



August 15, 2016
City Council Dinner, 5:00 PM – Cherry Creek Room
Regular City Council Meeting, 6:00 PM
City Council Chambers
13133 E. Arapahoe Road
Centennial, Colorado 80112
www.centennialco.gov

AGENDA

Meeting Protocols:

PLEASE TURN OFF CELL PHONES; BE RESPECTFUL AND TAKE PERSONAL CONVERSATIONS INTO THE LOBBY AREA.

The Centennial City Council Meetings are audio streamed live on the City's website. Please remember to mute the volume on your laptop computers and to turn off all cell phones as they may cause interference with the microphones and audio streaming.

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Public Comment

The Public Comment section offers an opportunity for any citizen to express opinions or ask questions regarding City services, policies or other matters of community concern, and any agenda items that are not a part of a scheduled public hearing. Citizens will have three minutes for comments if they are speaking as an individual, or five minutes if speaking on behalf of a group or organization. These time limits were established to provide efficiency in the conduct of the meeting and to allow equal opportunity for everyone wishing to speak. An immediate response should not be expected, as issues are typically referred to City staff for follow-up or research and are then reported back to Council and the individual who initiated the comment or inquiry.

Written materials for presentation to Council may be submitted to the City Clerk as the speaker approaches the podium. The City's computer presentation equipment is not available for general public use, although applicants are permitted to display relevant illustrations and material useful in informing the Council and public of a project. The public may, however, use the document camera for visual presentation of materials, if desired.

5. Scheduled Presentations (None)
6. Consideration of Communications, Proclamations and Appointments (None)

CONSENT AGENDA

The Consent Agenda can be adopted by a simple motion. The Consent Agenda will be read aloud prior to a vote on the motion. Any Consent Agenda item may be removed from the Consent Agenda at the request of a Council Member for individual consideration.

7. Consideration of Ordinances on First Reading (None)
8. Consideration of Resolutions
 - a. RESOLUTION NO. 2016-R-51 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR AN UPDATE TO THE CITY OF CENTENNIAL PARKS, OPEN SPACE, TRAILS AND RECREATION MASTER PLAN BETWEEN THE CITY AND DESIGN WORKSHOP, INC. (Houlne)
 - b. RESOLUTION NO. 2016-R-52 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, APPROVING A JOINT FUNDING INTERGOVERNMENTAL AGREEMENT WITH SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT TO JOINTLY FUND THE PILOT PROGRAM FOR A FIRST MILE LAST MILE SOLUTION PILOT PROGRAM (Hutton)
 - c. RESOLUTION NO. 2016-R-53 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO APPROVING A PILOT PROGRAM AGREEMENT FOR A FIRST MILE LAST MILE SOLUTION PILOT PROGRAM BETWEEN THE CITY AND WITH LYFT, INC (Hutton)
9. Consideration of Other Items
 - a. Minutes
 - i. Study Session August 8, 2016
 - ii. Regular Meeting August 8, 2016

DISCUSSION AGENDA

10. Consideration of Land Use Cases (None)

11. Consideration of Ordinances

a. Public Hearings

- i. ORDINANCE NO. 2016-O-14 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CENTENNIAL, COLORADO AND COMCAST OF COLORADO XI, INC. (“GRANTEE”) AND AMENDING ARTICLE 2 OF CHAPTER 5 OF THE CENTENNIAL MUNICIPAL CODE (Eddy/Hassman)

12. Consideration of Resolutions

a. Public Hearings

- i. RESOLUTION NO. 2016-R-54 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, AMENDING THE 2016 BUDGET AND APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE GENERAL FUND (*Continued from August 8, 2016*) (Hutton)

13. Consideration of Other Items

GENERAL BUSINESS

14. Other Matters as May Come Before Council

15. Reports

- a. City Manager
b. City Attorney
c. City Clerk
d. Council Members

16. Mayor's Report and Comments

17. Executive Session

- a. Executive Session Pursuant to C.R.S. Section 24-6-402(4)(b) and (e) to Receive Legal Advice, Determine Matters Subject to Negotiation, Determine Negotiation Strategy, and Instruct Negotiators Concerning Annexation of Property into the City of Centennial

18. Adjourn

Please call 303-754-3324 at least 48 hours prior to the meeting if you believe you will need special assistance or any reasonable accommodation in order to be in attendance at or participate in any such meeting, or for any additional information.



Staff Report

TO: Honorable Mayor Noon and Members of City Council

THROUGH: John Danielson, City Manager
Steve Greer, Director of Community Development

FROM: Jenny Houlne, Senior Planner

DATE OF MEETING: 8/15/2016

DATE OF SUBMITTAL: 8/5/2016

SUBJECT: RESOLUTION NO. 2016-R-51 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR AN UPDATE TO THE CITY OF CENTENNIAL PARKS, OPEN SPACE, TRAILS AND RECREATION MASTER PLAN BETWEEN THE CITY AND DESIGN WORKSHOP, INC.

1. Executive Summary:

Approval of Resolution 2016-R-51 will allow the City to enter into the attached Professional Services Agreement with the consultant team led by Design Workshop, Inc., as discussed at the City Council Study Session on August 8, 2016.

2. Discussion:

Last year, Council directed Staff to initiate the development of a plan update to the Parks, Open Space, Trails and Recreation Master Plan in 2016. To support this effort, Council allocated \$60,000 in the 2016 budget toward the preparation of the plan. The City was also awarded a \$50,000 grant from Arapahoe County Open Space. The funds were anticipated to be used primarily to contract a consultant team to support Staff in the development of the plan.

At the August 8 Study Session, Staff introduced the recommended consultant team, led by Design Workshop, Inc., and the team provided an overview of their proposal to effectively support the development of the plan. The proposal responds to the priorities and expectations stated by the City, including a broad and inclusive public engagement process; to reaffirm the community's vision and values as they relate to parks, trails, open space and recreation within Centennial; to address the City's policies and practices for collaborating with local recreation providers and other partners; to create a plan that provides policy guidance and includes an implementation strategy for prioritized projects; and to provide a plan that meets the expectations of the City Council and Open Space Advisory Board (OSAB), and can be supported by Centennial's stakeholders.

3. Recommendations:

At the August 8 Study Session, City Council expressed their support for the consultant team and proposed scope of work and directed Staff to bring forward a contract for formal approval. Staff recommends approval of Resolution 2016-R-51 and the associated Professional Services Agreement.

4. Alternatives:

City Council may choose not to approve Resolution 2016-R-51 and not enter into the attached contract with the consultant team or may request changes to the contract and/or scope of work.

5. Fiscal Impact:

The 2016 adopted budget includes \$60,000 toward the preparation of the Plan update. There is also the additional \$50,000 of Arapahoe County grant funds. The Team's cost proposal (\$109,980) can be fully accommodated within the budgeted amount.

6. Next Steps:

No additional City Council approvals are necessary at this time. Upon approval and execution of the Professional Services Agreement, development of the plan will begin.

7. Previous Actions:

Last year, Council directed Staff to initiate the development of a plan update to the Parks, Open Space, Trails and Recreation Master Plan in 2016. The 2016 adopted budget includes \$60,000 toward the preparation of the plan to include an additional \$50,000 of Arapahoe County grant funding.

At the Study Session with City Council on August 8, 2016, Council directed Staff to finalize a contract and scope of services with the consultant team.

8. Suggested Motions:

Approval of the Consent Agenda will affect approval of Resolution 2016-R-51. If Resolution 2016-R-51 is removed from the Consent Agenda and placed on the Discussion Agenda, City Council may use the following suggested motions:

Motion to Approve - I MOVE TO APPROVE RESOLUTION NO. 2016-R-51 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR AN UPDATE TO THE CITY OF CENTENNIAL PARKS, OPEN SPACE, TRAILS AND RECREATION MASTER PLAN BETWEEN THE CITY AND DESIGN WORKSHOP, INC.

Motion to Deny - I MOVE TO DENY RESOLUTION NO. 2016-R-51 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR AN UPDATE TO THE CITY OF CENTENNIAL PARKS, OPEN SPACE, TRAILS AND RECREATION MASTER PLAN BETWEEN THE CITY AND DESIGN WORKSHOP, INC.

Attachments:

1. Resolution 2016-R-51
 - a. Professional Services Agreement between City and Design Workshop, Inc.

**CITY OF CENTENNIAL,
COLORADO**

RESOLUTION NO. 2016-R-51

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CENTENNIAL, COLORADO, APPROVING A PROFESSIONAL
SERVICES AGREEMENT FOR AN UPDATE TO THE CITY OF
CENTENNIAL PARKS, OPEN SPACE, TRAILS AND RECREATION
MASTER PLAN BETWEEN THE CITY AND
DESIGN WORKSHOP, INC.**

WHEREAS, by Resolution No. 2008-R-22, the City adopted the Centennial Parks, Open Space, Trails and Recreation Master Plan (**“Master Plan”**) which identified the need for upgrades to existing parks and recreational facilities, acquisition of open space, and completion of trail connections to enhance neighborhood access to the regional trail network within and along the City; and

WHEREAS, the City desires to update the Master Plan and has need of professional services for the preparation thereof; and

WHEREAS, the City issued Request for Proposal No. 16-05-01 dated May 26, 2016 (the “RFP”) to retain such Master Plan update services; and

WHEREAS, a joint Open Space Advisory Board and City Council subcommittee and certain City staff (collectively the “Subcommittee”) interviewed the top consultants responding to the RFP; and

WHEREAS, the Subcommittee unanimously recommends Design Workshop, Inc., as the contractor to prepare an update to the Master Plan pursuant to the terms and conditions of a Professional Services Agreement in substantially the form attached hereto as **Exhibit 1** (“Agreement”).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO AS FOLLOWS:

Section 1. The City Council: (a) approves the Agreement for services related to an update to the Master Plan between the City and Design Workshop, Inc., substantially in the form attached to this Resolution as **Exhibit 1**, (b) authorizes the Mayor, in consultation with the City Attorney, to make such changes as may be needed to correct any nonmaterial errors or language in the Agreement that do not increase the obligations of the City, and (c) authorizes the Mayor to execute the Agreement on behalf of the City.

Section 2. Effective Date. This Resolution shall take effect upon its approval by the City Council.

ADOPTED by a vote of ____ in favor and ____ against this ____ day of August, 2016.

By: _____
Cathy A. Noon, Mayor

ATTEST:

Approved as to Form:

By: _____
City Clerk or Deputy City Clerk

By: _____
For City Attorney's Office

EXHIBIT 1
PROFESSIONAL SERVICES AGREEMENT

**CITY OF CENTENNIAL
PROFESSIONAL SERVICES AGREEMENT**

INDEPENDENT CONTRACTOR

Project/Services Name: Centennial Parks, Open Space, Trails and Recreation Master Plan Update

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between **DESIGN WORKSHOP, INC.**, a Colorado corporation whose business address is 1390 Lawrence St., Suite 100, Denver, CO 80204 (the "Contractor" or "Design Workshop") and the **CITY OF CENTENNIAL, COLORADO**, a home rule municipality of the State of Colorado (the "City"). The City and the Contractor may be collectively referred to herein as the "Parties."

RECITALS AND REPRESENTATIONS

WHEREAS, the City desires to have performed certain professional services as described in this Agreement; and

WHEREAS, the Contractor represents that the Contractor has the skill, ability, and expertise to perform the services described in this Agreement and within the deadlines provided by the Agreement; and

WHEREAS, the City desires to engage the Contractor to provide the services offered by the Contractor and described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1.0 SERVICES AND PURPOSE OF AGREEMENT

- 1.1 Services. The City desires to achieve, secure, receive, or obtain certain service(s) or work product(s) as more specifically described in **Exhibit A** (the "Services"). As an independent contractor, the Contractor offers to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement. The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.
- 1.2 City Representative. The City assigns Jenny Houlne as the City Representative for this Agreement. In the absence of Jenny Houlne, the City assigns Steve Greer as the City Representative for this Agreement. The City Representative will monitor the Contractor's progress and performance under this Agreement and shall be available to the Contractor to respond to questions, assist in understanding City policies, procedures, and practices, and supervise the performance of any City obligations under this Agreement.
- 1.3 Changes to Services. Any changes to the Services that are mutually agreed upon between the City and the Contractor shall be made in a formal writing referencing

this Agreement and, only upon execution by both Parties of such formal writing, shall become an amendment to the Services described in this Agreement. To be effective, any written change must be signed by the Contractor and by the City or by a person expressly authorized in writing to sign on behalf of the City. Changes to the Services or to this Agreement shall not be made through oral agreement or electronic mail messages.

2.0 COMPENSATION

2.1 Commencement of and Compensation for Services. Following execution of this Agreement by the City, the Contractor shall be authorized to commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section 2.0 and its subsections.

A. Method of Compensation. The Contractor shall perform the Services and shall invoice the City for work performed based on the rates and/or compensation methodology described in **Exhibit B**. Compensation shall be on a time and materials basis but in no event shall Contractor invoice City for an amount greater than \$109,980 for all Services required to be performed under this Agreement

B. Reimbursable Expenses. The following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the City without administrative mark-up but which must be accounted for by the Contractor and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

- ☒ None
- ☐ Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the Internal Revenue Service as a deductible business expense)
- ☐ Printing and Photocopying Related to the Services (billed at actual cost)
- ☐ Long Distance Telephone Charges Related to the Services
- ☐ Postage and Delivery Services
- ☐ Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

C. Non-reimbursable Costs, Charges, Fees, or Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

D. Increases in Compensation or Reimbursable Expenses. Any increases or modification to the compensation or reimbursable expenses shall be subject to the approval of the City and shall be made only by written amendment of this Agreement executed by both Parties.

2.2 Payment Processing. The Contractor shall submit invoices and requests for payment in a form acceptable to the City. Invoices shall not be submitted more often than once each month unless otherwise approved by this Agreement or in writing by the City. Unless otherwise directed or accepted by the City, all invoices

shall contain sufficient information to account for all appropriate measure(s) of Contractor work effort (e.g., task completion, work product delivery, or time) and all authorized reimbursable expenses for the Services during the stated period of the invoice. Following receipt of a Contractor's invoice, the City shall promptly review the Contractor's invoice. All City payments for Services rendered pursuant to this Agreement shall be issued in the business name of Contractor only, and in no event shall any such payments be issued to an individual.

- 2.3 City Dispute of Invoice or Invoiced Item(s). The City may dispute any Contractor compensation and/or reimbursable expense requested by the Contractor described in any invoice and may request additional information from the Contractor substantiating any and all compensation sought by the Contractor before accepting the invoice. When additional information is requested by the City, the City shall advise the Contractor in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay the Contractor within forty-five (45) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to the Contractor or designee of the Contractor or upon deposit of such payment or notice in the U.S. Mail, postage pre-paid, addressed to the Contractor.

3.0 CONTRACTOR'S REPRESENTATIONS AND OFFERED PERFORMANCE

The Contractor offers to perform the Services in accordance with the following Contractor-elected practices and procedures. By this Agreement, the City accepts such offer and the following are hereby made part of the terms and conditions of this Agreement:

- 3.1 General. The Contractor shall become fully acquainted with the available information related to the Services. The Contractor shall affirmatively request from the City Representative and the City such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. The Contractor shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. The Contractor shall provide all of the Services in a timely and professional manner. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.
- 3.2 Independent Contractor. The Contractor shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City. This Agreement does not require the Contractor to work exclusively for the City. This Agreement shall not be interpreted as the City dictating or directing the Contractor's performance or the time of performance beyond a completion schedule and a range of mutually agreeable work hours, but shall be interpreted as the Contractor's offer and City acceptance of terms and conditions for performance. The Contractor's business operations shall not be combined with the City by virtue of this Agreement, and the City will not provide

any training to Contractor, its agents, or employees beyond that minimal level required for performance of the Services. The Parties acknowledge that the Contractor may require some assistance or direction from the City in order for the Services to meet the City's contractual expectations. Any provisions in this Agreement that may appear to grant the City the right to direct or control Contractor or the Services shall be construed as City plans or specifications regarding the Services.

Subject to conformance with City-adopted policies and procedures and full conformance with Contractor's representations set forth in this Agreement, the Contractor shall have and maintain the requisite judgment, discretion, and responsibility for and control of the performance of the Services, the discipline of the Contractor's employees and other matters incidental to the performance of the Services, duties and responsibilities as described and contemplated in this Agreement. Contractor shall provide and bear the cost of all tools, and any other items, wages, or services required in the performance of the Services, and the City shall not provide any other assistance or benefits to Contractor for performance of the Services under this Agreement.

The Parties recognize and understand that some level of direction and supervision by the City is necessarily involved in successfully implementing City policies and procedures and in administering this Agreement, but the Parties each understand that the Contractor shall bear the burden and shall advise the City in writing of any conflict or inconsistency between the City's direction or supervision and the Contractor's legal status as an independent contractor.

The Contractor, by execution of this Agreement and having received such counsel and advice as deemed appropriate by the Contractor, represents to the City that this Agreement does not create a partnership, joint venture, employer/employee or other relationship with the City other than that of an independent contractor and the Contractor understands that the City shall reasonably rely upon such representation in the City's execution of this Agreement.

- 3.3 Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance

coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

- 3.4 Interaction with Public. The Contractor recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the City. Therefore, the Contractor offers and warrants to the City that the Contractor, its agents and employees will conduct all of their interactions with the citizens and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the City's public image.
- 3.5 Personnel Issues. The Parties recognize and understand that certain key personnel, such as those individuals employed by the Contractor to manage, supervise, direct, or plan for providing the Services contemplated by this Agreement, can have an impact on the favorable outcome of the project and on the stewardship of City funds toward providing the Services. Subject to such recognition and understanding, the Contractor warrants that it will assign key personnel that will provide the Services in a professional manner. In the event the City Manager becomes dissatisfied with the professionalism of the performance of a Contractor employee providing Services under this Agreement, utilizing an objective standard based upon the Contractor's representations and City specifications regarding the Services, which may include, but is not limited to, behavior which brings discredit upon the City, the Contractor offers the City the following process by which the Contractor will resolve the City Manager's dissatisfaction:

The City Manager shall have the option of, in her or his sole discretion, providing timely notification to the Contractor of such dissatisfaction. The notification may include the known facts which give rise to the problem, and may include a request by the City that the Contractor consider a transfer or reassignment of such employee out of service to the City when such employee is failing to perform the Services in a professional and effective manner. Thereafter, representatives of the Contractor and the City Manager shall meet to discuss possible remedies the Contractor might voluntarily offer to address the problems experienced by the City. The Contractor shall act within thirty (30) calendar days and in good faith to resolve any problems experienced by the City. If problems persist after the Contractor has taken such action in good faith, and provided the City Manager has notified the Contractor of the City's continuing dissatisfaction in accordance with this Section, the Contractor will offer to remove any Contractor employee from performing any work for the City, to reasonably limit, in any manner, the work done for the City by any Contractor employee, or to transfer or reassign any of its employees out of service to the City or to a different position acceptable to the City Manager. Upon the City Manager's acceptance of such offer, the Contractor will transfer permanently or reassign any Contractor employee as soon as reasonably possible. By its signature to this Agreement, the City accepts the Contractor's offer of this process. Nothing in this Agreement shall be construed to abrogate in whole or in part the right of the Contractor to hire, discipline, terminate, assign or otherwise manage or control its workforce.

- 3.6 Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement.

- 3.7 Standard of Performance. In performing the Services, the Contractor represents that it shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by competent members of the same profession practicing in the State of Colorado. The Contractor represents to the City that the Contractor is, and its employees or sub-contractors performing such Services are, properly licensed and/or registered within the State of Colorado for the performance of the Services (if licensure and/or registration is required by applicable law) and that the Contractor and employees possess the skills, knowledge, and abilities to perform the Services competently, timely, and professionally in accordance with this Agreement. In addition, the Contractor represents that it will provide the Services in accordance with more specific standards of performance as are:

- ☒ included within **Exhibit A**; or
☐ attached to this Agreement as **Exhibit _____**; or
☐ not included and not attached.

The Contractor represents, covenants and agrees that the Services will be provided to the City free from any material errors. The Contractor's failure to meet

or exceed any of the foregoing standards may be considered a material breach of this Agreement and may be grounds for termination of the Agreement pursuant to Section 4.0 below, in addition to any other remedies as provided in Section 9.0 below.

- 3.8 Review of Books and Records. The Contractor shall promptly comply with any written City request for the City or any of its duly authorized representatives to reasonably access and review any books, documents, papers, and records of the Contractor that are pertinent to the Contractor's performance under this Agreement for the purpose of the City performing an audit, examination, or other review of the Services.
- 3.9 Licenses and Permits. The Contractor shall be responsible at the Contractor's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement.
- 3.10 Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 3.11 Employment of or Contracts with Illegal Aliens. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall not contract with a subcontractor that fails to certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, the Contractor certifies as of the date of this Agreement that it does not knowingly employ or contract with an illegal alien who will perform work under this contract for Services and that the Contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. The Contractor is prohibited from using either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may

terminate this Agreement, and the Contractor may be liable for actual damages incurred by the City, notwithstanding any limitation on such damages provided by such Agreement.

- 3.12 Duty to Warn. The Contractor agrees to call to the City's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and/or other data supplied to the Contractor (by the City or by any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, the Contractor shall not independently verify the validity, completeness or accuracy of such information unless included in the Services or otherwise expressly engaged to do so by the City.

4.0 TERM AND TERMINATION

- 4.1 Term. This Agreement shall be effective on the 15th day of August, 2016, at 12:01 a.m., regardless of when executed (the "Effective Date") and shall terminate at 11:59 p.m. on July 31, 2017, or on a prior date of termination as may be permitted by this Agreement; provided, however, that the Parties may mutually agree in writing to extend the term of this Agreement for up to five (5) additional one (1) month terms, subject to annual appropriation.
- 4.2 Continuing Services Required. The Contractor shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement and generally in conformity with the schedule set forth as Exhibit A-1. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, the City Representative, or other City employee expressly authorized in writing to direct the Contractor's services.
- 4.3 City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:
- A. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after receipt of a notice of termination; and
 - B. All finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement shall be delivered by the Contractor to the City and shall become the property of the City; and
 - C. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section 4.3(A) above. Such final accounting and final invoice shall be delivered to the City within thirty (30) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City.

- 4.4 Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section 4.4, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this Section 4.4, nothing in this Section 4.4 shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.
- 4.5 Unilateral Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.
- 4.6 Reinstatement of Services Following City's Unilateral Suspension. The City may at its discretion direct the Contractor to continue performance of the Services following suspension. If such direction by the City is made within (30) days of the date of suspension, the Contractor shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, the Contractor may elect to: (1) provide written notice to the City that such suspension is considered a unilateral termination of this Agreement pursuant to Section 4.3; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to provide written notice to the City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to Section 4.3. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period of time.
- 4.7 Delivery of Notice of Termination. Any notice of termination permitted by this Section 4.0 and its subsections shall be addressed to the person signing this Agreement on behalf of either City or Contractor at the address shown below or

such other address as either party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

5.0 INSURANCE

5.1 Insurance Generally. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows:

- ☒ The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); or
- ☐ The Contractor shall secure and maintain the following ("Required Insurance"):
- ☐ Worker's Compensation Insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.
- ☐ Comprehensive General Liability insurance with minimum combined single limits of _____ Dollars (\$_____) each occurrence and of _____ Dollars (\$_____) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
- ☐ Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than _____ Dollars (\$_____) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
- ☐ Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of _____ Dollars (\$_____) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one

(1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

The Required Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.

5.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this Section 5.0 and its subsections, insurance shall conform to all of the following:

- A. For both Contractor Insurance and Required Insurance, all policies of insurance shall be primary insurance, and any insurance carried by the City, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor; provided, however, that the City shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. The Contractor shall not be an insured party for any City-obtained insurance policy or coverage.
- B. For both Contractor Insurance and Required Insurance, the Contractor shall be solely responsible for any deductible losses.
- C. For Required Insurance, no policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- D. For Required Insurance, every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy or in the alternative, the Contractor shall provide such notice as soon as reasonably practicable and in no event less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

5.3 Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section 5.0 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City immediately upon demand by the City, or at the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

5.4 Insurance Certificates. Prior to commencement of the Services, the Contractor shall submit to the City certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient

to demonstrate conformance with this Section 5.0 and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference the Project Name as identified on the first page of this Agreement. The City may request and the Contractor shall provide within three (3) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

6.0 CLAIMS, INDEMNIFICATION, HOLD HARMLESS AND DEFENSE

- 6.1 Notices of Claim. A Party shall notify the other Party immediately and in writing in the event that a Party learns of a third-party claim or an allegation of a third-party claim arising or resulting from the Parties' performance or failure to perform pursuant to this Agreement. The Parties shall reasonably cooperate in sharing information concerning potential claims.
- 6.2 Claims Challenging City Law, Ordinance, Rule, or Policy/Procedure. In the event any claim is asserted by a third-party against the City and/or the Contractor alleging that any law, statute, ordinance, rule or approved City policy or procedure is unlawful, unconstitutional or otherwise improper, then:
- A. The Contractor shall not be entitled to and shall not defend such claim; and
 - B. The City may, at its sole discretion, elect to defend, not defend, settle, confess, compromise, or otherwise direct the manner in which such claim is addressed; and
 - C. The Contractor shall reasonably cooperate with the City in any City defense of such claim although the Contractor shall bear any cost or expense incurred by the Contractor only in such cooperation, including but not limited to the Contractor's cost and expense incurred in consultation with its own legal counsel; and
 - D. Only if authorized by law and without waiving the provisions of the Colorado Constitution or the Colorado Governmental Immunity Act, the City shall indemnify and hold Contractor harmless for any damages, liability, expenses, or court awards, including costs and attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of such claim.
- 6.3 Indemnification for Certain Claims. For any claim not within the scope of Section 6.2 above, Contractor expressly agrees to indemnify and hold harmless the City, and any of its council members, board members, commissioners, officials, officers, Contractors, attorneys, or employees from damages, liability, expenses, or court awards, including costs and reasonable attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by any third-party, including but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent error or omission, or negligent act of commission by Contractor or any of its employees, or others

acting on Contractor's behalf in performance of the Services. Nothing in this Agreement shall be construed as constituting a covenant, promise, or agreement by the Contractor to indemnify or hold the City, its council members, board members, commissioners, officials, officers, agents, contractors, attorneys, or employees harmless for any negligence attributable to the City, its councils, boards, commissions, officials, officers, agents, Contractors, attorneys, or employees. The Contractor's obligation to indemnify pursuant to this Section shall survive the completion of the Services and shall survive the termination of this Agreement.

6.4 Defense of Claims.

- A. Claims Against Both the City and Contractor. In the event any claim is asserted by a third-party against both the City and Contractor arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the City shall be entitled to elect to defend such claim on behalf of both the City and Contractor subject to the provisions governing indemnification set forth in this Section. In the event that the City elects to defend such claim, the City shall consult with Contractor in such defense but the City is entitled to exercise its independent discretion in the manner of defense, including but not limited to the selection of litigation counsel and the discretion to settle, confess, compromise, or otherwise direct and dispose of any claim. In the event that the City elects to defend such claim, Contractor may at its own cost and expense elect to assume the defense of Contractor, in which case Contractor shall bear its own attorneys' fees, costs, and expenses in such defense and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.
- B. Claims Against Only One Party. In the event of any claim asserted by a third-party against only one Party to this Agreement arising out of any Party's performance of the Services which claim is not within the scope of Section 6.2 above, the Party shall be entitled to elect to defend such claim on behalf of such Party subject to the provisions governing indemnification set forth in this Section. Where appropriate, the defending Party may also elect to join the other Party through third-party practice or otherwise in accordance with the Colorado Rules of Civil Procedure or other applicable rules, in which case the joined Party may defend such claim subject to indemnification pursuant to this Section. In the event that a Party elects to intervene voluntarily in any claim asserted against the other Party arising out of any Party's performance of the Services or any claim that any law, statute, ordinance, rule or approved City policy or procedure is unlawful, unconstitutional or otherwise improper, the intervening Party shall bear its own attorneys' fees, costs, and expenses in such intervention and such fees, costs, and expenses shall not be subject to indemnification pursuant to this Section.

