

**Agenda for the
Regular Meeting of the
Englewood City Council
Monday, April 7, 2014
7:30 pm**

Englewood Civic Center – Council Chambers
1000 Englewood Parkway
Englewood, CO 80110

1. Call to Order.
2. Invocation.
3. Pledge of Allegiance.
4. Roll Call.
5. Consideration of Minutes of Previous Session.
 - a. Minutes from the Regular City Council Meeting of March 17, 2014.
6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. There is an expectation that the presentation will be conducted in a respectful manner. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
 - a. Students from the University of Colorado will perform "Public Notices" in conjunction with their ongoing collaboration with the M12 Collective and the Museum of Outdoor Arts exploring alternative educational practices and citizenship.
7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City Council. There is an expectation that the presentation will be conducted in a respectful manner. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)

Council Response to Public Comment.
8. Communications, Proclamations, and Appointments.
 - a. A proclamation declaring April 18, 2014 as Arbor Day.

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

9. Consent Agenda Items
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 20 – Recommendation from the Utilities Department to adopt a bill for an ordinance authorizing Englewood’s continued participation in the South Platte Water Related Activities Program. **Staff Source: Stewart H. Fonda, Director of Utilities.**
 - ii. Council Bill No. 21 – Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to adopt a bill for an ordinance authorizing a farm lease agreement for farm management services of the Wastewater Treatment Plant’s beneficial use farm near Byers and Bennett, Colorado. **Staff Sources: Stewart H. Fonda, Director of Utilities and Jim Tallent, Treatment Division Manager.**
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 15, approving a memorandum of understanding with the Colorado Electronic Crimes Task Force.
 - ii. Council Bill No. 16, approving a memorandum of understanding with Homeland Security Investigations and Immigration and Customs Enforcement regarding our participation in joint operations and task forces.
 - iii. Council Bill No. 17, authorizing the application for, and acceptance of, a grant through the Urban Areas Security Initiative/North Central Region programs.
 - iv. Council Bill No. 18, authorizing acceptance of a Colorado Internet Crimes Against Children Task Force grant in the amount of \$6,200.
 - c. Resolutions and Motions.
 - i. Recommendation from the Public Works Department to approve, by motion, a Professional Services Agreement with See Architecture, LLC, for design of a Vehicle Wash and Fluid Distribution Station. **Staff Source: Dave Henderson, Deputy Public Works Director.**
10. Public Hearing Items. (None Scheduled.)
11. Ordinances, Resolutions and Motions
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 22 – Recommendation from the Community Development Department to adopt a bill for an ordinance amending sections of Title 16 of the Englewood Municipal Code pertaining to non-conforming structures. Staff further recommends that Council set a Public Hearing for April 21, 2014 to gather public input on the proposed amendments. **Staff Source: Chris Neubecker, Senior Planner.**

- b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 14, as amended, an emergency ordinance creating a moratorium on the establishment of any new medical marijuana businesses that sell, manufacture, or cultivate medical marijuana.
- c. Resolutions and Motions.
 - i. Recommendation from the Finance and Administrative Services Department to approve a resolution for a year-end supplemental appropriation to the 2013 Budget. **Staff Source: Frank Grylewicz, Director of Finance and Administrative Services.**
 - ii. Recommendation from the Utilities Department to approve, by motion, the purchase of a combination unit jet cleaning/vacuuming machine (Vactor truck). Staff recommends awarding the bid to the lowest acceptable bidder, Williams Equipment Co., in the amount of \$278,700. **Staff Source: Stewart H. Fonda, Director of Utilities.**
 - iii. Recommendation from the Utilities Department to approve, by motion, a construction contract to repair the roof slabs on the two three million gallon covered water reservoirs on South Clarkson Street and Sunset Ridge. Staff recommends awarding the contract to the lowest acceptable bidder, Moltz Construction, Inc., in the amount of \$1,188,500. **Staff Source: Stewart H. Fonda, Director of Utilities.**
- 12. General Discussion.
 - a. Mayor's Choice.
 - b. Council Members' Choice.
- 13. City Manager's Report.
- 14. City Attorney's Report.
- 15. Adjournment.



