2)	Plan B (3)	Plan C (4)
1. Normal Retirement Benefit	\$ 650.00	\$ 663.00	\$ 676.00	\$ 700.00
2. Normal Cost	9,256	9,441	9,623	9,968
3. Present Value of Future Benefits	3,621,995	3,694,269	3,766,542	3,899,964
4. Actuarial Accrued Liability	3,571,247	3,642,505	3,713,780	3,845,311
5. Unfunded Accrued Liability / (Surplus)	812,199	883,457	954,732	1,086,263
6. Total Annual Calculated Contribution	76,423	84,050	91,675	105,757
7. Assumed Contribution	182,766	182,766	182,766	182,766
8. Funding Period Based on Assumed Contribution	6 years	7 years	8 years	9 years
9. Is current assumed contribution adequate to support the prospective benefit levels on an actuarially sound basis?	Yes	Yes	Yes	Yes



**CITY OF LOVELAND**  
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 12  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance  
**PRESENTER:** Brent Worthington

**TITLE:**

September 2013 Financial Report

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item. No action is required.

**SUMMARY:**

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending September 30, 2013.

**BACKGROUND:**

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures, including detailed reports on tax revenue and health claims as of September 30, 2013. Citywide Revenue (excluding internal transfers) of \$175,639,209 is 99.9% of year to date (YTD) budget or \$173,470 under the budget. Sales Tax collections are 103.6% of the YTD budget or \$964,676 over budget. Building Material Use Tax is 134.0% of YTD budget, or \$332,692 over budget. Sales and Use Tax collections combined were 106.3% of YTD budget or \$1,813,316 over budget. When the combined sales and use tax for the current year are compared to 2012 for the same period last year, they are higher by 8.0% or \$2,271,891.

Citywide total expenditures of \$155,358,024 (excluding internal transfers) are 76.1% of the YTD budget or \$48,697,230 under the budget.

**REVIEWED BY CITY MANAGER:**

*William A. Cavill*

**LIST OF ATTACHMENTS:**



1. September Snapshot Presentation
2. Snapshot report for September 2013
3. Rialto Quarterly Report Letter



# Snapshot

## September 2013

**Brent Worthington**  
Finance Director

**Presented**  
November 19, 2013

# September 2013 Snapshot

- Citywide Revenue
  - \$175.6 million, excluding transfers
  - 0.1% below budget projections
  
- Citywide Expenditures
  - \$155.4 million, excluding transfers
  - 23.9% below budget projections
  
- Citywide revenues exceed expenditures by \$20.3 million.

# September 2013 Snapshot

- General Fund Revenue
  - \$57.8 million YTD, excluding transfers
  - 6.9% above YTD Budget
  - 7.0% above same period last year
  
- Sales and Use Tax Revenue
  - \$30.8 million YTD
  - 6.3% above budget projections
  - 8.0% above same period as last year
  
- Sales Tax only
  - \$27.5 million YTD
  - 3.6% above budget projections
  - 7.3% above same period last year

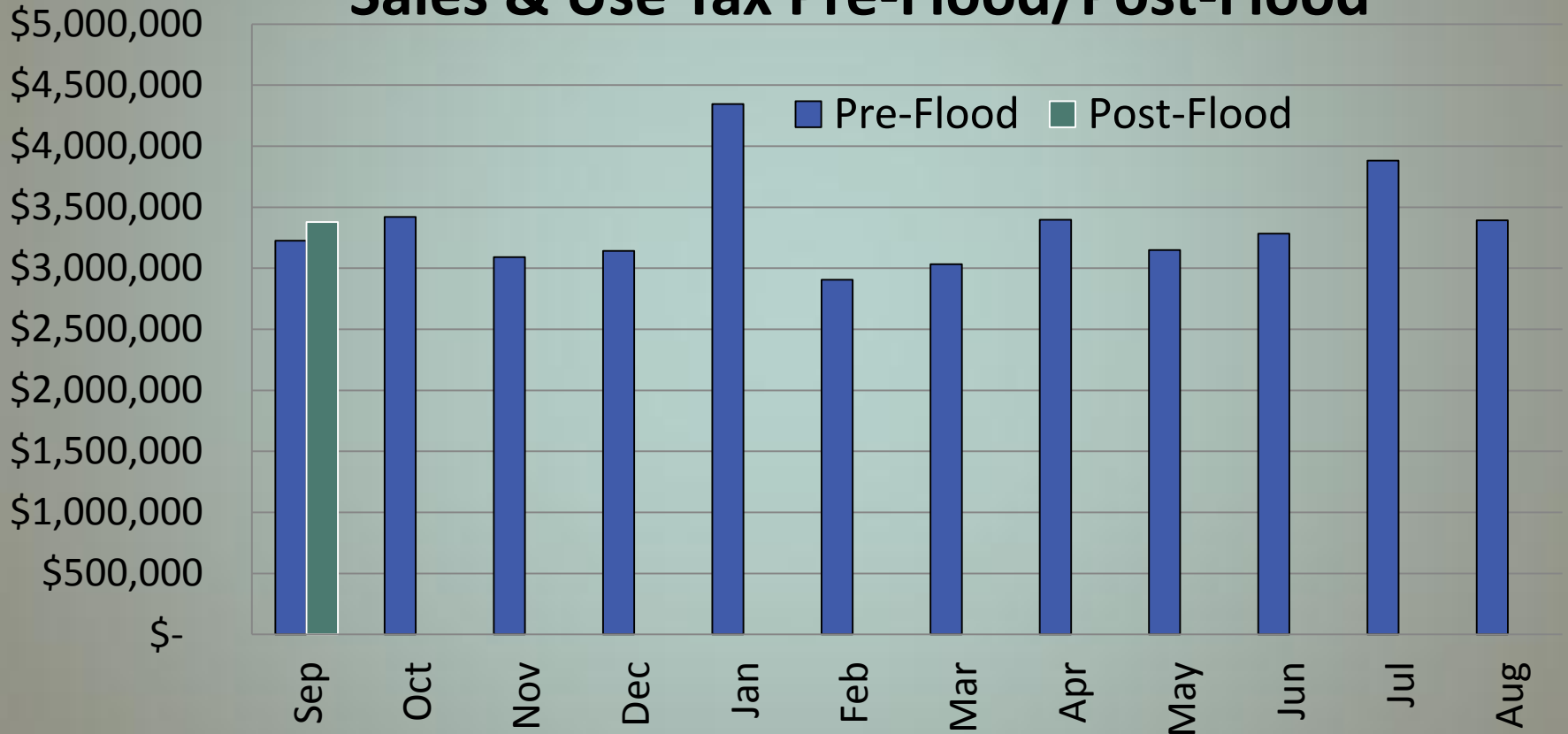
# September 2013 Snapshot

## Sales & Use Tax 2007 v. 2013



# September 2013 Snapshot

## Sales & Use Tax Pre-Flood/Post-Flood



# September 2013 Snapshot

- General Fund Expenditures
  - \$40.7 million YTD, excluding transfers
  - 9.3% below budget projections
  
- General Fund Revenues Exceed Expenditures by \$14.2 million
  
- Health Claims
  - September Claims \$696,401
  - 2013 YTD increased from \$5.0 mil to \$6.1 mil from same time as last year (23.2%)

# September 2013 Snapshot

## ➤ September “All Other Areas” on Geo Map

OCO Total	\$ 181,532.28	Out of Colorado
CNL Total	128,944.46	Colorado Not Loveland
OCL Total	8,337.00	Out of City limits
INT Total	3,190.21	Internet
INN Total	5.65	Innoprise Conversion
PEN Total	547.93	Pending (Application filed on-line for new account)
<b>Grand Total</b>	<b>\$ 322,557.53</b>	

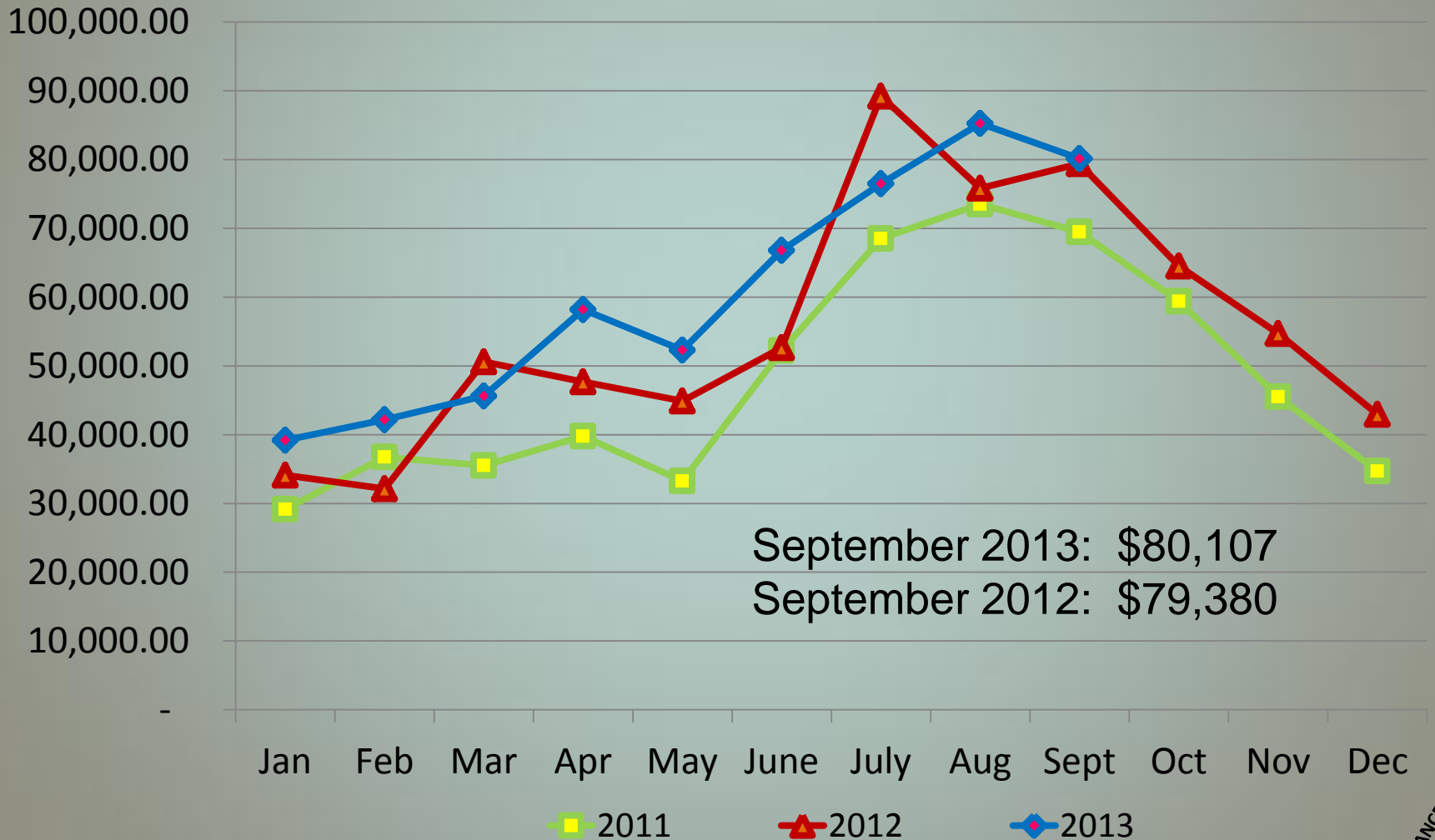
## ➤ Other highlights

- Lodging tax YTD is \$546,079 (7.8% higher than 2012 YTD).