7.0 **RECORDS AND OWNERSHIP OF DOCUMENTS**

- 7.1 Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained

in accordance with this Agreement, are to be retained and stored in accordance with the City's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

- 7.2 City's Right of Inspection. The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the storage location and method. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.
- 7.3 Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Centennial upon delivery and shall not be made subject to any copyright unless authorized by the City. Other materials, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or City contractors; or (2) pursuant to a request under the Colorado Open Records Act, C.R.S. § 24-72-203, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.
- 7.4 Return of Records to City. At the City's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the Colorado Open Records Act ("CORA"), and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

8.0 FORCE MAJEURE

Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

9.0 REMEDIES

In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions include:

- A. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- B. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
- C. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
- D. Terminate this Agreement in accordance with this Agreement; and/or
- E. ☐ Other remedies as may be provided by attached addendum or addenda.

The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

10.0 MISCELLANEOUS PROVISIONS

- 10.1 Confidentiality. The Contractor shall not disclose or use information acquired in the performance of Services pursuant to this Agreement that is not generally available to the public to further the Contractor's personal or financial interests, unless such disclosure is expressly authorized by the City Manager. This provision is not intended to impair or limit disclosure of information that is otherwise publicly available.
- 10.2 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Council or by a person expressly authorized to sign such waiver, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.
- 10.3 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10 of the Colorado Revised Statutes.

- 10.4 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section 10.4 shall not authorize assignment.
- 10.5 No Third-party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 10.6 Article X, Section 20/TABOR. The Parties understand and acknowledge that the City is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City of Centennial, and other applicable law. Upon the failure to appropriate such funds, this Agreement shall be terminated.
- 10.7 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado. To reduce the cost of dispute resolution and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.
- 10.8 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 10.9 Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Contractor without the express written consent of the City. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the City through the authorizing agent executing this Agreement. No assignment shall release the Contractor from performance of any

duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.

- 10.10 Interpretation and Mutual Negotiation. It is the intent of the Parties that this Agreement shall in all instances be interpreted to reflect the Contractor's status as an independent contractor with the City and that in no event shall this Agreement be interpreted as establishing an employment relationship between the City and either Contractor or Contractor's employees, agents, or representatives. The Parties agree that this Agreement is the result of mutual negotiation between the Parties and that the Agreement shall not be construed against the City on grounds relating to drafting, revision, review, or recommendation by any agent or representative of the City. The Parties further agree that all warranties in this Agreement are made by the Contractor to induce the City to accept the Contractor's offer to enter into this Agreement and have been incorporated into the Agreement at the Contractor's request.
- 10.11 Paragraph Captions. The captions of the paragraphs and sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 10.12 Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.
- 10.13 Integration and Amendment. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by both the City and the Contractor.
- 10.14 Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 10.15 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.
- 10.16 Notices. Unless otherwise specifically required by a provision of this Agreement, any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the City:**If to Contractor:**

City Manager City of Centennial 13133 E. Arapahoe Road Centennial, Colorado 80112	Design Workshop, Inc. 1390 Lawrence St. Suite 100 Denver, CO 80204 Attention: Jeff Zimmermann
With Copy to: City Attorney City of Centennial 13133 E. Arapahoe Road, Suite 100 Centennial, Colorado 80112	With Copy to:

10.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

11.0 ADDENDA AND SPECIAL PROVISIONS

The following Standardized City Addenda are attached and incorporated into this Agreement:

- ☒ None.
- ☐ Conflict of Interest Addendum
- ☐ Special Remedies -- Liquidated Damages
- ☐ Other Special Remedies
- ☐ City's Call Center Coordination
- ☐ Background Checks of Contractor Employees
- ☐ Drug Testing Addendum
- ☐ Colorado Labor Requirement of Public Works Funded with Public Funds
- ☐ Voluntary/Invited Attendance at City Training Sessions
- ☐ Free or Reduced Cost Services
- ☐ Special Insurance Addendum
- ☐ Hazardous Materials Addendum
- ☐ Civic Center Key and Access Card Directive Addendum
- ☐ Other

12.0 ATTACHMENTS

The following are attached to this Agreement for reference:

- ☐ Contractor's Certificate(s) of Insurance
- ☐ Contractor Proof of Professional Licensing
- ☐ Other

13.0 AUTHORITY

The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City of Centennial and the Contractor and bind their respective entities.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

SIGNATURE PAGE FOLLOWS

THIS AGREEMENT is executed and made effective as provided above.

CITY OF CENTENNIAL, COLORADO

Approval by City Council

☐ Not Required

By: _____
Mayor or Mayor Pro Tem

Approval by City Manager

☒ Not Required

By: _____
John H. Danielson, City Manager
(Pursuant to authority set forth in Section 2-2-130(b)(1) of the Centennial Municipal Code)

ATTEST:

APPROVED AS TO FORM (*Excluding Exhibits*)

☐ Not Required

City Clerk or Deputy City Clerk

For City Attorney's Office

FINANCE DEPARTMENT REVIEW:

Finance has reviewed this agreement and the funds:

☐ *are appropriated and available for this agreement.*

☐ *are not available for this agreement.*

☐ *Other: _____*

By: _____

Budgeted Item/Account: _____

Department/Position Responsible for Administration of Contract: Community
Development

CONTRACTOR: DESIGN WORKSHOP, INC

By: _____

Printed Name:_____

Printed Title:_____

STATE OF)

COUNTY OF) ss.

The foregoing Professional Services Agreement was acknowledged before me this ____ day of August, 2016, by _____ as _____ of Design Workshop, Inc.

Witness my hand and official seal.

My commission expires: _____.

Notary Public
(Required for all contracts pursuant to C.R.S. § 8-40-202(2)(b)(IV))

EXHIBIT A SCOPE OF SERVICES

Project/Services Name: Centennial Parks, Open Space, Trails and Recreation Master Plan Update

Contractor shall provide the following services with the accompanying tasks and deliverables (“Services”) as outlined in three main phases below:

Phase I: Developing a Context of Understanding

Phase II: Creating a Shared Vision

Phase III: Document Development and Adoption

While the following scope is organized in a linear manner, many of the tasks may proceed in a parallel or concurrent fashion as shown in the project schedule, which is attached as Exhibit A-1. The scope of work outlines interim deliverables, roles and responsibilities.

PHASE I: DEVELOPING A CONTEXT OF UNDERSTANDING

Developing a context of understanding requires collection and evaluation of available data and meetings with key stakeholders to launch the project. Project management tasks will be initiated in this phase and carry through project completion.

Task 1.1 Project Startup

Design Workshop will hold a Strategic Kickoff (SKO) workshop to effectively launch the project and organize the team including key Centennial staff members and leadership. The purpose of the meeting will be to:

- o Define roles, responsibilities and communications procedures
- o Confirm a detailed project schedule and document review process
- o Identify resources that may be useful to the plan creation process
- o Discuss the accomplishments of the 2007 Parks, Open Space, Trails and Recreation Master Plan and other relevant plans.
- o Pinpoint topics for additional research and evaluation
- o Establish project goals and desired outcomes
- o Review the Stakeholder Engagement Plan, confirming responsibilities and resources

Contractor shall facilitate and attend a half-day meeting with the Centennial project manager and key staff to launch the project and discuss project details. Contractor shall also attend an introduction meeting with the Open Space Advisory Board (OSAB), City Executive Team, and/or City Council in conjunction with the project startup meeting to update them on the steps and gain feedback regarding their goals and critical success factors.

Deliverables

- o Meeting agenda and meeting notes
- o A half-day of meetings/site tour with Centennial staff and an introduction presentation to OSAB, City Executive Team and/or City Council
- o Detailed project schedule with deadlines for deliverables with milestones, and community engagement activities
- o Internal communication plans
- o Critical success factors, dilemma, thesis and project goals documentation
- o Stakeholder Engagement Plan

Task 1.2 Document Review and Data Gathering

Past Plans Evaluation:

To gain a thorough understanding of the opportunities and challenges of parks, trails and open spaces, facilities and recreation offerings Design Workshop will review the relevant reports, plans, and policies outlined in the RFP list of resources. Contractor shall work with City staff to understand future development and projects (such as RTD stops) that are expected to impact parks, trails, and open space needs and opportunities in the future.

Base Map Creation

Design Workshop will create base maps and conduct inventory assessment based on GIS available information to include mapping data and parks and trails inventory and GIS mapping of existing and proposed trails. Design Workshop will identify any information gaps and determine, with the City, the opportunities to further complete the inventory and GIS mapping.

The following maps will be created by Design Workshop utilizing GIS data as available:

- o Parks, trails/paths, and open space property inventory base mapping (within and surrounding Centennial)
- o Recreation facility and park amenities inventory (based on data availability)
- o Relationship of planned future development, transportation routes, growth areas, and business areas to existing and planned parks, open space and recreation amenities.
- o Composite of natural resource amenities including: rivers, streams, flood plains, stormwater management properties, canals, wetlands, waterbodies, agricultural lands, wildlife habitat and corridors, significant landforms and vegetation land cover.
- o Jurisdictional/management boundaries including Special Districts, cities, counties, Council districts, HOAs/civic associations.

Deliverables

- o Previous plans/reports assessment memo
- o Large-size base maps to be utilized for public engagement activities (PDF format for printing)
- o Facilities/amenities inventory GIS and table documents

Task 1.3 Natural Resources and Green Space Assessment

The current conditions, future development, and proposed improvements information collected in Tasks 1.2 will be analyzed to identify challenges and opportunities for parks, trails, open space and recreation. Two key deliverables will be produced to include an assessment of the geographic service areas and gaps of green space/parks and identification of areas that possess natural resources of value as possible. Below is a description of the methods that will be utilized.

Service Area and Demographic Modeling:

True walking distances to parks will be determined using Network Analysis GIS modeling with an understanding of recommended service areas for various park types. We will calculate the number of people living or working within service areas to gain an understanding of underserved areas. In addition, geographic demographic information will be utilized to assess the relationship of parks to schools, density of population, residences with children, ethnicity, and income levels to discover gaps in park provision.

Natural Resource Assessment:

The natural resources data collected in Task 1.2 will be combined in a weighted overlay analysis to identify areas of containing highest value. This information will inform an opportunities assessment for future green space conservation, desirable public access to nature, or heightened management/maintenance needs.

Deliverables

- Small size analysis maps (existing and planned park, trails and facilities distribution maps; planned future development map, natural resources maps) formatted for Master Plan document and presentations (PDF format)
- Service area and gaps assessment memo and mapping
- Natural resources assessment mapping

Task 1.4 Project Management and Progress Reports

For every phase, project management shall be proved by Design Workshop's Principal-in-Charge and the Project Manager along with the Centennial's Project Manager. Progress conference call or in-person meetings shall be held bi-weekly and more often surrounding project milestones.

Deliverables

- o 2 progress meeting per month in person or via conference call/online Web document viewing during peak project production periods. Meetings may be supplemented with project report memos during non-peak production periods.
- o Percentage complete project report by task (once a month concurrent with invoicing)
- o Presentations to City Executive Team, OSAV and City Council as noted throughout the project tasks.

PHASE II: CREATING A SHARED VISION

Creating a shared vision requires first ensuring broad community representation in the input collected, assessing community needs and helping the community explore opportunities for their future.

Task 2.1 Stakeholder Engagement Plan and Website Content

The Design Workshop team will develop a Stakeholder Engagement Plan including the preparation of a stakeholder analysis matrix. Contractor shall expand upon its existing list categorizing the groups that will be engaged as stakeholders in focus group as part of the project kick-off and shall identify the optimum role for these groups within the project. A public meeting planning work sheet will include information distribution methods, agendas, meeting setup and materials needs, preparation assignments and other preparation planning. Contractor shall work with the City's communication staff to develop and implement the public communications plan to advertise public meetings and keep the public informed through the project process.

Design Workshop will provide a description of the project to include on the City's website along with information regarding public input opportunities, links to resources and past studies, a project timeline, meeting announcements, links to online survey, results from public meetings, and draft documents for review.

Deliverables

- o Stakeholder analysis matrix
- o Stakeholder Engagement Plan

- o Website content to be updated at two major project milestones

Task 2.2 Survey Questions and Values/Needs Assessment

Design Workshop will coordinate with the Comprehensive Plan creation to draft questions that will provide feedback about the values and needs for parks, trails, open space and recreation. Design Workshop will synthesize the results of this survey with survey results collected from the South Suburban Parks, Open Space, Trails and Recreation Plan survey, and other relevant survey results from the region and draw out conclusions relevant to Centennial.

Deliverables

- o Draft survey questions
- o Values and Needs Assessment synthesis of survey findings.

Task 2.3 Focus Groups and Coordination Meetings

Design Workshop shall coordinate focus group meetings to provide opportunity for in-depth discussion and discovery with a select group of experts on various topics and to gain an understanding of the concerns, opportunities, values and needs. Input will be gained through facilitated discussions and map exercises. Design Workshop shall organize the focus groups into three areas including representation from groups such as:

- Trails, Mobility and Connectivity:** this meeting will provide an opportunity to collaborate with the Arapahoe Bicycle and Pedestrian planning currently underway and engage local trails and pathway advocates and people with specific mobility needs such as those with disabilities and race organizers.
- Regional Collaboration:** including parks, recreation and trails managers from the surrounding Cities, Towns and Counties and Special Districts. This also includes partners such as the Southeast Metro Stormwater Authority.
- Recreational Offerings:** Centennial would benefit from gathering information specific to its boundaries to better understand how to best serve this diverse population. This focus group would include representatives from both South Suburban and Arapahoe Park and Recreation Districts, recreation organizers/groups such as youth soccer, hockey etc., Tri-County Health, School representatives, senior programs organizers, and more.

Coordination meetings will be necessary with the following groups to ensure future planning is integrated:

- Comprehensive Plan consultants and lead staff
- Open Space Advisory Board
- City Executive Team

Deliverables

- o Schedule of meetings and agendas and key questions
- o Three meetings facilitated within a one-day period
- o Draft meeting invitation list and invitation message
- o Summary of meeting findings memorandum
- o Three plan coordination meetings

Task 2.4 Citizen Workshops and Online Survey

Concepts and optional strategies will be tested in this meeting with residents of Centennial. Design Workshop shall utilize instant feedback keypad polling to quantitatively identify priorities and needs. Small group table discussions over maps will yield input about planning for geographic areas such as trail priorities, park amenities, location for expended services/properties, and facility

improvements. This meeting will be conducted in both the west portion of the city and the east portion of the city to encourage attendance. An online survey will also be made available for those unable to attend the meeting with an opportunity to provide input.

Deliverables

- o Meeting presentation and facilitation hosted in two locations (West Centennial and East Centennial)
- o Meeting agenda
- o Base maps, exhibits, and materials needed to provide and collect information
- o Meeting summary notes
- o Keypad polling results report
- o Documentation of the meeting conclusions and outcomes
- o Online Survey with meeting presentation content

PHASE III: DOCUMENT DEVELOPMENT AND ADOPTION

The plan concepts, recommendations and graphic depictions will be created in this phase to deliver a guiding document.

Task 3.1 Framework Document and Initial Concepts

Design Workshop will produce a detailed document outline for review and input from the City. This outline will include organizing concepts and a listing of anticipated recommendation topics and will include the following:

- a) Executive Summary
 - a. Plan Purpose and Relation to Other Plans
 - b. Context and Trends
 - c. Vision
 - d. Plan Themes and Citizen Input
 - e. Priority Projects
 - f. Big Ideas
- b) Introduction & Plan Update Process
- c) Centennial's Current Offerings
- d) Master Plan Recommendations, Policies, Metrics and Actions
 - a. Existing Park and Amenity Improvements
 - b. Acquisitions and New Development
 - c. Programming and Events
 - d. Open Space
 - e. Trails
 - f. Facilities
 - g. Partner Roles and Responsibilities
- e) Appendix of public input collected
- f) Appendix large-size map exhibits

Deliverables

- Draft Framework document
- Writing style guide and sample with document graphic design boards for approval
- One revision cycle of the Framework document

Task 3.2 Development of Draft Strategies, Policies, and Implementation

Draft plan content will be developed based on the analysis and input collected in the previous tasks. The initial plan concepts and recommendations developed in this task will be presented for input collection in the Citizen Workshop.

Deliverables

- Draft concepts presentation for review
- Once cycle of revision of presentation content
- Draft of proposed trails, open space, and parks location maps.

Task 3.3 Plan Document Development

The master plan will provide the City with guiding documents to inform future decisions and direction. It will also communicate to the general public and community organizations about services, offerings, and future plans. With this purpose in mind, Design Workshop shall produce engaging documents with graphics to communicate ideas to a variety of audiences.

Design Workshop will provide two draft documents in a format appropriate for webviewing and download. The City project manager will collect and consolidate comments from all sources and provide direction to Design Workshop regarding the changes advised to be made. Design Workshop will provide a Comment Log tracking form for organize comments received.

Deliverables

- o Document revision cycle 1: 80 percent complete (formatted graphic document without appendices) Draft Master Plan in PDF format for review and input by internal City reviewers
- o Document revision cycle 2: 90 percent complete (formatted graphic document without appendices) Draft Master Plan in PDF format for review and input by the public, partner agencies, and referral agencies
- o Comment Log tracking the incorporation of requested changes for revision cycle 1 & 2

Task 3.4 Formal Adoption Process and Final Master Plan

Design Workshop will prepare a presentation to be given to the Open Space Advisory Board and City Council for the adoption process. Based on any recommendations for changes received from these groups, Design Workshop shall produce a final plan with comments incorporated.

Deliverables

- o Digital PDF copy of the plan documents formatted for printing purposes
- o Digital PDF copy of the plan documents for Web viewing
- o Map documents
- o Two adoption meeting presentations

EXCLUDED: Large scale printing will be performed by the City.

EXHIBIT A-1 PROJECT SCHEDULE

The Services shall be initiated in August 2016 in order to provide questions that may supplement the public survey to be released summer/fall of 2016 related to the City's Comprehensive Planning process. The nine-month planning process is broken into three, 3-month tasks – Community Assessment, Concept Development and Review, and Document Planning and Review – with adoption to occur in late-spring 2017. Also included in the schedule are key points of public engagement which will occur throughout the planning process. The schedule requires four critical outreach efforts, including:

- Aligned with the City's Comprehensive Plan's Community Survey, questions specific to Centennials Parks and Trails system will be included that will inform the Community Assessment task.
- Prior to the beginning of Concept Development, a Community Visioning Workshop will be held at which Contractor shall use hands-on engagement tools to create a vision for the Plan.
- During the Concept Development phase of work, a Community Open House will be held during which Contractor shall present conceptual alternatives and ask for community feedback through keypad polling or other interactive means of establishing consensus.
- Near the conclusion of the Document Development phase of work, Contractor will hold a Community Presentation to present findings and recommendations and obtain additional valuable feedback to be incorporated into the final plan.

Date	9/16	10/16	11/16	12/16	1/17	2/17	3/17	4/17	5/17	6/17	7/17
Project Initiation											
Community Assessment											
Community Engagement											
Community Survey (w/ Centennial Comp Plan)	▲										
Community Visioning Workshop			▲								
Concept Development and Review											
Community Open House (polling)						▲					
Document Development and Review											
Community Presentation									▲		
Formal Plan Adoption											

▲ = Community Outreach Event

EXHIBIT B RATES FOR SERVICE AND REIMBURSABLE EXPENSES

Project/Services Name: Centennial Parks, Open Space, Trails and Recreation Master Plan Update

Contractor shall be compensated on a time and materials basis at the rates set forth below, subject to a maximum compensation payable under this Agreement for all Services of \$109,980.00.

PROPOSED COST BY TASK

	Principal in Charge \$300/hr	Project Manager \$150/hr	Planning Lead \$150/hr	Project LA \$100/hr	Project Planner \$90/hr	Project Assistant \$70/hr	COST
Project Start-up	6	10	8	6	4	2	\$5,600.00
Document Review and Data Gathering	4	16	12	12	24	4	\$9,040.00
Natural Resources and Green Space Assessment	4	16	16	24	40	4	\$12,280.00
Project Management and Progress Reports	4	8	2	4	0	2	\$3,240.00
Stakeholder Engagement Plan and Website Content	2	8	2	8	2	4	\$3,360.00
Survey Questions and Values/Needs Assessment	2	8	4	8	0	2	\$3,340.00
Focus Groups and Coordination Meetings	8	24	12	24	8	4	\$11,200.00
Citizen Workshops and Online Survey	8	16	16	32	8	4	\$11,400.00
Framework Document and Initial Concepts	8	24	24	24	24	4	\$14,440.00
Development of Draft Strategies, Policies and Implementation	8	24	24	24	24	4	\$14,440.00
Plan Document Development	6	16	16	32	16	2	\$11,380.00
Formal Adoption Process and Final Master Plan	8	24	12	16	8	2	\$10,260.00
TOTAL	68	194	148	214	158	38	\$109,980.00

HOURLY RATES TABLE

	BILLING RATE
JEFF ZIMMERMANN - PRINCIPAL IN CHARGE	\$300 / hour
CHRIS GEDDES - PROJECT MANAGER	\$150 / hour
ANNA GANGE LAYBOURN - LEAD PLANNER	\$150 / hour
AMANDA JETER - PROJECT LANDSCAPE ARCHITECT	\$100 / hour
CARLY KLEIN - PLANNER / DESIGNER / GIS ANALYST	\$90 / hour



Staff Report

TO: Honorable Mayor Noon and Members of City Council

THROUGH: John Danielson, City Manager
Elisha Thomas, Deputy City Manager
Scott Blumenreich, Chief Innovation & Technology Officer

FROM: Daniel Hutton, i-team Manager
Paul Gunther, i-team UI/UX Designer
Bailey Little, i-team Coordinator
Melanie Morgan, i-team Data Analyst

DATE OF MEETING: August 15, 2016

DATE OF SUBMITTAL: August 5, 2016

SUBJECT: Resolution No. 2016-R-52, A Resolution of the City Council of the City of Centennial, Colorado, Approving a Joint Funding Intergovernmental Agreement with Southeast Public Improvement Metropolitan District to Jointly Fund the Pilot Program for a First Mile Last Mile Solution Pilot Program, And;

Resolution No. 2016-R-53, A Resolution Approving a Pilot Program Agreement for a First Mile Last Mile Solution Pilot Program Between the City and Lyft, Inc.

1. Executive Summary:

During Study Session on July 11, 2016, Council provided Staff direction to finalize a joint funding agreement with the Southeast Public Improvement Metropolitan District (SPIMD) for funding for the Go Centennial Pilot (formally the First and Last Mile Pilot) and to finalize a pilot program agreement with Lyft, Inc. (Lyft) to provide services for the Go Centennial Pilot.

The agreement between the City and SPIMD is attached to Resolution 2016-R-52. Staff recommends Council's approval of Resolution 2016-R-52 which will delegate to the Mayor the authority to approve and execute a final agreement with SPIMD as long as the terms and conditions thereof are acceptable to the Mayor, the City Manager and the City Attorney.

The intergovernmental agreement with SPIMD (Resolution No. 2016-R-52) provides the City with a \$200,000 funding allocation for use in the Go Centennial Pilot. The City would match this funding allocation with previously appropriated funding (\$200,000) for total project funding of \$400,000.

The agreement with Lyft (2016-R-53) provides the Go Centennial Pilot with services for a six (6) month period.

Following approval of Resolution No. 2016-R-52 and Resolution No. 2016-R-53, a budget supplemental appropriation will occur. This supplemental appropriation (Resolution No. 2016-R-54) is necessary in order for the City to formally allocate the anticipated SPIMD funding into the Go Centennial Pilot.

Staff recommends approval of Resolution No. 2016-R-52, allowing the Mayor to execute an intergovernmental agreement with SPIMD to jointly fund the Go Centennial Pilot, and Resolution No. 2016-R-53, approving a pilot program agreement with Lyft to provide services for the Go Centennial Pilot for a six (6) month period.

2. Discussion:

Resolution No. 2016-R-52 allows the Mayor to execute an intergovernmental agreement with SPIMD to jointly fund the Go Centennial Pilot.

Resolution No. 2015-R-53 allows the Mayor to execute a pilot program agreement with Lyft to provide services for the Go Centennial Pilot for a six (6) month period.

3. Recommendations:

Staff recommends approval of Resolution No. 2016-R-52, allowing the Mayor to execute the final agreement with SPIMD to jointly fund the Go Centennial Pilot, and Resolution No. 2016-R-53, approving a pilot program agreement with Lyft to provide services for the Go Centennial Pilot for a six (6) month period.

4. Alternatives:

Council could choose not to approve Resolution No. 2016-R-52 and Resolution No. 2016-R-53. The Go Centennial Pilot would not receive funding and would not move forward.

5. Fiscal Impact:

Approval of Resolution No. 2016-R-52 and Resolution No. 2016-R-53 will result as follows:

- The City would receive funding approval of \$200,000 from SPIMD for use in the Go Centennial Pilot Program upon execution of an agreement by the Mayor for the City and by SPIMD.
- The City would match this funding with previously appropriated funding (\$200,000) for total project funding of \$400,000.
- The City would use the project funding to procure services from Lyft for the Go Centennial Pilot.

6. Next Steps:

Pending Council approval of Resolution No. 2016-R-52 and Resolution No. 2016-R-53:

- A. SPIMD would submit funding approval of \$200,000 to the City upon execution of the Agreement authorized by Resolution 2016-R-52.
- B. Staff would transfer the City's contribution of \$200,000 from the Grant Match Fund's line item to the Go Centennial Pilot line item. The City has already appropriated \$250,000 within the grant match fund line item.
- C. The Go Centennial Pilot would launch on August 17.

7. Previous Actions:

July 11, 2016: Council provided Staff direction to finalize a \$200,000 joint funding agreement with SPIMD for the Go Centennial Pilot and return with Resolution No. 2016-R-52, No. 2016-R-53, and No. 2016-R-54 to the August 15, 2016 City Council Agenda.

8. Suggested Motions:

RECOMMENDED MOTION: I MOVE TO APPROVE RESOLUTION NO. 2016-R-52:

APPROVING THE EXECUTION AND DELIVERY BY THE MAYOR OF AN INTERGOVERNMENTAL AGREEMENT WITH SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT TO JOINTLY FUND THE PILOT PROGRAM FOR A FIRST MILE LAST MILE SOLUTION PILOT PROGRAM.

ALTERNATIVE MOTION: I MOVE TO DENY RESOLUTION NO. 2016-R-52:

APPROVING THE EXECUTION AND DELIVERY BY THE MAYOR OF AN INTERGOVERNMENTAL AGREEMENT WITH SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT TO JOINTLY FUND THE PILOT PROGRAM FOR A FIRST MILE LAST MILE SOLUTION PILOT PROGRAM.

RECOMMENDED MOTION: I MOVE TO APPROVE RESOLUTION NO. 2016-R-53:

APPROVING A PILOT PROGRAM AGREEMENT FOR A FIRST MILE LAST MILE PROGRAM BETWEEN THE CITY AND WITH LYFT, INC.

ALTERNATIVE MOTION: I MOVE TO DENY RESOLUTION NO. 2016-R-53:

APPROVING A PILOT PROGRAM AGREEMENT FOR A FIRST MILE LAST MILE PROGRAM BETWEEN THE CITY AND WITH LYFT, INC.

FOR THE FOLLOWING REASONS:

(Councilmember making motion to deny to supply reason(s) for denial)

**CITY OF CENTENNIAL,
COLORADO**

RESOLUTION NO. 2016-R-52

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CENTENNIAL, COLORADO, APPROVING AN
INTERGOVERNMENTAL AGREEMENT WITH SOUTHEAST PUBLIC
IMPROVEMENT METROPOLITAN DISTRICT TO JOINTLY FUND
THE PILOT PROGRAM FOR A FIRST MILE LAST MILE SOLUTION
PILOT PROGRAM**

WHEREAS, the City, through its Innovation Team, and the Southeast Public Improvement Metropolitan District (“SPIMD”), have jointly sought solutions to assist residents, visitors, and employees of resident businesses to get to and from hub light rail transit stations in order to maximize use of public transit and alleviate traffic congestion on City and area streets; and

WHEREAS, in furtherance of this goal, the City and SPIMD desire to jointly fund and implement a six month, limited funding, pilot program for first and last mile connections that connects riders within the program area to Regional Transportation District’s (“RTD”) Dry Creek light rail station through use of Lyft, Inc.’s (“Lyft”) application, enabling ride sharing to and from the transit hub (“Go Centennial Pilot Program”); and

WHEREAS, the City’s, SPIMD’s and Lyft’s cooperation in this on-demand, mobile smartphone-based (or concierge call in) Go Centennial Pilot Program will test efficacy in maximizing first and last mile services and enhancing ridership to and from the Dry Creek light rail station, with the goal of reducing the cost per ride from that associated with the currently available operating cost for RTD’s Call-n-Ride service; and

WHEREAS, the City and SPIMD intend to enter into an intergovernmental agreement generally in the form attached hereto as **Exhibit A** (“IGA”) that sets forth the terms and conditions by which they will jointly fund the Go Centennial Pilot Program; and

WHEREAS, the continuance of the Go Centennial Pilot Program beyond September 22, 2016, is specifically conditioned on the City and SPIMD finalizing and executing an IGA by such date; and

WHEREAS, in order to maximize Go Centennial Pilot Program data collection over three seasons of the year, the Go Centennial Pilot Program is set to launch in mid-August, 2016, prior to the date on which SPIMD can consider and execute the IGA; and

WHEREAS, the City Council desires to authorize and delegate to the Mayor the authority to execute an IGA that accepts funding from SPIMD in the amount of \$200,000 for the purpose of funding the Go Centennial Pilot Program as long as the terms and conditions of such IGA are acceptable to the Mayor, the City Manager and the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO AS FOLLOWS:

Section 1. The City Council, contingent on approval of a supplemental budget appropriation as needed to fund the Go Centennial Pilot program, authorizes and delegates to the Mayor the authority to execute the IGA in the form attached as Exhibit A with such amendments thereto that are acceptable to the Mayor, the City Manager and the City Attorney.