PROCLAMATION

WHEREAS, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the United States and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, trees in the City of Englewood increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, the City of Englewood, Colorado has been recognized for 29 consecutive years as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting ways; and

WHEREAS, the State of Colorado will celebrate Arbor Day on April 18th, 2014;

NOW THEREFORE, I, Randy P. Penn, Mayor of the City of Englewood, Colorado, hereby recognize

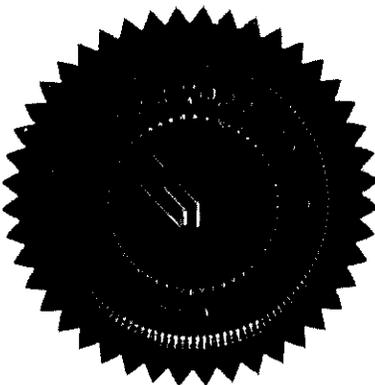
ARBOR DAY

in the City of Englewood, Colorado, and I urge all Englewood citizens to support efforts to care for our trees and woodlands and to support our City's efforts to protect our trees and woodlands.

Further, I urge all Englewood citizens to plant trees to gladden the hearts and promote the well being of present and future generations.

GIVEN under my hand and seal this 7th day of April, 2014.

Randy P. Penn, Mayor



COUNCIL COMMUNICATION

Date April 7, 2014	Agenda Item 9 a i	Subject S. Platte Water Related Activities Program – Endangered Species Act
INITIATED BY Utilities Department		STAFF SOURCE Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved Englewood’s participation in the South Platte River Program at their March 5, 2007 meeting.

RECOMMENDED ACTION

The Englewood Water and Sewer Board recommended at their March 11, 2014 meeting, Council approval of a bill for an ordinance authorizing Englewood’s continued participation in the South Platte Water Related Activities Program for 2014 and the six years thereafter.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The South Platte Water Related Activities Program (SPWRAP) is an agreement with the Department of the Interior to improve the habitat of the following endangered species – the interior least tern, whooping crane, pallid sturgeon and the threatened piping plover. The South Platte Water Related Activities Program (SPWRAP) would improve the habitat, by providing more water in the critical area along the Platte River in Nebraska. Englewood, along with other water users along the South Platte River, are the principals in the SPWRAP agreement. This agreement provides compliance with the Endangered Species Act to participating entities.

The Department of the Interior is funding half of the program, and through the Corps of Engineers, issues 404 Permits for users along the South Platte River. These permits are mandatory for construction, repairs or projects in or along the South Platte River.

FINANCIAL IMPACT

Englewood’s portion of the assessment for the program for 2014 is \$10,458.00 with an annual assessment for an additional 6 years. Future assessment amounts will be computed on treated water use and number of participants with the SPWRAP Program. There are funds in the water fund budgeted for this program with an annual assessment for an additional 6 years, with the assessment subject to Colorado State TABOR restrictions.

LIST OF ATTACHMENTS

Approved minutes from the March 11, 2014 Water and Sewer Board meeting
Bill for an Ordinance

Motion approved unanimously.



8. S. PLATTE WATER RELATED ACTIVITIES PROGRAM – ENDANGERED SPECIES ACT.

The South Platte Water Related Activities Program (SPWRAP) is an agreement with the Department of the Interior to improve the habitat of endangered species. The SPWRAP program improves the endangered species habitat by providing more water in the critical area along the Platte River in Nebraska. This agreement provides compliance with the Endangered Species Act to participating entities.

Englewood's portion of the assessment for the program for 2014 is \$10,458, with an annual assessment for an additional six years. Future assessment amounts will be computed on treated water use and number of participants.