# Lodging Tax Comparison

## Lodging Tax



September 2013: \$80,107  
September 2012: \$79,380



# Rialto Theater Center

- Theater Revenue
  - \$153,452 YTD
  - \$155,033 YTD (previous year)
  
- Event Center Revenue
  - \$17,622 YTD
  - \$91,717 YTD (previous year)
  
- Theater Expense
  - \$362,191 YTD
  - \$358,181 YTD (previous year)
  
- Event Center Expense
  - \$100,653 YTD
  - \$115,677 YTD (previous year)

# September 2013 Snapshot



## Questions?

**Brent Worthington**  
Finance Director

**Presented**  
**November 19, 2013**

# Snapshot

## Monthly Financial Report

# September 2013

### A Snapshot In Time

- ◇ Citywide Revenue, excluding transfers between funds, \$175.6 million (0.1% below budget projections)
- ◇ Sales & Use Tax Collection, \$30.8 million (6.3% above budget projections)
- ◇ Citywide Expenditures, excluding transfers between funds, \$155.4 million (23.9% below budget projections)
- ◇ Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$20.3 million
- ◇ General Fund Revenue, excluding transfers between funds, \$57.8 million (6.9% above budget projections)
- ◇ General Fund Expenditures, excluding transfers between funds, \$40.7 million, (9.3% below budget projections)
- ◇ General Fund Revenues exceed Expenditures by \$14.2 million

Citywide Revenues & Expenditures	2-3
General Fund Revenues & Expenditures	4-5
Capital Projects	5
Tax Totals & Comparison	6-9
Geo Codes & Sales Tax SIC	10-12
Health Care Claims	13
Activity Measures	14

### The Sales / Use Tax Basics

September 2013	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2013	\$ 26,495,800	\$ 1,484,360	\$ 979,190	\$ 28,959,350
Actual 2013	27,460,476	2,000,309	1,311,881	30,772,666
% of Budget	103.6%	134.8%	134.0%	106.3%
Actual 2012	\$ 25,596,952	\$ 1,871,230	\$ 1,032,593	\$ 28,500,775
Change from prior year	7.3%	6.9%	27.0%	8.0%

### Financial Sustainability

The City remains in a strong financial position because of a tradition of conservative fiscal management. To uphold this tradition, the City ensures that operations are paid for by current-year revenues, fund balances are positive and reserves are sufficient to overcome financial challenges, and debt is considered extraordinary and avoided in favor of a pay-as-we-go system. This sound fiscal policy allows the City to achieve Council goals and priorities and to meet challenges as they arise.

In 2011, the City embarked upon a community-wide financial sustainability effort to ensure that shortfalls projected in its General Fund 10-year financial plan were addressed using a balanced plan consisting of 81% expenditure cuts and 19% revenue increases. The Financial Sustainability Strategy, adopted by the City Council on June 7, 2011, includes ongoing processes designed to ensure that the City retains a healthy financial outlook

Although sales and use tax revenue is greater in 2013 than in 2007 year-to-date, inflation adjustment of the revenue shows that collections in 2013 have not significantly grown above 2007 levels when inflation is taken into account, emphasizing the importance of continuing the strategy implementation.



# Citywide Revenues & Expenditures

Combined Statement of Revenues and Expenditures September 2013				
REVENUE	Current Month	YTD Actual	YTD Revised Budget	% of Budget
<b>General Governmental</b>				
1 General Fund	\$ 5,566,870	\$ 57,811,911	\$ 54,084,852	106.9%
2 Special Revenue	773,760	5,658,080	7,904,880	71.6% <sup>1</sup>
3 Other Entities	959,865	19,964,708	24,407,203	81.8% <sup>2</sup>
4 Internal Service	1,398,633	12,742,735	12,424,170	102.6%
5 <i>Subtotal General Govt Operations</i>	\$ 8,699,128	\$ 96,177,434	\$ 98,821,105	97.3%
6 Capital Projects	698,269	7,408,143	4,913,592	150.8%
<b>Enterprise Fund</b>				
7 Water & Power	7,845,812	61,179,289	60,795,720	100.6%
8 Stormwater	347,123	3,269,356	3,251,910	100.5%
9 Golf	248,688	3,075,191	3,310,180	92.9% <sup>3</sup>
10 Solid Waste	507,948	4,529,796	4,720,171	96.0%
11 <i>Subtotal Enterprise</i>	\$ 8,949,571	\$ 72,053,632	\$ 72,077,981	100.0%
<b>12 Total Revenue</b>	<b>\$ 18,346,967</b>	<b>\$ 175,639,209</b>	<b>\$ 175,812,678</b>	<b>99.9%</b>
<i>Prior Year External Revenue</i>		164,137,047		
<i>Increase From Prior Year</i>		7.0%		
13 Internal Transfers	167,811	3,577,686	32,143,550	11.1%
<b>14 Grand Total Revenues</b>	<b>\$ 18,514,778</b>	<b>\$ 179,216,895</b>	<b>\$ 207,956,228</b>	<b>86.2%</b>
<b>EXPENDITURES</b>				
<b>General Governmental</b>				
15 General Fund	\$ 4,566,247	\$ 40,038,844	\$ 43,832,181	91.3%
16 Special Revenue	779,629	7,556,647	6,633,889	113.9% <sup>4</sup>
17 Other Entities	1,386,490	18,977,301	20,360,282	93.2%
18 Internal Services	1,475,687	11,490,781	12,873,372	89.3%
19 <i>Subtotal General Gov't Operations</i>	\$ 8,208,052	\$ 78,063,573	\$ 83,699,724	93.3%
20 Capital	4,451,705	21,890,283	61,732,073	35.5%
<b>Enterprise Fund</b>				
21 Water & Power	5,272,865	48,033,104	51,051,700	94.1%
22 Stormwater	167,067	1,879,027	1,652,441	113.7% <sup>5</sup>
23 Golf	229,494	2,068,739	2,281,386	90.7%
24 Solid Waste	402,428	3,423,298	3,637,930	94.1%
25 <i>Subtotal Enterprise</i>	\$ 6,071,854	\$ 55,404,167	\$ 58,623,457	94.5%
<b>26 Total Expenditures</b>	<b>\$ 18,731,611</b>	<b>\$ 155,358,024</b>	<b>\$ 204,055,253</b>	<b>76.1%</b>
<i>Prior Year External Expenditures</i>		142,233,626		
<i>Increase (-Decrease) From Prior Year</i>		9.2%		
27 Internal Transfers	167,811	3,577,686	32,143,550	11.1%
<b>28 Grand Total Expenditures</b>	<b>\$ 18,899,422</b>	<b>\$ 158,935,710</b>	<b>\$ 236,198,803</b>	<b>67.3%</b>

<sup>1</sup> Lower than anticipated Transportation intergovernmental revenue due to the timing of grant drawdowns, lower than anticipated State Revenue Sharing from HUTF and motor vehicle fees, and Transportation Utility Fees coming in lower than anticipated.

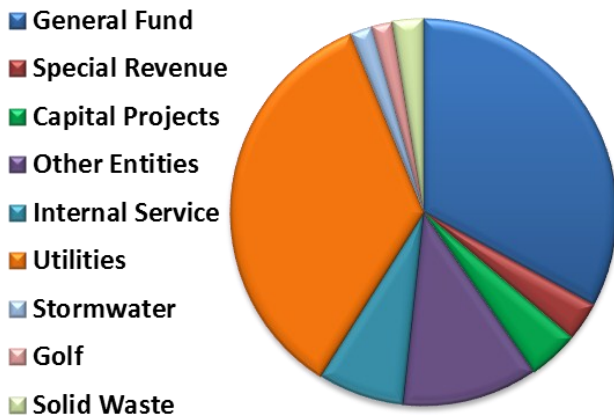
<sup>2</sup> Timing of the cash transactions implementing the loan from the Recreation, Library and General Government CEF funds to Urban Renewal Authority of \$1.5 million and timing of the drawdown of Federal grants to the Airport related to capital projects.

<sup>3</sup> Lower than anticipated revenue resulting from inclement weather and flooding.

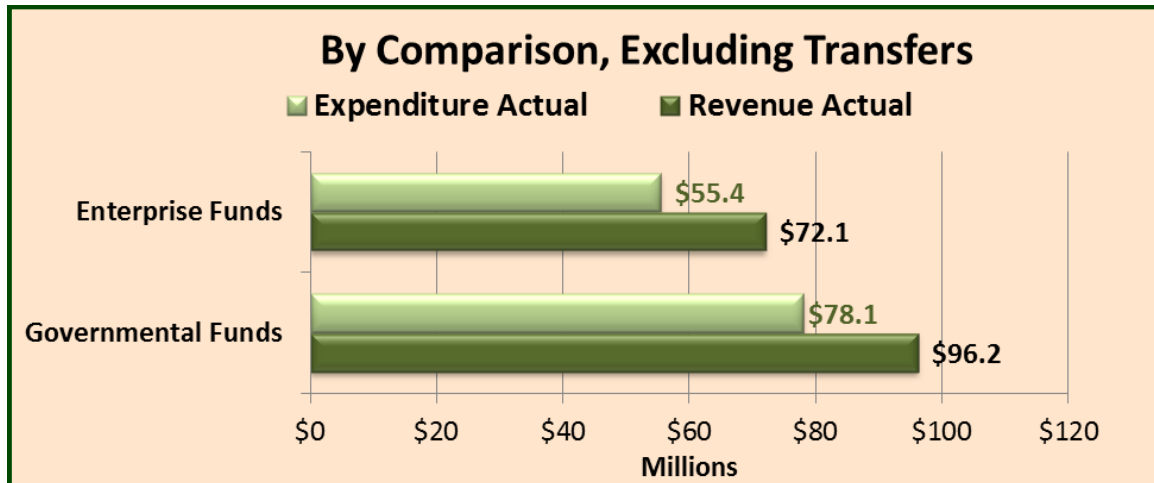
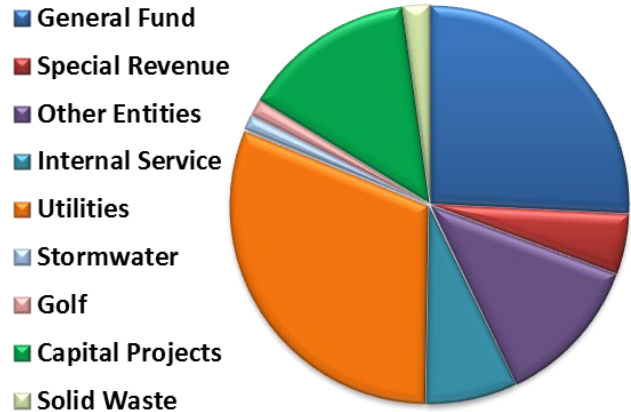
<sup>4</sup> Repairs and Maintenance budgeted for as capital construction; offset by savings in capital accounts in line 20.

<sup>5</sup> Budgeted Stormwater repair and maintenance work was able to begin sooner than originally planned.

**YTD Operating Revenues of \$175.6 Million**



**YTD Operating Expenditures of \$155.4 Million**



- ◆ General Fund Revenue, excluding transfers between funds, \$57.8 million (6.9% above budget projections)  
\* 7.0% above 2012 YTD
- ◆ General Fund Expenditures, excluding capital and transfers between funds, \$40 million (8.7% below budget projections)  
\* 5.6% below 2012 YTD
- ◆ Water & Power Revenue, excluding transfers between funds, \$61.2 million (0.6% above budget projections)  
\* 6.0% above 2012 YTD
- ◆ Water & Power Expenditures, excluding transfers between funds, \$48 million (5.9% below budget projections)  
\* 12.5% above 2012 YTD
- ◆ Other Entities Fund Revenue, excluding transfers between funds, \$20 million (18.2% below budget projections)  
\* 0.5% below 2012 YTD
- ◆ Other Entities Expenditures, excluding capital and transfers between funds, \$19 million (6.8% below budget projections)  
\* 0.6% above 2012 YTD