Section 2. **Effective Date.** This Resolution shall take effect upon its approval by the City Council.

ADOPTED by a vote of ____ in favor and ____ against this ____ day of August, 2016.

By: _____
Cathy A. Noon, Mayor

ATTEST:

Approved as to Form:

By: _____
City Clerk or Deputy City Clerk

By: _____
For City Attorney's Office

EXHIBIT A

**SOUTH I-25 URBAN CORRIDOR CAPITAL PILOT PROGRAM IMPLEMENTATION
AGREEMENT**

SOUTH I-25 URBAN CORRIDOR CAPITAL PILOT PROGRAM IMPLEMENTATION AGREEMENT

Lyft Pilot Program

This Pilot Program Implementation Agreement (the “Agreement”) is made, effective as of this _____ day of _____, 2016 (the “Effective Date”) by and between the SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“SPIMD”), and CITY OF CENTENNIAL, a home rule municipality of the State of Colorado (“Applicant”), hereinafter collectively referred to as the “Parties.”

WHEREAS, the Parties are legally empowered under their respective organizational documents and the laws of the State of Colorado to enter into this Agreement; and

WHEREAS, the City is conducting a first-last mile pilot program to study the efficacy of improving transportation to and from the Regional Transportation District’s Dry Creek light rail station (the “Hub”) to and from locations within the area shown on Exhibit A (the “Target Area”) by connecting qualified riders through a mobile smartphone-based (or concierge call in) application with independent contractor drivers working through Lyft, Inc. or Via Mobility Services, for riders requiring mobility assisted service (the “Pilot Program”) as more specifically outlined in the Application for Funding and its attachments attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, to conduct the Pilot Program, the Applicant will promote the Pilot Program; act as the primary point of contact with the corporate partners prior to and during the implementation of the Pilot Program; provide concierge services to persons that desire to participate in the Pilot Program but do not have technical means to do so; work with Lyft, Inc. for the provision of on-demand transportation within the Target Area to and from the Hub; work with Via Mobility Services for the provision of on-demand transportation to riders requiring wheelchair accessible services within the Target Area to and from the Hub; work with Xerox Corporation to provide a user interface on the Go Denver App for the Pilot Program and any on-going needs during the Pilot Program; work with Lyft, Inc. or other partners for the provision of transportation to qualified riders needing wheelchair accessible vehicles within the Target Area to and from the Hub; and

WHEREAS, the Target Area is within the City’s boundaries and SPIMD’s boundaries; and

WHEREAS, SPIMD has determined to contribute funding for the Pilot Program directly to the City; and

WHEREAS, SPIMD and the City will share in the costs of the Pilot Program on a dollar for dollar basis as described in this Agreement; and

WHEREAS, conducting the Pilot Program will serve a public purpose and will promote the general welfare of the residents, businesses, and visitors of the Parties; and

WHEREAS, SPIMD has to date invested or committed approximately \$50 million in funding to partner with local jurisdictions in implementing qualified capital improvements and mitigation Pilot Programs within the Corridor, inclusive of a commitment of up to \$36 million in matching funds to support the TMA's Vision 2025 Plan Capital Pilot Programs program; and

WHEREAS, SPIMD levies a property tax on commercial properties within the corridor to provide such funding; and,

WHEREAS, the Parties have in turn agreed to acknowledge that SPIMD funds are in part considered as mitigation for transportation impacts attendant to new commercial development within the Corridor; and,

WHEREAS, the Applicant has previously requested review of the Pilot Program by the TMA for conformance with the TMA's Vision 2025 Policy and criteria, and the currently adopted TMA multiyear funding plan, and has received a favorable response from the TMA; and

WHEREAS, Applicant has requested SPIMD's funding assistance for this Pilot Program in the amount of up to \$200,000, and Applicant acknowledges that SPIMD's provision of such funds is conditioned upon said amount being credited proportionately as regional transportation system mitigation offsets for the commercial properties within SPIMD; and

WHEREAS, based on the foregoing SPIMD hereby agrees to financially participate in the Pilot Program conditioned on adherence to the terms and conditions set forth herein; and

WHEREAS, Applicant will act as Pilot Program manager and cause the Pilot Program to be conducted, and

WHEREAS, the Parties have budgeted funding to perform the Pilot Program; and

WHEREAS, the Parties wish to state herein their understanding as to how the Pilot Program will be financed and implemented;

NOW THEREFORE, as full consideration for and in furtherance of the goals and intents and purposes of this Agreement, the Parties hereby agree as follows:

1. Purpose. The purpose of this Agreement is to memorialize SPIMD's agreement to financially participate in the Pilot Program and to establish the process by which SPIMD's participation will be accomplished. The total costs associated with the Pilot Program (collectively "Estimated Pilot Program Costs") are currently estimated at Four Hundred Thousand Dollars (\$400,000.00). The actual Eligible Costs expended for the Pilot Program shall be the "Actual Pilot Program Cost." Eligible Costs shall include payment of contractors, including consultants, contracted to perform the Pilot Program, pursuant to their contracts and

shall not include the overhead or other internal costs and expenditures of any participant. No participant will be entitled to include in-kind costs for credit or Pilot Program cost purposes.

2. SPIMD Contribution. SPIMD's contribution toward the Pilot Program shall be, as matching funds to dollars contributed solely by the Applicant (as opposed to private third parties), an amount up to Two Hundred Thousand Dollars (\$200,000.00) and shall be paid to the Applicant in accordance with Paragraph 4 and Paragraph 5 of this Agreement (the "SPIMD Contribution"). As a condition of receipt of SPIMD's Pilot Program matching funds as provided for herein, as a *quid pro quo*, the Applicant hereby states its intent to participate in the future, as equal partners with SPIMD and other jurisdictions within SPIMD, in future funding efforts through both Denver South Economic Development Partnership and TMA programs/activities as are deemed of mutual benefit. SPIMD's contributions are allocated to Zone 4.

3. Allocated Shares of Estimated Pilot Program Costs. The Estimated Pilot Program Costs as between the Parties are set forth below:

Participant	Participant Share of the Estimated Pilot Program Cost (Annual)
Applicant	\$200,000
SPIMD	\$200,000

SPIMD has appropriated and committed up to \$200,000 for the Pilot Program all of which may be expended in 2016. Any amount of the SPIMD Contribution not expended in 2016 will automatically carryover for use on the Pilot Program through May 1, 2017. The SPIMD Contribution shall be used toward the completion of the Pilot Program and shall be matched dollar for dollar against the dollars contributed by the Applicant.

If the actual costs spent on the Pilot Program ("Actual Pilot Program Costs") are lower than the Estimated Pilot Program Costs, then SPIMD shall retain the funds remaining in the SPIMD Pilot Program Fund (as defined below). The Applicant certifies that the above sources and amounts of funds are the sole and only sources and amounts, and acknowledges and agrees that if additional funding sources or amounts are made available to the Applicant for the Pilot Program, then SPIMD's financial commitment will be reduced proportionately. The Applicant has informed SPIMD herein of all reimbursement or cost sharing that may reduce the Applicant's cost share as set forth herein.

4. Financing.

A. SPIMD's obligation to fund the SPIMD Contribution shall be contingent on the Applicant awarding contracts as described above and the Applicant issuing a notice to

proceed to the contractor selected by the Applicant. The Applicant shall provide SPIMD with written confirmation that it has awarded the contract and has issued the notice to proceed to the contractor.

B. Upon satisfaction of the requirements of paragraph 4.A, the Applicant and SPIMD shall each contribute the amounts of capital to the overall Pilot Program as set forth above in paragraph 3. The Applicant shall deposit funds equal to its share of the Pilot Program Costs according to paragraph 3 of this Agreement, into an account designated for the Pilot Program work and draws on this account to fund the Applicant's share of the Pilot Program costs shall be made in accordance with the terms of this Agreement. Within fifteen (15) days following SPIMD's receipt of the Applicant's confirmation that it has awarded the contract(s), SPIMD shall deposit its share of the Estimated Pilot Program Costs into an account earmarked for the Pilot Program (the "SPIMD Pilot Program Fund"). Draws from the SPIMD Pilot Program Fund to pay for costs associated with the Pilot Program shall be made in accordance with the terms of this Agreement, and shall be made concurrent with draws from the Pilot Program fund of Applicant.

C. The Applicant will maintain full and complete records of Actual Pilot Program Costs incurred in accordance with generally accepted accounting principles. The Applicant shall provide metrics on participation in the Pilot Program to SPIMD. SPIMD reserves the right to audit the Applicant's financial and operations records related to the Pilot Program during and upon completion of the Pilot Program.

D. SPIMD shall have no obligation to commit any additional funds in the event that the Actual Pilot Program Costs exceed the Estimated Pilot Program Costs. This Agreement establishes SPIMD's maximum contribution toward the completion of the Pilot Program. Any unspent portion of the SPIMD Pilot Program Fund remaining at the completion of the Pilot Program shall be retained by SPIMD.

5. Pilot Program Implementation.

A. The Applicant anticipates that the Pilot Program will commence in August of 2016 and be completed in approximately sixth (6) months. Applicant will be responsible for all implementation and oversight of the Pilot Program, inclusive of the retention of any necessary consultants and contractors to perform the work necessary to complete the Pilot Program.

B. The Applicant shall assure that the Pilot Program is completed in accordance with the applicable laws, rules, and regulations of all governmental entities having proper jurisdiction over the Pilot Program.

C. All invoices for payment of Actual Pilot Program Costs, including a final invoice resulting from the completion of the Pilot Program or termination of a contract with the contractor(s) for the Pilot Program, shall require the approval of both Parties. All invoices or other cost documentation for Actual Pilot Program Costs shall be directed to the Applicant and the Applicant shall distribute them together with a pay request approved by the Applicant Representative identified in Paragraph 11.A. to the SPIMD Representative identified in

Paragraph 11.B. Each pay request submitted by the Applicant Representative to the SPIMD Representative shall be accompanied by: (1) Pilot Program invoices or other documentation of Actual Pilot Program Costs; and (2) such other documentation supporting or explaining the pay request as the Applicant Representative may choose to include in his discretion. The Applicant Representative may submit pay requests to the SPIMD Representative either in hard copy or electronically (via email). Upon receipt of each pay request, the SPIMD Representative will review the same and provide approval of the pay request or provide comments on the pay request within eight (8) calendar days. If the SPIMD Representative does not provide comment on the pay request within said eight (8) day review period, the pay request shall be deemed approved. Following approval of each pay request, SPIMD shall immediately cause funds to be disbursed from the SPIMD Pilot Program Fund to the Applicant. As set forth above, SPIMD shall have no obligation to commit any funds in excess of the SPIMD Contribution.

D. The Applicant shall keep accurate records of the progress of the Pilot Program and shall provide status reports to the SPIMD Representative identified in Paragraph 11.B. on a monthly basis, including progress updates, notice of any problems with the Pilot Program or any consultant, contractor, or subcontractor and a record of the payments made to any consultant, contractor, or subcontractor. Said status reports shall include updates to the Actual Pilot Program Costs expended and expected to be expended through Pilot Program completion, and any variance from the Estimated Pilot Program Costs, as well as any adjustments to the time schedule for Pilot Program completion.

6. Character of SPIMD Role. SPIMD will be responsible for working with the Applicant and the Pilot Program contractor(s), if and to the extent necessary to facilitate the Pilot Program, including without limitation acting as liaison with the Pilot Program area stakeholders such as Denver South Economic Development Partnership in order to keep all affected local governments apprised of the process, and to receive and convey any feedback to the Applicant in order to resolve any real or perceived issues with the Pilot Program's progress; provided that SPIMD shall have no obligation to complete, or liability for or arising from the Pilot Program. SPIMD shall not be liable for any claims, demands, losses, damages, expenses, injuries, and liabilities arising from the death or injury of any person or persons, including any claims of the Applicant or other funding entities, or from any damage to or destruction of property caused by or in connection with the Pilot Program, or any negligent act or omission of the Applicant, any other funding entities or the Pilot Program contractor. To the extent allowed by law, the Applicant shall indemnify, save and hold harmless SPIMD, its officers, employees and agents, against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney fees incurred as a result of any negligent act or omission of the Applicant related to this Agreement or the completion of the Pilot Program.

7. Good Faith and Fair Dealing. SPIMD and the Applicant agree that the Applicant shall have a fiduciary duty to SPIMD in the performance of this Agreement. This fiduciary duty accepted by the Applicant shall include, but not be limited to, the highest duties of good faith, fair dealing, disclosure of all information to SPIMD as described herein, avoidance of conflicts of interest, and avoidance of the appearance of conflicts of interest in carrying out the goals and objectives of this Agreement.

8. Insurance. SPIMD and the Applicant shall insure themselves separately against liability, loss and damages arising out of the operation of and performance under this Agreement and the construction, use or operation of the Improvements.

9. Term of Agreement and Termination.

A. This Agreement shall be effective as of the Effective Date identified above and shall terminate upon the completion and close out of the Pilot Program by the Applicant, and a final accounting of the Actual Pilot Program Costs being provided by the Applicant to SPIMD; provided that, in the absence of the prior and express written consent of SPIMD the obligation to cause funds to be disbursed from the SPIMD Pilot Program Fund to the Applicant shall terminate on May 1, 2017 whether or not the Pilot Program has been completed.

B. Either party shall have the right to terminate this Agreement after thirty (30) days written notice to the other party in the event of a default which is not cured within twenty (20) days after delivery of the written notice of default. Termination shall not be effective if reasonable action to cure the breach has been taken by the defaulting party before the effective date of the termination, and such actions are pursued diligently to a successful completion within twenty (20) days from inception of the actions. If such actions are not successful within said period of time, the nondefaulting party shall have the right to terminate this Agreement upon written notice to the other party.

C. In the event of termination, cancellation or assumption of the services by Applicant, the Applicant shall settle all accounts with the Pilot Program contractor(s) engaged to perform the work necessary to complete the Pilot Program, close out the contract with such contractor and then remit any money recovered from or refunded by contractor(s) pro rata to the contributors thereof.

D. The Applicant's obligation to share pro-rata Pilot Program cost savings with SPIMD, the Applicant's accounting obligations, the Applicant's assurance of compliance with applicable laws, and the Applicant's preservation of records pertaining to the Pilot Program shall survive termination of this Agreement.

10. Assignment. Neither Party shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other Party. Any attempt to assign this Agreement or parts hereof in the absence of such written consent shall be null and void ab initio.

11. Pilot Program Management.

A. Applicant Representative. The Applicant hereby designates the City's i-team Manager Daniel Hutton (dhutton@centennialco.gov) as the Applicant's representative to coordinate all communication with SPIMD related to the Pilot Program, including issues arising under this Agreement.

B. SPIMD Representative. SPIMD hereby designates one of its Board members whom is also a member of the TMA's Technical Advisory Committee (Pat Mulhern, P.E.; pat@mulhernmre.com) as SPIMD's representative to coordinate all communication with the Applicant related to the Pilot Program, including issues arising under this Agreement.

12. Miscellaneous.

A. It is the intention of the Parties that the Applicant shall be, and remain, an independent contractor. The Parties do not intend and nothing contained in this Agreement shall be deemed to create a partnership, co-tenancy, joint venture or agency of any kind.

B. Any Party in default under this Agreement shall pay the reasonable attorney's fees of the other party incurred in order to enforce its rights under this Agreement.

C. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the parties to this Agreement, the exclusive venue for dispute resolution shall be the District Court for and in Arapahoe Colorado, Colorado.

D. This Agreement shall inure to the benefit of, and be binding upon the parties to this Agreement and their respective successors and permitted assigns. This Agreement is solely between and for the benefit of SPIMD and the Applicant, and no design consultant, contractor, any subcontractor nor any other person is a third-party beneficiary to or under this Agreement.

E. This Agreement contains the entire agreement of the Parties with respect to its subject matter; and it cannot be amended or supplemented except by a writing signed by both parties. Any amendments or modifications to this Agreement must be in writing executed by the Parties in order to be valid and binding. Each Party to this Agreement represents and warrants that they have made full disclosure of any and all contingencies, conditions, or reimbursement agreements related to their financial participation in the Pilot Program as described in paragraph 3, above.

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

F. SPIMD and the Applicant are political subdivisions of the State of Colorado and, as such, (1) any and all financial obligations described hereunder are subject to annual budget and appropriations requirements, and (2) no consultants, contractors or subcontractors shall have lien rights against the Parties, nor against any property lying within the boundaries of the Parties in the event of nonpayment of any amount due under this Agreement.

G. The Applicant and SPIMD, and their respective elected officials, directors, officials, officers, agents and employees are relying upon and do not waive or abrogate, or intend

to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as the same may be amended from time to time.

H. No elected official, director, officer, agent or employee of SPIMD or the Applicant shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

I. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Capital Pilot Program Implementation Agreement as of the day and year first above written.

SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT

President

CITY OF CENTENNIAL, COLORADO

Approval by City Council

☐ Not Required

By: _____

Cathy A. Noon, Mayor

Approval by City Manager

☐ Not Required

By: _____

John H. Danielson, City Manager

ATTEST:

City Clerk or Deputy City Clerk

APPROVED AS TO FORM (*Excluding Exhibits*)

☐ Not Required

For City Attorney's Office

FINANCE DEPARTMENT REVIEW:

Finance has reviewed this agreement and the funds:

☐ *are appropriated and available for this agreement.*

☐ *are not available for this agreement.*

☐ *Other:* _____

By: _____

Budgeted Item/Account: _____

EXHIBIT A
TARGET AREA

EXHIBIT B
APPLICATION FOR FUNDING



EXHIBIT B - APPLICATION FOR FUNDING

APPLICATION FOR SPIMD CAPITAL FUNDING

Submitted by:

Date:

Project Name:

Project Type: ☐ Major (Zone)
☒ Special (Annual)

TMA Zone:

Project Summary:

The City of Centennial is seeking match funding for a pilot to test the effectiveness of using rideshare services to provide first and last mile (FLM) rides to and from the Dry Creek light rail station. With funding secured, Lyft will supplement RTD's existing Call-n-Ride (CnR) service from August 2016 through February 2017. Using Lyft Line service, this model could serve two to three times the current CnR ridership for the same cost. Rideshare cars will be hailed through Lyft's existing mobile platform or through Xerox's Go Denver integrated interface, providing as few decision points to the user as possible. For users who do not have or do not wish to use a smart phone, Centennial's 24/7 Citizen Response Center will provide user support to book Lyft Line rides through Lyft's Concierge tool.

This solution seeks to address the FLM problem – that is, how transit users travel the final mile or so between their origins and destinations and transit stations – which continues to be the Achilles heel of transit systems globally. While light rail provides an efficient method of moving people along major transportation corridors, twenty percent of commuters to the Denver South region say they do not use light rail because it is too difficult to get from the light rail station to their workplace. Although CnR was an inventive solution, it is heavily subsidized at ~\$21 per one-way trip, requires advance sign-ups and is unable to respond to real-time demand. Lyft's model, which has proven to be a cost-effective way to transport people between dispersed destinations, presents an opportunity for transit agencies to encourage ridership.

Quantitatively, the effectiveness of this pilot will be determined primarily by the number of riders on the new service and average per boarding costs. Data collected will determine if riders of the new service have ever used CnR, trip origins and destinations and qualitative feedback about the service. This information will allow the project team to calculate the resulting reductions in VMT and emissions. Qualitatively, user experience indicators will help to ensure the success of the pilot. Should the pilot prove successful, latent demand, average cost of rides and user experience feedback will all be necessary for planning ongoing operations and scaling this model to other RTD light rail stations and other transit systems.

SPIMD funding and Centennial's matching funds will all go towards project execution - \$9,000 for data and reporting through Go Denver and funding rides to and from the Dry Creek light rail station.

For more detailed information please see Attachment A - Go Centennial Summary, Attachment B - Go Centennial Operations Diagram, Attachment C - Go Centennial FAQ's and Attachment D – Go Centennial Operations Plan.

ESTIMATED FUNDING SCHEDULE:

YEAR		2014		2015		2016		2017		2018		TOTAL
TOTAL PROJECT DESIGN	\$	<input type="text"/>	\$	<input type="text"/>	\$	<input type="text"/>	\$	<input type="text"/>	\$	<input type="text"/>	\$	<input type="text"/>
TOTAL PROJECT EXECUTION	\$	<input type="text"/>	\$	<input type="text"/>	\$	<input type="text" value="334,000"/>	\$	<input type="text" value="66,000"/>	\$	<input type="text"/>	\$	<input type="text" value="400,000"/>
										TOTAL:	\$	<input type="text" value="400,000"/>

PROJECT REVENUE SOURCES:

Local Gov't:	<div>City of Centennial</div>	\$	<div></div>	\$	<div></div>	\$	<div>167,000</div>	\$	<div>33,000</div>	\$	<div></div>	\$	<div>200,000</div>	
Local Metro District:	<div></div>	\$	<div></div>	\$	<div></div>	\$	<div></div>	\$	<div></div>	\$	<div></div>	\$	<div></div>	
Other:	<div></div>	\$	<div></div>	\$	<div></div>	\$	<div></div>	\$	<div></div>	\$	<div></div>	\$	<div></div>	
SPIMD (up to equal match of Local Gov't)		\$	<div></div>	\$	<div></div>	\$	<div>167,000</div>	\$	<div>33,000</div>	\$	<div></div>	\$	<div>200,000</div>	
												TOTAL:	\$	<div>400,000</div>

EXHIBIT B - APPLICATION FOR FUNDING

CONDITIONS TO FUNDING:

Is this project within the boundaries of SPIMD?	<input checked="" type="checkbox"/>	Have Zone Stakeholders been notified of this application?	<input type="checkbox"/>	Are comments from Stakeholders attached?*	<input type="checkbox"/>
---	-------------------------------------	---	--------------------------	---	--------------------------

*Include letters of support from Stakeholders when submitting application

PROJECT LOCATION:

Brief
Description of
Location:

This pilot will operate within the existing Dry Creek Call-n-Ride service area located within Centennial; west of Dry Creek Station, with service extending north to Arapahoe Road, east to I-25, south to County Line Road, and west to S Holly Street (south of E Dry Creek Rd) or S Quebec St (north of E Dry Creek Rd). Please see Attachment A for a map of the proposed service area, included in the Go Centennial Summary.

Please send a picture of the project location with the application.

Local Gov't
Official:

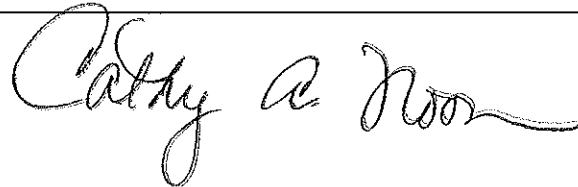
Cathy Noon, Mayor, City of Centennial

(Name, Title)

TMA Official

(Name, Title)

TMA Board
Approval (date)



*Note: This form is to be submitted to the Denver South Transportation Management Association (TMA) for its review and recommendation to SPIMD.




Attachment A – Go Centennial Summary



Summary

Go Centennial connects homes and businesses in Centennial to RTD light rail. For a six-month pilot period, beginning August 17, the City of Centennial and the Denver South Transportation Management Association will offer free Lyft Line rides to and from the Dry Creek light rail station to people who live or work within a defined service area. The Go Denver smartphone app, powered by Xerox, will allow users to plan and book free Lyft Line rides that connect with light rail at the Dry Creek station. Lyft Line rides will be covered Monday-Friday, 5:30 a.m. - 7 p.m.

Here's how it Works

1. Download the Go Denver app from Google Play (Android) or App Store (iPhone).
2. When you first open the app, you'll be prompted to create an account.
3. Click the  menu icon in the top left corner, and follow the link to Go Centennial. The first time you use Go Centennial, you will need to register. To qualify for a free Lyft Line ride you must be registered through the Go Denver app and be leaving or going to the Dry Creek Light Rail Station within RTD's existing Call-n-Ride service area.
4. Enter your origin ("From") and destination ("To"), and click "route." If your trip is within the service area, a  icon for a Lyft to Light Rail option will be provided.
5. Click the  icon and follow the prompts to book your Lyft ride.

Registration information will be used to determine if this pilot program is meeting its goals. Users' personal information will not be shared with anyone.

What if I don't have a smartphone?

If you don't have a smartphone, call Centennial's Citizen Response Center at (303) 325-8000 and mention Go Centennial. The representative will help walk you through all the steps to book your Lyft ride. If you need assistance planning or booking your RTD trip, you can visit www.GoDenverApp.com or call RTD's Trip Planners directly at (303) 299-6000.

Goals

We hope this service will be easier, more convenient and less expensive than existing services. We hope users will provide feedback about the service to help make it even better.

Questions

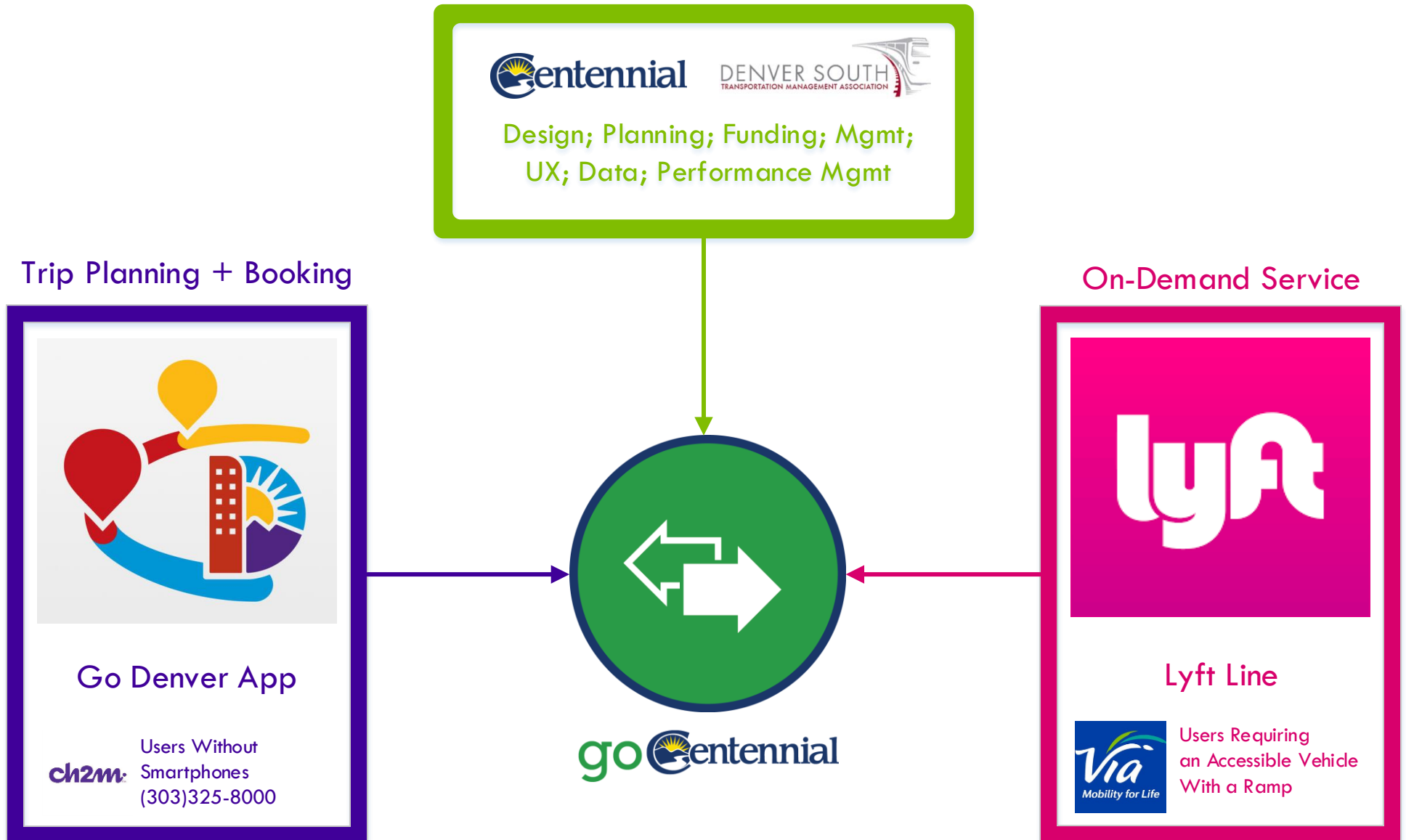
Visit go.centennialco.gov for FAQs and more.