Motion: To recommend Council approval of Englewood's continued participation in the S. Platte Water Related Activities Program and assessment for 2014 and approving the assessment, based on water consumption, for six years thereafter.

Moved: Habenicht

Seconded: Waggoner

Motion approved unanimously.

The meeting adjourned at 5:30 p.m.

The next Water and Sewer Board meeting will be Tuesday, April 8, 2014 at 5:00 p.m. in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 20
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING THE CITY OF ENGLEWOOD, COLORADO TO PARTICIPATE IN THE SOUTH PLATTE WATER RELATED ACTIVITIES PROGRAM, INC. (SPWRAP) WITH THE DEPARTMENT OF THE INTERIOR TO IMPROVE THE HABITAT BY PROVIDING MORE WATER IN THE CRITICAL AREA ALONG THE PLATTE RIVER IN NEBRASKA AND PROVIDE COMPLIANCE WITH THE ENDANGERED SPECIES ACT.

WHEREAS, in 1997 the governors of the states of Colorado, Nebraska and Wyoming signed an agreement with the Department of Interior to improve the habitat for endangered species along the Platte River and tributaries; which agreement promised participation by the users of the Platte River in each state and the Federal government; and

WHEREAS, one aspect of this agreement is a program called "South Platte Water Related Activities Program, Inc." (SPWRAP), a nonprofit which was set up for the purpose of coordinating efforts to benefit the endangered species along the Platte River; and

WHEREAS, the South Platte Water Related Activities Program (SPWRAP) is an intergovernmental agreement with the Department of the Interior to improve the habitat of the following endangered species – the Interior Least Tern, Whooping Crane, Pallid Sturgeon and the threatened Piping Plover; and

WHEREAS, the South Platte Water related Activities Program (SPWRAP) would improve the habitat, by providing more water in the critical area along the Platte River in Nebraska; and

WHEREAS, the City of Englewood, Colorado, along with other water users along the South Platte River, are the principals in the SPWRAP Agreement, which provides compliance with the Endangered Species Act by participating entities; and

WHEREAS, the Department of the Interior is funding half of the program, and through the Corps of Engineers, issues 404 Permits for users along the South Platte River; and

WHEREAS, these permits are mandatory for construction, repairs or projects in or along the South Platte River; and

WHEREAS, the Englewood City Council approved Englewood's participation in the South Platte Water Related Activities Program by the passage of Resolution No. 39, Series of 2007; and

WHEREAS, Englewood's portion of the assessment for the SPWRAP Program for 2014 is \$10,458.00 with an annual assessment for an additional 6 years, with the assessment subject to the Colorado State TABOR restrictions; and

WHEREAS, future assessment amounts will be computed on treated water use and the number of participants with the SPWRAP Program; and

WHEREAS, the Englewood Water and Sewer Board recommended the City's participation in the South Platte Water Related Activities Program for 2014 and the six years thereafter at their March 11, 2014 meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes Englewood's participation in the South Platte River Program with the Department of the Interior to improve the habitat of certain endangered species until the year 2020, subject to the Colorado State TABOR restrictions, attached hereto as Exhibit A.

Introduced, read in full, and passed on first reading on the 7th day of April, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 11th day of April, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 9th day of April, 2014 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 7th day of April, 2014.

Loucrishia A. Ellis



South Platte Water Related Activities Program, Inc.
220 Water Avenue, Berthoud, Colorado, 80513

January 13, 2014

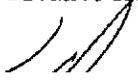
RE: SPWRAP Municipal Source Water Usage Questionnaire

Dear SPWRAP Municipal Member;

As a signatory to the Platte River Recovery & Implementation Program (PRRIP) the State of Colorado is required to provide source water use data every 5 years detailing the usage of water in the South Platte River drainage in Colorado. This information is used to verify and update the assumed processes and data that were initially used during PRRIP negotiations. SPWRAP is contractually obligated to collect and provide some of this data to the State. We need your assistance with completing the attached questionnaire to meet these contractual obligations.

