City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM 5C

SUBJECT: RESOLUTION NO. 53, SERIES 2025 – A RESOLUTION APPROVING AN ALLOCATION AGREEMENT WITH THE OTHER PUBLIC ENTITY PLAINTIFFS IN THE MARSHALL FIRE LITIGATION

DATE: AUGUST 5, 2025

PREPARED BY: MELINDA CULLEY, DEPUTY CITY ATTORNEY

PRESENTED BY: KATHLEEN KELLY, CITY ATTORNEY

SUMMARY:
An Allocation Agreement has been proposed between the City of Louisville, the Board of County Commissioners of the County of Boulder, the Town of Superior, Boulder County Health, Superior Metropolitan District No. 1, Boulder Valley School District, and Colorado School Districts Self Insurance Pool.

BACKGROUND / PRIOR DISCUSSIONS:
In November 2023, the City hired the law firms of Baron & Budd, P.C. and Diab Chambers LLC (the "Litigation Attorneys") to represent it in its lawsuit against Xcel for damages incurred by the City as a result of the Marshall Fire. These firms also represent the Town of Superior, Boulder County, Boulder County Public Health, Superior Metropolitan District No. 1, Boulder Valley School District, and Colorado School Districts Self Insurance Pool (the "Public Entity Plaintiffs").

DEVELOPMENT PROPOSAL:
N/A

ANALYSIS:
The Litigation Attorneys have requested the Public Entity Plaintiffs sign the attached Allocation Agreement among Participating Entities Collectively, which formalizes the percentages of recovery for each of the Public Entity Plaintiffs in connection with settlement discussions. We understand from the Litigation Attorneys that all of the other Public Entity Plaintiffs have approved the Allocation Agreement.

2025 COUNCIL WORK PLAN:
The Allocation Agreement may support the Council's priorities of economic vitality and safety.

FISCAL IMPACT:
<u>Budgeted?:</u> **Yes**

ALTERNATIVE(S):
Council could choose not to approve the Allocation Agreement.

RECOMMENDATION:
If Council wishes to approve the Allocation Agreement, it may approve Resolution No. 53, Series 2025 - A Resolution Approving an Allocation Agreement with the Other Public Entity Plaintiffs in The Marshall Fire Litigation

ATTACHMENT(S):
1. Resolution No. 53, Series 2025
2. Allocation Agreement Among Participating Entities Collectively

RESOLUTION NO. 53
SERIES 2025

A RESOLUTION APPROVING AN ALLOCATION AGREEMENT WITH THE OTHER PUBLIC ENTITY PLAINTIFFS IN THE MARSHALL FIRE LITIGATION

WHEREAS, an Allocation Agreement has been proposed between the City of Louisville, the Board of County Commissioners of the County of Boulder, the Town of Superior, Boulder County Health, Superior Metropolitan District No. 1, Boulder Valley School District, and Colorado School Districts Self Insurance Pool.

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

Section 1. The City Council hereby approves the Allocation Agreement Among Participating Entities Collectively (the "Agreement") in substantially the same form as the copy of such Agreement accompanying this Resolution.

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

PASSED AND ADOPTED this 5th day of August, 2025.

____
Christopher M. Leh, Mayor

ATTEST:

____
Genny Kline, Interim City Clerk

Allocation Agreement Among Participating Entities Collectively

WHEREAS the Board of County Commissioners of the County of Boulder, Town of Superior, City of Louisville, Boulder County Public Health, Superior Metropolitan District No. 1, Boulder Valley School District, and Colorado School Districts Self Insurance Pool (collectively, “Participating Entities”, or singularly “Participating Entity”) were and are affected by the 2021 Marshall Fire;

WHEREAS the Participating Entities claim that these damages were caused by the actions and/or inactions of Xcel Energy, Inc., Public Service Company Of Colorado D/B/A Xcel Energy, Xcel Energy Services, Inc., Teleport Communications America, LLC, and/or Qwest Corporation (“Defendants”), and for which each Participating Entity has filed a lawsuit to recover damages from Defendants associated with the Marshall Fire (“Cases”);