EXHIBIT B - APPLICATION FOR FUNDING

Attachment B – Go Centennial Operations Diagram

Operations



Attachment C – Go Centennial FAQs



FAQs

What is this program?

Go Centennial is a pilot program providing a solution for transit users to easily get to and from RTD's Dry Creek Light Rail Station. Often, getting to or from the light rail station is the most challenging part of taking transit. This is what is called the "first and last mile" problem (see below). By integrating with the Go Denver app and partnering with Lyft, we have created an easy, cost effective and efficient model to reach your destinations without having to drive. The Go Centennial pilot program allows transit users to schedule free Lyft rides to and from the Dry Creek Station within the existing RTD Call-n-Ride service area.



This pilot program will operate for up to six months, from August 17, 2016 to February, 2017.


Lyft Line rides will be free Monday - Friday, 5:30 a.m.–7 p.m.

What is the first and last mile?

The First and Last Mile isn't a mile, exactly. It's the distance between your home or workplace and the light rail station. While it is usually a short distance, it is often the most difficult part of the trip. We hope that by making this part of the trip easier, transit becomes a more viable option for many travelers.

I have a smartphone! What do I do? How does this work?

1. Download the Go Denver app from Google Play (Android) or App Store (iPhone).
2. When you first open Go Denver, you'll be prompted to create an account.
3. Click the  menu icon in the top left corner, and follow the link to Go Centennial. The first time you use Go Centennial, you will need register in order to receive the free Lyft ride. We use this information to determine if the pilot is meeting its goals. Your personal information will never be shared with anyone.
4. Enter your origin ("From") and destination ("To"), and click "Route." If your trip is within the service area, a  icon for a Lyft to Light Rail option will be provided.

5. Click the  icon and follow the prompts to book your Lyft ride.

Once you set up your account you'll be able to take Go Centennial to or from the Dry Creek Station for the rest of the pilot period!

What if I don't have a smartphone?

If you don't have a smartphone, you may call Centennial's Citizen Response Center at (303) 325-8000 and mention Go Centennial. The representative will walk you through the steps to book your Lyft ride. This number is reserved only for those without smartphones needing assistance booking a Go Centennial ride as part of the pilot program.

Who do I contact if I have any issues?

If you experience a safety emergency please call 911.

Attachment C – Go Centennial FAQs



If you need assistance planning or booking your RTD trip, including Call-n-Ride, bus, or light rail, you can visit www.GoDenverApp.com or call RTD's Trip Planners directly at (303) 299-6000.

If you need assistance with Lyft or Lyft Line service, please contact Lyft's Customer Service Line at (855) 865-9553.

If you would like help learning how to use the apps, visit Centennial's Mobility Ambassador Program's Transportation Resource Guide: <http://www.centennialco.gov/Government/senior-commission.aspx>.

Can anyone use this pilot program?

Yes, anyone over 18 can use this pilot program. All of Lyft's vehicles have 4-doors and accept service animals. If you are unable to ride in a sedan, you can request a wheelchair-accessible vehicle by checking the appropriate box when you register for the program or telling the Citizen Response Center representative.

Why is this a pilot program?

Simply put, this is a whole new platform, which requires testing to see what works and what doesn't. We hope this service will be easier, more convenient and less expensive than existing services, but no other city in the country has tried to connect transit and rideshare so seamlessly. We hope you will provide feedback about the service so it can continue to improve.

What area does this pilot program encompass?

The pilot covers most of the current Dry Creek Call-n-Ride service area. The service area stretches west from I-25 to S Quebec St between E Arapahoe Rd and E Dry Creek Rd. The service area stretches west from I-25 to S Holly St between E Dry Creek Rd on the north and E County Line Rd on the south.

What are the hours I can use this program?

This service will run the same hours as RTD's Call-n-Ride. Monday-Friday, 5:30 a.m. – 7 p.m.

How long will this program be in place?

We hope to run the pilot from August 17, 2016 to February 17, 2017. However, the pilot may end earlier if the funding is expended.



Attachment C – Go Centennial FAQs



What is the cost to participate?

The Lyft ride is free if you register through the Go Denver App, to travel to or from the Dry Creek Light Rail Station within the existing Call-n-Ride service area. A light rail ticket is required to ride the train.

Who are the project partners?

- Lyft will be providing rides to and from the Dry Creek light rail station.
- The Go Denver app, powered by Xerox, allows users to seamlessly plan and book trips within the service area.
- CH2M will be booking rides for people without smartphones through a contract to operate the City's 24/7 Citizen Response Center.
- SPIMD, the Southeast Public Improvement Metropolitan District, and the Denver South Transportation Management Association are funding partners for this pilot, with the hope that lessons learned can be applied for the benefit of all businesses in Denver South.
- RTD is providing operational guidance for the pilot. Through this pilot, we hope to provide data to RTD to help optimize service to light rail stations throughout the metro area.

Why Lyft and not Uber?

Our goal for the program is to allow seamless planning and booking. Lyft's integration with the Go Denver app provides just that, alongside fast rides and friendly drivers.

How do I know using a rideshare is safe?

Lyft conducts criminal background checks, DMV checks, vehicle inspections and provides \$1 million liability insurance for all drivers and vehicles. In addition, there is a zero-tolerance drug and alcohol policy and a rating system; if you rate a driver less than 3 stars, you will never be matched with that driver again. If you do experience a safety incident, call 911, if necessary, then call Lyft's 24/7 Critical Response Line at (855) 865-9553.

What is Lyft Line? How is it different from a regular Lyft?

Lyft Line is a car-sharing service offered by Lyft. After requesting your ride, you may be matched with one other person or group headed in the same direction. Lyft ensures your driver will not deviate more than 5 minutes from the optimal route, resulting in minimum impacts to your travel time. This pilot is utilizing Lyft Line service to help reduce the number of cars on the road and fund more rides for you.

Do you offer service for people with disabilities?

Yes. Lyft Line provides rides to people with small mobility aids that fit in the back seat of a sedan, like folding wheelchairs. For larger mobility aids, we have partnered with Via, a full-spectrum mobility manager, to serve paratransit trips through this pilot. Our accessible vehicle is an MV-1, equipped with a ramp.

How can I request an accessible vehicle?

Download and install the Lyft app. Enter your origin and destination, and change the vehicle type to "Lyft Access" from the trip options. Enter GOCENTENNIALWAV (verify code with Lyft) in the promo code section. The code will only work if your trip starts or ends at the Dry Creek Station and the other end of your trip is within the service area above. (Will insert screenshots when

Attachment C – Go Centennial FAQs



received from Lyft) Once the trip is booked, you will see a photo of the vehicle, the vehicle's license plate and the driver's estimated arrival time.

How is this paid for? Were taxpayer dollars used to develop this program?

The project concept and implementation plan were developed by the Centennial Innovation Team, funded by Bloomberg Philanthropies. Funding for rides is being provided by the City of Centennial and the Southeast Public Improvement Metropolitan District (SPIMD).

What happens after the pilot period?

If this pilot project proves successful and data shows it is more effective and cost-efficient than existing services, the City of Centennial will approach RTD and other potential funders with a proposal to extend the timeframe and expand the number of service areas included in this program.

Attachment D – Go Centennial Operations Plan

go Centennial

A MOBILITY ON DEMAND PILOT
FOR THE DENVER SOUTH REGION

OPERATIONS MODEL PREPARED BY:



WITH SPECIAL RECOGNITION TO:

Denver Metro Chamber of Commerce/Mobility Choice & Rutt Bridges

Fehr & Peers | RTD | Rocky Mountain Institute | Transit Alliance

Attachment D – Go Centennial Operations Plan

INTRODUCTION

The Go Centennial pilot is a public-private partnership between the City of Centennial, CH2M, the Denver South Transportation Management Association (DSTMA)/Southeast Public Improvement Metropolitan District (SPIMD), Lyft, Via Mobility Services (Via) and Xerox to address the first and last mile problem – how to get travelers from their origins or destinations to transit stations and vice versa. This model applies an on-demand, demand-responsive mobile platform to provide intuitive and efficient transportation connections to and from the Regional Transportation District (RTD) Dry Creek Light Rail Station in Centennial, Colorado.

Go Centennial will provide a streamlined, intuitive approach to travel for residents, workers and visitors in Centennial. Travelers will use the Go Denver App, powered by Xerox, to book a no-fee first or last mile trip to the Dry Creek Station. The Go Denver App will communicate directly with Lyft to ensure that a car is ordered for the origin and destination as specified by the user.

On-demand: Users call or hail a ride exactly when they need one

Demand-responsive: the number of drivers increases when there is more ridership

The program will be managed by the City of Centennial and DSTMA. These stakeholders are responsible for the program's design, planning, funding, user experience and performance management. The Go Denver App will function as the Travel Management Coordination Center (TMCC), linking planning and booking across multiple travel modes; Xerox will create and develop a User Interface to make this possible. Lyft will operate rideshare service as an enterprise solution under contract with the City of Centennial. In addition to rideshare, Lyft will provide customer support and access to the Concierge booking platform.

While other First and Last Mile (FLM) pilots have taken great steps forward throughout the nation, the Denver Metropolitan Area has an exceptional opportunity to expand on these models as a result of its recent investments in light rail infrastructure; RTD will be opening four rail lines in 2016, greatly expanding the number of destinations reachable through the light rail system. While this network is expanding rapidly, connecting people to and from light rail stations remains a challenge. Go Centennial goes a necessary step beyond similar pilots by experimenting with user experience and testing demand for a free first and last mile rideshare as a service add-on to regular light rail fares. Additionally, Go Centennial will integrate wheelchair accessible transportation in order to accommodate users requiring an accessible vehicle with a ramp. As a result of these features, Go Centennial will provide a fully-integrated trip planning experience for all users that will help make transit ridership competitive with single-occupancy vehicle use. Notably, this pilot program will serve as a case study for the rest of the RTD service area and provide a model that can be replicated around the country.

Attachment D – Go Centennial Operations Plan

PLATFORM OVERVIEW

SERVICE AREA

The pilot will begin in a defined service area; only trips with one end at the Dry Creek Station and the other within the identified boundaries are eligible. **Figure 1** shows the service area boundary of the pilot program. This boundary is essentially the same as the existing Dry Creek Call-N-Ride (CnR) service area, with the exception of the small area south of County Line Road (beyond the City of Centennial jurisdictional boundary) that is not eligible for Go Centennial.



Figure 1: Go Centennial Service Area Boundary

TIMEFRAME

Go Centennial will strive to operate for six months, from August 17, 2016 to February 17, 2017. Based on anticipated demand and Lyft Line prices, budgeted funding is anticipated to last six months. However, this timeframe is flexible based on how long the available funding lasts. Hours of operation will be Monday through Friday (excluding holidays and weekends), 5:30 AM to 7:00 PM – the same hours of operation as the current RTD Call-n-Ride (CnR) service.

Attachment D – Go Centennial Operations Plan

SERVICE TYPES

Lyft offers three different ride options as a part of its general services—Lyft Classic, Lyft Plus and Lyft Line. Lyft Classic is the company's traditional rideshare service, in which Partner Drivers use their personal vehicles to drive a single rider (or group of riders going to the same destination together through the same request) to his/her desired destination. Lyft Plus serves a group of up to six riders. Lyft Line is a modified version of this model that allows for carpooling based on an algorithm created by Lyft. Lyft Line groups users with nearby origins and destinations into a single vehicle.

At its launch, Go Centennial will use Lyft Line for all trips not requiring an accessible vehicle with a ramp. This carpool alternative will reduce the number of vehicle miles traveled (VMT) by the fleet of Lyft Partner Drivers in Centennial. Lyft Line allows a maximum of two individual ride requests per trip, allowing each user to bring one companion. Because Lyft Line is capped at two different origins or destinations, the additional travel time (relative to traditional Lyft service) will be minimal. Performance measures and survey data will be analyzed throughout the program to determine if users should be given the option between Lyft and Lyft Line later in the pilot.

Lyft provides service through its current platform to users with service animals or folding wheelchairs. Through a separate partnership with Via, an accessible vehicle with a ramp will accommodate wheelchairs, scooters and oxygen tanks and will be hailed through the Lyft App in Lyft Access mode. The designated pick up/drop-off space at the Dry Creek Station will have the necessary ADA features, including curb ramps and wheelchair loading and unloading space. Users with visual impairments and users without smartphones may contact the Centennial Citizen Response Center (CRC) for assistance scheduling a ride.

TRAVEL MANAGEMENT COORDINATION CENTER: GO DENVER**SIGN-UP PROCESS**

The Go Denver App will serve as the platform through which Go Centennial trips (RTD Light Rail + Lyft Line) will be scheduled. First-time users of Go Denver will be asked to sign-up for the App with a name, password and email. The first time they use Go Centennial, they will be required to answer a few additional registration questions.

Registration for Go Centennial will consist of the following questions:

- i. Normal Go Denver and Lyft registration processes, including and in addition:
- ii. Current use frequency of
 - a. RTD Light Rail,
 - b. RTD Call-n-Ride,
 - c. Lyft,
 - d. Other rideshare services.
- iii. Whether they require an accessible vehicle with a ramp

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Once a user has registered for the program, they will not have to answer the above questions again. Instead, they will see a splash page with Terms and Conditions each time they use Go Denver to arrange a Go Centennial trip. Users who have not previously downloaded and registered for Lyft on their phone will be prompted to download the App and go through the initial Lyft registration process. This is necessary for Lyft Line booking integration.

TRIP PLANNING

To plan a trip, users will enter their origin and destination, and a series of travel options will appear. Each option shows the mode, total travel time, time on each mode, cost, calories burned and CO₂ emissions.

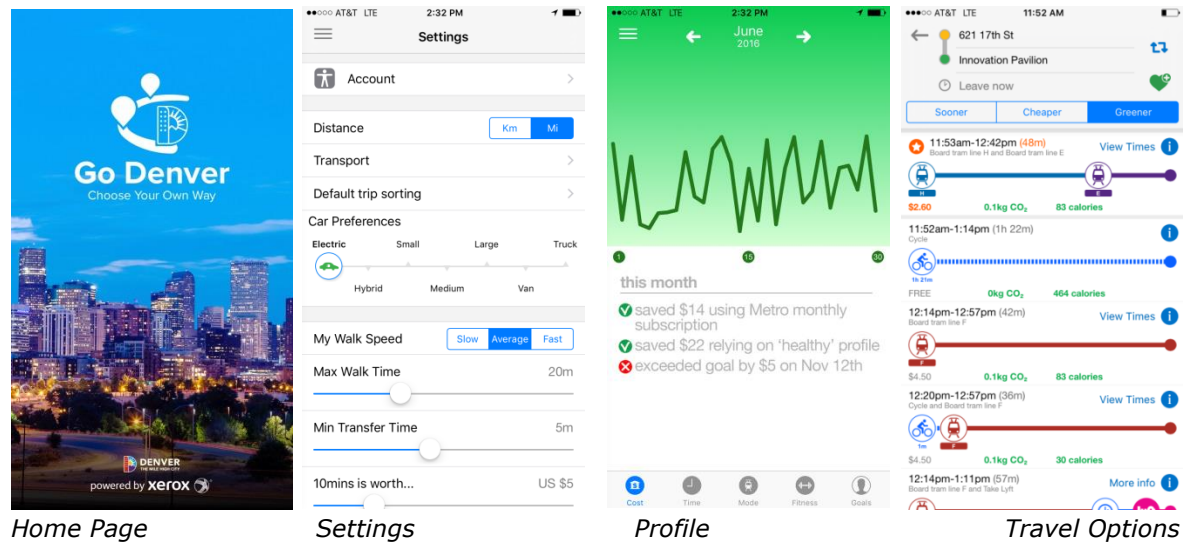


Figure 2: Go Denver User Interface

SERVICE COORDINATION

Users will coordinate their trip through Go Denver (or the Centennial CRC) on the front end. Xerox will coordinate Lyft Line service on the back end through Lyft. On the back end, Lyft will apply their algorithm to determine other users (Go Centennial and not) who may be able to share a Lyft Line ride. Lyft will not only be responsible for carpool coordination, but also for routing, prompt arrival and departure times and any other service elements during or in preparation for the actual Lyft Line ride. Lyft will also be responsible for coordinating service for Via's drivers and vehicle through the Lyft App in Lyft Access mode.

PAYMENT INTEGRATION

No-fee Lyft Line rides included with the user's purchase of a light rail ticket will be clearly designated within the Go Denver App. No payment will need to be made for those who have a transit pass in order to emulate the current fare structure of RTD's CnR and the Lone Tree Link, which serves one of Centennial's neighboring communities. At the end of their ride, users will be made aware through the Go Denver App that they are responsible for purchasing a light rail ticket at the Dry

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Creek Station. Lyft Line rides will be tallied and paid through the City of Centennial. This will be discussed further in the *Estimated Budget* section.

CONCIERGE SERVICES

Go Centennial will provide assistance for users who are unable to use the Go Denver App. CH2M operates Centennial's CRC on a 24/7 basis. Employees working at the CRC will be trained to answer questions about Go Centennial and to book trips through Lyft's enterprise platform, Concierge. The phone number for the CRC will be available on Go Centennial marketing materials. The CRC's existing capacity should be sufficient for the duration of the pilot period. Lyft's customer response center will be available for questions and assistance related to Lyft Line trips. Both Lyft Customer Response services and CRC services will be available at no cost as part of this pilot.

HOW IT WORKS

STEP 1: DETERMINE THE MODES AVAILABLE FOR TRIP

USER-END

The user enters their origin and destination into the Go Denver App. The user then chooses whether to sort travel options by 'sooner,' 'cheaper' or 'greener.' Transportation options appear with calories, price, travel time, CO₂ emissions and departure and arrival times. For eligible trips, a program specific icon will indicate the Go Centennial option, and the price will be reduced to reflect the free Lyft Line trip.

If the user does not have a smartphone, they can call the CRC number that will be available on promotional material and at the Dry Creek Station. Responders will be trained and equipped to book rides for these users.

BACK-END

The Go Denver App will determine all of the applicable transportation options based on the user's origin, destination and departure time. The Go Centennial option will show up if the passenger uses the Dry Creek Station and the origin or destination is within the geofenced boundary (as shown in **Figure 1**).

STEP 2: SELECTION OF GO CENTENNIAL (RTD LIGHT RAIL + LYFT LINE)

USER-END

- a) The user will select the Go Centennial ('Board light rail and take Lyft Line' or 'Take Lyft Line and board light rail') option for the desired time as provided by the Go Denver App. If the user does not currently have the Lyft App, the user will be prompted to install the free Lyft App and go through the standard Lyft registration process. If the user already has the Lyft App, the process will continue seamlessly through the Go Denver App.
- b) If this is the first time the user has selected the Go Centennial option (i.e., RTD Light Rail + Lyft Line), they will be instructed to register for the program.
- c) After the user has registered, the Go Denver App will clearly state that light rail tickets and existing monthly and annual light rail passes (EcoPasses) include a Lyft Line ride without additional payment. Day users (i.e., users

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without passes) will be instructed by the Go Denver App to purchase a light rail ticket at the station.

- d) Users will be assigned to their respective Lyft Line vehicle. The user will be notified of the vehicle type and license plate of their assigned driver, the estimated pick-up time and the pick-up location. Users that require an accessible vehicle with a ramp will access this service through the Lyft App in Lyft Access mode.

BACK-END

- a) Once the user has registered for Lyft through the Lyft App, the Lyft App will automatically link to the Go Denver App, without requiring the user to leave the Go Denver App.
- b) User registration for Go Centennial will create a database that collects user data from the registration questions.
- c) The Lyft Line carpool feature of Go Centennial will be worked into Lyft's normal algorithm. Go Centennial users can potentially be paired with non-Go Centennial users.
- d) Lyft will track Lyft Line and Lyft Access trips taken as part of Go Centennial. Lyft will bill the City for these trips on a monthly basis.

STEP 3: THE COMMUTE

The following section presents an example Go Centennial trip, assuming that the user rides Lyft Line for the final mile. A commute with Lyft Line as the first mile would work similarly.

USER-END

For the purposes of this example, the user's trip originates in Downtown Denver. The user boards RTD's E Light Rail line at Union Station. The user alights the light rail at the Dry Creek Station and goes to the well-marked, well-signed, designated Lyft curb pick-up location. A vehicle matching the vehicle type and license plate number as displayed on Go Denver (following the selection of a trip) will be waiting (or arriving within a few minutes of light rail arrival). The driver will already have the user's final destination(s) in the mapping device. The user will get in the vehicle and travel safely and quickly to their final destination. The user will review the Lyft Partner Driver (one to five stars) and have the opportunity to tip the driver, via the same process as normal Lyft rides. (Any tip will be charged to the user's credit card on file in the Lyft App.)

BACK-END

Lyft Partner Drivers currently within the Centennial region will be notified when a request is submitted. If it is a last mile trip, the driver will be made aware of the train arrival time in order to arrive at the station within a short time of the train's arrival. Lyft will determine arrival times based on light rail schedules until on-time arrival can be determined and released by RTD. Lyft Partner Drivers will be trained on Go Centennial protocols and will pull up to the designated curb area at the Dry Creek

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Station. Lyft Line will function normally after this point in the trip. That is, drivers will proceed to the final destination that was designated by the user through the Go Denver App.

ENFORCEMENT

GEOFENCING

The geofenced area presented in **Figure 1** — bounded by I-25, Arapahoe Road, Quebec Street, Dry Creek Road, Holly Street and County Line Road — will serve as the geographic limits for this pilot. In other words, users' first or last legs of their trips must be between Dry Creek Station and a location within this area. Lyft will be programmed in order to ensure that only trips within this defined area can be made through Go Centennial.

USE LIMITATIONS

There will be no limitations to the number of users per day, week or month. The only limitation is based on the Pilot Program Budget identified in **Table 3**, \$377,000 of which is reserved for Lyft Line and Lyft Access rides. Once funding runs out, the pilot in its current state will end. While Lyft Line costs will be averaged over total rides, **Table 1** shows the number of rides per day, based on fully loaded costs (admin, overhead, Lyft Line and Lyft Access service, Lyft fees, hailing, dispatch, taxes, etc.) per ride that would allow the pilot to last six months given the current funding. However, there is no limit to the number of trips per day that one user can make. The Go Denver App will have the ability to track the number of trips per day for ongoing monitoring purposes.

Table 1: Maximum Ride Total Estimates within \$400,000 Budget

Fully Loaded Costs per Ride	Total Rides (6 Mo. Pilot)	Rides (Per Day)
\$9.00	44,444	356
\$8.00	50,000	400
\$7.00	57,143	457
\$6.00	66,667	533

SERVICE ELIGIBILITY

Anyone taking a trip within the service area that either starts or ends at the Dry Creek Station is eligible to use the service whether or not they hold an RTD pass. The current structure of Go Centennial does not allow the service to determine if a user is in fact pairing their Lyft Line trip with a light rail trip. Therefore, this service can technically be used by anyone. However, given the low-density land use around Dry Creek Station, it is unlikely that a Lyft Line trip starting or ending at Dry Creek Station will be used for a trip that is not paired with light rail.

USE TRACKING

Upon each user's registration, Go Centennial will add anonymized data to a database that tracks usage of the service for the purpose of evaluation, performance management and long-term implementation. User trends will allow the program to be tweaked during and after the pilot in order to ensure greater ridership, customer satisfaction and financial sustainability.

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Online and intercept (i.e., in-person) surveys of Go Centennial users will also be conducted during and at the end of the pilot. Each user will receive the pop-up online Go Denver survey twice during the duration of the program—once two months after registration and again at the end of the program. These surveys aim to gauge what is working well and what can be improved. The Go Centennial Evaluation Plan presents draft survey questions that would be conducted electronically to current users of the program.

Xerox, as the developer of the Go Denver App, will be responsible for distributing the online survey using the database of email addresses collected during online registration. Xerox will also collect survey result, anonymize and share with the i-team.

In summary, Xerox will provide the following types of data on a monthly basis or when available:

- Go Denver user registration data, including email
- Go Centennial user registration data
- Online survey output data

MANAGEMENT AND SUPERVISION

PARTNERSHIP MODEL

Go Centennial is a public-private partnership between the City of Centennial, CH2M, DSTMA/SPIMD, Lyft, Via and Xerox. Each project partner has clearly defined roles and responsibilities throughout the pilot. The City's agreements with individual partners will include more detailed scopes of work for specificity.

CENTENNIAL + DSTMA/SPIMD

The program is managed by the City of Centennial and DSTMA. During the start-up phase, the Centennial innovation team (i-team) was responsible for the front-end behavioral design, operational planning, governance and marketing. During the implementation phase, Centennial will be responsible for on-going communications, employer relations, user outreach, fundraising, local operations, performance tracking and project management.

DSTMA/SPIMD will provide funding and will work closely with the team to integrate Go Centennial with their resources and programs and serve an advisory role on the planning, design and evaluation of the program.

LYFT

The City of Centennial and DSTMA/SPIMD will compensate Lyft for their services according to the Pilot Program Agreement between the City and Lyft to ensure that service is provided at an acceptable level. During the implementation phase, Lyft will also be responsible for user data collection, route optimization, service improvement and Partner Driver and vehicle coordination (addressing vehicle supply and system capacity based on demand in order to minimize charging surge prices).

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XEROX

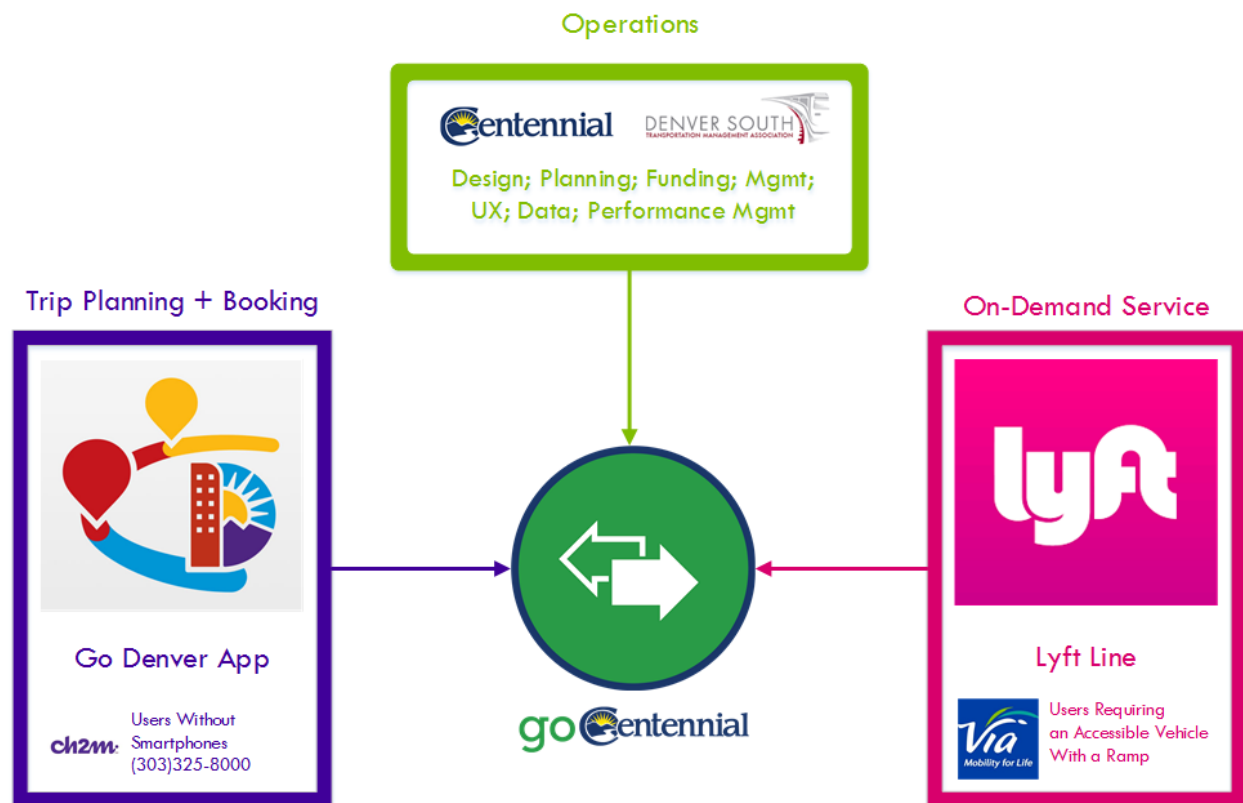
Xerox's Go Denver App will communicate directly with Lyft. Xerox will maintain the Go Denver App to provide a platform for users to book trips, pay fares and learn about other transportation options. During the implementation phase, Xerox will be responsible for continual system improvement, quality assurance/quality control testing, payment systems integration and user interface-based performance measurement programming and data collection.