In order to collate and report the data to the State by the due date, we respectfully request you return the questionnaire with a copy of your 2014 Reporting Form & Assessment Invoice, including payment, which is due by **March 3, 2014**. If you have questions regarding the completion of the questionnaire, please contact Jon Altenhofen at NCWCD as indicated at the top of the questionnaire.

Thank you in advance for your assistance.

Sincerely, 

 Kevin Urfe
Executive Director

South Platte Water Related Activities Program, Inc. (SPWRAP)

2014 Questionnaire on Sources of Water Supply - Required for Colorado 3-States PRRIP reporting.

Have questions? Contact Jon Altenhofen at

or call 970-622-2236.

Please return by March 3, 2014 with 2014 Reporting Form & Assessment Invoice and Payment

Reporting Entity:	CITY OF ENGLEWOOD		
Mailing Address:	1000 Englewood Pkwy.	County:	Arapahoe
	Englewood, CO 80110		
Email Address:			
Phone Number:			
Submitted By:	Stewart H. Fonda	Date:	
Title:	Director of Utilities		

Please fill in following blanks:

Years are calendar years (January-December)

Population Served with Treated Water

2009-2013 Average

31,000

For the Treated Water Use on your 2014 Reporting Form list the following % sources (should add to 100%):

2009-2013 Average

<u>% Transbasin Imports</u>	_____ %
<u>% Native South Platte Flow Development</u> (Surface Water and Tributary Groundwater)	100 %
<u>% Nontributary Groundwater</u>	_____ %
<u>% In Basin Agricultural Conversion:</u> (All acquired agriculture water rights)	_____ %
Total	100 %

Water Conservation Question: Reduction in water use due to residential conservation will be computed from total gpcd for residential deliveries (gallons per capita per day) as compared to prior reporting/studies:

5 year Average

2009-2013

90 gpcd (residential base line)

Wastewater - Reuse/Exchange Question: % reuse of all sources actually reused after wastewater treatment (Directly after treatment--by pipeline or flow downriver for rediversion and indirectly by exchange/augmentation:

Total of all reuse):

5 year Average

2009-2013

_____ %

South Platte Water Related Activities Program, Inc.

Municipal (Class M) Membership

2014 Reporting Form & Assessment Invoice

A. Instructions:

Please fill in this form including membership information, water use data, and the assessment as calculated. Send payment for your SPWRAP annual assessment to the address listed at the bottom of this form.

Municipal Member Entity	CITY OF ENGLEWOOD		
Mailing Address	1000 ENGLEWOOD PARKWAY		
	ENGLEWOOD, CO 80110		
email Address	-		
Phone Number	303-762-2636		
Submitted By	Stewart H. Fonda	2-25-14	
Title	Director of Utilities	Date	

B. Treated Water Use (Previous 5-Year Average, if available)

Note: A member's water use for purposes of defining the number of single-family equivalent taps for SPWRAP is defined as "any treated water deliveries from sources of water owned by the member."

	(A)	(B)	(C)	(D) = A + B - C
Year	Treated Water Production at Member's Plant(s) ¹ (acre feet)	Additions ² (acre feet)	Subtractions ³ (acre feet)	Total Treated Water Use (acre feet)
2009	5,683			5,683
2010	6,263			6,263
2011	5,718			5,718
2012	5,770			5,770
2013	5,616			5,616
Average Adjusted Treated Water Use⁴				5,810

¹The total amount of treated water produced at your entity's water treatment facility

²Add any treated water that is owned by your entity but treated by another entity.

³Subtract any water treated at your facility but not owned by your entity.

⁴Equals the sum divided by the number of years reported.