WHEREAS the United States Federal Emergency Management Agency (“FEMA”) has obligated funds, will obligate funds, has made payments, or will make monetary payments to several Participating Entities in connection with public assistance programs resulting from federal or state emergency/disaster declarations and/or resulting from the Marshall Fire (“Disaster/Public Assistance”);

WHEREAS the Participating Entities have engaged, or will engage, in good faith negotiations with Defendants regarding Participating Entities’ legal damages, (“Settlement Discussions”); and,

WHEREAS an anticipated Settlement Agreement would include one collective settlement amount to resolve all Participating Entities’ respective legal claims, including those for which particular Participating Entities have received Disaster/Public Assistance;

The Participating Entities hereby enter into this Allocation Protocol Agreement (hereinafter “Agreement”) to equitably and fairly allocate the collective settlement amount (hereinafter, “Global Settlement”) among and between the Participating Entities:

I. Damages Expert

a. Industrial Economics (hereinafter “IEc”) will serve as the common Damages Expert in connection with the Settlement Discussions (hereinafter, “Damages Expert”).
b. IEc is a qualified and unbiased economist and wildfire damages expert, appropriately selected for this Case.
c. IEc will provide the common expert analysis for each and all Participating Entities, and FEMA, with the intent to provide common and normalized methodologies for the calculation of the same or similar damages for each and all of the Participating Entities, including FEMA obligations. IEc will work with the Participating Entities to agree on all amounts included in a Global Demand (as defined below) of Defendants.
d. To the extent any Participating Entity, Damages Expert, or counsel learn or discover new information or errors that could affect any damages analysis, such

new information or error shall not affect or change the pro-rata calculations and allocations agreed upon on the date of the first mediation. Participating Entities acknowledge that they have been given an opportunity to independently review and verify their respective individual damages. Accordingly, Participating Entities hereby waive and release Damages Expert, Baron & Budd P.C., and Diab Chambers LLP, from any errors, miscalculations or discrepancies that may ultimately affect their pro-rata recoveries and acknowledge that there is a risk that Participating Entities may receive more or less than they might be entitled to.

II. Baron & Budd, P.C. and Diab Chambers LLP

a. During the Settlement Discussions, Baron & Budd and Diab Chambers will advocate for and assert a global demand to Defendants for the legal damages of Participating Entities, which shall also include those losses, expenses, costs and the like for which some or all Participating Entities have received Disaster/Public Assistance (the "Global Demand").
b. The Participating Entities, agree there are no conflicts related to Baron & Budd and Diab Chambers role and participation.
c. Baron & Budd and Diab Chambers will negotiate resolution with FEMA regarding their share of gross recoveries from obligated Participating Entities resulting from a Master Settlement agreement, including FEMA's pro-rata share of attorneys' fees and costs.
d. The Participating Entities will share pro-rata in accordance with this Agreement in any amounts the Participating Entities collectively receive in settlement of the claims that the Participating Entities assert against Defendants.

III. Minimum Payment[1]

a. Each and every Participating Entity with a demand that is less than one hundred and fifty thousand dollars ($150,000) shall receive a Minimum Payment equal to one hundred percent (100%) of their demand, not to exceed one hundred forty-nine thousand nine hundred ninety-nine dollars ($149,999), minus costs and attorneys' fees.
b. Each and every Participating Entity with a demand that is greater than or equal to one hundred fifty thousand dollars ($150,000) shall receive a Minimum Payment of one hundred fifty thousand dollars ($150,000), minus costs and attorneys' fees.