ADDITIONAL SUPPORT

In addition to the stakeholders listed above, CH2M will provide support and booking assistance through the CRC under the existing contract with the City of Centennial.

Via will provide service to users requiring an accessible vehicle with a ramp. Lyft will provide Via access to its ridesharing and hailing platform through the Lyft App under Lyft Access mode so that users will have an equivalent trip planning and booking experience. Via will provide trained drivers and at least one accessible vehicle with a ramp for the duration of the pilot.

Figure 3: Go Centennial Operations Diagram

**KEY PERFORMANCE MEASUREMENTS**

Performance management is an approach to transportation planning that provides a link between short-term management and long-range decisions about policies and investments. Performance management is particularly important for pilot programs, such as Go Centennial, because it allows the project proponents to define goals for

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the pilot and use data to determine whether their pilot has achieved its stated objectives. These metrics also allow an objective and quantifiable assessment of the program and opportunities for change that will allow for the increased success of a more permanent installation.

As mentioned in the **Use Tracking** subsection, Go Centennial will track various usage and survey data to monitor the performance of the program. This data will aid the project stakeholders in the evaluation and long-term implementation. By tracking the success of the program, performance measures will also allow stakeholders to make a case for the continuation or modification of the program as appropriate. Finally, performance measures also contribute to the transferability of the pilot program to other RTD Light Rail service areas, cities and regions.

Table 2 shows the goals of Go Centennial and connects each goal with a performance target and a source of data to measure performance in each area. The Evaluation Plan provides more detail on the overall performance management effort and data collection strategy.

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Table 2: Performance Measures by Goal

Focus Area	Goal	Performance Target/Measure	Data Source
1. Influencing Commuter Behavior	1-1. Increase light rail ridership; make more efficient use of seating space	Increase RTD Light Rail ridership from Dry Creek Station <ul style="list-style-type: none"> Aug 2015 – Jan 2016 1,904 trips per day Goal: 2,100 per day 	RTD Light Rail ridership
	1-2. Reduce SOV trips to the Park-n-Ride; reduce congestion due to fewer SOVs on the roadway	10% decrease in the monthly total of cars parked at the Dry Creek Park-n-Ride station (from approximately 112)	Monthly RTD Park-n-Ride data at Dry Creek Station
	1-3. Reduce regional VMT	VMT reduced by 250,000 miles by February 2017	Go Denver registration data; number of trips per user
	1-4. Increase first and last mile trips to the Dry Creek Station	Increase trips to the light rail station (Call-n-Ride + Lyft Line trips) by 50%	RTD Dry Creek Call-n-Ride ridership, Lyft data reporting
2. Benefiting Drivers and Transit Users	2-1. Provide a safe travel option for users	No collisions or personal security incidents related to the program	Police reports from the Arapahoe County Sheriff's Office
	2-2. Improve service levels for first and last mile service riders	25% reduction in average wait time to station or destination relative to existing Call-n-Ride service	Wait time data from Lyft and RTD Call-n-Ride (baseline)
	2-3. Create an equitable system that is accessible to all types of users	No users who would like to use service but are unable to	Appendix B survey data results

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	2-4. Reduce commuter stress levels and enhance well-being by providing comfortable service	95% of survey respondents report being 'satisfied' or 'highly satisfied' with level of comfort during FLMP service	Appendix A survey data results (question #9)
	2-5. Ensure customer satisfaction	95% of survey respondents report being 'satisfied' or 'highly satisfied' with overall satisfaction during Go Centennial service; Average rating of driver from program trips is 4.8 out of 5 stars	Appendix A survey data results (question #8); Lyft rating data
3. Cost Effectiveness	3-1. Reduce costs for first and final mile services	Decrease in average per trip cost for first and last mile service from \$21 (for Call-n-Ride service) to \$8 (for Lyft service)	Lyft invoicing; RTD subsidy for Call-n-Ride (baseline)
	3-2. Provide a high return on investment for the City of Centennial	Benefit/cost ratio of greater than 1.0 for City of Centennial investment of \$200,000	Cost reduction relative to existing RTD Call-n-Ride subsidy
4. Technology/ User Experience	4-1. Provide a responsive, on-demand service	Average wait time for Lyft Line ride under 10 minutes	Wait time (between request and pick-up) from Lyft
	4-2. Develop reliable and integrated trip planning and payment systems	Less than 15 calls monthly to concierge service regarding payment troubleshooting	Centennial Citizen Response Center (CRC) concierge service data
	4-3. Increase ease of booking a first or last mile trip	90% of survey respondents report the Go Denver App being 'easy' or 'very easy' to use	Appendix A survey data results (question #10)

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5. Transferability and Sustainability	5-1. Retain new users	50% of users return to FLMP service within two weeks of initial trip	Lyft ride information by user ID
	5-2. Produce a pilot evaluation that assesses transferability and sustainability	Centennial i-team produces final evaluation report by end of March 2017	i-team
6. Long-Term Change for Centennial	6-1. Contribute to Centennial-based employers' recruiting efforts	Survey of Centennial employers	Appendix C survey data results
	6-2. Create overlay parking requirements for developers and employers in the program service area	Reduced number of single occupancy vehicle trips	Appendix C survey data results
	6-3. Normalize new commute behaviors and patterns	Continuation of FLMP program beyond February 2017	Program status

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EXPERIMENTAL DESIGN AND TRANSFERABILITY

Several transit agencies in the United States have identified the potential benefits of coordination with private rideshare companies. Pilot programs in Dallas, Kansas City, Philadelphia and St. Petersburg are experimenting with the integration of private ridesharing services like Lyft, Uber and Bridj and transit. However, these pilots are restricted in scope and limited data on their success are available. To our knowledge, no other pilot tests the provision of free rideshare service linked with transit. A few provide partially-subsidized rides and Tampa, Florida, recently launched a fully-subsidized program for trips overnight, when transit does not operate. As such, the transferability of this pilot is crucial to its implementation throughout the Denver Region and the rest of the country.

The Go Centennial program aims to leverage the on-demand, demand-responsive capabilities of ridesharing platforms to enhance the effectiveness and ridership of transit systems. This goal applies not only to the pilot service area, but to the broader RTD service area and to transit ridersheds nationwide. In addition to providing no-fee ridesharing service to users in Centennial, Go Centennial will test an entirely new platform for seamless door-to-door transit planning that streamlines payment and systems integration. Furthermore, Go Centennial strives to provide equivalent experiences for people with disabilities and for those who do not have smartphones.

To achieve these goals, it is important that Go Centennial demonstrate that similar programs could succeed in other transit ridersheds, cities and metropolitan areas. Due to the rapid expansion of RTD's Light Rail network through FasTracks and the explosive growth of the Denver metropolitan area, it is particularly important that Go Centennial demonstrate the transferability of rideshare/transit partnerships to other light rail stations in the Denver region. In fact, it is possible that other first and last mile programs could achieve an economy of scale, due to RTD's current expansion. The larger the demand for rideshare services, the greater the number of opportunities there are for carpooling within this on-demand model. While Go Centennial is currently limited in duration, hours of operation and geography, the pilot will test the feasibility and desirability of expanding past these boundaries. If the program is successful according to the performance measures listed in this document, Go Centennial will provide a replicable, scalable model for Denver and other American cities with light rail systems and bus rapid transit (BRT) within lower-density areas. Go Centennial will provide not only a proof of concept, but also a model for potential regulatory changes, system integration needs and reasonable cost estimates for transit systems throughout the country.

ESTIMATED BUDGET**UP-FRONT INVESTMENT**

The i-team has contributed - largely through in-kind resources - time and labor for design and planning of the pilot. As part of project planning, the i-team will contribute \$26,000 to Xerox for App design, development and integration. This \$26,000 cost

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will be paid for through the i-team budget and not the pilot program funding pool supported by the City of Centennial and DSTMA/SPIMD.

PILOT PROGRAM COSTS

Operating costs for the pilot period of six months, which will be supported by City of Centennial and DSTMA/SPIMD funds, fall into four line items — 1. *Xerox - Hosting, Data Collection and Analysis*; 2. *Lyft - Lyft Line Rides* 3. *Via – Accessible Service*; and; 4. *Operations and Maintenance (O&M) Contingency Funding*. See **Table 3** for the Pilot Program Budget.

Table 3: Pilot Program Budget

Vendor/Line Item	Service	Estimated Cost
1. <i>Xerox</i>	Hosting, Data Collection, Analysis	\$9,000
2. <i>Lyft</i>	Lyft Line Rides	\$330,000
3. <i>Via</i>	Accessible Service	\$47,000
4. <i>O&M Contingency</i>	Cost overages; emergencies	\$14,000
Pilot Budget Total		NTE \$400,000

1. *Xerox - Hosting, Data Collection, and Analysis*; \$9,000

Xerox will be responsible for continual system improvement, quality assurance/quality control testing, and payment systems integration throughout the six-month implementation phase of the pilot.

Additionally, Xerox will provide the City of Centennial with Go Denver data for the purpose of performance management and ongoing program monitoring. In addition to data collected through user registration and use of the Go Denver App, Xerox will use its database of user email addresses to distribute a survey to each user twice during the duration of the program - once after two months into the program and once at the end of the program. The City of Centennial will provide Xerox with a final list of survey questions to distribute to users.

2. *Lyft – Lyft Lines Rides*; \$330,000

The numbers of estimated trips at each price point to allow for a six-month pilot are outlined in **Table 1**.

Lyft functions as an on-demand transportation service platform that allows people to connect to a network of contracted Partner Drivers through a smartphone App. Lyft's business model is not to provide rides directly, but to contract with responsible private car owners to use its network and platform to connect these Partner Drivers with users that need rides. In this way, Lyft is not a direct service provider, but a supply/demand go between for Partner Drivers that use their personal vehicles to make money and users that need mobility on demand. As such, Lyft passes on the majority of fares collected from requests to the Partner Drivers (80%) and keeps the remainder (20%).

To provide an example, a user would use the Lyft App because he or she needed to get from their home to the grocery store. The user would request

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the ride, and Lyft would connect the user with a Partner Driver to provide the ride. In this scenario, the total ride cost would be \$10 not including tip, which is at the discretion of the user. At \$10 total, Lyft would retain \$2 and pass the remaining \$8 on to the Partner Driver.

3. *Via – Accessible Service; \$47,000*

Via's services and personnel costs include training and supply of two operators for two daily hour shifts, an accessible vehicle with a ramp, support, service, administration, business insurance, vehicle insurance, taxes, fees and Lyft platform integration.

Via will bill the City \$26.50 per service hour over 13.5 service hours per day, five days a week from August 17, 2016 – February 17, 2016. After accounting for holidays and weekends, this equates to 129 total service days. Please see **Table 4** for Via Service Agreement Figures.

Table 4: Via Service Agreement

Via Service Agreement Figures	
Set Hourly Rate	\$26.50
Service Hours per Day	13.5
Total Service Days (excluding weekends and holidays)	129
Estimated Via Service Cost	\$47,000

As at least one accessible vehicle with a ramp must be dedicated to ensure equivalent service levels and compliance with the Americans with Disabilities Act (ADA), the City's contract with Via ensures a cost of services floor with the City at a rate of \$26.50 per hour. To test this service model and Lyft Access mode in the Lyft App, and also to prevent the vendors from double-billing the City, Via will essentially serve as a Lyft Partner Driver with backing from the City. In doing so, Via will deduct from its monthly invoice to the City (estimated at \$7,700 – please see above) base fares, cost per mile fares, cost per minute fares and other fare based charges received from Lyft that are associated with Lyft Access mode requests.

To provide an example, Via would charge the City a standard \$7,700 per month. In this scenario, the Via driver and vehicle would fulfill 250 requests during the first month of service at \$10 per request through Lyft Access mode. Lyft would deduct 20% per request, passing on 80% of each request to Via as a Lyft Partner Driver. Based on 250 requests at \$8 per (80% of \$10), Lyft would remit \$2,000 to Via that month. This \$2,000 would be applied towards Via's monthly invoice to the City. \$7,700 minus \$2,000 would equal \$5,700. If this scenario were applied to the entire six month pilot, the City's fixed contract with Via would be reduced to roughly \$34,000, as opposed to the standard \$47,000.

In theory, the Via drivers and vehicle could provide enough rides requested through Lyft Access mode to zero out the City's fixed contract, shifting these costs from overhead to on-demand service costs and into the *Lyft - Lyft Line Rides* line item. Remaining funds not remitted to Via due to monthly Lyft

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deductions will be moved from the *Via - Accessible Service* line item to the *O&M Contingency Funding* line item (see below) on a monthly basis.

4. *O&M Contingency Funding* – \$14,000

This item serves as a contingency reserve to ensure uninterrupted administration and operational oversight throughout the remainder of the pilot period. This funding will not be spent unless absolutely necessary, as one of the overarching goals of the program is to automate many of the business processes, systems and dispatch services required of typical transportation programs. These funds may be used for cost overages for Lyft, Via or other additional contract support if demand for service is higher than anticipated.

IMPLEMENTATION PLAN

PHASING

Before beginning full service in August 2016, Go Centennial stakeholders will perform quality assurance/quality control testing on a defined user group. This user group will consist of self-identified interested parties who will take light rail and rideshare trips using the Go Denver interface. These users will provide feedback on the service to Lyft, Xerox and the Centennial i-team, who will make adjustments to the service and the user experience as appropriate, prior to launch.

After launching in August, the pilot will continue for approximately six months within the service area defined in **Figure 1**. Features of the program will stay consistent during this duration, except for minor adjustments essential to its success.

Should the initial Go Centennial program prove successful according to the key performance measures defined in this document, the i-team and City of Centennial will work to identify additional funding opportunities and models to extend the pilot or seek long-term implementation. The *Service Sustainability* section of this document further discusses long-term opportunities.

CUSTOMER COMMUNICATION AND BRANDING

Promoting the program is an important part of its success. The program will have a strong, distinct brand that includes the City of Centennial, CH2M, DSTMA, Lyft, Via and Xerox logos but also a unique Go Centennial branding as part of Xerox's Go Denver platform. The program will be publicized in advance of the launch and throughout the duration of the pilot.

Methods of advertising will include:

- Signage and pamphlets at the Dry Creek Station
- Signage and pamphlets at key destinations in the service area
- Distribution of informational material through large employers in Centennial
- Educational events at Dry Creek Station to guide users through the downloading and use of the Go Denver App
- Coordination with Homeowners Associations within the service area

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- Social Media exposure including City website, pilot website, Facebook, Instagram, Next Door and Twitter
- Outreach through City of Centennial Senior and Youth Commissioners to senior and youth population, respectively
- Piggy-backing promotion with other local events in the City of Centennial, such as National Night Out (August 2nd) and Centennial under the Stars (August 13th)
- Notifications delivered through the Lyft App

EVALUATION

Data collection, data analysis and evaluation of the program are important components of this pilot. Performance metrics will allow the project stakeholders to measure the achievement of program goals and also inform modifications to the program for long-term implementation and sustainability.

A portion of the data acquired will be collected through the questions and information entered during the registration of the program via Go Denver. Online and intercept surveys of users of the program will also be conducted during and at the end of the pilot to gauge what's working well and how it can be improved. Both qualitative and quantitative data will be collected and analyzed through this survey.

CnR data during the pilot project will be compared to CnR ridership numbers during the same months in the previous year. CnR ridership will also be compared to Go Centennial ridership to determine the relative success of Go Centennial compared to the existing first and last mile service.

The Evaluation Plan provides greater detail on each of these data collection and evaluation efforts. Qualitative and quantitative data, including the users' ratings of drivers, will be analyzed to determine the success of the program and inform strategies for its long-term implementation.

SERVICE SUSTAINABILITY AND EXIT STRATEGIES

The program is currently designed to continue until the funding, proposed at \$400,000, runs out. Based on estimates of demand in the service area and the cost of Lyft Line and accessible vehicle rides, it is estimated that the program will be able to operate with these funds for six months. The i-team will search for additional opportunities for funding and long-term sustainability throughout the duration of this pilot.

If the six month Go Centennial pilot is to translate into a long-term program, its service needs to be financially, economically and programmatically sustainable. Potential sources of funding after the pilot period include sponsorships from large employers in the area, such as Ikea, Zillow and others. Various models of partnership could also be employed, for example, where in exchange for sponsorship, employees are offered additional rideshare levels of service or carpool opportunities.

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Another sustainable model for continuing Go Denver beyond the six month pilot is a collaborative public-private partnership similar to the existing Lone Tree Link service in the nearby City of Lone Tree, which provides a connection from the Lincoln Light Rail Station to employers along Park Meadows Drive every ten minutes. Link service is provided by a partnership of organizations, including the City of Lone Tree, DSTMA/SPIMD, Charles Schwab, the Sky Ridge Medical Center and the Park Ridge Corporate Center. Large businesses contribute to the service as a benefit for their employees, as a tool for workforce recruitment and as a means for reducing congestion in Lone Tree.

In addition to public-private partnerships, RTD may also be able to fund and administer the program after the completion of the pilot, particularly if it complements or replaces its CnR and Access-A-Ride programs with Go Centennial service area to reduce redundancy. RTD may find that the program enhances ridership to and from Dry Creek Station at operating costs comparable to the existing CnR service. However, in order for RTD to administer the program going forward, it is important that the City of Centennial uses the pilot to demonstrate the program is low-risk for the transit agency. The i-team has partnered with RTD on an application to the Federal Transit Administration's Mobility on Demand Sandbox Grant. If successful, this funding could continue service in the Dry Creek service area and expand the service to other CnR areas in Southeast Denver.

Finally, the continued success of Go Centennial beyond the period of the pilot requires on-going commitment from the project's private partners. Xerox will conduct tweaks to the Go Denver App as the program evolves and additional needs are uncovered. Xerox's hosting of the Go Denver platform is contingent on the extension of its contract with the City and County of Denver in Q1 2017. Similarly, Lyft has signed a service agreement for the program. If Go Centennial service proves profitable for Lyft and Lyft Partner Drivers, then the company will presumably retain its interest in accessing the Centennial transit ridershed.



Staff Report

TO: Honorable Mayor Noon and Members of City Council

THROUGH: John Danielson, City Manager
Elisha Thomas, Deputy City Manager
Scott Blumenreich, Chief Innovation & Technology Officer

FROM: Daniel Hutton, i-team Manager
Paul Gunther, i-team UI/UX Designer
Bailey Little, i-team Coordinator
Melanie Morgan, i-team Data Analyst

DATE OF MEETING: August 15, 2016

DATE OF SUBMITTAL: August 5, 2016

SUBJECT: Resolution No. 2016-R-52, A Resolution of the City Council of the City of Centennial, Colorado, Approving a Joint Funding Intergovernmental Agreement with Southeast Public Improvement Metropolitan District to Jointly Fund the Pilot Program for a First Mile Last Mile Solution Pilot Program, And;

Resolution No. 2016-R-53, A Resolution Approving a Pilot Program Agreement for a First Mile Last Mile Solution Pilot Program Between the City and Lyft, Inc.

1. Executive Summary:

During Study Session on July 11, 2016, Council provided Staff direction to finalize a joint funding agreement with the Southeast Public Improvement Metropolitan District (SPIMD) for funding for the Go Centennial Pilot (formally the First and Last Mile Pilot) and to finalize a pilot program agreement with Lyft, Inc. (Lyft) to provide services for the Go Centennial Pilot.

The agreement between the City and SPIMD is attached to Resolution 2016-R-52. Staff recommends Council's approval of Resolution 2016-R-52 which will delegate to the Mayor the authority to approve and execute a final agreement with SPIMD as long as the terms and conditions thereof are acceptable to the Mayor, the City Manager and the City Attorney.

The intergovernmental agreement with SPIMD (Resolution No. 2016-R-52) provides the City with a \$200,000 funding allocation for use in the Go Centennial Pilot. The City would match this funding allocation with previously appropriated funding (\$200,000) for total project funding of \$400,000.

The agreement with Lyft (2016-R-53) provides the Go Centennial Pilot with services for a six (6) month period.

Following approval of Resolution No. 2016-R-52 and Resolution No. 2016-R-53, a budget supplemental appropriation will occur. This supplemental appropriation (Resolution No. 2016-R-54) is necessary in order for the City to formally allocate the anticipated SPIMD funding into the Go Centennial Pilot.

Staff recommends approval of Resolution No. 2016-R-52, allowing the Mayor to execute an intergovernmental agreement with SPIMD to jointly fund the Go Centennial Pilot, and Resolution No. 2016-R-53, approving a pilot program agreement with Lyft to provide services for the Go Centennial Pilot for a six (6) month period.

2. Discussion:

Resolution No. 2016-R-52 allows the Mayor to execute an intergovernmental agreement with SPIMD to jointly fund the Go Centennial Pilot.

Resolution No. 2015-R-53 allows the Mayor to execute a pilot program agreement with Lyft to provide services for the Go Centennial Pilot for a six (6) month period.

3. Recommendations:

Staff recommends approval of Resolution No. 2016-R-52, allowing the Mayor to execute the final agreement with SPIMD to jointly fund the Go Centennial Pilot, and Resolution No. 2016-R-53, approving a pilot program agreement with Lyft to provide services for the Go Centennial Pilot for a six (6) month period.

4. Alternatives:

Council could choose not to approve Resolution No. 2016-R-52 and Resolution No. 2016-R-53. The Go Centennial Pilot would not receive funding and would not move forward.

5. Fiscal Impact:

Approval of Resolution No. 2016-R-52 and Resolution No. 2016-R-53 will result as follows:

- The City would receive funding approval of \$200,000 from SPIMD for use in the Go Centennial Pilot Program upon execution of an agreement by the Mayor for the City and by SPIMD.
- The City would match this funding with previously appropriated funding (\$200,000) for total project funding of \$400,000.
- The City would use the project funding to procure services from Lyft for the Go Centennial Pilot.

6. Next Steps:

Pending Council approval of Resolution No. 2016-R-52 and Resolution No. 2016-R-53:

- A. SPIMD would submit funding approval of \$200,000 to the City upon execution of the Agreement authorized by Resolution 2016-R-52.
- B. Staff would transfer the City's contribution of \$200,000 from the Grant Match Fund's line item to the Go Centennial Pilot line item. The City has already appropriated \$250,000 within the grant match fund line item.
- C. The Go Centennial Pilot would launch on August 17.

7. Previous Actions:

July 11, 2016: Council provided Staff direction to finalize a \$200,000 joint funding agreement with SPIMD for the Go Centennial Pilot and return with Resolution No. 2016-R-52, No. 2016-R-53, and No. 2016-R-54 to the August 15, 2016 City Council Agenda.

8. Suggested Motions:

RECOMMENDED MOTION: I MOVE TO APPROVE RESOLUTION NO. 2016-R-52:

APPROVING THE EXECUTION AND DELIVERY BY THE MAYOR OF AN INTERGOVERNMENTAL AGREEMENT WITH SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT TO JOINTLY FUND THE PILOT PROGRAM FOR A FIRST MILE LAST MILE SOLUTION PILOT PROGRAM.

ALTERNATIVE MOTION: I MOVE TO DENY RESOLUTION NO. 2016-R-52:

APPROVING THE EXECUTION AND DELIVERY BY THE MAYOR OF AN INTERGOVERNMENTAL AGREEMENT WITH SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT TO JOINTLY FUND THE PILOT PROGRAM FOR A FIRST MILE LAST MILE SOLUTION PILOT PROGRAM.

RECOMMENDED MOTION: I MOVE TO APPROVE RESOLUTION NO. 2016-R-53:

APPROVING A PILOT PROGRAM AGREEMENT FOR A FIRST MILE LAST MILE PROGRAM BETWEEN THE CITY AND WITH LYFT, INC.

ALTERNATIVE MOTION: I MOVE TO DENY RESOLUTION NO. 2016-R-53:

APPROVING A PILOT PROGRAM AGREEMENT FOR A FIRST MILE LAST MILE PROGRAM BETWEEN THE CITY AND WITH LYFT, INC.

FOR THE FOLLOWING REASONS:

(Councilmember making motion to deny to supply reason(s) for denial)

**CITY OF CENTENNIAL,
COLORADO**

RESOLUTION NO. 2016-R-53

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CENTENNIAL, COLORADO APPROVING A PILOT PROGRAM
AGREEMENT FOR A FIRST MILE LAST MILE SOLUTION PILOT
PROGRAM BETWEEN THE CITY AND WITH LYFT, INC.**

WHEREAS, the City, through its i-team, seeks solutions to assist residents, visitors, and employees of resident businesses to get to and from hub light rail transit stations in order to maximize use of public transit and alleviate traffic congestion on City streets; and

WHEREAS, in furtherance of this goal, the City, with funding assistance from the Southeast Public Improvement Metropolitan District ("SPIMD"), has determined to contract with Lyft, Inc. ("Lyft") in implementing a six month, limited funding, pilot program for first and last mile connections that connects riders within the program area to Regional Transportation District's ("RTD") Dry Creek light rail station through use of Lyft's application, enabling ride sharing to and from the transit hub ("Go Centennial Pilot"); and

WHEREAS, the City and Lyft's cooperation in this on-demand, mobile smartphone-based (or concierge call in) Go Centennial Pilot will test efficacy in maximizing first and last mile services and enhancing ridership to and from the Dry Creek light rail station, with the goal of reducing the cost per ride from that associated with the currently available operating cost for RTD's Call-n-Ride service; and

WHEREAS, the terms and conditions by which Lyft and the City will cooperate in implementation of the Go Centennial Pilot are set forth in the Go Centennial Pilot Program Agreement attached hereto as Exhibit 1.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO AS FOLLOWS:

Section 1. The City Council: (a) contingent on approval of a supplemental budget appropriation as needed to fund the Go Centennial Pilot Program Agreement, approves the Go Centennial Pilot Program Agreement which sets forth mutual obligations of the City and Lyft for implementation of the Go Centennial Pilot in the form attached to this Resolution as **Exhibit 1** (the "Agreement"), (b) authorizes the Mayor, in consultation with the City Attorney, to make such changes as may be needed to correct any nonmaterial errors or language that do not increase the obligations of the City, and (c) authorizes the Mayor to execute the Agreement on behalf of the City.

Section 2. **Effective Date.** This Resolution shall take effect upon its approval by the City Council.

ADOPTED by a vote of ____ in favor and ____ against this ____ day of August, 2016.

By: _____
Cathy A. Noon, Mayor

ATTEST:

Approved as to Form:

By: _____
City Clerk or Deputy City Clerk

By: _____
For City Attorney's Office

EXHIBIT 1

**GO CENTENNIAL
PILOT PROGRAM AGREEMENT
(LYFT, INC.)**



GO CENTENNIAL

PILOT PROGRAM AGREEMENT

THIS PILOT PROGRAM AGREEMENT ("**Agreement**") effective as of August 15, 2016, regardless of when signed ("**Effective Date**"), is by and between LYFT, INC., a Delaware corporation ("**Lyft**"), and the CITY OF CENTENNIAL, a Colorado home rule municipality ("**Centennial**" or "**City**") (Lyft and the City are each a "**Party**" and jointly, the "**Parties.**")

WHEREAS, the City seeks solutions to assist residents, visitors, and employees of resident businesses to get to and from hub light rail transit stations in order to maximize use of public transit and alleviate traffic congestion on City streets; and

WHEREAS, in furtherance of this goal, the City has determined to contract with Lyft and other public and private entities to operate a City funded pilot program for first and last mile connections that connects riders to Regional Transportation District's ("**RTD**") Dry Creek light rail station through use of Lyft's Lyft Line and Lyft Classic application, enabling ride sharing to and from the transit hub; and

WHEREAS, the Parties desire to cooperate in this on-demand, mobile smartphone-based (or concierge call in) pilot program which is being implemented on a temporary basis to test its efficacy in (1) maximizing first and last mile services and (2) enhancing ridership to and from the Dry Creek light rail station, (3) with the goal of reducing the cost per ride from that associated with the currently available operating cost for RTD's Call-n-Ride service.