C. Calculation of Single Family Equivalents, Membership Units and Annual Assessment

1	Previous 5-Year Average (2009-2013) Treated Water Use (AF)	5,810
2	Use per S.F. Account (AF/SFE) ⁵	0.50
3	Single Family Equivalents (No. 1 divided by No. 2)	11,620
4	SPWRAP Member Units per SFE ⁵	6.0
5	Total SPWRAP Member Units (No. 3 multiplied by No. 4)	69,720
6	2014 SPWRAP Assessment (per member unit) ⁵	\$ 0.15
7	Calculated Assessment (No. 5 multiplied by No. 6)	10,458.00
8	Minimum Assessment: ⁷	\$50.00
9	2014 SPWRAP Assessment (enter larger of line 7 or 8 above)	10,458.00
	If you are paying your assessment for all remaining years of the PRRIP "First Increment" as described in Note 7, check here	

⁵Numbers 2, 4 & 6 above are fixed for all members in 2014

D. Payment of Assessment (Due by March 3rd in 2014)

Payment of the annual assessment will provide membership in SPWRAP and coverage under the Platte River Recovery Implementation Program through calendar year 2014.

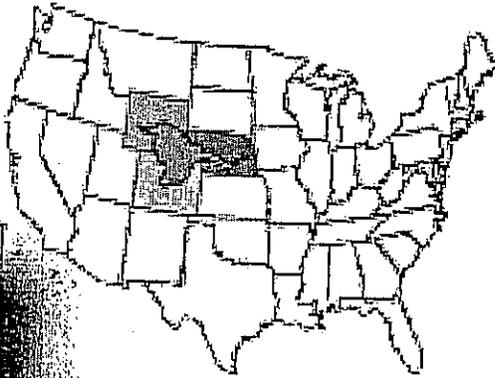
Please make check payable to "SPWRAP" and send to the following address:⁶

SPWRAP
% Northern Colorado Water Conservancy District
220 Water Avenue
Berthoud, Colorado, 80513

⁶If your entity requires a separate invoice please mail completed form to the above address. Please indicate that an invoice is requested.

⁷SPWRAP has established a minimum annual assessment of \$50. Also, a member whose annual assessment is \$200 or less has the option of making a one-time assessment payment that is thirteen times (the length of the Program first increment) their calculated annual assessment. If a member's calculated annual assessment is \$2, thirteen times that amount would be \$26. However, since the minimum assessment is \$50, the member pays \$50 one time and is covered for the first increment of the Program. If a member's calculated annual assessment is \$6, the member can either pay \$50 each year, or make a one-time assessment payment of \$78 (\$6 x 13). Members should consider the possible benefits of making a one-time payment.

**Notes: This reporting form may be revised in the future to reflect information needed to comply with Program requirements. Entities electing to join after 2007 will be required to pay the assessment for the year they join the program. In addition the new member must pay assessments for all prior years of the program, plus 4% interest, compounded annually.*