# General Fund Revenues & Expenditures

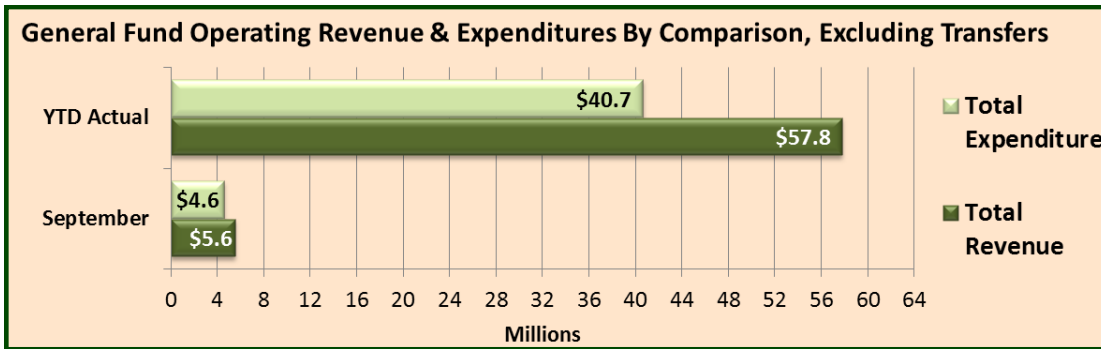
General Fund Revenue & Expenditures September 2013				
REVENUES	Current Month	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ 76,571	\$ 7,381,466	\$ 7,170,620	102.9%
3 Sales tax	3,051,797	27,460,476	26,495,800	103.6%
4 Building use tax	105,174	1,311,882	979,190	134.0%
5 Auto use tax	222,332	2,000,309	1,484,360	134.8%
6 Other taxes	150,026	2,272,763	1,988,680	114.3%
7 Intergovernmental	262,962	414,539	285,630	145.1%
8 License & permits				
9 Building permits	98,774	1,246,552	991,880	125.7%
10 Other permits	13,911	152,597	171,821	88.8% <sup>1</sup>
11 Charges for services	896,240	9,192,241	8,730,368	105.3%
12 Fines & forfeitures	75,722	666,028	801,540	83.1% <sup>2</sup>
13 Interest income	(8,731)	166,734	255,110	65.4%
14 Miscellaneous	622,093	5,546,326	4,729,853	117.3%
<b>15 Subtotal</b>	<b>\$ 5,566,870</b>	<b>\$ 57,811,911</b>	<b>\$ 54,084,852</b>	<b>106.9%</b>
16 Interfund transfers	6,560	109,100	109,100	100.0%
<b>17 Total Revenue</b>	<b>\$ 5,573,430</b>	<b>\$ 57,921,011</b>	<b>\$ 54,193,952</b>	<b>106.9%</b>
EXPENDITURES				
Operating Expenditures				
18 Legislative	\$ 8,223	\$ 83,406	\$ 103,791	80.4%
19 Executive & Legal	178,032	1,702,856	1,840,722	92.5%
20 Economic Development	74,194	855,967	1,681,598	50.9%
21 Cultural Services	120,112	1,199,142	1,325,531	90.5%
22 Development Services	225,543	1,997,664	2,442,615	81.8%
23 Finance	318,239	2,757,579	3,082,091	89.5%
24 Fire & Rescue	881	10,893	12,110	0.0%
25 Human Resources	81,046	662,605	748,588	88.5%
26 Information Technology	235,218	2,338,912	2,897,974	80.7%
27 Library	217,317	1,937,552	2,006,110	96.6%
28 Parks & Recreation	704,210	6,264,470	6,994,394	89.6%
29 Police	1,392,347	11,959,082	12,281,388	97.4%
30 Public Works	420,210	3,426,563	3,516,940	97.4%
31 Non-Departmental	645,722	5,477,785	5,895,360	92.9%
<b>32 Subtotal Operating</b>	<b>\$ 4,621,294</b>	<b>\$ 40,674,477</b>	<b>\$ 44,829,211</b>	<b>90.7%</b>
33 Internal Transfers	160,364	3,020,921	8,204,120	36.8%
<b>34 Total Expenditures</b>	<b>\$ 4,781,658</b>	<b>\$ 43,695,398</b>	<b>\$ 53,033,331</b>	<b>82.4%</b>

<sup>1</sup> Lower than projected revenue from special events.

<sup>2</sup> Lower than projected revenue from traffic fines, parking fines, and fines for municipal ordinance violations.



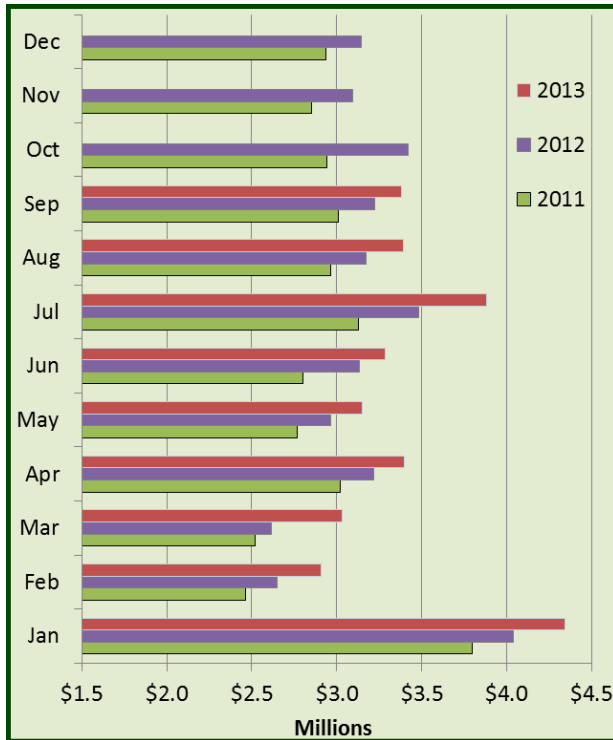
# Monthly Financial Report



## Capital Projects \$500,000+

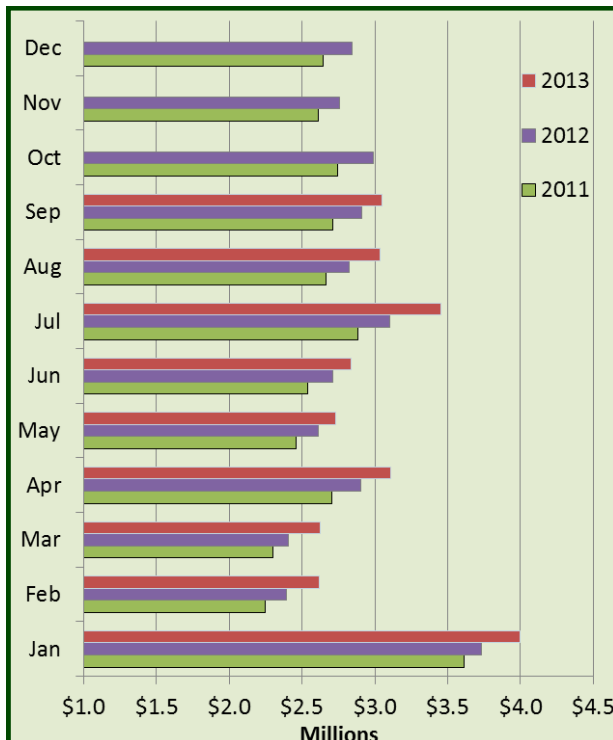
Project Title	2013 Budget	2013 Expenditures	Remaining 2013 Budget	% of 2013 Budget (Exp/Bud)
<b>Water Capital</b>				
Water Treatment Plant Phase II Expansion (38 MGD)	\$ 2,023,200	\$ 745,095	\$ 1,278,105	36.83%
Filter Plant No. 2 Pipe Gallery Improvements	943,110	932,231	10,879	98.85%
W 29th St. & W 1st St. Water Line Replacement	725,910	38,100	687,810	5.25%
Morning Drive Alternate Waterline 30"	1,109,100	959,586	149,514	86.52%
2013 Small Diameter Waterline Replacement	1,030,320	21,698	1,008,622	2.11%
<b>Raw Water Capital</b>				
Windy Gap Firming Project	1,218,000	-	1,218,000	0.00%
Purchase of Colorado-Big Thompson Project (CBT)	820,090	-	820,090	0.00%
<b>Wastewater Utility Capital</b>				
Digester Mixing System	1,200,000	-	1,200,000	0.00%
Digester Building Code Compliance	900,000	-	900,000	0.00%
South Horseshoe Lift Station Submersible	1,361,690	255,420	1,106,270	18.76%
<b>Power Capital</b>				
East Sub to Crossroads Sub on Railroad	1,379,732	1,144,633	235,099	82.96%
Horseshoe Sub along Hwy 287 to 29th St.	1,338,299	14,189	1,324,110	1.06%
Airport Sub North to Crossroads and South to Kendall Pkwy	683,260	542,324	140,936	79.37%
Callisto (vault 2716) East along 5th, North on Boyd Lake to railroad xing	570,000	1,001	568,999	0.18%
SW219 on old railroad North on VanBuren, East on 22nd to SW126	670,250	14,773	655,477	2.20%
Crossroads Substation - purchase new transformer	600,000	-	600,000	0.00%
Crossroads Substation - new switgear & transformer install	512,900	-	512,900	0.00%
<b>Stormwater Capital</b>				
29th and Monroe Outfall (Dry Creek)	1,000,000	-	1,000,000	0.00%
MeHaffey Park Regional Detention Pond	569,451	67,341	502,111	11.83%
<b>Streets Transportation Program</b>				
2013 Street Rehabilitation	4,441,840	2,432,371	2,009,469	54.76%
Fiber Optic Network to Signals and Other Facilities	1,071,130	35,580	1,035,550	3.32%
Boise & 37th Intersection Improvements	540,060	59,887	480,173	11.09%
<b>All Other</b>				
Facilities Maintenance Capital Projects	500,000	124,457	375,544	24.89%
Open Lands Acquisition	2,430,800	1,081,747	1,349,053	44.50%
Fire Station 2 Relocation	3,566,480	788,726	2,777,754	22.11%
Service Center Phase III	13,312,060	956,598	12,355,462	7.19%
Vehicle Wash	1,600,000	-	1,600,000	0.00%
Mehaffey Park	8,110,560	791,530	7,319,030	9.76%
River's Edge Natural Area	\$1,808,840	\$1,547,084	\$ 261,756	85.53%





## Sales & Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,799,760	\$ 4,039,678	\$ 4,345,836	\$ 4,136,490	5.1%
Feb	2,465,447	2,649,229	2,906,780	2,528,010	15.0%
Mar	2,517,162	2,618,052	3,033,347	3,028,120	0.2%
Apr	3,022,770	3,215,437	3,397,074	3,286,040	3.4%
May	2,769,526	2,966,032	3,150,201	2,991,970	5.3%
Jun	2,800,184	3,136,014	3,284,808	3,127,370	5.0%
Jul	3,129,254	3,480,123	3,882,561	3,495,310	11.1%
Aug	2,961,686	3,171,055	3,392,757	3,154,400	7.6%
Sep	3,008,637	3,225,155	3,379,303	3,211,640	5.2%
Oct	2,944,433	3,421,098		3,327,150	
Nov	2,853,360	3,092,095		3,091,770	
Dec	2,933,671	3,142,793		3,141,380	
	\$35,205,889	\$38,156,762	\$30,772,666	\$38,519,650	
YTD	\$26,474,426	\$28,500,775	\$30,772,666	\$28,959,350	6.3%

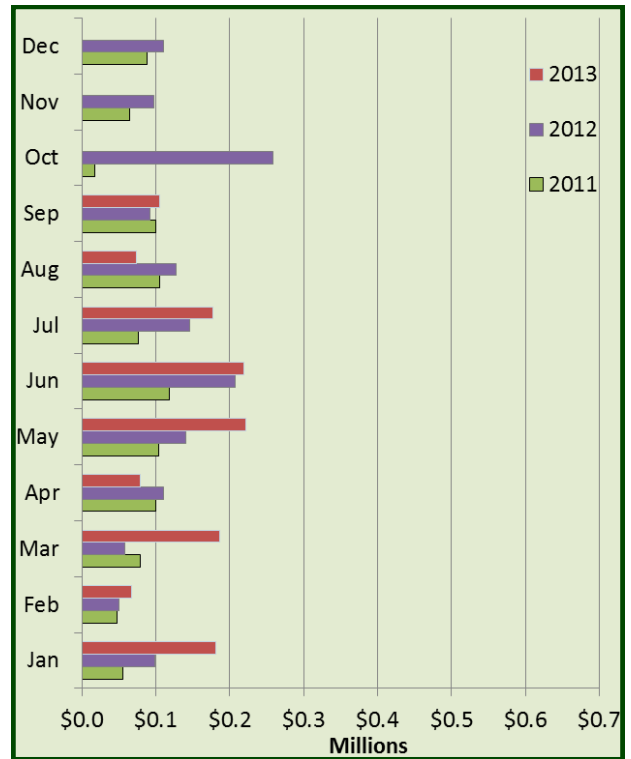


## Retail Sales Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,613,881	\$ 3,733,309	3,995,194	\$ 3,909,960	2.2%
Feb	2,249,749	2,390,409	2,619,453	2,285,380	14.6%
Mar	2,299,237	2,403,380	2,622,808	2,715,660	-3.4%
Apr	2,702,024	2,905,558	3,109,701	3,008,620	3.4%
May	2,462,213	2,614,500	2,733,983	2,710,640	0.9%
Jun	2,536,541	2,711,906	2,835,171	2,878,350	-1.5%
Jul	2,882,075	3,105,564	3,453,149	3,210,310	7.6%
Aug	2,667,674	2,823,319	3,039,219	2,866,890	6.0%
Sep	2,710,738	2,909,008	3,051,797	2,909,990	4.9%
Oct	2,746,866	2,991,033		3,035,070	
Nov	2,610,980	2,757,932		2,824,870	
Dec	2,647,162	2,841,959		2,863,910	
	\$32,129,139	\$34,187,876	\$27,460,476	\$35,219,650	
YTD	\$24,124,132	\$25,596,952	\$27,460,476	\$26,495,800	3.6%