In consideration of the mutual promises contained herein and the mutual benefits to be derived therefrom, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions: In addition to the terms defined within the body of this Agreement, the following terms shall have the meaning assigned:

"Concierge Platform" or "Concierge" means the web based software application Lyft will provide to the City, providing access to an online portal owned and hosted by Lyft, that for the purposes of this agreement will be operated by the City under separate agreement with CH2M Hill Engineer's Inc. ("**CH2M**") that allows the City, on behalf of a Qualified Rider who places a phone call to the City's Citizen Response Center, to request rides to and from the Hub on behalf of such Qualified Rider during Daily Program Times and within the Target Area.

"Daily Program Times" means the hours of 5:30 a.m. through 7:00 p.m., five days a week, Monday through Friday.

"Go Centennial Platform" means the mobile software application developed by Xerox Corporation that integrates with the Go Denver App and Lyft App to allow Qualified Riders, during the Program Period, to request rides to and from the Hub during Daily Program Times and within the Target Area.

“Go Denver App” means the mobile software application developed by Xerox Corporation that allows smartphone users to access information and arrange and pay for, when appropriate, multiple modes of transportation to help commuters find faster, less expensive or more environmentally sound routes to destinations, to include access to the Lyft App.

“Hub” means the RTD Dry Creek Light Rail Station.

“i-team Manager” means the City’s Innovation Team Manager.

“Launch Date” means a date separately and mutually agreed upon by Lyft and the City’s i-team Manager in writing (to include e-mail) for implementation of the Program.

“Lyft Access” means the program that allows Qualified Riders to access WAVs through the Lyft App for purposes of providing wheelchair accessible vehicles to Qualified Riders needing such accessibility assistance. “Lyft Access Fees” means fees due to Lyft by the City for Lyft Access rides taken during the Program Period for Qualified Riders within the Target Area between the Daily Program Times on a per ride basis.

“Lyft App” means the mobile software application that allows smartphone users access to request, obtain and pay for vehicular rides from Lyft Partner Drivers pursuant to the terms and conditions set by Lyft.

“Lyft Classic” means Lyft’s program of allowing a passenger or a Qualified Rider the ability to have a personal ride, whether it is only the one Qualified Rider or a group of up to three other passengers along with the Qualified Rider, from the pick-up location to the drop-off location.

“Lyft Fees” means fees due to Lyft by the City for rides taken during the Program Period for Qualified Riders within the Target Area between the Daily Program Times on a per ride basis.

“Lyft Line” means Lyft’s program of ride sharing whereby open seats in a car are used to full advantage by matching passengers with up to three separate passengers also travelling the along the same route with pickup and drop-off order varying with every ride based on the most efficient route chosen by Lyft’s system.

“Lyft Partner Driver” means an independent contractor who uses the Lyft platform (and who has no relation to the City, as employee, agent, independent contractor or otherwise) and provides Lyft Classic or Line vehicle rides to persons subject to the terms and conditions of such Lyft Partner Driver’s agreement with Lyft.

“Lyft Primary Contact” means the individual reported by Lyft to the i-team manager as the person with responsibility for compliance and oversight of this Agreement and the Program.

“Program” means the temporary on-demand, mobile smartphone-based (or Concierge Platform based) pilot program named “Go Centennial” and described in this Agreement.

“Program Funding” means funding to be provided to Lyft by the City (with contribution other funding partners) for Lyft fees up to the Program Funding Maximum.

“Program Funding Maximum” means the aggregate amount of up to \$377,000.00 payable to Lyft, of which \$330,000 is the maximum for Lyft Fees and \$47,000 is the maximum for Lyft Access Fees, and which amount has been budgeted and appropriated by the City Council for the City of Centennial for the Program (inclusive of amounts contributed by SPIMD) specifically to be spent on this Program, and which is the maximum amount payable to Lyft by the City under this Agreement for the Program. The parties agree to meet and discuss in good faith the dollar amounts set forth in this definition once and if Lyft informs the City that it has reached 90% of this Program Funding Maximum as is required under Section 2(l).

“Program Period” means six months from the Launch Date or at the depletion of the Program Funding Maximum, whichever occurs first.

“Qualified Rider” means a rider registered with the Program either through the Go Centennial Platform or the Concierge Platform who books and completes either a Lyft Classic ride, a Lyft Line ride or Lyft Access ride within the Target Area during the Daily Program Times through the Go Centennial Platform or Concierge Platform.

“SPIMD” means the Southeast Public Improvement Metropolitan District, a Colorado special district.

“Target Area” means the area within the City depicted on the map attached hereto as Exhibit A in which rides to or from the Hub must originate and/or end in order to qualify for Program Funding.

“Wheelchair Accessible Vehicles” or “WAV” shall mean specially outfitted vehicles to accommodate wheelchair users available at all times during Daily Program Times to provide rides to Qualified Riders in need of a vehicle that accommodates wheelchairs, which vehicles shall be provided and operated by a third party, Via Mobility Services, a Colorado non-profit corporation, under separate contracts with the City and with Lyft.

2. Lyft Services. Lyft agrees to perform the following services (“**Lyft Services**”):

- (a) In order to implement the Program, working with Xerox Corporation to ensure proper integration of the Lyft mobile based ride share enabling platform application through the Go Centennial Platform accessible through the Go Denver App.
- (b) Providing a dedicated account manager and customer support team to assist with customer service via a 24/7 online support portal.
- (c) Providing a unique Program promotional code (“**Ride Code**”), valid for the Program Period, for Centennial to advertise and distribute to Qualified Riders in order to allow such persons to participate in the Program.
- (d) Allowing Program participants to sign up with Lyft through the Lyft app in order to utilize a Ride Code and access a Lyft Classic, Lyft Line or Lyft Access ride under the Program through the Lyft Platform, with such registration to include data parameters as agreed upon by the City and Lyft in separate writing (to include e-mail).
- (e) Allowing the City to utilize Concierge by creating an account and scheduling rides for Qualified Riders with such registration to include data parameters as agreed upon by the City and Lyft in separate writing (to include e-mail).
- (f) Ensuring that any person using a Ride Code, receives Ride Code restrictions or terms and conditions for accessing the Program, such terms and conditions to be provided by the City. The City shall be responsible for ensuring that any person accessing a Lyft

Ride or Lyft Access Ride under the Program is provided Ride Code restrictions or terms and conditions for participation in the Program.

- (g) Ensuring that use of the Ride Code by persons other than those participating in the Program through Concierge meet Program parameters related to Target Area and Daily Program Times to ensure that the requested Lyft Classic, Lyft Line or Lyft Access ride meets the Program requirements for Qualified Riders.
- (h) Contracting with Via Mobility Services for the provision of WAVs accessible through Lyft Access during Program Times in a form acceptable to the City for those Qualified Riders selecting Accessibility Mode.
- (i) As is standard within the Lyft app, ensuring that names and photographs of Lyft Partner Drivers, along with a description of such Lyft Partner Driver's vehicle, will be visible in the app.
- (j) Monitoring Qualified Rider usage during the Program Period and providing only such reporting to the City as required to evidence rides taken for payment and invoice purposes and as the City may use to monitor and test the benefits and efficacy of the Program, which is further detailed in Section 2(k)(2).
- (k) Providing a monthly accounting and invoice to the City, to the attention of the i-team Manager, of Lyft Fees and of Lyft Access Fees payable by the City for rides accessed by Qualified Riders under the Program accrued during the prior month of the Program Period up to a maximum compensation, not to exceed the Program Funding Maximum, and:
 - (1) Providing each such invoice in a form reasonably acceptable to the City as agreed to by Lyft, and
 - (2) Providing an accompanying report detailing the total amount billed to Centennial during the period covered by the invoice, including the following information:
 - (A) Total Program trips from the previous month;
 - (B) Origination and destination of each Program trip invoiced;
 - (C) Date and time of each Program trip invoiced;
 - (D) Total of unique Qualified Riders;
 - (E) Actual distance travelled for each Program trip invoiced;
 - (F) To the extent that Lyft has the capability to provide, wait times for each program trip invoiced; and
 - (G) Travel times for each program trip invoiced.
 - (3) By this Agreement, agreeing that such invoices and accompanying reports may be shared monthly with SPIMD.
- (l) Monitoring the accrual of Lyft Fees payable with Program Funding and contacting the City's i-team Manager in writing (to include e-mail) when such Lyft Fees accrue to within 90% of the Program Funding Maximum.
- (m) Collaborating with the City on ways to foster availability of Lyft Partner Drivers to ensure adequate supply for Program success.
- (n) Ensuring Lyft Access is functional during all Daily Program Times.
- (o) Providing limited and reasonable training employees of the City's partner, CH2M, on use of Concierge to allow such CH2M employees, through the City's Citizen Response

Center, to access Lyft online to arrange transportation on behalf of eligible Qualified Riders who may not have ability to use the Go Centennial Platform.

- (p) Cooperating and providing mutually agreed to marketing activities to promote the Program, such activities to be agreed to in separate writing by the i-team Manager and Lyft Primary Contact (to include e-mail). Lyft agrees that Centennial may advise Qualified Riders that the Lyft Fee is paid by Centennial as part of the Program.
3. Lyft Agreements. Lyft acknowledges and agrees that: (a) Centennial has no ownership or control over Lyft, Lyft Partner Drivers, or Lyft Partner Driver vehicles; and, (b) before receiving the Ride Code, the Lyft App will require riders to acknowledge that such users understand and assume any and all risks associated with using the Lyft App and agree to terms and conditions to be provided by Centennial.
4. City Services. The City agrees to perform the following services ("**City Services**"):
- (a) Providing Program access to Qualified Riders unable to use the Go Centennial Platform by contracting with CH2M to ensure that the City's Citizen Response Center can access Lyft online through use of Lyft Concierge web based dashboard to arrange Lyft Classic transportation, or through the use of a centralized phone with the Lyft app to provide Lyft Line or Lyft Access transportation.
 - (b) The City shall be responsible for ensuring that any person accessing a Lyft Classic, Lyft Line or Lyft Access ride through the City's Citizen Response Center or CH2M under the Program is verbally provided a list of restrictions or terms and conditions for participation in the Program.
 - (c) Cooperating and providing marketing activities to promote the Program, such activities to be agreed to in separate writing by the i-team manager and Lyft Primary Contact (to include e-mail).
 - (d) Limited data sharing with Lyft to monitor and test the benefits and efficacy of the Program, which is more fully described in Section 2(k)(2)
 - (e) Paying to Lyft 100% of all Lyft Fees for Lyft Classic, Lyft Line or Lyft Access rides requested and completed by Qualified Riders through the Go Centennial Platform or Concierge Platform within the Target Area, up to the Program Funding Maximum. All rides are subject to increased prices due to prime time charges. The City is responsible for the full payment of all rides taken through the Program, including all tolls, fees, taxes, prime time charges and trust and service fees. Standard Lyft cancellation fees and no show fees shall also be paid by the City when access through Concierge results in a rider no-show or cancellation.

The City shall not bear responsibility for any gratuity payments such Qualified Rider may otherwise make.

The City shall be liable for payment of Lyft Fees and related charges described herein unless the City has provided written notice to Lyft to turn off the Ride Code, in which event Centennial shall pay for all rides incurred by redemption of a Ride Code before and up until 24 hours after the time of such notice to Lyft. Notice under this provision shall be delivered via an email to gcohen@lyft.com with a copy to legal@lyft.com. The time of notice shall be the time that the e-mail is sent. The City shall make reasonable efforts to contact multiple Lyft personnel to ensure that such notice has been reviewed.

- (f) Paying to Lyft, within 30 days of monthly invoice date (by placement of a check in the U.S. mail first class postage prepaid) Lyft Fees accrued in the prior month, up to the Program Funding Maximum. Following receipt of Lyft's invoice, the City shall promptly review the invoice and approve for payment. Any invoice not paid in full within 30 days of invoice date shall accrue interest at the rate of 1.5% per month or the maximum allowed by law.

5. City Agreements.

- (a) For rides accessed through the Concierge Platform, the City represents and warrants that it has obtained all rights, consents and authorizations required by this Agreement to collect the information of Program participants and to share such information with Lyft. The City further represents and warrants that in its communications to Program participants and before distributing the Ride Codes, the City shall advertise and disclose that user information and ride information will be shared with Lyft, with SPIMD, and third party companies such as WAV providers.
- (b) Ride Requests through Concierge. When submitting a request through Concierge, City agrees to request and obtain verbal affirmation from each user to allow Lyft to use the user Information to (a) send transactional SMS texts to the user relating to the request and user's ride if the user's phone has SMS texting capability; (b) share the user information with the driver who accepted the request; provided that the driver will only receive the first name of the user and pick up and drop off location; and (c) use and store the user information for the internal purposes of Lyft, subject to the Lyft privacy policy. The City represents and warrants that (i) the City will only submit ride requests for users who have held themselves out to the City as being eighteen (18) years of age or older; and (ii) the City shall have requested and received verbal affirmation from each user consenting to sharing of such user's information for the purposes set forth herein. To the extent allowed by law, the City agrees to defend, indemnify and hold harmless Lyft and its directors, officers, employees, subcontractors and agents from and against all third party claims arising out of a breach of the City's representations and warranties.
- (c) For purposes of using the Concierge platform, the City will designate at least one (1) authorized personnel of the City or CH2M to serve as the City's administrator (each, an "**Administrator**") and the Administrator will be required to create dashboard login credentials to access and use the dashboard. The City is responsible and, to the extent allowed by law, will indemnify Lyft for all activity occurring under the City's dashboard login credentials, except to the extent caused by Lyft's breach of this Agreement. The City will contact Lyft upon known or suspected unauthorized use under the City's dashboard or if dashboard login credentials information is lost or stolen.

6. Term and Termination.

6.1 Term. This Agreement shall commence on the Launch Date and continue for six (6) months thereafter, unless earlier terminated as authorized in Section 6.2 ("Term"). The Term may be extended by mutual written agreement of the Parties.

6.2 Termination.

6.2.1 This Agreement shall terminate immediately upon payment by the City to Lyft of the Program Funding Maximum.

6.2.2 This Agreement shall automatically terminate on September 22, 2016, if SPIMD fails by such date to approve an agreement to contribute \$200,000.00 to fund the Program. In the event that the Agreement terminates on September 22, 2016, the City shall immediately remit to Lyft all outstanding payment amounts due to Lyft up to the Program Funding Maximum.

6.2.3 In addition to the City's right to request that the Ride Code be turned off as set forth in Section 4(e), either party may terminate this Agreement in its entirety at any time without cause by giving ten (10) days' prior written notice of termination to the other party. Any termination under this Agreement shall not relieve the City of its payment obligations to Lyft for all rides taken under this Agreement prior to the effective date of such termination.

6.2.4 During the Term, either party may terminate this Agreement in the event of a material breach by the other party if the breach is not cured by the other party within five (5) days of written notice thereof provided by the non-breaching party.

6.2.5 During the Term, either party may terminate this Agreement immediately upon written notice to the other party in the event the other party makes an assignment for the benefit of creditors (excluding an assignment allowable per the terms of the Assignment clause contained in this Agreement), files an involuntary petition in bankruptcy or is adjudicated bankrupt or insolvent, has a receiver appointed for any portion of its business or property, or has a trustee in bankruptcy or trustee in insolvency appointed for it under federal or state law.

6.3 Survival. Any outstanding payment obligations and Sections 2(i), 4(d), 4(e), 4(f), 8, 10, 11, 12, 13, 14, 15 and 16 (for period specified) shall survive the expiration or termination of this Agreement.

7. Fees and Payment. Except for the payment obligations specifically set forth in Section 4, each party shall be responsible for its expenses and costs during its performance under this Agreement.

8. Independent Contractors.

Lyft represents to the City that its Lyft Partner Drivers operate as independent contractors to Lyft and nothing in this Agreement confers upon such drivers any contractual or other relationship with or to the City.

Lyft and the City shall perform, respectively, as independent contractors to each other, and nothing in this Agreement shall be deemed to create any partnership, joint venture, joint enterprise, employer/employee, agency or other relationship among the parties, and no party shall have the right to enter into contracts on behalf of, to legally bind, to incur debt on behalf of, or to otherwise incur any liability or obligation on behalf of, the other party hereto, in the absence of a separate writing, executed by an authorized representative of the other party. Each party shall be solely responsible for its employees and contractors used to provide the Lyft Services or City Services.

Lyft and the City shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Lyft Services or City Services, respectively, during the course of or arising or accruing as a result of any employment, whether past or present, with Lyft or any subcontractor, or the City or any subcontractor, as the case may be,

as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. Lyft and the City will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to their respective employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, neither the City nor Lyft, respectively, shall be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the other party's or any of the other party's subcontractor's employees, sub-consultants, subcontractors, volunteers or representatives, or any other liabilities whatsoever, unless otherwise specifically provided herein.

9. Waiver of Claims for Benefits. To the maximum extent permitted by law, each party waives all claims against the other for any employee benefits and each will defend the other from any claim and will indemnify and reimburse the other party against any liability for any employee benefits imposed on the other, including related attorneys' fees and costs in defending against any such liability.

10. Proprietary Rights.

10.1 License to Use Trademarks. Subject to the restrictions described in Section 7.2 below, Lyft hereby grants Centennial a limited, non-exclusive, revocable, non-assignable and non-transferable license during the Term to use the Lyft Marks (as defined below), on a royalty-free basis, for the sole purpose of the City Services as set forth herein and the City hereby grants Lyft a limited, non-exclusive, revocable, non-assignable and non-transferable license during the Term to use the City Marks (as defined below), on a royalty-free basis, for the sole purpose of the Lyft Services as set forth herein. For purposes of this Agreement, (a) the term "Lyft Marks" will mean the trademarks, service marks, trade names, copyrights, logos, slogans and other identifying symbols and indicia of Lyft in their entirety and exactly as provided by Lyft to Centennial for the purposes of this Agreement only (and as approved for use by the City in each instance), and (b) the term "City Marks" will mean the trademarks, copyrights, logos, slogans and other identifying symbols and indicia of the City in their entirety and exactly as provided by Centennial to Lyft for the purposes of this Agreement only. Notwithstanding anything to the contrary herein, the Lyft Marks will remain the property of Lyft and the City Marks will remain the property of the City.

10.2 Restrictions. All uses of a party's marks by the other party will be in the form and format provided, specified or approved by the owner of such marks in each instance. Neither party will use the other party's marks without the prior, express, written consent of the other party in each instance. Either party may revoke any license it grants to the other party to use its marks at any time for any or no reason, in its sole discretion. All goodwill related to the use of a party's marks by the other party shall inure to the benefit of the owner of such marks. Except as expressly set forth herein, neither party shall be deemed to grant the other party any license or rights under any intellectual property or other proprietary rights. All rights not granted are expressly reserved.

10.3 Data. Each party agrees that any third party data and/or personal information that may be obtained by such party as part of the Lyft Services or City Services ("**Data**") will be collected, stored, maintained and shared only in compliance and to meet obligations under this Agreement. Except as set forth in Sections 2, 4 and 10, each

party shall own, and shall not be required to share, any Data that it collects with respect to this Agreement.

10.4 No Development. The parties acknowledge and agree that there shall be no development of technology, content or media or other intellectual property by either party for the other party under this agreement. Intellectual property development activities, if any, must be the subject of a separate written agreement between Lyft and Centennial prior to the commencement of any such intellectual property development.

11. Confidential Information. The parties are both party to a Non-Disclosure Agreement dated June 14, 2016 ("NDA") which shall govern the disclosure and receipt of Confidential Information (as defined in the NDA) for the Term of this Agreement also. Notwithstanding, the parties acknowledge and agree that invoices, usage data and user data reported to the City as is required hereunder, and further detailed in Section 2(k)(2), shall not be considered Confidential Information under the NDA and the City may release such information to the public pursuant to any open records request under the Colorado Open Records Act or as the City determines appropriate in its discretion in furtherance of the Program.

12. No Publicity without Prior Consent. Neither party may issue a press release, post information on line (including web sites, social media channels or blogs) or otherwise refer to the other party in any manner with respect to this Agreement, the Lyft Services or City Services or otherwise, without the prior written consent of such other party, to include e-mail consent which may be provided by the City's i-team Manager on behalf of the City at dhutton@centennialco.gov and by Lyft's communications staff on behalf of Lyft at mc@Lyft.com.

13. Compliance with Laws. Each party shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.

14. Indemnification.

14.1 City Assumption of Certain Risk; Indemnification by City. Centennial assumes any and all risks of personal injury and property damage attributable to the sole negligent acts or omissions of Centennial and the officers, employees, servants, and agents thereof while acting within the scope of their employment by Centennial. To the extent allowed by law, the City will indemnify, defend and hold harmless Lyft and its officers, employees and agents against all claims, damages, losses and expenses (including reasonable attorney's fees) with respect to any third party claim arising out of or related to: (a) the negligence or willful misconduct of the City and its employees in the performance under this Agreement; (b) a breach of the City's representations, warranties or obligations in this Agreement; or (c) any violation of law by the City.

14.2 Indemnification by Lyft. Lyft will indemnify, defend and hold harmless the City and its elected officials, officers, employees and agents against all claims, damages, losses and expenses (including reasonable attorney's fees) with respect to any third party claim arising out of or related to: (a) the negligence or willful misconduct of Lyft and its employees in their performance under this Agreement; (b) a breach of Lyft's representations, warranties or obligations in this Agreement; or (c) any claims that Lyft Marks infringe a third party's intellectual property rights, as long as the Lyft Marks have been used in the manner approved by Lyft.

14.3 Defenses. Centennial and Lyft agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Colorado; or (2) a waiver, limitation, or other modification of any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

14.4 Procedure. The party seeking indemnification shall provide prompt notice to indemnifying party of any claim subject to indemnification hereunder. The indemnifying party will assume the defense of the claim through counsel designated by it and reasonably acceptable to the indemnified party. The indemnifying party will not settle or compromise any claim, or consent to the entry of any judgment, without written consent of the indemnified party, which will not be unreasonably withheld. The indemnified party will reasonably cooperate with the indemnifying party in the defense of a claim, at the indemnifying party's expense.

15. Limits of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CLAIM FOR ANY INDIRECT, WILLFUL, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, FOR LOSS OF GOODWILL, FOR LOSS OF BUSINESS PROFITS, OR DAMAGES FOR LOSS OF BUSINESS, OR LOSS OR INACCURACY OF DATA OF ANY KIND, OR OTHER INDIRECT ECONOMIC DAMAGES, WHETHER BASED ON CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OR HAD REASON TO KNOW OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THE AGGREGATE AMOUNT OF ANY AND ALL LIABILITY OF ONE PARTY TO THE OTHER FOR ANY CLAIM(S) ARISING FROM OR RELATING TO THE AGREEMENT, SHALL BE LIMITED TO DIRECT PROVABLE DAMAGES AND SHALL NOT EXCEED, IN ANY EVENT, TEN THOUSAND DOLLARS (\$10,000.00). THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO, OR LIMIT THE SCOPE OF, LYFT'S INSURANCE OBLIGATIONS.

15.1 DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH ABOVE, LYFT MAKES NO WARRANTIES TO THE CITY CONCERNING THE LYFT APP AND THE CONCIERGE PLATFORM, OR OTHERWISE. LYFT PROVIDES THE LYFT APP AND THE CONCIERGE PLATFORM "AS IS" AND WITHOUT WARRANTY. LYFT DOES NOT WARRANT THAT THE LYFT APP OR THE CONCIERGE PLATFORM WILL MEET THE CITY REQUIREMENTS OR THAT THE OPERATION OF THE LYFT APP OR THE CONCIERGE PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE OR THAT DRIVING SERVICES MAY BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION AS REQUESTED BY THE CITY OR ANY QUALIFIED RIDER. TO THE FULLEST EXTENT PERMITTED BY LAW, LYFT SPECIFICALLY DISCLAIMS ALL WARRANTIES IN RESPECT TO THE LYFT APP AND THE CONCIERGE PLATFORM, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

16. Insurance. During the Term and for one (1) year thereafter, Lyft shall maintain Commercial General Liability and, if required by law, Worker's Compensation insurance. The

Commercial General Liability insurance policy limits shall be not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, death and property damage liability, and Two Million Dollars (\$2,000,000) in aggregate. Such insurance shall cover Lyft's obligations under this Agreement and the actions of its employees. All policies shall be written by reputable insurance companies with a Best's policyholder rating of not less than A- VII. Such insurance shall be primary and non-contributing to any insurance maintained or obtained by Centennial and shall not be cancelled or materially reduced without thirty (30) days prior written notice to Centennial, via blanket endorsement. Upon execution of this Agreement, Lyft shall provide evidence of the insurance required herein. In no event shall the limits of any policy be considered as limiting the liability of a party under this Agreement. Additionally, Lyft shall maintain Commercial Automobile Liability Insurance on behalf of the Lyft Partner Drivers, for the period of time when the driver has accepted a ride request and is en-route to pick up a passenger until the last passenger has been dropped off, with a combined single limit not less than One Million Dollars (\$1,000,000) per accident for bodily injury, death and property damage liability arising out of the use of non-owned vehicles. Lyft shall maintain Commercial Auto Liability Insurance on behalf of the Lyft Partner Drivers, for the period of time when the driver is logged onto the application and is available to receive ride requests, minimum limits of \$50,000 per person, \$100,000 per accident for bodily injury and \$30,000 for property damage.

17. General.

17.1 Notice. Unless otherwise specifically stated in this Agreement, any and all notices permitted or required to be given hereunder shall be sent to the address below and deemed duly given: (a) upon actual delivery, if delivery is by hand; or (b) by electronic mail. In the event a party gives notice by electronic mail, such notice must be followed with an electronic mail and a written copy of the notice to the receiving party's legal department if copy to the party's legal department is required below.

If to the City:	If to Lyft:
City Manager City of Centennial 13133 E. Arapahoe Road Centennial, Colorado 80112 jdanielson@centennialco.gov	Lyft, Inc. Attn: Government Relations 185 Berry Street, Suite 5000 San Francisco, CA 94107
With Copy to: i-team Manager City of Centennial 13133 E. Arapahoe Road Centennial, Colorado 80112 dhutton@centennialco.gov	Lyft, Inc. Attn: Legal Team 185 Berry Street, Suite 5000 San Francisco, CA 94107 Legal@lyft.com
With Copy to: City Attorney City of Centennial 13133 E. Arapahoe Road Centennial, Colorado 80112 rwidner@centennialco.gov	

17.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to its conflict of laws provisions. For any claims involving a dispute or breach of this Agreement, exclusive jurisdiction shall be in the courts in Arapahoe County Colorado.

17.3 Waiver; Modification. The failure of either party to enforce, at any time or for any period of time, the provisions hereof, or the failure of either party to exercise any option herein, shall not be construed as a waiver of such provision or option and shall in no way affect that party's right to enforce such provisions or exercise such option. Any modification or amendment to this Agreement shall be effective only if in writing and signed by both parties.

17.4 Severability. In the event any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement (and each of the remaining terms and conditions contained herein) shall remain in full force and effect.

17.5 Force Majeure. Any delay in or failure by either party in performance of this Agreement shall be excused if and to the extent such delay or failure is caused by occurrences beyond the control of the affected party including, but not limited to, decrees or restraints of Government, acts of God, strikes, work stoppage or other labor disturbances, war or sabotage (each being a "Force Majeure Event"). The affected party will promptly notify the other party upon becoming aware that any Force Majeure has occurred or is likely to occur and will use its best efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement.

17.6 No Assignment. This Agreement may not be assigned, in whole or in part, by a party without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of each party hereto and

its respective successors and assigns. Notwithstanding the foregoing, either party may assign the Agreement in its entirety, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to affect an assignment in breach of this Section shall be void. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

17.7 Entire Agreement. This Agreement and the exhibits attached hereto contain the full and complete understanding and agreement between the parties relating to the subject matter hereof and supersede all prior and contemporary understandings and agreements, whether oral or written, relating such subject matter hereof. This Agreement may be executed in one or more counterparts and by exchange of signed counterparts transmitted by facsimile, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same original instrument.

REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGES FOLLOW

THIS AGREEMENT is executed and made effective as provided above.

CITY OF CENTENNIAL, COLORADO

Approval by City Council

☐ Not Required

By: _____

Cathy A. Noon, Mayor

Approval by City Manager

☐ Not Required

By: _____

John H. Danielson, City Manager

ATTEST:

City Clerk or Deputy City Clerk

APPROVED AS TO FORM (*Excluding Exhibits*)

☐ Not Required

For City Attorney's Office

FINANCE DEPARTMENT REVIEW:

Finance has reviewed this agreement and the funds:

☐ *are appropriated and available for this agreement.*

☐ *are not available for this agreement.*

☐ *Other:* _____

By: _____

Budgeted Item/Account: _____

Department/Position Responsible for Administration of Contract: Innovation Team

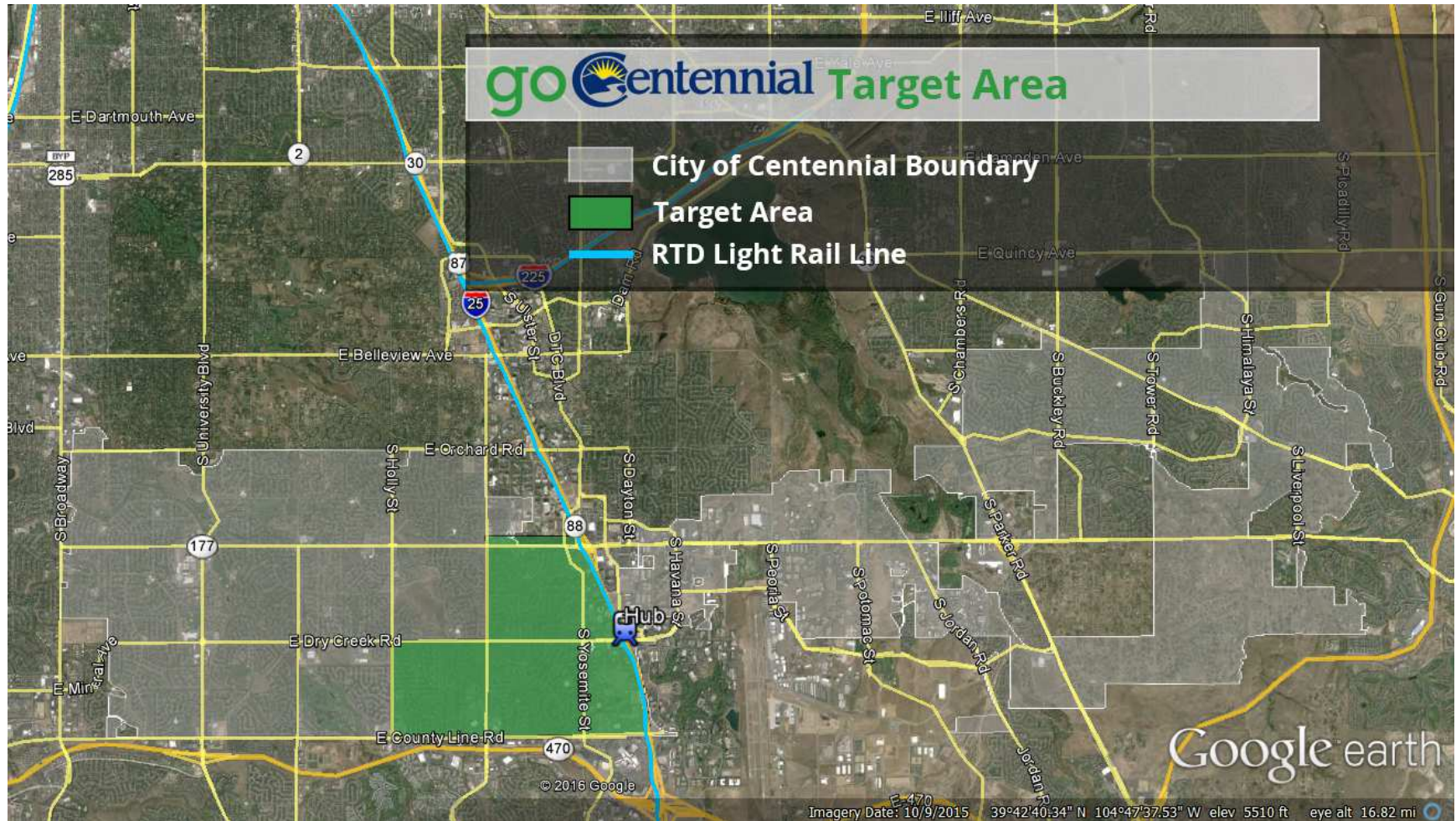
LYFT, INC.

By: _____

Print Name: _____

Position/Title: _____

EXHIBIT A





**MINUTES OF THE
CENTENNIAL CITY COUNCIL
Study Session**

6:00 PM**Monday, August 08, 2016**

A Study Session of the City Council was held on this date in the City Council Chambers at 13133 E. Arapahoe Road, Centennial, Colorado. A full and timely notice of this meeting had been posted and a quorum was present.

A. Call to Order

Mayor Noon called the meeting to order at 6:02 PM.

B. Roll Call

Those present were:

- Mayor Noon
- Council Member Turley
- Council Member Moon
- Council Member Piko
- Council Member Lucas
- Council Member Truhlar
- Council Member Gotto
- Council Member Whelan
- Council Member Penaloza, arrived at 6:04 PM

Those absent were: None

Also present were:

- John Danielson, City Manager
- Maureen Juran, Deputy City Attorney
- Elisha Thomas, Deputy City Manager
- Andy Firestine, Assistant City Manager
- Steve Greer, Director of Community Development
- Tamra Gregory, Code Compliance Manager
- Eric Eddy, Assistant to the City Manager
- Sheri Chadwick, Director of Communications
- Jill Hassman, Assistant City Attorney
- Barbara Setterlind, City Clerk

C. Parks, Open Space, Trails and Recreation Master Plan 2016: Introduction of Recommended Consultant Team and Scope of Work Review; 6:05 PM

Steve Greer, Director of Community Development, made a brief introduction. Jeff Zimmerman and Chris Geddes representing Design Work Shop, presented. Consensus was to go forward as presented.

D. Nuisance Regulations - Discussion; 6:23 PM

Steve Greer, Director of Community Development and Tamra Gregory, Code Compliance Manager, presented. Consensus to bring back for further discussion in the near future.

E. Adjourn

There being no further business to discuss, the Study Session was adjourned at 7:30 PM.

Respectfully Submitted,

Barbara Setterlind, City Clerk



**MINUTES OF THE
CENTENNIAL CITY COUNCIL
Regular City Council Meeting**

7:00 PM

Monday, August 08, 2016

A Regular Meeting of the City Council was held on this date in the City Council Chambers at 13133 E. Arapahoe Road, Centennial, Colorado. A full and timely notice of this meeting had been posted and a quorum was present.

1. Call to Order

Mayor Noon called the meeting to order at 7:46 PM.

2. Roll Call

Those present were:

- Mayor Noon
- Council Member Moon
- Council Member Piko
- Council Member Lucas
- Council Member Turley
- Council Member Truhlar
- Council Member Gotto
- Council Member Whelan
- Council Member Penaloza

Those absent were: None

Also present were:

- John Danielson, City Manager
- Maureen Juran, Deputy City Attorney
- Elisha Thomas, Deputy City Manager
- Andy Firestine, Assistant City Manager
- Steve Greer, Director of Community Development
- Eric Eddy, Assistant to the City Manager
- Sheri Chadwick, Director of Communications
- Jill Hassman, Assistant City Attorney
- Barbara Setterlind, City Clerk

3. Pledge of Allegiance

Mayor Noon led the Pledge of Allegiance.

4. Public Comment; 7:48 PM

Fred Chavez, 7664 S. Hombolt Street, discussed stockpiling in his neighborhood and stated he supported new code compliance regulations.

Wally Godby, 7275 S. Grant Street discussed stockpiling in his neighborhood and stated he supported new code compliance regulations and parking of inoperative vehicles on grass.

Michael Lovitt, 6549 S. Lincoln Street, discussed stockpiling in neighbors backyard and felt it was a health and safety issue for children.

Ron Carter, 17229 E. Progress Avenue, discussed parking of a bus on his neighbor's property.

Andrea Suhaka, 6864 S. Ulster Circle, discussed stockpiling issues in her neighborhood.

5. Scheduled Presentations (None)

6. Consideration of Communications, Proclamations and Appointments (None)

CONSENT AGENDA

Council Member Whelan moved to Approve CONSENT AGENDA. Council Member Gotto seconded the motion.

With Mayor Noon, Council Member Moon, Council Member Piko, Council Member Lucas, Council Member Turley, Council Member Truhlar, Council Member Gotto, Council Member Whelan, Council Member Penaloza voting AYE, and (None) voting NAY; Absent: 0. THE MOTION Passed.

7. Consideration of Ordinances on First Reading

- a. **ORDINANCE NO. 2016-O-14, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CENTENNIAL COLORADO AND COMCAST OF COLORADO XI, INC. ("GRANTEE") AND AMENDING ARTICLE 2 OF CHAPTER 5 OF THE CENTENNIAL MUNICIPAL CODE**

8. Consideration of Resolutions

- a. **RESOLUTION NO. 2016-R-47 A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF CENTENNIAL, COLORADO, SUPPORTING AND APPROVING SUBMITTAL OF A GRANT APPLICATION TO ARAPAHOE COUNTY FOR FUNDING OF PHASE I CONSTRUCTION OF THE LONE TREE CREEK REGIONAL TRAIL PROJECT**
- b. **RESOLUTION NO. 2016-R-56, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO AUTHORIZING THE CITY MANAGER TO EXECUTE CERTAIN CONSTRUCTION CONTRACTS ON BEHALF OF THE CITY RELATED TO THE 2016 STREET REHABILITATION ADDITIONAL FUNDS**

9. Consideration of Other Items

a. Minutes

- i. **Study Session August 1, 2016**
- ii. **Regular Meeting August 1, 2016**

DISCUSSION AGENDA

10. Consideration of Land Use Cases

a. Public Hearings

- i. ORDINANCE NO. 2016-O-13, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO REZONING CERTAIN PROPERTY LOCATED SOUTH OF 4343 SOUTH FLANDERS STREET FROM NEIGHBORHOOD CONSERVATION (NC6) TO URBAN RESIDENTIAL (RU) UNDER THE 2011 LAND DEVELOPMENT CODE, AND AMENDING THE OFFICIAL ZONING MAP (Gradis) (This Public Hearing is being continued to September 6, 2016 at 7:00pm).**

Council Member Whelan moved to Continue the Public Hearing for ORDINANCE NO. 2016-O-13, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO REZONING CERTAIN PROPERTY LOCATED SOUTH OF 4343 SOUTH FLANDERS STREET FROM NEIGHBORHOOD CONSERVATION (NC6) TO URBAN RESIDENTIAL (RU) UNDER THE 2011 LAND DEVELOPMENT CODE, AND AMENDING THE OFFICIAL ZONING MAP to September 6, 2016 at 7:00 PM in these Council Chambers. Council Member Gotto seconded the motion.

With Mayor Noon, Council Member Moon, Council Member Piko, Council Member Lucas, Council Member Turley, Council Member Truhlar, Council Member Gotto, Council Member Whelan, Council Member Penaloza voting AYE, and (None) voting NAY; Absent: 0. THE MOTION Passed.

11. Consideration of Ordinances (None)

12. Consideration of Resolutions

a. Public Hearings

- i. RESOLUTION NO. 2016-R-54 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, AMENDING THE 2016 BUDGET AND APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE GENERAL FUND**

Council Member Whelan moved to Continue the Public Hearing for RESOLUTION NO. 2016-R-54 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, AMENDING THE 2016 BUDGET AND APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE GENERAL FUND to August 15, 2016 at 6:00 PM in these Council Chambers. Council Member Truhlar seconded the motion.

With Mayor Noon, Council Member Moon, Council Member Piko, Council Member Lucas, Council Member Turley, Council Member Truhlar, Council Member Gotto, Council Member Whelan, Council Member Penaloza voting AYE, and (None) voting NAY;; Absent: 0. THE MOTION Passed.

13. Consideration of Other Items (None)

GENERAL BUSINESS

14. Other Matters as May Come Before Council

Council Member Gotto stated he has reviewed the City Manager's contract and concluded the next yearly evaluation of the City Manager should occur in 2017. Council agreed.

Mayor Noon discussed the upcoming National League of Cities Conference and stated Council Member Turley had expressed desire in attending. Council Member Piko stated she would be interested in attending and Council Member Whelan stated he would be an alternate if needed.

Council Member Moon asked Council consider looking at an Ordinance regarding abandoned homes. Consensus was to direct staff to look into this and bring back for discuss as a Study Session item.

15. Reports

a. City Manager

John Danielson, City Manager, made a brief report.

b. City Attorney (None)

c. City Clerk

Barbara Setterlind, City Clerk, made a brief report.

d. Council Members

Council Member Moon, Turley, Truhlar, Lucas, Gotto, Piko and Whelan made brief reports.

16. Mayor's Report and Comments

Mayor Noon made a brief report.

17. Executive Session

a. Executive Session Pursuant to C.R.S. §24-6-402(e) and (b) to Receive Legal Advice, Devise Negotiation Strategy and Instruct Negotiators Concerning a Franchise Agreement with Comcast

Council Member Whelan moved to go into Executive Session Pursuant to C.R.S. §24-6-402(e) and (b) to Receive Legal Advice, Devise Negotiation Strategy and Instruct Negotiators Concerning a Franchise Agreement with Comcast. Council Member Gotto seconded the motion.

With Mayor Noon, Council Member Moon, Council Member Piko, Council Member Lucas, Council Member Turley, Council Member Truhlar, Council Member Gotto, Council Member Whelan, Council Member Penaloza voting AYE, and (None) voting NAY; Absent: 0. THE MOTION Passed.

18. Adjourn

There being no further business to discuss, the Study Session was adjourned at 8:55 PM.

Respectfully Submitted,

Barbara Setterlind, City Clerk



Staff Report

TO: Honorable Mayor Noon and Members of City Council

THROUGH: John Danielson, City Manager
Elisha Thomas, Deputy City Manager
Robert Widner, City Attorney

FROM: Eric Eddy, Assistant to the City Manager
Jill Hassman, Assistant City Attorney

DATE OF MEETING: August 15, 2016

DATE OF SUBMITTAL: August 5, 2016

SUBJECT: Ordinance 2016-O-14 Concerning Approval of Renewal Franchise Agreement with Comcast for Cable Television Services

1. Executive Summary:

On January 19, 2016, the City extended its 2001 cable franchise agreement with Comcast in order to allow for sufficient time to complete a negotiation process for a new franchise. The City Attorney's Office, Staff, outside counsel, and Comcast have completed a recommended renewal franchise agreement with Comcast for City Council's consideration.

Approval or denial of a cable franchise renewal requires an ordinance of the City and an associated public hearing. It is important to note that federal law presumes that an incumbent cable operator has a right to a renewal of its franchise if it proposes and has the legal, financial, and technical capability to comply with a franchise that meets the future cable-related needs of the community, taking into account the cost of meeting those needs.

Review criteria by which a renewal of a cable franchise may be denied are set forth in federal law and include:

1. The Cable Operator does not have the financial, technical or legal qualifications to comply with the terms of a franchise that meets the future cable-related needs of the community, taking into account the costs of meeting those needs;
2. The Cable Operator will not provide adequate public, educational and governmental access channel capacity, facilities or financial support;
3. The Cable Operator's proposed terms do not comply with applicable federal, state and local laws and regulations, including but not limited to local customer service standards or relevant existing contractual obligations of the City; or
4. The Cable Operator has a record of violations of its obligations under its existing franchise with the City.

The City and Comcast have conducted what are considered "informal" negotiations under federal law. If Council decides to deny this proposed franchise renewal agreement (attached to Ordinance No. 2016-O-14), the City and Comcast would then commence "formal" negotiations

under the federal Cable Act. After following the more stringent regulatory requirements in the federal statutes, Council would have another opportunity to accept or reject Comcast's proposed franchise.

The recommended franchise agreement attached to Ordinance No. 2016-O-14 is based largely on the Colorado Communications and Utility Alliance ("CCUA") model agreement.

If approved, Ordinance No. 2016-O-14 would grant a ten (10) year cable franchise agreement to Comcast. In addition, the ordinance would also make several minor administrative changes to Chapter 5 of the Centennial Municipal Code concerning franchises.

2. Discussion:

Franchise agreements allow private companies to make use of public-rights-of-way for private purposes. Components of franchise agreements include items such as terms, franchise fees, buildout requirements, among other important topics. A Cable Operator pays franchise fees as compensation for the use of public property – similar to paying a lease for City rights-of-way. The franchise fee is equivalent to 5% of gross revenues derived from the operation of the cable system within the City. Franchise fees may be passed through directly to subscribers by the Cable Operator.

The recommended franchise renewal agreement with Comcast is attached to Ordinance No. 2016-O-14. Key provisions of the proposed agreement include:

- a. Term: The franchise would run from 2016 for ten (10) years until 2026.
- b. Franchise Fees: In return for the non-exclusive right to use portions of the public rights-of-way, Comcast will remit franchise fees in the amount of 5% of gross revenues to the City. This is the same franchise fee as was in the previous Comcast franchise and is consistent with the City's other cable franchise with CenturyLink.
- c. Buildout Requirement: The buildout requirement in the recommended franchise is based on market-based language. Comcast has indicated that they are unwilling to consider universal buildout in municipalities with more than one cable provider. If market conditions change in Centennial, the recommended language will ensure that the City maintains a universal buildout obligation under certain conditions.
- d. PEG Fees: The option for the collection of Public, Educational and Governmental (PEG) is preserved in the negotiated franchise agreement. This option provides City Council the capability to recover certain costs (beyond the franchise fees) if a local governmental channel is developed.
- e. Compliance with federal, state and local laws: Comcast is required to fully comply with all equal employment or non-discrimination provisions and requirements of federal, state, and local laws.
- f. Right-of-Way Use and Construction: Comcast will be required to comply with the City's existing Right-of-Way regulations, with limited exclusions for Comcast-specific provisions. This is an important change from the prior franchise agreement, which included different standards specific to Comcast's use of the right-of-way.

- g. **Rate Discrimination:** Comcast is required to establish rates 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. Rates must be established in a non-discriminatory manner in accordance with federal, state, and local laws.

The City's initial franchise agreement with Comcast from 2001 is codified in Chapter 5 of the Municipal Code. If approved by Council, the renewal franchise agreement will replace the prior Comcast franchise in the Municipal Code.

3. Recommendations:

Staff recommends approval of Ordinance No. 2016-O-14, granting a cable television franchise to Comcast and amending Chapter 5 of the Centennial Municipal Code.

4. Alternatives:

Council may consider modifying or rejecting the proposed franchise agreement.

5. Fiscal Impact:

There is no direct fiscal cost associated with the franchise agreement. Franchise fee revenues the City receives from Comcast are dependent upon gross revenues.

6. Next Steps:

If Council adopts Ordinance No. 2016-O-14, Staff and Comcast will implement the new franchise agreement.

7. Previous Actions:

August 8, 2016: City Council set the Public Hearing for Ordinance No. 2016-O-14.

January 19, 2016: City Council approved an extension to the existing Comcast franchise pursuant to Ordinance No. 2016-O-02.

8. Suggested Motions:

Motion for Approval

I MOVE TO APPROVE ORDINANCE NO. 2016-O-14, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CENTENNIAL COLORADO AND COMCAST OF COLORADO XI, INC. ("GRANTEE") AND AMENDING ARTICLE 2 OF CHAPTER 5 OF THE CENTENNIAL MUNICIPAL CODE

Motion for Denial

I MOVE TO DENY NO. 2016-O-14, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO APPROVING A CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CENTENNIAL COLORADO AND COMCAST OF COLORADO XI, INC. ("GRANTEE") AND AMENDING ARTICLE 2 OF CHAPTER 5 OF THE CENTENNIAL MUNICIPAL CODE

**CITY OF CENTENNIAL,
COLORADO**

ORDINANCE NO. 2016-O-14

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL,
COLORADO APPROVING A CABLE TELEVISION FRANCHISE
AGREEMENT BETWEEN THE CITY OF CENTENNIAL, COLORADO AND
COMCAST OF COLORADO XI, INC. ("GRANTEE") AND AMENDING
ARTICLE 2 OF CHAPTER 5 OF THE CENTENNIAL MUNICIPAL CODE**

WHEREAS, on March 29, 2001, the City Council for the City of Centennial, Colorado ("City") approved the grant of a non-exclusive cable franchise ("2001 Franchise Agreement") to TCI Cablevision of New Mexico, Inc., Mountain States Video, Inc., TCI Cablevision of Colorado, Inc., TCI Cablevision of Florida, Inc., United CATV, Inc., and United Cable Television of Colorado, Inc., ("Grantee" or "Comcast"), for its construction and operation of a cable television system within the City; and

WHEREAS, as the successor in interest to Grantee, the Comcast entity which holds the Franchise in the City is Comcast of Colorado XI, Inc. ("Comcast"); and

WHEREAS, pursuant to Section 2.3 of the 2001 Franchise Agreement, the 2001 Franchise Agreement expired on February 7, 2016; and

WHEREAS, prior to expiration of the 2001 Franchise Agreement, the City and Comcast, pursuant to Ordinance No. 2016-O-02, agreed to extend the existing 2001 Franchise Agreement until August 8, 2016; and

WHEREAS, the City has reviewed the performance of Comcast under the 2001 Franchise Agreement and the quality of service during the prior franchise term, has identified the future cable-related needs and interests of the City and its citizens, has considered the financial, technical, and legal qualifications of Comcast and has determined that Comcast's plans for operating and maintaining its cable system are generally adequate; and

WHEREAS, the City and Comcast have been involved in negotiations concerning a proposed cable franchise renewal agreement ("2016 Franchise Agreement"); and

WHEREAS, these negotiations have resulted in the proposed 2016 Franchise Agreement that is being presented to the City Council for its consideration and approval; and

WHEREAS, the public has had reasonable notice and opportunity to comment on Comcast's proposal to continue providing cable service within the City as set forth in the 2016 Franchise Agreement; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of cable service, the reliability of the cable system within the City, the availability of local programming, and quality customer service; and

WHEREAS, the proposed 2016 Franchise Agreement between the City and Comcast has been prepared, a copy of which is marked **Attachment A** and attached hereto and incorporated herein by reference; and

WHEREAS, the City Council has reviewed the 2016 Franchise Agreement and is familiar with its terms; and

WHEREAS, after due consideration, the City Council has determined that it is in the best interest of the City and its residents to grant a cable franchise to Comcast upon the terms and conditions set forth in the proposed new 2016 Franchise Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, ORDAINS:

Section 1. Approval of the 2016 Franchise Agreement. The 2016 Franchise Agreement in the form attached hereto (**Attachment A**) between Comcast of Colorado XI, Inc. and the City of Centennial is approved subject to: (1) any revisions approved by the City Council prior to approval on Second Reading; and (2) revisions made by the City Manager following consultation with the City Attorney and Mayor which revisions do not substantially change the obligations of the City or are desired to improve the grammar, clarity, or understanding of the terms or conditions. Upon execution of the approved 2016 Franchise Agreement by the City and Comcast of Colorado XI, Inc., the 2001 Franchise Agreement shall be terminated.

Section 2. Amendment to Article 2 of Chapter 5 of the Centennial Municipal Code. The existing Article 2 of Chapter 5 is hereby repealed and shall be replaced with a new Article 2 entitled "Cable Television Franchise - 2016" which Article is attached as **Attachment A** to this Ordinance.

Section 3. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this Ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

Section 4. Codification Amendments. The codifier of the City's Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Centennial Municipal Code.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD ON THE 8th DAY OF AUGUST, 2016.

CITY OF CENTENNIAL

By: _____
Cathy A. Noon, Mayor

Approved as to Form:

For City Attorney's Office

I hereby certify that the above Ordinance was introduced to the City Council of the City of Centennial at its meeting of _____, 2016 and ordered published one time by title only in *The Villager* newspaper on _____, 2016, and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

ATTEST:

SEAL

By: _____
City Clerk or Deputy City Clerk

FINALLY ADOPTED, PASSED, APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED PUBLISHED BY TITLE ONLY, IN *THE VILLAGER* NEWSPAPER AND IN FULL ON THE CITY WEB SITE IN ACCORDANCE WITH SECTION 2-1-110 OF THE MUNICIPAL CODE BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS MEETING HELD ON THE 15th DAY OF AUGUST, 2016, BY A VOTE OF _____ IN FAVOR AND _____ AGAINST.

CITY OF CENTENNIAL

By: _____
Cathy A. Noon, Mayor

I hereby certify that the above Ordinance was finally adopted by the City Council of the City of Centennial at its meeting of _____, 2016, and ordered published by title only, one time by *The Villager* newspaper on _____, 2016 and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

ATTEST:

SEAL

By: _____
City Clerk or Deputy City Clerk

**COMCAST OF COLORADO XI, INC. AND
THE CITY OF CENTENNIAL, COLORADO**

**CABLE FRANCHISE AGREEMENT
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**COMCAST OF COLORADO XI, INC. AND
CITY OF CENTENNIAL, COLORADO**

CABLE FRANCHISE AGREEMENT

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

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

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

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

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

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

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 Centennial, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.16 “City Council” means the Centennial City Council, or its successor, the governing body of the City of Centennial, 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 XI, Inc. 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 codes, regulations 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 September 17, 2016 (the "Effective Date"), and shall terminate on September 17, 2026 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; complimentary services; 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 (with the understanding that Comcast will use its current system design and technology infrastructure to meet any requirements of the new franchise), 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 forty-five (45) 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 five percent (5%) 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 Five Thousand dollars (\$5,000.00) 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 forty-five (45) 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; unless the additional commitments are specifically exempted from this Section 3.11.

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 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.

4.8 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.

4.9 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.

4.10 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 twenty-five thousand dollars (\$25,000).

(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 twenty-five thousand dollars (\$25,000) 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

Within ninety (90) days after written request from the City, Grantee shall place the City’s phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

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

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

7.2 Confidentiality

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

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the City upon 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 confidential written report subject to the provisions of Section 7.2, 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 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) Upon 120 days written notice from the City, after the completion of construction of the Fiber Optic return line pursuant to Section 9.12A and once the equipment in connection therewith is made operational, Grantee shall make available to City two (2) 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 Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to City, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if 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 two (2) Channels provided to City. If a Channel allocated for Public, Educational, or Governmental Access 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) Pursuant to Section 9.2(A), within one hundred twenty (120) days after a written request from the City, Grantee shall provide one (1) Activated Downstream

Channel 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) Pursuant to Section 9.2(A), within one hundred twenty (120) days after a written request from the City, Grantee shall activate 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. Activation of such HD Access Channel 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; and,

(b) There will be a minimum of five (5) hours per-day, five days per-week of HD PEG programming available for the 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 one (1) 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 Channel 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 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 the HD Access Channel 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 Web-Based Video on Demand and Streaming

(A) If the City is providing on-line video content, and has not connected and activated its own fiber optic network to the Centennial Civic Center, and if Grantee has installed a fiber optic network at the Centennial Civic Center, Grantee shall provide at no cost to the City, at the Centennial Civic Center, 13133 East Arapahoe Road, a business class broadband connection, broadband service and all necessary hardware, to enable the City's delivery of web-based PEG content. If, during the term of this Franchise, the City moves its location and such new location does not have the capacity to connect and receive the broadband service described in this Section 9.5(A), the cost of upgrading the network to enable such service shall be incurred by the City. The broadband connection provided herein shall be used exclusively for web-based on demand Access programming and/or web-based video streaming of Access content. Within ninety (90) days after written request of the City, Grantee shall additionally provide a one time grant of

funding, in an amount not to exceed fifteen thousand dollars (\$15,000) which the City shall use to acquire and/or for replacement costs for a video on demand server for facilitating the web-based Access programming described in this Section 9.5.

(B) The City's Designated Access Provider(s) may provide web-based video on demand programming on line; provided however, that such Designated Access Provider(s) shall be responsible for its own costs related to a video on demand server, broadband connection and service and any other associated equipment.

(C) For all of the City's and its Designated Access Provider's web-based on demand Access programming facilitated through the broadband connection and service described in this Section 9.5, Grantee shall be permitted to provide its logo which shall be displayed on the main web page for the web-based Access programming, in a manner reasonably similar to the Grantee's logo display found on its Project Open Voice web-based supported programming. Notwithstanding the foregoing, the size of the City's or Designated Access Provider's logos may be as large as or larger than Grantee's logo, in the City's or Designated Access Provider's sole reasonable discretion.