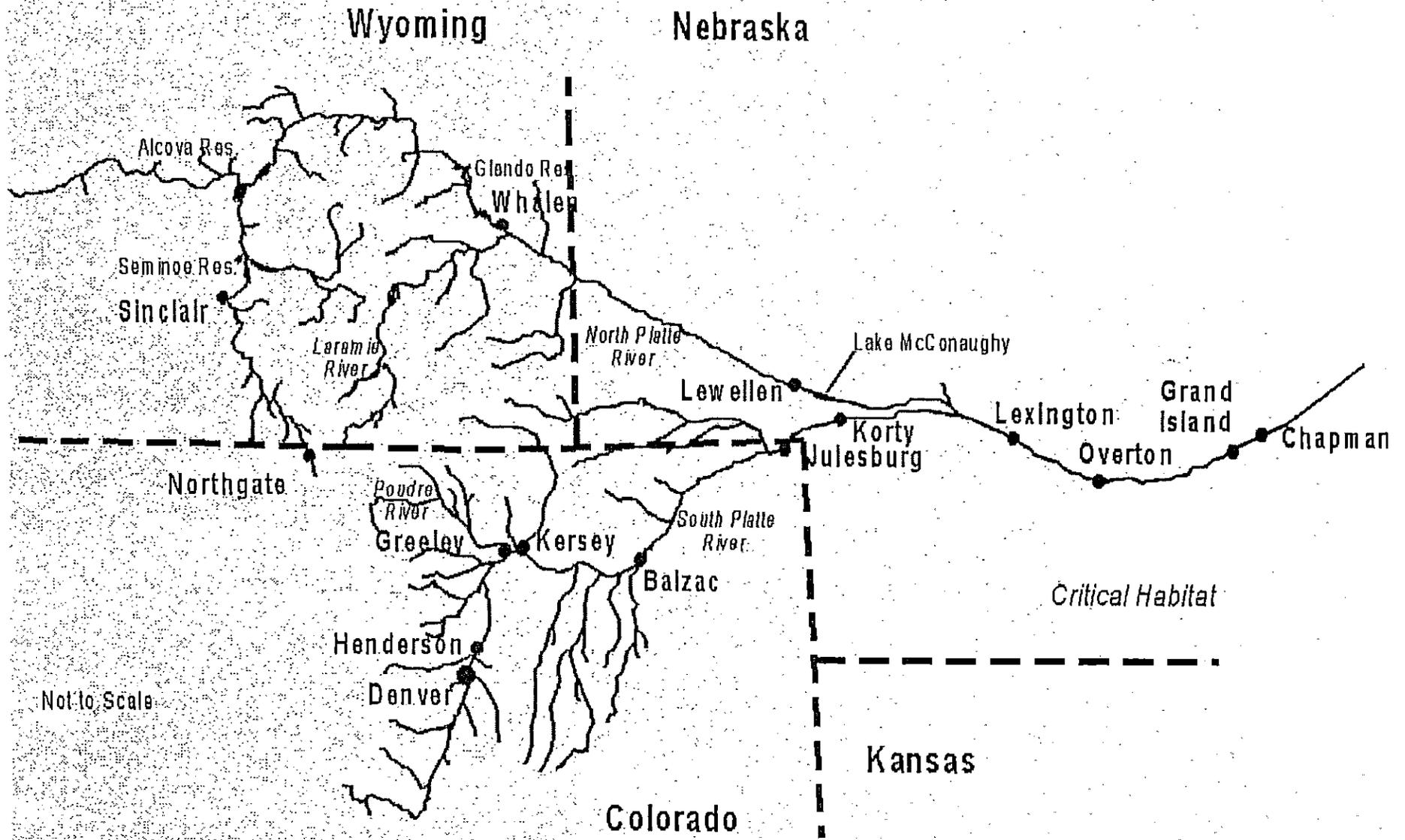
Wyoming

Nebraska

Colorado

**Platte River
Program
Area**

Platte River Basin



The South Platte Water Related Activities Program

Since the late 1970's, conflicts between water use and endangered species protection have affected federal permitting of existing and planned irrigation, municipal and industrial water supply projects in the Platte River basin. These are 404 permits issued by the Army Corps of Engineers whenever work is done in the South Platte River or any of its tributaries.

In 1997, the Governors of the States of Colorado, Nebraska and Wyoming signed an agreement with the Department of the Interior to improve and/or study the habitat of four endangered species in the central Platte River in Nebraska (endangered interior least tern, whooping crane and pallid sturgeon and the threatened piping plover (target species)). Some Colorado water users have incorporated into the South Platte Water Related Activities Program, Inc. (SPWRAP), a Colorado nonprofit corporation, to represent users and partner with the State to ensure compliance with Program obligations. SPWRAP will serve as the vehicle by which Colorado South Platte water users participate in the Program, and the exclusive means by which they will obtain the regulatory benefits of the Program. The Program was finalized in October, 2006. This program will allow water projects to be initiated with relatively little effort required for Endangered Species Act (ESA) compliance.