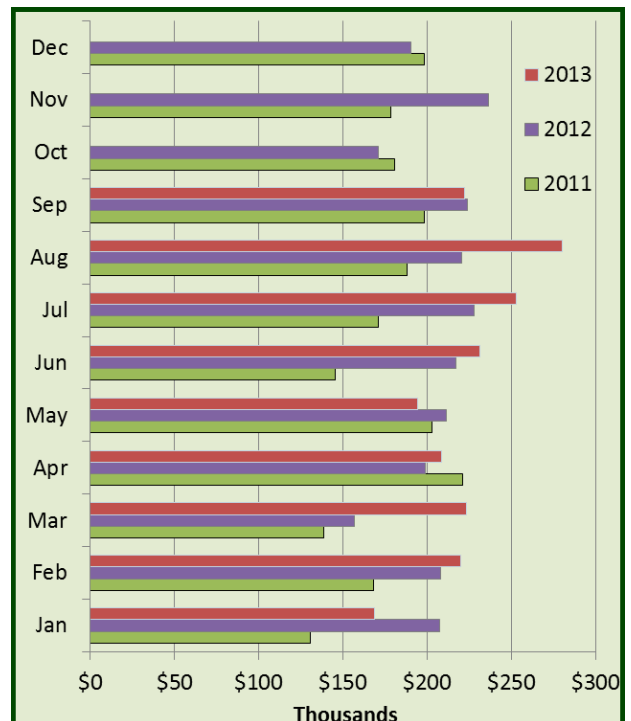
## Building Materials Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 55,542	\$ 99,108	\$ 181,907	\$ 85,270	113.3%
Feb	47,621	50,703	67,440	83,620	-19.3%
Mar	79,590	57,845	187,222	164,570	13.8%
Apr	99,569	111,197	79,229	110,120	-28.1%
May	104,373	140,470	221,834	104,700	111.9%
Jun	118,318	207,024	218,722	100,770	117.1%
Jul	76,488	146,570	176,829	108,080	63.6%
Aug	105,871	127,261	73,524	104,580	-29.7%
Sep	99,544	92,415	105,174	117,480	-10.5%
Oct	17,021	259,279		96,490	
Nov	64,211	97,778		100,250	
Dec	88,033	110,414		124,070	
	\$956,181	\$1,500,063	\$1,311,881	\$1,300,000	
YTD	\$786,916	\$1,032,593	\$1,311,881	\$ 979,190	34.0%



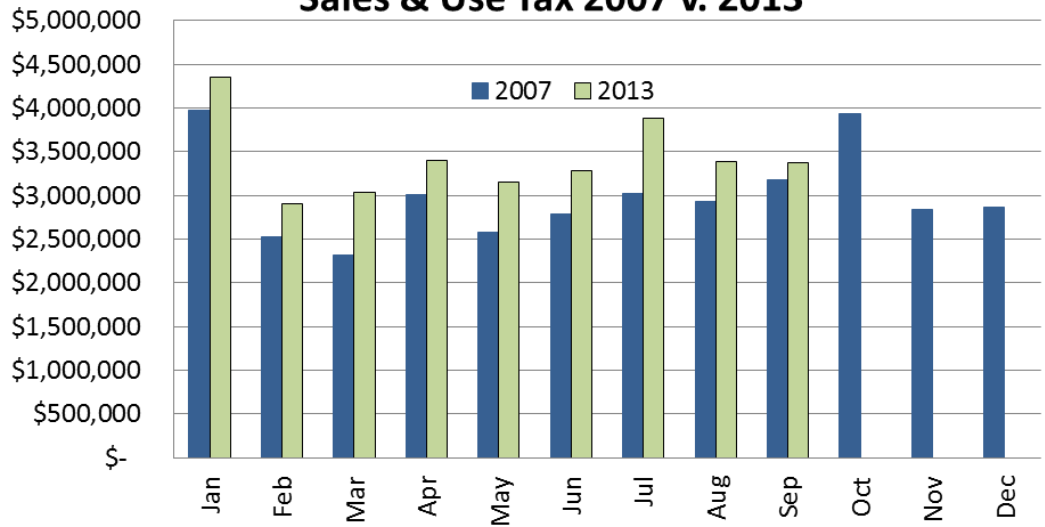
## Motor Vehicle Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 130,337	\$ 207,261	\$ 168,734	\$ 141,260	19.4%
Feb	168,077	208,117	219,886	159,010	38.3%
Mar	138,335	156,828	223,317	147,890	51.0%
Apr	221,177	198,682	208,144	167,300	24.4%
May	202,940	211,062	194,384	176,630	10.1%
Jun	145,325	217,084	230,915	148,250	55.8%
Jul	170,691	227,989	252,583	176,920	42.8%
Aug	188,141	220,475	280,014	182,930	53.1%
Sep	198,355	223,732	222,332	184,170	20.7%
Oct	180,546	170,786		195,590	
Nov	178,169	236,385		166,650	
Dec	198,476	190,420		153,400	
	\$2,120,569	\$2,468,822	\$2,000,309	\$2,000,000	
YTD	\$1,563,378	\$1,871,230	\$2,000,309	\$1,484,360	34.8%



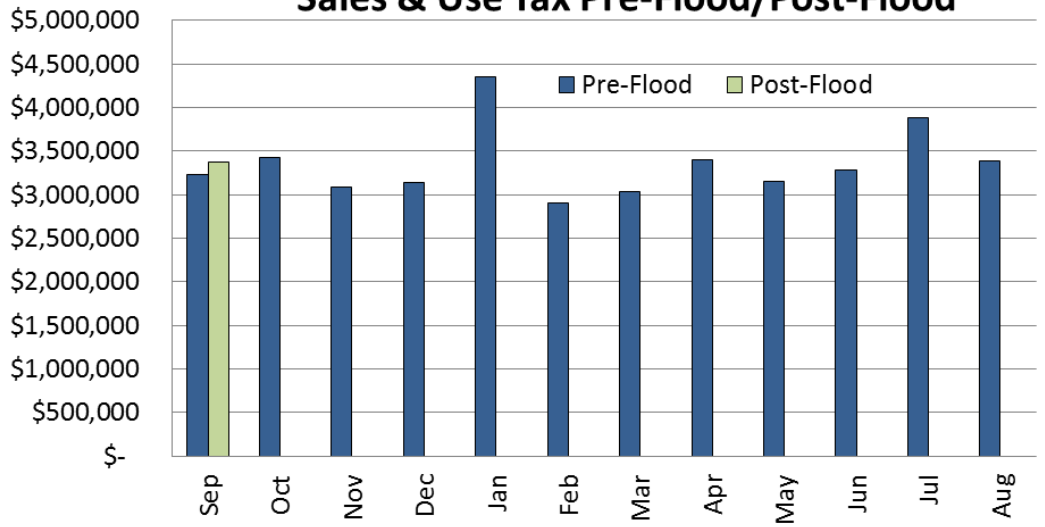
	2007	2013
Jan	\$ 3,972,513	\$ 4,345,836
Feb	2,520,486	2,906,780
Mar	2,319,579	3,033,347
Apr	3,003,780	3,397,074
May	2,581,830	3,150,202
Jun	2,781,786	3,284,808
Jul	3,022,815	3,882,560
Aug	2,931,667	3,392,757
Sep	3,176,883	3,379,303
Oct	3,936,330	
Nov	2,835,420	
Dec	2,869,916	
<b>Total</b>	<b>\$35,953,006</b>	<b>\$30,772,666</b>

### Sales & Use Tax 2007 v. 2013

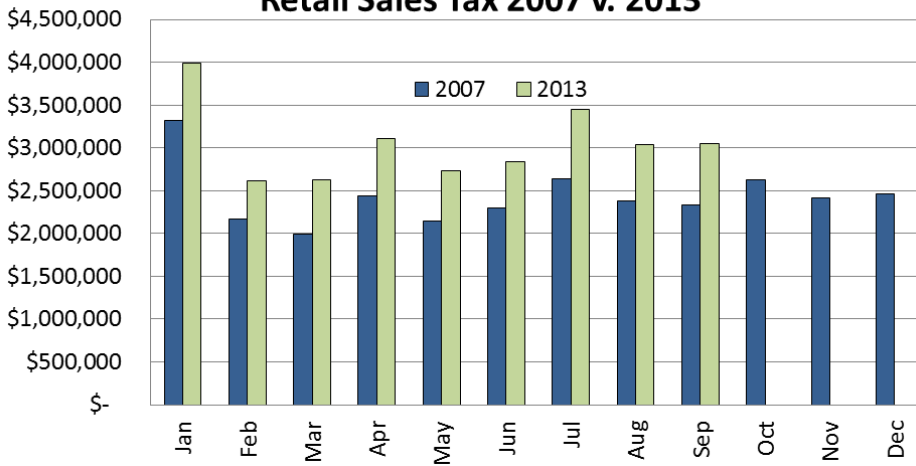


	Pre-Flood	Post-Flood
Sep	\$ 3,225,155	\$ 3,379,303
Oct	3,421,098	
Nov	3,092,095	
Dec	3,142,793	
Jan	4,345,836	
Feb	2,906,780	
Mar	3,033,347	
Apr	3,397,074	
May	3,150,202	
Jun	3,284,808	
Jul	3,882,560	
Aug	3,392,757	
<b>Total</b>	<b>\$ 3,225,155</b>	<b>\$ 3,379,303</b>

### Sales & Use Tax Pre-Flood/Post-Flood

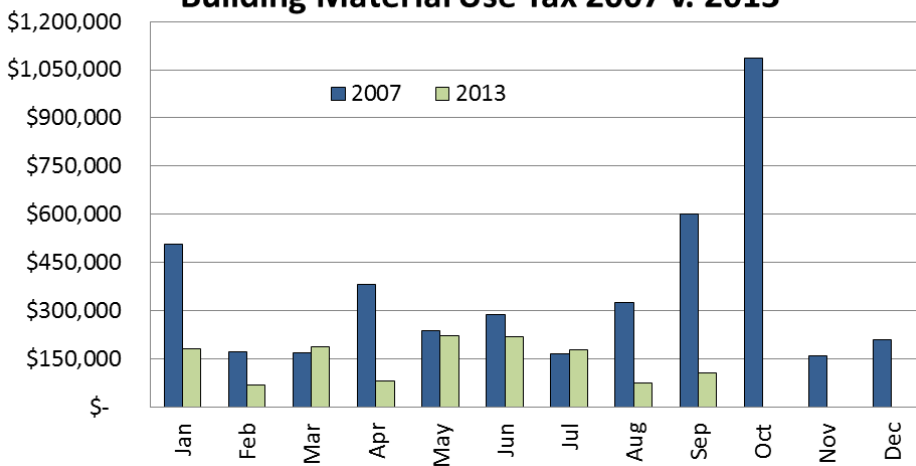


### Retail Sales Tax 2007 v. 2013



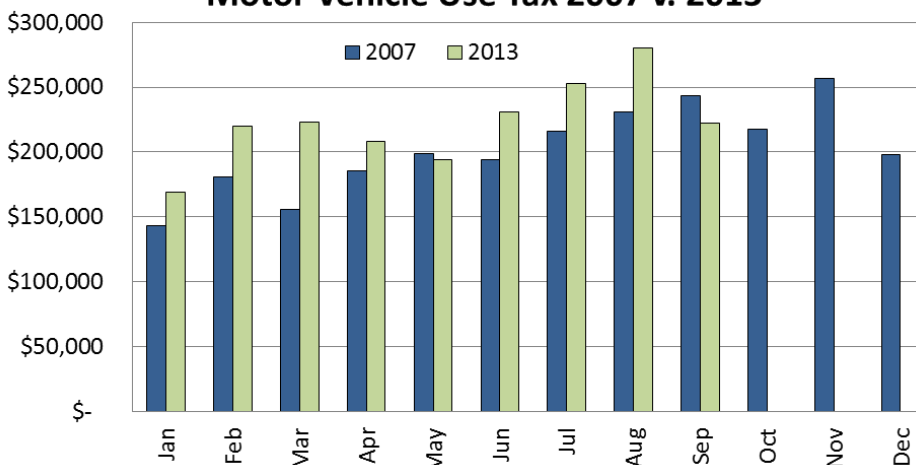
	2007	2013
Jan	\$ 3,324,067	\$ 3,995,194
Feb	2,167,873	2,619,453
Mar	1,994,635	2,622,808
Apr	2,437,958	3,109,701
May	2,146,685	2,733,983
Jun	2,300,533	2,835,171
Jul	2,640,223	3,453,149
Aug	2,376,534	3,039,219
Sep	2,332,844	3,051,797
Oct	2,632,667	
Nov	2,419,051	
Dec	2,464,559	
<b>Total</b>	<b>\$29,237,629</b>	<b>\$27,460,476</b>

### Building Material Use Tax 2007 v. 2013



	2007	2013
Jan	\$ 505,441	\$ 181,907
Feb	171,835	67,440
Mar	169,579	187,222
Apr	380,285	79,229
May	236,140	221,834
Jun	287,300	218,722
Jul	166,446	176,829
Aug	324,125	73,524
Sep	600,704	105,174
Oct	1,086,325	
Nov	159,382	
Dec	207,723	
<b>Total</b>	<b>\$4,295,285</b>	<b>\$ 1,311,882</b>