(D) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

9.6 Support for Access Costs

Within one hundred twenty (120) days after written notice from the City, and during the term of this Franchise Agreement, Grantee shall provide up to 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 and the web based on demand Access programming described in Section 9.5, 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 forty-five (45) 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.

9.7 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.

9.8 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.

9.9 Change In Technology

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

9.10 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.

9.11 Access Cooperation

City may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any CCUA member, the CCUA, or any combination thereof to receive any Access benefit due City hereunder, or to share in the use of Access 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.

9.12 Return Lines/Access Origination

(A) If requested in writing by the City, Grantee shall install and subsequently maintain a return line to the Centennial Civic Center, 13133 East Arapahoe Road, 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 either of these locations shall cease if a location is no longer used in the future by the City to originate Access programming. The terms of such installation shall be contained in a separate agreement between the parties.

(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 Compliance with Applicable Law for Work in the Right of Way

Notwithstanding anything in this Franchise to the contrary, Grantee shall comply with all requirements, rules, regulations, laws and practices of the State, City, county or federal government governing work in the Right-of Way or other public property in effect at the time that Grantee commences such work.

10.2 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.

10.3 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.

10.4 Repair and Restoration of Private Property

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.

10.5 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

10.10 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.

10.11 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.

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. The parties acknowledge that the City has granted a franchise to a second entrant into the wireline video market in the City. Grantee shall have the discretion, except as provided in subsections (B) and (C) below, to determine the scope, location and timing of the design, construction or upgrading of its system, and the deployment of its services, as long as such decisions are consistent with Section 4.3 of this Franchise.

(B) Exception to Discretion on Service Availability. If, at any time during the term of this Franchise, Grantee becomes the only provider of Cable Service to Persons in the City, upon written notice from the City that it has revoked or otherwise withdrawn the Franchise granted to any other provider of Cable Service in the City, Grantee shall:

- (1) Extend its Cable System to all Persons living in areas with a residential density of at least thirty-five (35) residences per mile of its existing trunk or distribution cable, subject to subsection (C) below. Any residence that is located more than four hundred (400) feet from the Right-of-Way shall not be included in this density calculation;
- (2) Provide Cable Service in accordance with Section 6 of this Franchise and at a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty five (125) foot drop (referred to herein as “Standard Installation”) 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) If the residential density is less than thirty-five (35) residences per mile of its existing trunk or distribution cable, Grantee will extend its Cable System to provide service if a capital contribution in aid of construction, including cost of material, labor and easements, is provided. 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 thirty-five (35) residences per mile of cable-bearing strand feet of its trunk or distribution cable and whose denominator equals thirty-five (35). 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.

(C) Schedule for Extension of Service. From the time Grantee is notified of its obligation to extend its Cable System pursuant to subsection (B) above, it shall have five (5) years from the date of such notice to complete the extension of its Cable System to all areas of the City with the residential densities described in subsection (B). To the extent that there are less than five (5) years remaining in the term of this Franchise at the time of such notice, Grantee and the City shall meet and determine where the Cable System extension shall occur. The Grantee and the City may agree to extend the Franchise so that five (5) years remain on the franchise term. Alternatively, the Grantee shall only be obligated to build out areas on a pro rata basis, for each year remaining on the Franchise that meet the residential densities described in subsection (B). For example, if there are 500 homes that meet the residential densities described in subsection (B) at the time of the notice and there are three (3) years remaining on the term of the Franchise, Franchisee shall be obligated to extend its Cable System to three hundred (300) homes.

(D) Obligation of New Entrant Following Extension of Service. If the City grants a Franchise to any other provider of Cable Service or reinstates any Franchise that it revoked or withdrew under subsection (B) above, so that Grantee is no longer the only provider of Cable Service in the City, the City shall insure that any such subsequently granted or reinstated Franchise requires that the deployment of Cable Service will be geographically dispersed throughout the City and will be made available to diverse residential neighborhoods of the City without discrimination. Upon such subsequent grant or reinstatement to another provider of Cable Service, Grantee shall no longer be obligated to comply with subsections (B) and (C) above.

12.2 Connection of Public Facilities

(A) 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 the interconnection point on these facilities is located within 150 feet of the distribution point on the Cable System, from which Cable Service can be provided to these facilities. For purposes of this subsection, “school” means all State-accredited K-12 public and private schools.

(B) The Cable Service described herein is a voluntary initiative of Grantee, and shall be provided throughout the term of this Franchise provided, however, that after the Effective Date of this Franchise, the City shall use its best efforts to fairly allocate complimentary Cable

Service to ensure the pro rata distribution among franchised wireline providers (taking into account any technical limitations of franchised wireline providers). Grantee has the right to terminate its voluntary complimentary Cable Service to any governmental building upon ninety (90) days' notice to the City. In the case of leased facilities, the recipient of service is responsible for securing approval for appropriate right of entry suitable to the Grantee in its reasonable discretion. The Cable Service provided 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 Cable Service provided in accordance with this section 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. Such Cable Service shall not be located in public waiting areas or used to entertain the public, nor shall they be used in a way that might violate copyright laws. The City shall take reasonable steps to limit display in public areas to just the City or Educational Access Channels. The intent of the provisions in this Section 12.2 is to ensure access to Cable Services for the benefit of the City and Schools and other entities as provided herein; it being agreed, however, that Grantee need not provide Cable Service if complimentary cable service is already being provided by another cable operator. The City shall provide notice to the Grantee within thirty (30) days of the date on which any other franchised wireline provider completes installation of complimentary Cable Service to any governmental building at which Grantee currently provides Cable Service or has an obligation to provide such service under this Section 12.2. The City reserves all rights it has under Applicable Law to assert the maximum calculation of Gross Revenues permitted under Section 1.28 of this Franchise consistent with Section 1.28(A), but without regard to any further limitations set forth in Section 1.28(B), and the manner in which the value of the complimentary Cable Services is calculated. Subject to Applicable Law, should Grantee elect to offset governmental complimentary services against Franchise Fees, Grantee shall first provide the City with ninety (90) days' prior written notice.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying 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.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and City are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and City shall continue to comply with all obligations and duties under the Franchise.

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 XI, INC.
8000 E. Iliff Ave.
Denver, CO 80231
Attn: Government Affairs

The City's address shall be:

City of Centennial-- City Manager
13133 East Arapahoe Road
Centennial, CO 80112

with a copy to:

City of Centennial-- City Attorney
13133 East Arapahoe Road Suite #100
Centennial, CO 80112

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 Arapahoe 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 Centennial, Colorado this ____ day of _____, 2016.

ATTEST:

CITY OF CENTENNIAL, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

City Attorney

City Manager

Accepted and approved this _____ day of _____, 2016.

ATTEST:

COMCAST OF COLORADO XI, INC.

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 CENTENNIAL

<u>Type of Complaint</u>	<u>Number of Calls</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
<u>TOTAL</u>	0

Compliments	
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**City of Centennial
Customer Service Standards
(revised August 15, 2016)**

Introduction

The purpose of the Customer Service Standards (“Standards”) is to establish uniform requirements for the quality of service cable operators are expected to offer their customers in the City of Centennial (“Centennial” or the “City”). The Standards are subject to change from time to time.

Centennial encourages Cable Operators to exceed these standards in their day-to-day operations and as such, understands that a Cable Operator may modify their operations in exceeding these standards.

The Standards incorporate the Customer Service Obligations published by the Federal Communications Commission (Section 76.309), April, 1993 and model customer service standards developed by the Colorado Communications and Utility Alliance. Based upon Centennial’s assessment of the needs its citizens, the City modified and created standards specially tailored to meet local needs.

The Standards require a cable operator, in certain circumstances, to post a security fund or letter of credit ensuring Customer Service. The security fund is to be used when the cable operator fails to respond to a citizen complaint that the City determines is valid and to provide a mechanism by which to impose remedies for noncompliance. It is the sincere hope and intention of the City that the security fund will never need to be drawn upon; however, the City believes that some enforcement measures are necessary.

CUSTOMER SERVICE STANDARDS

I. POLICY

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.

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.

These Standards supercede 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.

These Standards apply to the provision of any Cable Service, provided by a Cable Operator over a Cable System, within the City of Centennial.

II. 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" means, 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 (A) who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System. 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 televisions 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 Centennial, 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" (or "CSR") shall mean any person employed with or under contract or subcontract to a Cable Operator to assist, or provide service to, customers, whether by telephone, writing service or installation orders, answering customers' questions in person, receiving and processing payments, or performing any other customer service-related tasks.

"Escalated complaint" 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 be 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 (i) the loss or substantial impairment of picture and/or sound on one or more cable television channels.

"Service outage" or "outage" shall mean a loss or substantial impairment in reception on all channels.

"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.

III. CUSTOMER SERVICE

A. Courtesy

Cable Operator employees, contractors and subcontractors shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with customers.

B. Accessibility

1. 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 requests.

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.

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.

2. A Cable Operator shall maintain local telephone access lines that shall be available twenty-four (24) hours a day, seven (7) days a week for service/repair requests and billing/service inquiries.

3. A Cable Operator shall have dispatchers and technicians on call twenty-four (24) hours a day, seven (7) days a week, including legal holidays.

4. If a customer service telephone call is answered with a recorded message providing the customer with various menu options to address the customer’s concern, the recorded message must provide the customer the option to connect to and speak with a CSR within sixty (60) seconds of the commencement of the recording. 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 from the time a customer chooses a menu option to speak directly with a CSR or chooses a menu option that pursuant to the automated voice message, leads to a direct connection

with a CSR. Under normal operating conditions, this thirty (30) second telephone answer time requirement standard shall be met no less than ninety (90) percent of the time measured quarterly.

5. Under normal operating conditions, a customer shall not receive a busy signal more than three percent (3%) of the time. This standard shall be met ninety (90) percent or more of the time, measured quarterly.

C. Responsiveness

1. Guaranteed Seven-Day Residential Installation

a. A Cable Operator shall complete all standard residential installations or modifications to service requested by customers within seven (7) business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to one hundred twenty five (125) feet from the existing distribution system. If the customer requests a nonstandard residential installation, or the Cable Operator determines that a nonstandard residential installation is required, the Cable Operator shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

b. All underground cable drops to the home shall be buried at a depth of no less than twelve inches (12"), or such other depth as may be required by the Franchise Agreement 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.

2. Residential Installation and Service Appointments

a. The "appointment window" alternatives for specific installations, service calls, and/or other installation activities will be either a specific time, or at a maximum, a four (4) hour time block between the hours of 8:00 a.m. and 6:00 p.m., six (6) days per week. A Cable Operator may schedule service calls and other installation activities outside of the above days and hours for the express convenience of customers. 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.

b. A Cable Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment, unless the customer's issue has otherwise been resolved.

c. If a Cable Operator is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the 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.

d. A Cable Operator shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves written notification of arrival and return time,

and a copy of that notification is kept by the Cable Operator. In such circumstances, the Cable Operator shall contact the customer within forty-eight (48) hours.

3. Residential Service Interruptions

a. In the event of system outages resulting from Cable Operator equipment failure, the Cable Operator shall correct such failure within 2 hours after the 3rd customer call is received.

b. All other service interruptions resulting from Cable Operator equipment failure shall be corrected by the Cable Operator by the end of the next calendar day.

c. Records of Complaints.

i. A Cable Operator shall keep an accurate and comprehensive file of any 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 (3) years.

ii. 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 Grantee and any other requirements of a Franchise Agreement but no personally identifiable information. These summaries shall be provided within fifteen (15) 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. 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 (15th) 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.

d. Records of Service Interruptions and Outages. A Cable Operator shall maintain records of all outages and reported service interruptions. Such records shall indicate the type of 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 (15) days after the end of each quarter. Such records shall be submitted to the City with the records identified in Section 3.c.ii above if so requested in writing, and shall be retained by the Cable Operator for a period of three (3) years.

e. All service outages and interruptions for any cause beyond the control of the Cable Operator shall be corrected within thirty-six (36) hours, after the conditions beyond its control have been corrected.

4. TV Reception

a. A Cable Operator shall provide clear television reception that meets or exceeds technical standards established by the United States Federal Communications Commission (the "FCC"). A Cable Operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice and shall occur during periods of minimum use of the system, preferably between midnight and six a.m. (6:00 a.m.).

b. If a customer experiences poor video or audio reception attributable to a Cable Operator's equipment, the Cable Operator shall:

- i. Assess the problem within one (1) day of notification;
- ii. Communicate with the customer regarding the nature of the problem and the expected time for repair;
- iii. Complete the repair within two (2) days of assessing the problem unless circumstances exist that reasonably require additional time.

c. If an appointment is necessary to address any video or audio reception problem, the customer may choose a block of time described in Section III.C.2.a. 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.

5. Problem Resolution

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.

6. Billing, Credits, and Refunds

a. 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 CSR.

b. A Cable Operator shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time the Cable Operator may apply an administrative fee to the customer's account. The administrative fee must reflect the average costs incurred by the Cable Operator in attempting to collect the past due payment in accordance with applicable law. If the customer's service bill is not paid within forty-five (45) days of the beginning date of the applicable service period, the

Cable Operator may perform a "soft" disconnect of the customer's service. If a customer's service bill is not paid within fifty-two (52) days of the beginning date of the applicable service period, the Cable Operator may disconnect the customer's service, provided it has provided two (2) weeks notice to the customer that such disconnection may result.

c. The Cable Operator shall issue a credit or refund to a customer within 30 days after determining the customer's entitlement to a credit or refund.

d. Whenever the Cable Operator offers any promotional or specially priced service(s) its promotional materials shall clearly identify and explain the specific terms of the promotion, including but not limited to manner in which any payment credit will be applied.

7. Treatment of Property

To the extent that a Franchise Agreement does not contain the following procedures for treatment of property, Operator shall comply with the procedures set forth in this Section.

a. A Cable Operator shall keep tree trimming to a minimum; trees and shrubs or other landscaping that are damaged by a Cable Operator, any employee or agent of a Cable Operator during installation or construction shall be restored to their prior condition or replaced within seven (7) days, unless seasonal conditions require a longer time, in which case such restoration or replacement shall be made within seven (7) 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.

b. 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 (100) percent of the actual cost of the damage.

c. 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 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 purposes of this subsection, "reasonable notice" shall be considered:

- i. For pedestal installation or similar major construction, seven (7) days.
- ii. For routine maintenance, such as adding or dropping service, tree trimming and the like, reasonable notice given the circumstances. Unless a Franchise Agreement has a different requirement, reasonable notice shall require, at a minimum, prior notice to a property owner or tenant, before entry is made onto that person's property.

iii. For emergency work a Cable Operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. 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.

d. Cable Operator personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

D. Services for Customers with Disabilities

1. For any customer with a disability, a Cable Operator shall deliver and pick up equipment at customers' homes at no charge unless the malfunction was caused by the actions of the customer. In the case of malfunctioning equipment, the technician shall provide replacement equipment, hook it up and ensure that it is working properly, and shall return the defective equipment to the Cable Operator.

2. A Cable Operator shall provide either TTY, TDD, TYY, VRS service or other similar service that are 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.

3. A Cable Operator shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with Section III.D.4) customers.

4. Any customer with a disability may request the special services described above by providing a Cable Operator with a letter from the customer's physician stating the need, or by making the request to the Cable Operator's installer or service technician, where the need for the special services can be visually confirmed.

E. Cable Services Information

1. 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 Cable Operator's website (and in Spanish, when requested by the customer):

a. Products and services offered by the Cable Operator, including its channel lineup;

b. The Cable Operator's complete range of service options and the prices for these services;

c. The Cable Operator's billing, collection and disconnection policies;

d. Privacy rights of customers;

e. All applicable complaint procedures, including complaint forms and the telephone numbers and mailing addresses of the Cable Operator, and the FCC;

- f. Use and availability of parental control/lock out device;
- g. Special services for customers with disabilities;
- h. Days, times of operation, and locations of the service centers;

2. 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, 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.

3. 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 (30) days prior to the time such changes are to be effective, in order to inform the City of such changes.

4. Copies of notices provided to the customer in accordance with subsection 5 below shall be filed (by fax or email acceptable) with the City.

5. 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 (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.

6. 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.

7. Each CSR, technician or employee of the Cable Operator in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed. A written estimate of the charges shall be provided to the customer before the actual work is performed.

F. Customer Privacy

1. Cable Customer Privacy. In addition to complying with the requirements in this subsection, a Cable Operator shall fully comply with all obligations under 47 U.S.C. Section 551.

2. Collection and Use of Personally Identifiable Information.

a. A Cable Operator shall not use the Cable System to collect, monitor or observe Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer unless, and only to the extent that such information is: (i) used to detect unauthorized reception of cable communications, or (ii) necessary to render a Cable Service or Other Service provided by the Cable Operator to the Customer and as otherwise authorized by applicable law.

b. 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 F.2.b shall not be interpreted to prohibit an Affiliate from obtaining access to Personally Identifiable Information to the extent otherwise permitted by this subsection F.

c. 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.

3. Disclosure of Personally Identifiable Information. A Cable Operator shall not disclose Personally Identifiable Information without the prior affirmative written or electronic consent of the Customer, unless otherwise authorized by applicable law.

a. A minimum of thirty (30) days prior to making any disclosure of Personally Identifiable Information of any Customer for any Non-Cable related purpose as provided in this subsection F.3.a, where such Customer has not previously been provided the notice and choice provided for in subsection III.F.9, 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 III.F.10.

b. A Cable Operator may disclose Personally Identifiable Information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a Cable Service or Other Service provided by the Cable Operator to the Customer.

c. To the extent authorized by 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.

4. Access to Information. Any Personally Identifiable Information collected and maintained by a Cable Operator shall be made available for Customer examination within thirty (30) days of receiving a request by a Customer to examine such information 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.

5. Privacy Notice to Customers

a. 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.

b. In or accompanying the statement required by subsection F.5.a, 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:

i. Disclosure pursuant to valid legal process authorized by applicable law.

ii. 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: (A) A Customer's extent of viewing of a Cable Service or Other Service provided by the Cable Operator; (B) The extent of any other use by a Customer of a Cable Service; (C) The nature of any transactions made by a Customer over the Cable System; or (D) The nature of programming or 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 F.3.a. If a Customer exercises his or her right to prohibit the disclosure of name and address as provided in subsection F.3.a 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 F.9 below.

6. Privacy Reporting Requirements. The Cable Operator shall include in its regular periodic reports to the City required by its Franchise Agreement information summarizing:

a. The type of Personally Identifiable Information that was actually collected or disclosed by Cable Operator during the reporting period;

b. For each type of Personally Identifiable Information collected or disclosed, a statement 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.

c. The standard industrial classification (SIC) 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;

d. 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.

7. Nothing in this subsection III.F 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.

8. 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 4 of this subsection III.F, pursuant to a court order or other valid legal process, or pursuant to applicable law.

9. 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 III.F. 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 III.F.5, 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.

G. Safety

A Cable Operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever a Cable Operator receives notice that an unsafe condition exists with respect to its equipment, the Cable Operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

H. 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 30 days of initial installation, then such customer can request disconnection of Cable Service within 30 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; provided such equipment is returned in such order, then the Cable Operator shall refund the monthly recurring fee for the new customer's first 30 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 PPV 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.

IV. COMPLAINT PROCEDURE

A. Complaints to a Cable Operator

1. A Cable Operator shall establish written procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts and shall have such procedures printed and disseminated at the Cable Operator's sole expense, consistent with Section III.E.1.e of these Standards.
2. Said written procedures shall prescribe a simple manner in which any customer may submit a complaint by telephone or in writing to a Cable Operator that it has violated any provision of these Customer Service Standards, any terms or conditions of the customer's contract with the Cable Operator, or reasonable business practices. 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.
3. At the conclusion of the Cable Operator's investigation of a customer complaint, but in no more than ten (10) calendar days after receiving the complaint, the Cable Operator shall notify the customer of the results of its investigation and its proposed action or credit.

4. A Cable Operator shall also notify the customer of the customer's right to file a complaint with the 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.

5. A Cable Operator shall immediately report all customer Escalated complaints that it does not find valid to the City.

6. A Cable Operator's complaint procedures shall be filed with the City prior to implementation.

B. Complaints to the City

1. Any customer who is dissatisfied with any proposed decision of the Cable Operator or who has not received a decision within the time period set forth below shall be entitled to have the complaint reviewed by the City.

2. 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.

3. The customer shall make such filing and notification within twenty (20) days of receipt of the Cable Operator's decision or, if no decision has been provided, within thirty (30) days after filing the original complaint with the Cable Operator.

4. If the City decides that further evidence is warranted, the 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.

5. 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.

6. The City shall issue a determination within fifteen (15) days of receiving the customer complaint, or after examining the materials submitted, setting forth its basis for the determination.

7. The City may extend these time limits for reasonable cause and may intercede and attempt to negotiate an informal resolution.

C. Security Fund or Letter of Credit

A Cable operator shall comply with any Franchise Agreement regarding Letters of Credit. If a Franchise Agreement is silent on Letter of Credit the following shall apply:

1. Within thirty (30) days of the 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 twenty-five thousand dollars (\$25,000) 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.

2. 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.
3. The Security Fund shall serve as security for the payment of any penalties, fees, charges or credits as provided for herein and for the performance by a Cable Operator of all its obligations under these Customer Service Standards.
4. The rights reserved to the 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.

D. Verification of Compliance

A Cable Operator shall establish its compliance with any or all of the standards required through annual reports that demonstrate said compliance, or as requested by the City.

E. Procedure for Remedying Violations

1. 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.
2. 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:
 - a. Impose assessments of up to one thousand dollars (\$1,000.00) per day, to be withdrawn from the Security Fund in addition to any franchise fee until the non-compliance is remedied; and/or
 - b. Order such rebates and credits to affected customers as in its sole discretion it deems reasonable and appropriate for degraded or unsatisfactory services that constituted noncompliance with these Standards; and/or
 - c. Reverse any decision of the Cable Operator in the matter and/or
 - d. Grant a specific solution as determined by the City; and/or
 - e. Except for in emergency situations, withhold licenses and permits for work by the Cable Operator or its subcontractors in accordance with applicable law.

V. MISCELLANEOUS

A. Severability

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of a Cable Operator under said provision, or any other provision of these Standards. Revised 8/15/16.



Staff Report

TO: Honorable Mayor Noon and Members of City Council

THROUGH: John Danielson, City Manager
Elisha Thomas, Deputy City Manager
Scott Blumenreich, Chief Innovation & Technology Officer

FROM: Daniel Hutton, i-team Manager
Paul Gunther, i-team UI/UX Designer
Bailey Little, i-team Coordinator
Melanie Morgan, i-team Data Analyst

DATE OF MEETING: August 15, 2016

DATE OF SUBMITTAL: August 5, 2016

SUBJECT: Resolution No. 2016-R-54, A Resolution of the City Council of the City of Centennial, Colorado, Amending the 2016 Budget and Approving a Supplemental Appropriation for the General Fund

1. Executive Summary:

During Study Session on July 11, 2016, Council provided Staff direction to finalize a joint funding agreement with the Southeast Public Improvement Metropolitan District (SPIMD) for joint funding of the Go Centennial Pilot (formally the First and Last Mile Pilot) and to finalize a pilot program agreement with Lyft, Inc. (Lyft) to provide services for the Go Centennial Pilot.

Staff is still waiting on confirmation from SPIMD that the joint funding for the Go Centennial Pilot has been formally approved. Resolution No. 2016-R-54 conditionally amends the 2016 budget and approves a supplemental appropriation from the joint agreement with SPIMD (\$200,000) and the previously appropriated Grant Match Fund's line item (\$200,000) into the total project cost (\$400,000). Appropriation of this funding is contingent upon SPIMD formal approval of funding.

Staff recommends approval of Resolution No. 2016-R-54, conditionally amending the 2016 budget and approving a supplemental appropriation for the General Fund.

2. Discussion:

Approval of Resolution No. 2016-R-54 approves a one-time budget amendment to recognize revenue from SPIMD and appropriate from the City's General Fund, allowing the Go Centennial Pilot to move forward. The amendment of the budget and the appropriations approval is contingent on receipt of funding approval from SPIMD.

3. Recommendations:

Staff recommends approval of Resolution No. 2016-R-54, conditionally amending the 2016 budget and approving a supplemental appropriation for the General Fund.

4. Alternatives:

Council can choose not to approve Resolution No. 2016-R-54. The 2016 budget would not be amended and the supplemental appropriation from the General Fund would not be approved.

5. Fiscal Impact:

Approval of Resolution No. 2016-R-54 will result in the following changes to the 2016 General Fund Budget when the SPIMD contributory funding is received:

General Fund – 2016 Revenues	2016 Budget As Amended to Date	2016 Amended	\$ Change	% Change
Revenue/Other Contributions	\$338,032	\$538,032	\$200,000	59%
Total Revenues	\$338,032	\$538,032	\$200,000	59%

General Fund – 2016 <u>Expenditures</u>	2016 Adopted Budget	2016 Amended	\$ Change	% Change
Office of Technology & Innovation / Go Centennial Pilot	\$200,000	\$400,000	\$200,000	100%
Total Expenditures	\$200,000	\$400,000	\$200,000	100%

6. Next Steps:

Pending Council approval of Resolutions No. 2016-R-52, No. 2016-R-53 and No. 2016-R-54:

- A. SPIMD would provide \$200,000 in funding to the Go Centennial Pilot Program.
- B. Staff would transfer the \$200,000 from the Grant Match Fund's line item to the Go Centennial Pilot line item. The City has already appropriated \$250,000 within the Grant Match Fund line item.
- C. The Go Centennial Pilot would launch on August 17, 2016.

7. Previous Actions:

July 11, 2016: Council provided Staff direction to finalize a \$200,000 joint funding agreement with SPIMD for the Go Centennial Pilot and return with Resolution No. 2016-R-52, No. 2016-R-53, and No. 2016-R-54 to the August 8, 2016 City Council Agenda.

8. Suggested Motions:

RECOMMENDED MOTION: I MOVE TO APPROVE RESOLUTION NO. 2016-R-54:

AMENDING THE 2016 BUDGET AND APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE GENERAL FUND.

ALTERNATIVE MOTION: I MOVE TO DENY RESOLUTION NO. 2016-R-54:

AMENDING THE 2016 BUDGET AND APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE GENERAL FUND.

FOR THE FOLLOWING REASONS:

(Councilmember making motion to deny to supply reason(s) for denial)

Attachment A: Resolution 2016-R-54

**CITY OF CENTENNIAL,
COLORADO
RESOLUTION NO. 2016-R-54**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CENTENNIAL, COLORADO, AMENDING THE 2016 BUDGET AND
APPROVING A SUPPLEMENTAL APPROPRIATION FOR THE
GENERAL FUND**

WHEREAS, the City is authorized by Section 11.13 of its Home Rule Charter and Section 29-1-109, C.R.S., to establish and amend its annual budget and to make transfers and supplemental appropriations of budgeted funds; and

WHEREAS, the City provided notice of a public hearing concerning this Resolution in accordance with Section 29-1-106, C.R.S, by publishing notice once in a newspaper of general circulation and held such public hearing as required by state statute and by Section 11.13(a)(2) of the Home Rule Charter; and

WHEREAS, the City and the Southeast Public Improvement Metropolitan District (“SPIMD”), desire to jointly fund and implement a six month, limited funding, pilot program for first and last mile transit (“Go Centennial Pilot Program”); and

WHEREAS, the City and SPIMD intend to enter into an intergovernmental agreement (“IGA”) that sets forth the terms and conditions by which they will jointly fund the Go Centennial Pilot Program and pursuant to which SPIMD will contribute \$200,000.00 in funding for the Go Centennial Pilot Program; and

WHEREAS, the City desires to amend the 2016 budget and approve a supplemental budget appropriation for the General Fund for the Office of Technology & Innovation for use on the Go Centennial Pilot Program which funds are to be contributed by SPIMD under the anticipated IGA; and

WHEREAS, the additional appropriation contemplated by this Resolution does not exceed the amount of estimated revenues and fund balance in budget year 2016.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Centennial, Colorado as follows:

Section 1. Contingent on receipt of funding approval by SPIMD in the amount of \$200,000, the City Council amends the General Fund 2016 Budget for the City of Centennial as follows:

General Fund – 2016 Revenues	2016 Budget As Amended to Date	2016 Amended	\$ Change	% Change
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