The program is a basin-wide effort undertaken by the 3 States and the Department of the Interior to provide benefits for the endangered interior lesser tern, whooping crane, and pallid sturgeon and the threatened piping plover (the target species). The habitat for these species is in Nebraska near Grand Island. Through the program the states and the federal government will provide land, water and systematic monitoring and research.

The program is designed to be incremental, with the first increment lasting at least 13 years. During this time the objectives are to:

1. retine and improve flows in the central Platte River by an average of 130,000 to 150,000 acre-feet per year at Grand Island;
2. protect, restore and maintain 10,000 acres of habitat;
3. Implement the integrated monitoring and research plan through the Adaptive Management Plan.

The monetary cost of the first increment of the program is \$187 million (2005). The States plan to contribute water and land in addition to the monetary contributions. The total burden of money, land and water will be shared equally by the 3 States (50%) and the United States (50%). Basically, Colorado would provide money, Wyoming would provide water and Nebraska would provide land with the United States providing matching contributions.

This program is voluntary to water users along the South Platte River. The downside is that if a federal 404 permit (for any activities in the river or its tributaries) is needed by a water user, that user will be charged past dues to the program or the permit will not be issued. The good news is that by participating in the program, the entity is assured compliance with the Endangered Species Act. Otherwise compliance in the future may cost much more than the program costs. The Program provides substantial benefits to water users in the form of regulatory predictability under the ESA.

The water users' portion is determined by the amount of water used in the past five years. Englewood's contribution will be approximately \$29,000 for this year. Since the ESA went into effect, it was common knowledge that those diverting water (especially in the Platte River basin) would be affected in some way. There were many options discussed as to how water users would comply and some were very detrimental to the diversion of water. The Program will allow compliance without curtailing diversions by Englewood.

- Assessments will change each year depending on the amount of water produced for the previous 5 years.
- The Program would like assessments for the first year paid by April 1, 2007.
- Assessments may change depending on how many entities join.

COUNCIL COMMUNICATION

Date April 7, 2014	Agenda Item 9 a ii	Subject Farm Lease Agreement L/E WWTP Beneficial Use Farms
INITIATED BY Littleton/Englewood Wastewater Treatment Plant – Supervisory Committee	STAFF SOURCE Stewart H. Fonda, Director of Utilities Jim Tallent, Treatment Division Manager	

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council previously approved this and other farm lease agreements.

RECOMMENDED ACTION

The recommended action is to approve, by Ordinance, a 2-year cash-lease agreement for:

1. Clint A. Burnet

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Various farmers perform farm management services on City-owned farm properties near Byers and Bennett, CO. Previously approved by Council, one leased parcel was managed by James Burnet, who recently passed away. His son is willing to take over the existing lease for the remainder of the agreement period.

The Cities of Littleton and Englewood own approximately 6,700 farmable acres to provide a long-term and environmentally safe solution to recycling stabilized wastewater biosolids in a beneficial use farming program. Littleton/Englewood WWTP (L/E WWTP) staff, in coordination with local farmers, provides transportation, application, monitoring and required reporting services for biosolids application on these farms. Farm management services are contracted, via cash-lease, with local farmers to plant, harvest and manage all farming activities.

At the December 19, 2013 L/E WWTP Supervisory Committee meeting, action was approved to proceed with a short-term cash-lease agreement for two years, under existing terms, to Clint A. Burnet. This shorter term will bring all farm lease agreements to be renewed at the same time and can be acted upon by City Council with one ordinance action.

A new 2-year lease document, based on existing, previously approved terms, was prepared by Hill and Robbins and reviewed and approved by both Englewood and Littleton City Attorneys. City of Littleton approved the lease agreement, by Ordinance, March 4, 2014.

FINANCIAL IMPACT

This particular farm lease covers 477.5 acres and with recommended continued cash-lease pricing of \$8.00/acre, firm revenue of \$3,820.00 will be generated each year, regardless of commodity/economy trends.