### Motor Vehicle Use Tax 2007 v. 2013



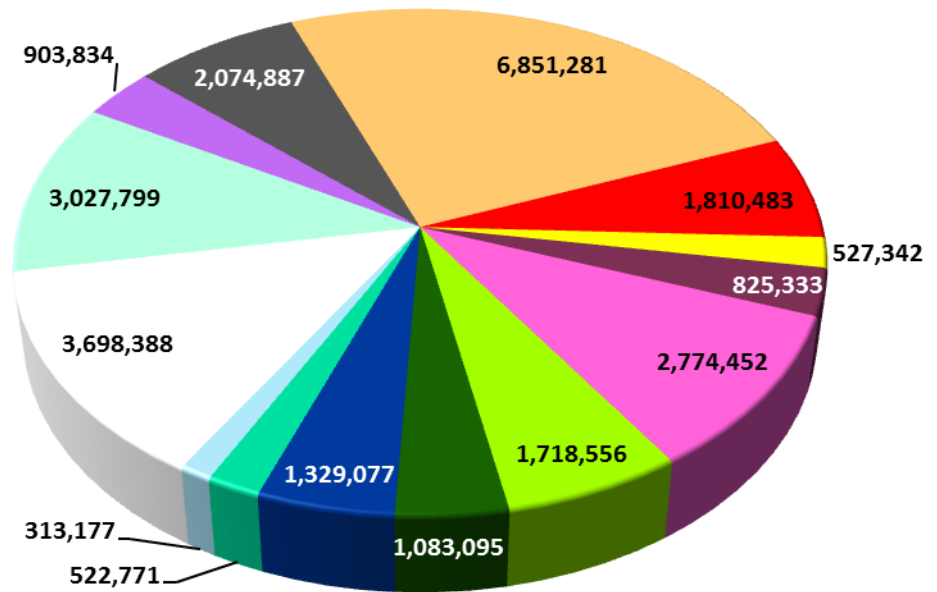
	2007	2013
Jan	\$ 143,005	\$ 168,734
Feb	180,778	219,886
Mar	155,365	223,317
Apr	185,537	208,144
May	199,005	194,384
Jun	193,953	230,915
Jul	216,146	252,583
Aug	231,008	280,014
Sep	243,336	222,332
Oct	217,338	
Nov	256,987	
Dec	197,634	
<b>Total</b>	<b>\$2,420,092</b>	<b>\$ 2,000,309</b>

# Geographical Codes

Geographical Area	YTD 2013	YTD 2012	Change
South East Loveland	\$ 6,851,281	\$ 6,397,147	7.1%
North West Loveland	3,027,799	2,942,588	2.9%
Centerra	2,774,452	2,470,022	12.3%
North East Loveland	2,074,887	1,905,346	8.9%
Orchards Shopping Center	1,810,483	1,594,674	13.5%
Promenade Shops (1)	1,718,556	1,719,534	-0.1%
Thompson Valley Shopping Center	1,329,077	1,245,257	6.7%
Outlet Mall	1,083,095	1,033,777	4.8%
South West Loveland	903,834	847,844	6.6%
Downtown (2)	825,333	749,692	10.1%
Columbine Shopping Center	527,342	495,247	6.5%
The Ranch	522,771	495,276	5.6%
Airport	313,177	307,043	2.0%
All Other Areas (3)	3,698,388	3,393,507	9.0%
<b>Total</b>	<b>\$27,460,475</b>	<b>\$25,596,953</b>	<b>7.3%</b>

- (1) Sales at this retail center are affected by the decline in Electronics and Appliances (noted on page 10). Factoring out this sector, overall sales are up nearly 1%.
- (2) There has been an increase in tax licenses issued in the Downtown area, and established retailers' sales are trending up.
- (3) Refers to sales tax remitted by vendors who are located outside of the City but make sales to customers within Loveland.

- North West Loveland
- North East Loveland
- Orchards Shopping Center
- Downtown
- Promenade Shops
- Thompson Valley Shopping Center
- Airport
- South West Loveland
- South East Loveland
- Columbine Shopping Center
- Centerra
- Outlet Mall
- The Ranch
- All Other Areas



Map →

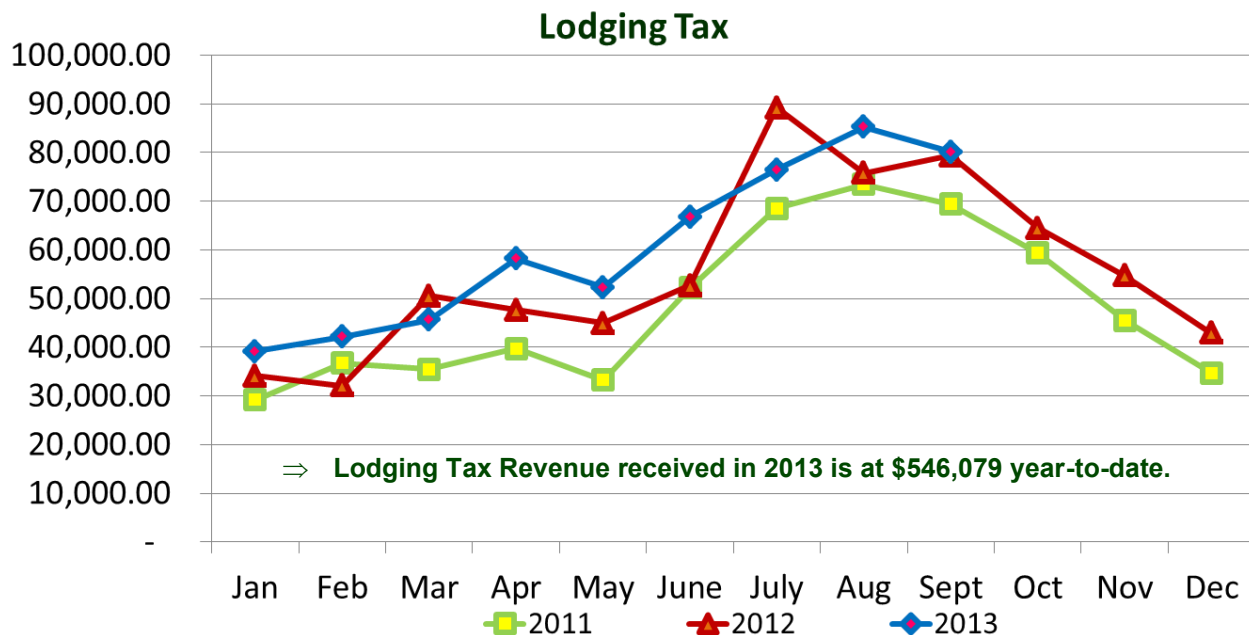


# Sales Tax Collections

Description	YTD 2013	YTD 2012	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	5,952,460	5,786,160	\$ 166,300	2.9%	21.7%	21.7%
Restaurants & Bars	3,538,005	3,262,403	275,602	8.4%	12.9%	34.6%
Grocery Stores & Specialty Foods	2,726,544	2,531,314	195,230	7.7%	9.9%	44.5%
Clothing & Clothing Accessories Stores	2,001,455	1,881,926	119,529	6.4%	7.3%	51.8%
Building Material & Lawn & Garden Supplies	1,920,602	1,729,765	190,837	11.0%	7.0%	58.8%
Motor Vehicle Dealers, Auto Parts & Leasing	1,919,986	1,672,898	247,088	14.8%	7.0%	65.8%
Sporting Goods, Hobby, Book & Music Stores	1,498,485	1,258,231	240,254	19.1%	5.5%	71.2%
Utilities	1,411,705	1,340,270	71,435	5.3%	5.1%	76.4%
Broadcasting & Telecommunications (1)	990,000	1,007,266	(17,266)	-1.7%	3.6%	80.0%
Used Merchandise Stores	826,001	772,480	53,521	6.9%	3.0%	83.0%
Beer, Wine & Liquor Stores	660,278	615,101	45,177	7.3%	2.4%	85.4%
Hotels, Motels & Other Accommodations	612,529	576,738	35,791	6.2%	2.2%	87.6%
Consumer Goods & Commercial Equipment Rental	554,883	446,180	108,703	24.4%	2.0%	89.6%
Health & Personal Care Stores	456,084	431,340	24,744	5.7%	1.7%	91.3%
Furniture & Home Furnishing Stores	355,508	324,672	30,836	9.5%	1.3%	92.6%
Electronic Shopping & Mail-Order Houses	350,056	336,988	13,068	3.9%	1.3%	93.9%
Electronics & Appliance Stores (2)	306,717	368,675	(61,958)	-16.8%	1.1%	95.0%
Office Supplies, Stationery & Gift Stores	248,073	236,630	11,443	4.8%	0.9%	95.9%
Gasoline Stations with Convenience Stores	229,191	202,882	26,309	13.0%	0.8%	96.7%
All Other Categories	901,913	815,034	86,879	10.7%	3.3%	100.0%
<b>Total</b>	<b>\$ 27,460,475</b>	<b>\$ 25,596,953</b>	<b>\$ 1,863,522</b>	<b>7.3%</b>	<b>100.0%</b>	

(1) Appears to be driven by the major wireless carriers, showing a decline through September.

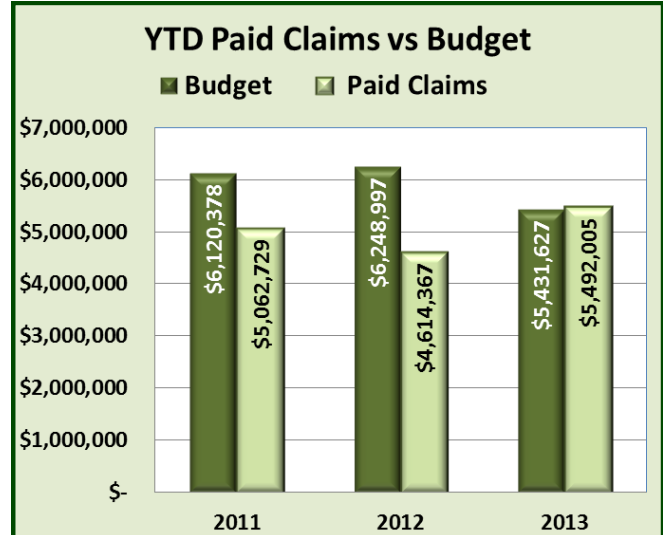
(2) This sector shows a significant decline through September; staff will continue to monitor this trend.



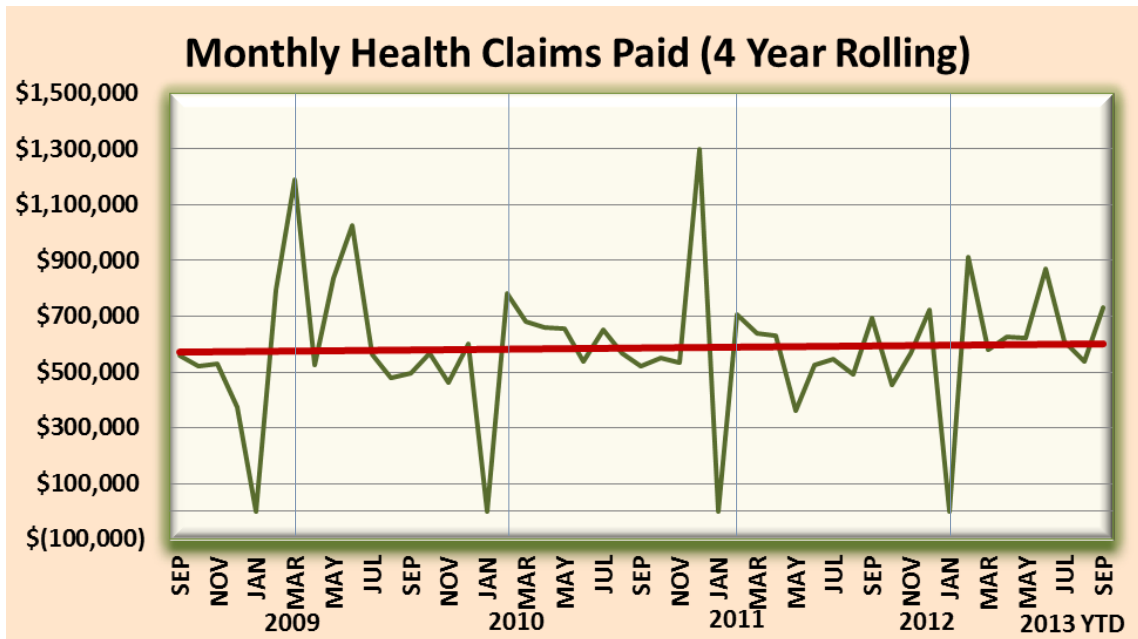


Claims Incurred				
		OAP	HRA	Total
2013	Sept	535,972	160,429	696,401
	YTD	4,837,699	1,303,848	6,141,547
2012	Sept	297,985	155,034	453,019
	YTD	3,854,261	1,130,928	4,985,189
Change	Sept	237,987	5,395	243,382
	% Sept	79.9%	3.5%	53.7%
	YTD	983,438	172,920	1,156,358
	% YTD	25.5%	15.3%	23.2%

⇒ HRA—Health Reimbursement Arrangement  
 ⇒ OAP—Open Access Plan



Incurred claims are total expenses the City is obligated to pay for claims, including claims paid and unpaid. Paid claims are those claims that have been paid and reconciled through the bank to-date, which may not reflect Stop Loss reimbursements or other refunds.