[1] Minimum payment ("Minimum Payment") is defined herein as the minimum settlement amount that will be attributed to a Participating Entity pursuant to the guidelines set forth in Section III of this Agreement. Costs and fees will be deducted from the Minimum Payment prior to disbursement. The Minimum Payment assumes a successful litigation and resolution sufficient to meet these thresholds. The Participating Entities understand and acknowledge that during the course of any litigation, there is risk that the litigation does not develop as planned and a settlement is not guaranteed.

c. Each and every Participating Entity will receive at least the Minimum Payment by executing this Agreement and any Master Settlement Agreement for a Global Settlement. The Minimum Payment shall apply to the Participating Entities as defined herein.

IV. Pro-Rata Allocation

a. The Global Demand will include the damages for each and all Participating Entities, including those damages for which Participating Entities incurred a local cost share associated with Disaster/Public Assistance from FEMA. Each damages category shall be treated with equal weight subject to the pro-rata allocation process.

b. Each Participating Entity will have an Allocation Percentage, calculated based on a Numerator and Denominator. The Numerator will be an entity's own total damages. The Denominator will be the total damages sum for all Participating Entities collectively.

V. Global Negotiation Process

a. The Participating Entities will present to and negotiate with Defendants using one Global Demand Denominator, thereafter, engaging in one bilateral negotiation.

b. Each Participating Entity's respective recoveries will be reduced pro-rata (in accordance with the Allocation Percentages) as the bilateral negotiation reduces the Global Demand throughout the Global Negotiation Process.

c. The Participating Entities have the discretion whether to resolve all claims included in the Global Demand Denominator, and Participating Entities will take into consideration all legal, factual, and strategic matters when deciding whether to resolve the claims within the Global Demand.

d. Each Participating Entity must agree to a Global Settlement in order for that Global Settlement to have effect as to any Participating Entity. Nothing herein is a waiver or release of any rights whatsoever to control the outcome of an entity's case, and the choice to participate in a Global Settlement remains in its entirety for each Participating Entity.

VI. Memorialization and Finality

a. The Participating Entities will do all things necessary in a reasonable and timely manner to effectuate the memorialization and documentation of any Settlement Agreement for a Global Settlement, should a Global Settlement be reached.

b. Each of the persons executing this Agreement warrants that they are empowered and authorized to so execute and have the authority to fully bind the Participating Entity or Participating Entities for whom they are signing to the terms of this Agreement.

c. This Agreement may be signed in counterparts, which taken together shall constitute one and the same Agreement, and which may be signed and transmitted by facsimile or e-mail. Once this Agreement has been fully executed by all

Participating Entities, any signed counterpart shall be equivalent to a signed original for all purposes.

d. This Agreement constitutes the entire agreement of the Participating Entities and supersedes all other prior negotiations and agreements with respect to the subject matter hereof and thereof, except that the Participating Entities acknowledge that any joint prosecution agreement and/or confidentiality agreements (if any) heretofore executed between them shall continue in full force and effect.
e. Unless expressly stated herein, this Agreement shall be solely for the benefit of the Participating Entities and no other person or entity shall be a third-party beneficiary hereof.
f. This Agreement may not be waived, modified, amended or supplemented except in a writing signed by all of the Participating Entities.

[Signature pages follow]

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BOULDER

Date: ______________________ ____

BOULDER COUNTY PUBLIC HEALTH

Date: ______________________ ____

CITY OF LOUISVILLE

Date: ______________________ ____

TOWN OF SUPERIOR

Date: ______________________ ____

SUPERIOR METROPOLITAN DISTRICT NO. 1

Date: ______________________ ____

BOULDER VALLEY SCHOOL DISTRICT

Date: ______________________ ____

COLORADO SCHOOL DISTRICTS SELF INSURANCE POOL

Date: ______________________ ______________________________________

COUNSEL

Date: ______________________ ______________________________________

Torri Sherlin
Jason Julius
Baron and Budd, P.C.

COUNSEL

Date: ______________________ ______________________________________

Rob Chambers
Diab Chambers LLP