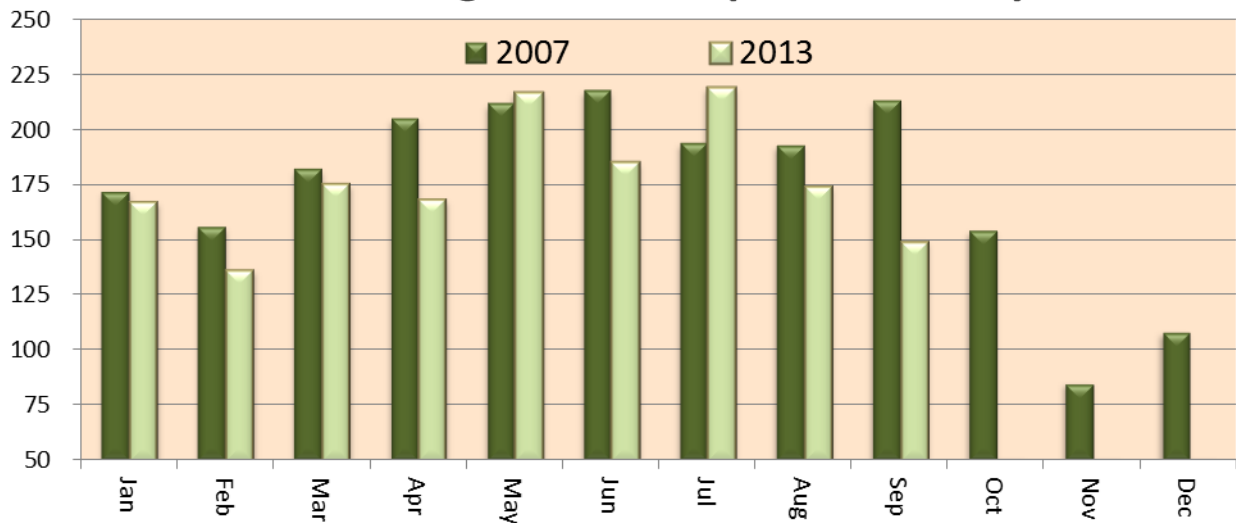


Comparison of YTD Claims Over \$25k				
September	2010	2011	2012	2013
# of claims	36	44	37	48
YTD Cost of high claims	\$2,929,144	\$2,266,796	\$2,055,116	\$2,808,090

⇒ 2013 # of StopLoss claims: 3  
 (claims over \$150k paid by StopLoss Carrier)



## Building Permit Comparison History



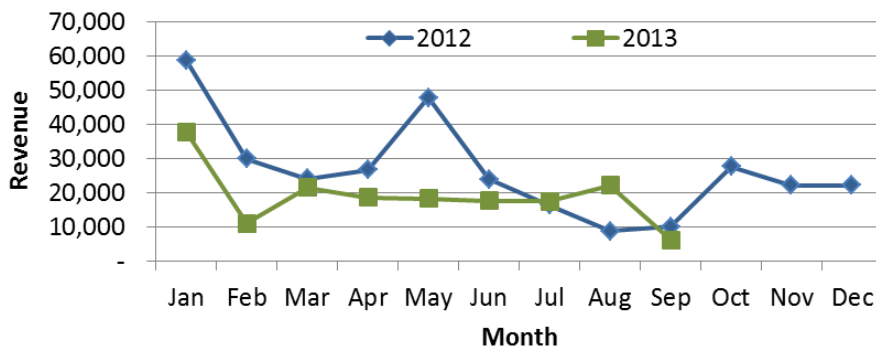
Measures	Sept 2011	Sept 2012	Sept 2013	2011 YTD	2012 YTD	2013 YTD
# of Building Permits	150	175	149	1,383	1,671	1,590
Building Permit Valuations	\$ 6,693,147	\$15,424,833	\$ 7,129,022	\$ 68,625,163	\$100,107,277	\$ 119,788,711
# of Certified Occupancies	26	31	28	186	254	269
Net # of Sales Tax Licenses	(36)	13	11	131	(102)	(303)
New Residential Electric Meter Sets	38	27	15	289	172	213
# of Utility Bills Sent	35,718	36,266	36,764	319,764	324,706	329,045
Rounds of Golf	14,016	13,590	9,545	104,627	108,562	93,848
\$ Average Health Claim Costs/Emp.	\$ 869.75	\$ 703.45	\$ 1,058.36	\$ 983.94	\$ 869.21	\$ 1,045.83
KWH Demand (kH)	127,069	123,680	136,885	986,062	1,015,066	1,038,908
KWH Purchased (kwh)	58,964,037	58,453,591	62,999,849	551,211,729	565,237,747	570,089,283
Gallons of Water Sold	606,626,412	620,840,014	553,577,414	2,896,348,177	3,473,224,224	2,889,783,591
# of Workers' Comp Claims 2013	11	8	10	93	80	83
\$ of Workers' Comp Claims Paid 2013	\$ 21,912.00	\$ 22,735.04	\$ 24,517.00	\$ 125,843.00	\$ 344,204.14	\$ 340,174.95
# of Total Open Claims	22	14	22	<i>Not Cumulative</i>		
\$ of Total Open Claims	222,484	227,325	212,886	<i>Not Cumulative</i>		
\$ of Lodging Tax Collected	\$ 69,447.42	\$ 79,379.57	\$ 80,106.93	\$ 438,111.79	\$ 506,446.80	\$ 546,079.47

**City of Loveland**  
**Statement of Results of Operations for Rialto Theatre Center**  
 For Quarter Ending 09/30/2013

	YTD Amount	YTD Budget	% of Budget	2012 YTD	Change from Prior Year
<b>Rialto Theatre</b>					
<b>Rialto Theatre Revenues</b>					
Revenues from Operations	\$ 128,452	\$ 165,960	77.40%	\$ 136,797	-6.10%
Gifts/Donations	-	18,000	0.00%	18,235	-100.00%
Transfers from Lodging Tax Fund	25,000	25,000	100.00%	-	0.00%
<b>Total Rialto Theatre Revenues</b>	<b>153,452</b>	<b>208,960</b>	<b>73.44%</b>	<b>155,033</b>	<b>-1.02%</b>
<b>Rialto Theatre Expenses</b>					
Personnel Costs	168,319	184,480	91.24%	180,388	-6.69%
Supplies	19,668	32,575	60.38%	36,644	-46.33%
Purchased Services	83,054	103,460	80.28%	102,856	-19.25%
Capital Outlay	-	560	0.00%	38,293	-100.00%
<b>Total Direct Costs</b>	<b>271,041</b>	<b>321,075</b>	<b>84.42%</b>	<b>358,181</b>	<b>-24.33%</b>
Administrative Allocations	91,150	91,150	100.00%	-	0.00%
<b>Total Rialto Theatre Expenses</b>	<b>362,191</b>	<b>412,225</b>	<b>87.86%</b>	<b>358,181</b>	<b>1.12%</b>
<b>Rialto Theatre Net Income (Loss)</b>	<b>\$ (208,738)</b>	<b>\$ (203,265)</b>	<b>102.69%</b>	<b>\$ (203,149)</b>	<b>2.75%</b>
<b>Rialto Event Center</b>					
<b>Rialto Event Center Revenues</b>					
Revenues from Operations	17,622	21,000	83.91%	6,657	164.71%
Gifts/Donations	-	-	0.00%	85,060	-100.00%
<b>Total Event Center Revenues</b>	<b>17,622</b>	<b>21,000</b>	<b>83.91%</b>	<b>91,717</b>	<b>-80.79%</b>
<b>Rialto Event Center Expenses</b>					
Personal Services	64,024	59,670	107.30%	35,560	80.04%
Supplies	7,311	2,000	365.56%	79,641	-90.82%
Purchased Services	29,318	54,110	54.18%	475	6072.11%
Capital Outlay	-	20,320	0.00%	-	0.00%
<b>Total Rialto Event Center Expenses</b>	<b>\$ 100,653</b>	<b>\$ 136,100</b>	<b>73.95%</b>	<b>\$ 115,677</b>	<b>-12.99%</b>
<b>Rialto Event Center Net Income (Loss)</b>	<b>\$ (83,031)</b>	<b>\$ (115,100)</b>	<b>72.14%</b>	<b>\$ (23,960)<sup>1</sup></b>	<b>246.54%</b>
<b>Grand Total Rialto Theatre Center Revenues</b>	<b>171,074</b>	<b>229,960</b>	<b>74.39%</b>	<b>246,750</b>	<b>-30.67%</b>
<b>Grand Total Rialto Theatre Center Expenses</b>	<b>462,843</b>	<b>548,325</b>	<b>84.41%</b>	<b>473,858</b>	<b>-2.32%</b>
<b>Rialto Theatre Center Net Income (Loss)</b>	<b>\$(291,769)</b>	<b>\$(318,365)</b>	<b>91.65%</b>	<b>\$(227,108)</b>	<b>28.47%</b>

<sup>1</sup>Rialto Event Center 2012 Net Income/(Loss), NET OF \$85,000 donation = (109,020)

## Rialto Theater Center Revenue by Month



**For more information regarding this report contact:**

**Brent Worthington, Finance Director**

**970.962.2300 or**

**[brent.worthington@cityofloveland.org](mailto:brent.worthington@cityofloveland.org)**

**Financial Sustainability  
Strategies Can Be**

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**[CityofLoveland.org](http://CityofLoveland.org)**

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- ⇒ **Finance**
- ⇒ **Administration**
- ⇒ **Financial Reports**
- ⇒ **Financial  
Sustainability**

*The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at [bettie.greenberg@cityofloveland.org](mailto:bettie.greenberg@cityofloveland.org) or 970-962-3319*





Museum/Gallery • Art in Public Places  
 Fifth and Lincoln, Loveland, Colorado 80537  
 (970) 962-2410 • FAX 962-2910 • TDD 962-2833

**CITY OF LOVELAND**  
**CULTURAL SERVICES DEPARTMENT**

Rialto Theater  
 228 E. 4th St., Loveland, CO 80537  
 (970) 962-2120 • FAX 962-2422

October 31, 2013

TO: City Council and City Manager  
 FROM: Susan Ison, Cultural Services Director  
 RE: Rialto Theater Center Quarterly Report

Significant Staff Changes

Since the August 6 Quarterly Report several staffing changes have occurred:

- Jan Sawyer's resignation became effective August 23, 2013 (Roberta Cox was appointed interim Theater Manager on August 26, 2013).
- Brittany Koonce's resignation became effective September 6, 2013.

The changes in staff presented an opportunity to realign responsibilities and increase efficiencies, while continuing to provide excellent customer service. Facilities Management staff has been very supportive and agreed that they have the capacity to absorb the Scheduling Coordinator responsibilities. Dave Klith, Facility Coordinator, moved his office from the MOC to the RTC in September to assume those responsibilities. The elimination of one full-time employee is an immediate cost savings of approximately \$46,000 annually. The savings is just partially evident in the July-September 3rd Quarter Report, but will be reflected more fully in the 4<sup>th</sup> Quarter Report, which will be presented in February, 2014.

New Management

In August, a search for a new Rialto Theater Center Manager was initiated. We received over 80 applications, many from out of state, and interviewed nine candidates. I am pleased to announce that the new Theater Manager, Richard (Rich) Harris, begins work November 5, 2013. He previously held positions as Executive Director at The Dairy Center for the Arts in Boulder, Executive Director of Town Hall Arts Center in Littleton, Events Manager at Teikyo Loretta Heights University in Denver and Theater Manager at the Boulder Theater.

Business Plan Update

The 2<sup>nd</sup> Quarter Report also referenced a Request for Proposal for a Business Plan for the Rialto Theater Center. Subsequently, due to the associated cost, a decision was made to complete the Business Plan internally. I am Project Lead with the cooperative assistance of staff from several other City departments. Work is underway with several unexpected delays due to some key staff being unavailable because of flood response responsibilities and also due to the desire to have the participation of the

new Theater Manager. Completion is anticipated early first quarter of 2014. However, some of the Action Items in the plan will be in process concurrently—specifically the review of a number of the existing policies (including rates and fees), and the possible addition of several policies. Changes to rates and fees will, of course, return to City Council for review and approval. The Marketing Plan is being reviewed as well.

On the revenue side, Theater usage continues high. Event usage has been light the past few months, but it will be increasing in the last two months of the year. We are very excited that Madwire will soon be a tenant on the third floor. Occupancy is anticipated as early as Thanksgiving, but no firm date has been announced. As you are aware from the recent lease, Madwire will be using the Devereaux Room every weekday morning. Other uses of the building after they are on-site are anticipated and the exposure of the facility through their customer visits should be beneficial. It's a positive direction.



**CITY OF LOVELAND**  
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 13  
**MEETING DATE:** 11/19/2013  
**TO:** City Council  
**FROM:** Alan Krcmarik, Executive Fiscal Advisor  
**PRESENTER:** Alan Krcmarik

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**TITLE:**

Investment Report for September 2013

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item. No Council action is required.

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**SUMMARY:**

The budget estimate for investment earnings for 2013 is \$2,760,420. Through September, the net amount posted to the investment accounts is \$920,920, including realized gains. Actual year-to-date earnings are much lower than the budget projection. Earlier this year, several very high interest rate corporate bonds matured, so future yields will be lower. The estimated annualized yield on market value for securities held by US Bank decreased to 1.09% at the end of September, lower than the 1.14% yield reported at the end of August. The yield is still under the annual target rate of 1.20% for 2013. Reinvestment rates have risen recently after being at near record low levels. Current reinvestment rates are now higher than the budget projection target.

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**BACKGROUND:**

At the end of September the City's portfolio had an estimated market value of \$223.6 million, about \$2.6 million less than a month ago. The market value is attributable to revenue collections and the interest rate shifts in treasury rates. Of this amount, US Bank held (including accrued interest) \$184.8 in trust accounts; other funds are held in local government investment pools, in operating accounts at First National Bank and Wells Fargo Bank, and a few miscellaneous accounts. Interest rates trended significantly lower in 2012 and despite an upward move in the last few months; they are still projected to remain relatively low for years. Investments are in US Treasury Notes, high-rated US Agency Bonds, high-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each one percent of earnings on the portfolio equates to about \$2.2 million annually.

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**REVIEWED BY CITY MANAGER:**

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. Investment Focus September 2013



# Investment Focus

Monthly Investment Report

September 2013

## What's in here?

Focal Points	1
Gain / Loss	
Rate Trends	2
Cash Statement	3
Portfolio size	4
Investment types	
Transactions /	5
Maturity	
Future Scan	6

## Focal Points

- \* 2013 targets for the City's portfolio: 1) the interest rate target is **1.2%**; 2) the earnings goal = **\$2,760,420**.
- \* City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.
- \* Revenue posted to accounts = **\$920,920** - **44% of the ytd target**. So far this year, the portfolio has **\$50,650 in realized gains**.
- \* Each 1% of the market value amounts to nearly \$2.2 million.
- \* The month end market value shows the unrealized loss was lower, estimated to be **\$2,766,201** at the end of September.

## Shutdown Pain Augurs Protracted Fed Stimulus

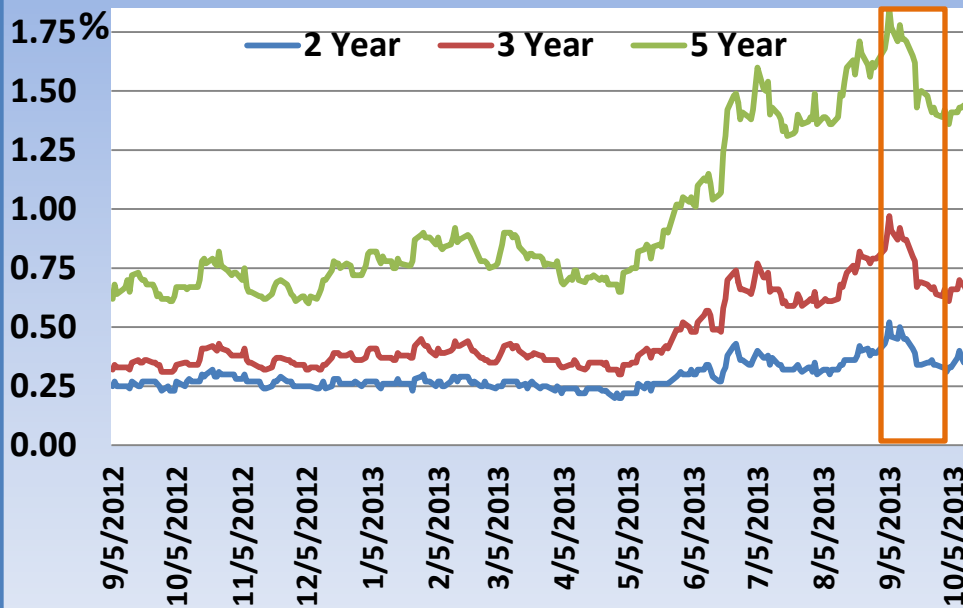
"The government shutdown and debt-ceiling fight are clouding the outlook for the global economy and markets, but they are bringing clarity to one area: The Federal Reserve is now likely to keep its foot on the monetary gas pedal even longer to offset damage from the standoff. . .the most closely watched official gauges of economic activity will be unlikely to provide reliable readings for months." See chart on page 2. (Source: THE WALL STREET JOURNAL, Sudeep Reddy, October 14, 2013.)

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 9,362,615	\$9,362,615	--
Investment Pools	29,497,365	29,497,365	--
Money Markets	<u>4,201,955</u>	<u>4,201,955</u>	--
Subtotal	\$ 43,061,935	\$ 43,061,935	--
Notes and Bonds	<u>183,330,180</u>	<u>180,563,980</u>	<b>\$ (2,766,201)</b>
Total Portfolio	<b>\$ 226,392,115</b>	<b>\$ 223,625,914</b>	<b>\$ (2,766,201)</b>
Data Sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.



## Treasury rate trends / Debate hurts recovery



Interest rates on U.S. Treasuries fell sharply during September. The 2-, 3-, and 5-year treasury notes fell by 6, 16, and 23 basis points respectively. This extreme rate shift increased the value of securities in the portfolio and lowered the unrealized loss.

“Some private-sector signals are already flashing red.

- Consumer confidence on Sunday (10/13) dropped to a new low for the shutdown.
- Business executives also have said they are less likely to hire and invest as lawmakers debate whether defaulting on U.S. bills would be merely bad or disastrous for the economy.
- Economists tend to be an optimistic bunch, expecting for years that a stronger recovery would be just around the corner. The latest survey showed many more throwing in the towel, shifting their hopes to 2014.”

“The thing that’s been hard to time—and makes people in my line of work look silly—is the psychological turn

that leads businesses to start hiring, leads consumers to feel comfortable to spend a bit more freely, or gotten investors more confident to make slightly more aggressive investments,” said Carl Tannenbaum, chief economist at Northern Trust. “All of those things eventually kick in,” he said. “But boy, it has taken a frustratingly long time. With political battles again diminishing the benefits of monetary policy, the wait may be even longer.”

### 31 Fed on Hold as Washington Fights

The Federal Reserve’s hints left many economists bracing for a September pullback in the central bank’s bond purchases. Now forecasters are looking at a policy change in December or next year.



Number of economists surveyed and when they expect the Fed to start reducing its bond buying

● September survey  
● October survey

Source: WSJ survey of economists

## Cash Position Summary

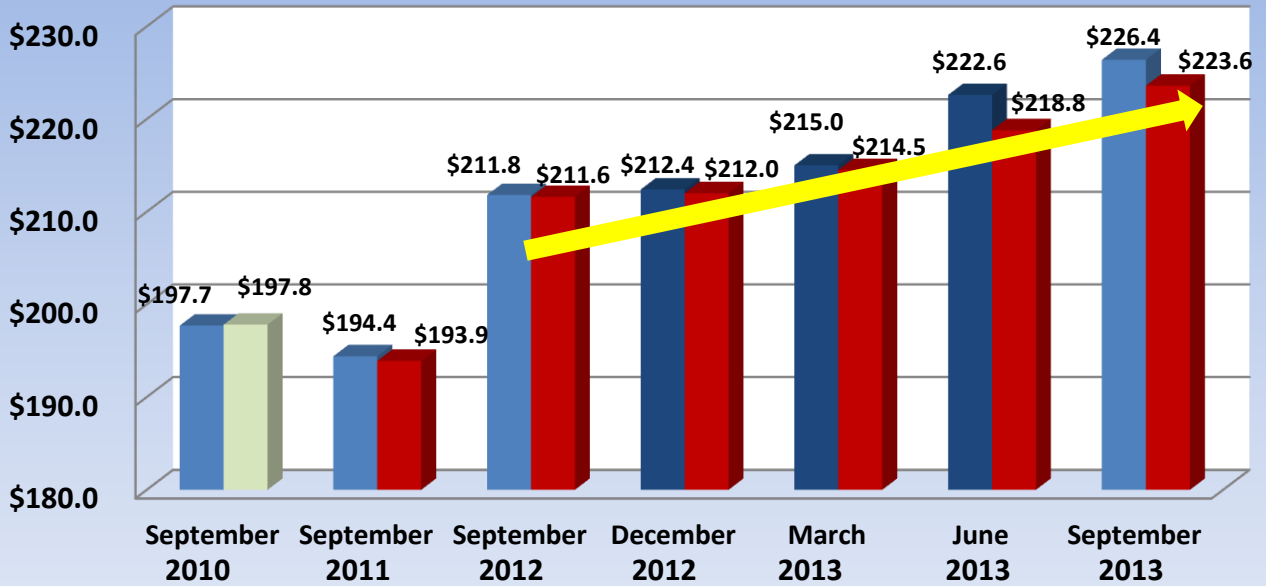
## Cash &amp; Reserves (unaudited)

	2013 Beginning	YTD Activity	Month End Total
<b>Restricted Reserves</b>	Due to rounding, column and row totals may not add exactly.		
1 Capital Expansion Fees	\$ 35,226,830	\$ 2,634,101	\$ 37,860,931
2 Water System Impact Fees	8,945,821	(92,300)	8,853,522
3 Raw Water Revenue – Windy Gap	20,940,043	1,678,791	22,613,834
4 Wastewater System Imp. Fees	5,131,782	684,992	5,816,774
5 Storm Drain System Imp. Fees	1,469,674	154,693	1,624,367
6 Power Plant Investment Fees	8,211,002	993,750	9,204,752
7 Cemetery Perpetual Care	2,629,094	59,364	2,688,458
8 Other Restricted	30,489,353	(1,069,267)	29,420,086
9 <b>Total Restricted</b>	<b>\$ 113,043,599</b>	<b>\$ 5,039,124</b>	<b>\$ 118,082,724</b>
<b>Committed/ Assigned</b>			
10 General Fund	\$ 11,224,908	\$ 1,139	\$ 11,225,944
11 Enterprise Funds	4,998,736	(536,539)	4,462,197
12 Internal Service Funds	19,553,388	878,871	20,432,259
13 <b>Total Reserves</b>	<b>\$ 35,777,032</b>	<b>\$ 343,471</b>	<b>\$ 36,120,503</b>
14 <b>Total Restricted and Reserved</b>	<b>\$ 148,820,632</b>	<b>\$ 5,382,595</b>	<b>\$ 154,203,227</b>
<b>Unassigned Balance</b>			
15 General Fund	\$ 23,685,948	\$ 11,889,367	\$ 35,575,315
16 Airport	1,384,130	(561,995)	882,165
17 Internal Service – Vehicle Maint	245,629	(75,978)	169,651
18 Enterprise Funds	37,097,373	(1,871,895)	35,225,478
19 <b>Total Unrestricted</b>	<b>\$ 62,413,080</b>	<b>\$ 9,379,528</b>	<b>\$ 71,792,609</b>
20 <b>TOTAL CASH</b>	<b>\$ 211,233,712</b>	<b>\$ 14,762,124</b>	<b>\$ 225,995,836</b>

# Monthly Investment Report

## Portfolio Size / Types of Investments

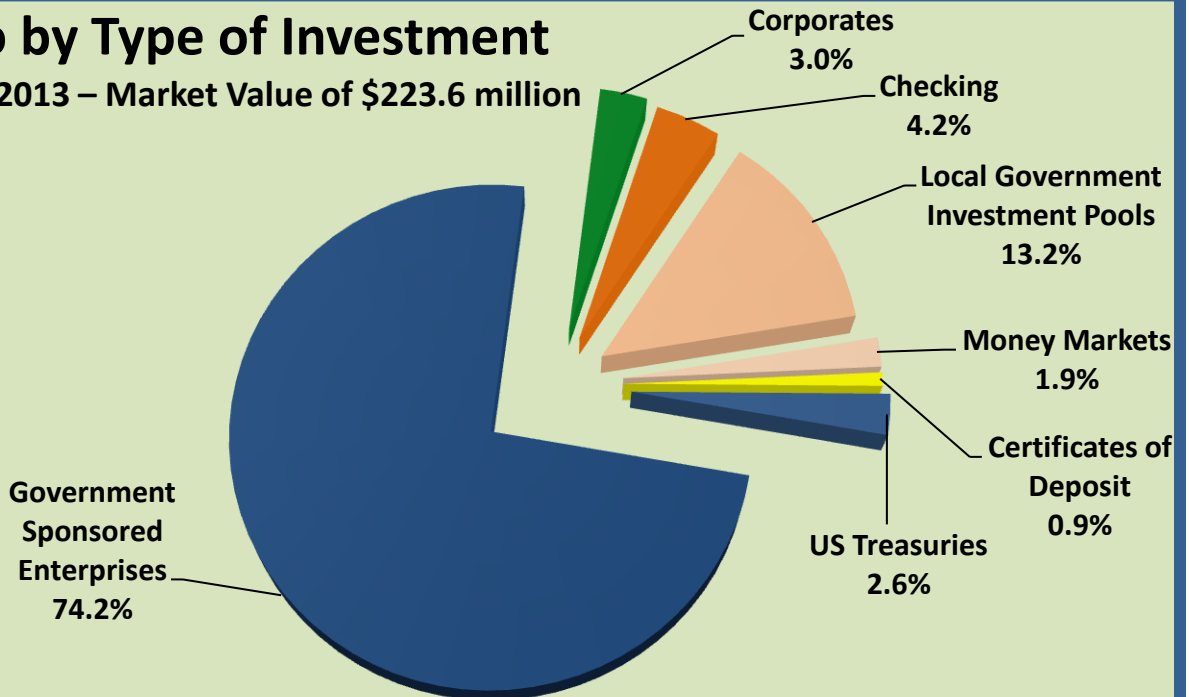
### Portfolio Size since September 2010



Blue bars show Purchase value; red and green bars show Market value (red = loss and green = gain).

### Portfolio by Type of Investment

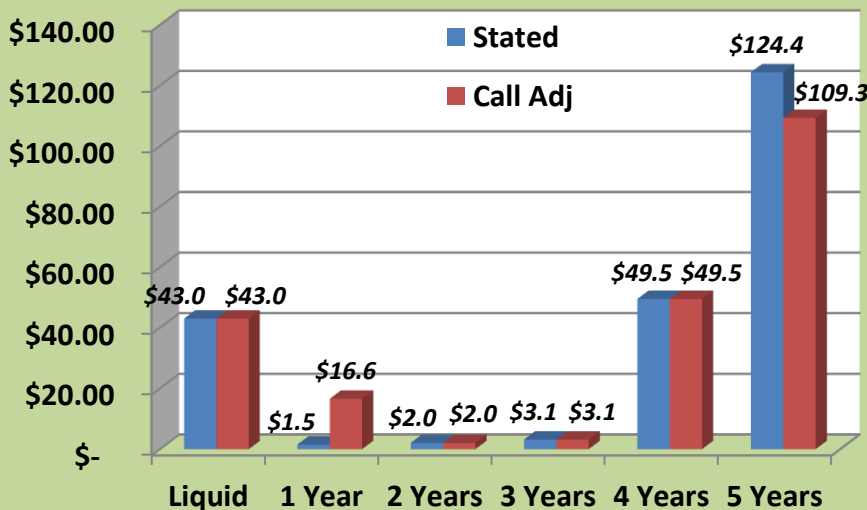
September 2013 – Market Value of \$223.6 million



# Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
<b><u>Purchases</u></b>				
Federal Home Loan Bank	09/20/2018	\$ 3,130,000	\$ 3,130,000.00	1.375%
		\$ 3,130,000	\$ 3,130,000.00	
<b><u>Matured</u></b>				
General Electric Cap Note	09/20/2013	\$2,000,000	\$ 2,215,460.00	5.400%
<b><u>Called</u></b>				
none this month			<b><u>Call Value \$</u></b>	
<b><u>Sales</u></b>				
none this month			<b><u>Gain \$</u></b>	

**Portfolio by Estimated Maturity Term**  
(in millions - Total = \$223.6 at the end of September)



The target rate for 2013 is 1.2%. Rates are now up a little from the near record lows. For the year-to-date, the portfolio proceeds are below the earnings target level for 2013.

To support earnings, or to reposition the portfolio, bonds may be sold. So far this year, gains of \$50,650 have been realized through sales.

The blue bars show the stated term; red bars show the calls. Just one of the five year bonds may be called early.



## Future Scan: Still no Quantitative Easing taper, rates lower

- ❖ On October 30, the **Federal Open Market Committee** decided to make no change in the \$85 billion-per-month bond purchase program and to keep the federal funds rate at zero to 0.25%.
  - “Despite seeing signs of “growing underlying strength” and diminished downside risk in the economy,” the Fed held to their status quo strategy.
  - “To Fed watchers, the most notable part of the FOMC statement issued at meeting's end was little mention of the lackluster economic indicators since the September meeting.”
  - “The fact that the statement is so balanced, despite unimpressive data, suggests that they need to leave the options open so they don't box their successors in,” said Robert Tipp, managing director and chief investment strategist at Prudential Fixed Income. “At their last meeting, they said, 'everything is on hold.' Now there is weaker data but they didn't reference the weaker data, so that could suggest on the margin that they're more likely to taper.”
  - “With Janet Yellen expected to take over as Fed chairwoman in late January, “the implications for us is that we are going to have a few months of uncertainty here until we get an idea of which way she is going to push the committee,” Mr. Tipp said.” I think there is a lot of uncertainty about how different a Janet Yellen Fed would be.”
  - The Fed is likely to keep the current pace of QE through the end of this year and into 2014. (Source: *Fed doesn't change interest rates, quantitative easing*, Hazel Bradford, in *Pensions&Investments* online, October 31, 2013)
- ❖ **Morgan Stanley Fixed Income Strategy – the market focused on shutdown and debt ceiling.**
  - “With respect to the shutdown, MS & Co. economists estimate a 0.15% draw on GDP growth for each week of the shutdown. Negative effects would be reversed in the following quarter.”
  - “If the shutdown persists, it could affect the timing and integrity of future data releases between now and then. With the Fed being data dependent, this could potentially impact the timing of the Fed's decision, but we feel a tapering announcement will be made no later than early 2014. “The longer this stalemate goes on, the uncertainty quotient will rise as investors lack government economic data, and the drag on GDP could grow with each passing week as furloughed government workers go without paychecks and businesses that rely on government spending lose revenues.” (Source: Morgan Stanley *Basis Points* Fixed Income Strategy, Kevin Flanagan & Jon Mackay, October 8, 2013.)
- ❖ **The August Colorado Employment Situation** was released on September 20, 2013. Using non-seasonally adjusted data, Colorado's unemployment rate for August was estimated to be 6.7% compared to the national unemployment rate of 7.2%. Colorado's unemployment rate decreased 0.1% from 6.8% in July. (Source: Colorado Department of Labor and Employment *Colorado Employment Situation September 2013*, dated September 20, 2013.)
- ❖ **Recession Outlook:** Four indicators, Industrial Production, Nonfarm Employment, Real Personal Income, and Real Retail Sales are the basis for determining a recession. In September, combined growth rate of these four indicators improved slightly. “The overall picture of the US economy remains one of a ploddingly slow recovery from the Great Recession.” The rate of post-trough growth has been slower since February of 2012.” (Source: *Advisor Perspectives*, Doug Short, October 30, 2013.)

[For more information regarding this report, please contact:](#)

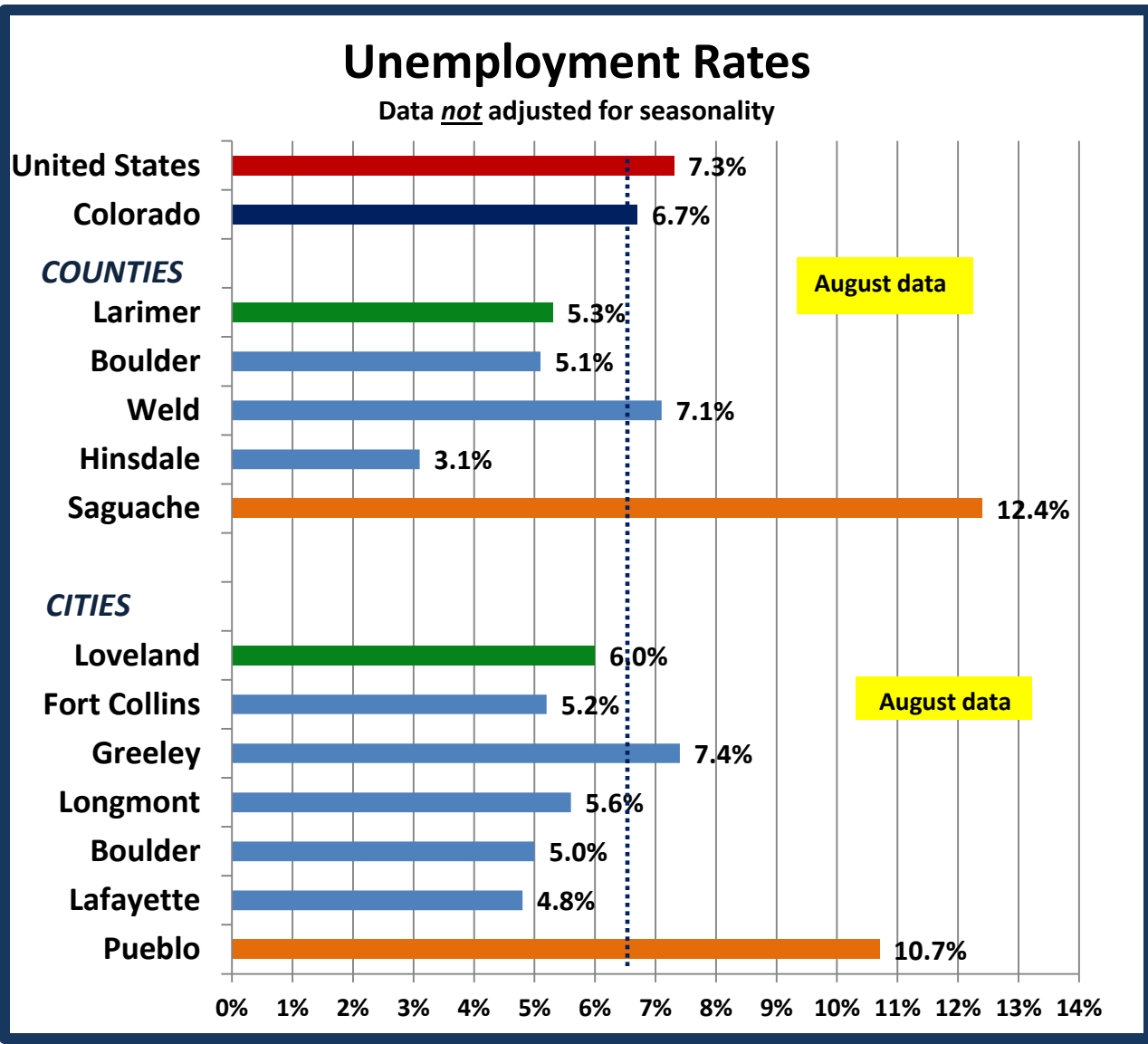
**Alan Krcmarik, Executive Fiscal Advisor**

**970.962.2625 or [Alan.Krcmarik@cityofloveland.org](mailto:Alan.Krcmarik@cityofloveland.org)**

# Updated Colorado Labor Data

- ☐ Loveland’s employed workforce **expanded** in **August**, up 191 jobs from July.
- ☐ Compared to August of 2012, there are now 659 **more** jobs.

**No update due to government shutdown**





## *In a complex economy, conventional measures of unemployment sometimes fall short.*

In today's labor market, the unemployment rate drastically understates the weakness of job opportunities. This is due to the existence of a large pool of "*missing workers*"—potential workers who, because of weak job opportunities, are neither employed nor actively seeking a job. In other words, these are people who would be either working or looking for work if job opportunities were significantly stronger. Because jobless workers are only counted as unemployed if they are actively seeking work, these "*missing workers*" are not reflected in the unemployment rate.

As part of its ongoing effort to create the metrics needed to assess how well the economy is working for America's broad middle class, the Economic Policy Institute is introducing its "*missing worker*" estimates, which will be updated on this page on the first Friday of every month immediately after the Bureau of Labor Statistics releases its jobs numbers. The "*missing worker*" estimates provide policymakers with a key gauge of the health of the labor market.

### Current "*missing worker*" estimates at a glance

*Updated October 22, 2013, based on most current data available*

Total missing workers, September 2013: <b>5,190,000</b>	Unemployment rate if missing workers were looking for work: <b>10.2%</b>	<i>Official unemployment rate:</i> <b>7.2%</b>
---------------------------------------------------------	--------------------------------------------------------------------------	---------------------------------------------------