LIST OF ATTACHMENTS

City of Littleton, CO Bill for an Ordinance authorizing Burnet Farm lease
Proposed Bill for an Ordinance

CITY OF LITTLETON, COLORADO

ORDINANCE NO. 7

Series, 2014

INTRODUCED BY COUNCILMEMBERS: BECKMAN & VALDES

**AN ORDINANCE OF THE CITY OF LITTLETON, COLORADO,
AUTHORIZING THE BURNET FARM LEASE FOR THE
FARMS IN THE LITTLETON/ENGLEWOOD WASTEWATER
TREATMENT PLANT BIOSOLIDS MANAGEMENT PROGRAM**

WHEREAS, the Cities of Littleton and Englewood jointly own properties near Byers and Bennett, Colorado, which are used for the Littleton/Englewood Wastewater Treatment Plant (L/EWWTP) Biosolids Management Program;

WHEREAS, this program uses dryland farm property for long-term applications of domestic wastewater biosolids generated by the L/EWWTP; and

WHEREAS, this lease shall be for a term of one (1) year, commencing on January 1, 2014, and a one (1) year renewal commencing on January 1, 2015.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LITTLETON, COLORADO, THAT:

Section 1: The city council of the City of Littleton hereby authorizes on its properties a farm lease between Clint A. Burnet and the Cities of Littleton and Englewood commencing on January 1, 2014, for a term of one (1) year, renewable annually for one (1) additional year.

Section 2: Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, including each part, section, subsection, sentence, clause or phrase hereof, irrespective of the fact that one or more parts, sections, subsections, sentences, clauses or phrases may be declared invalid.

Section 3: Repealer. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that this repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Ordinance No. 7
Series of 2014
Page 2

1 INTRODUCTION AS A BILL at a regularly scheduled meeting of the city council
2 of the City of Littleton on the 18th day of February, 2014, passed on first reading by a vote of
3 7 FOR and 0 AGAINST; and ordered published by posting at Littleton Center, Bemis
4 Library, the Municipal Courthouse and on the City of Littleton Website.

5 PUBLIC HEARING on the Ordinance to take place on the 4th day of
6 March, 2014, in the council chamber, Littleton Center, 2255 West Berry Avenue,
7 Littleton, Colorado, at the hour of 6:30 p.m., or as soon thereafter as it may be heard.

8
9 PASSED on second and final reading, following public hearing, by a vote of 7 FOR
10 and 0 AGAINST on the 4th day of March, 2014 and ordered published by
11 posting at Littleton Center, Bemis Library, the Municipal Courthouse and on the City of Littleton
12 Website.

13 ATTEST:

14 _____
15 ~~Wendy Heffner~~
16 CITY CLERK

_____ ^D
17 ~~Phil Gorman~~
18 PRESIDENT OF CITY COUNCIL

19 APPROVED AS TO FORM:

20 _____
21 ~~Kristin Schlotorn~~
22 DEPUTY CITY ATTORNEY 

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 21
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING A FARM LEASE FOR THE FARM IN THE
LITTLETON/ENGLEWOOD WASTEWATER TREATMENT PLANT BIOSOLIDS
MANAGEMENT PROGRAM.

WHEREAS, the Cities of Littleton and Englewood jointly own properties near Byers, Colorado and Bennett, Colorado which are used for the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Biosolids Management Program; and

WHEREAS, this Program uses dryland farm property for long-term applications of domestic wastewater biosolids generated by the (L/E WWTP); and

WHEREAS, this leased parcel was managed by James Burnet, who recently passed away and his son is willing to take over the existing lease for the remainder of the agreement period; and

WHEREAS, this lease replaces and supersedes the prior lease agreement commence on January 1, 2014 and is for a term of one (1) year, renewable for one additional year; and

WHEREAS, the L/E WWTP Supervisory Committee approved this lease with Clint A. Burnet at their December 19, 2013 meeting; and

WHEREAS, the City of Littleton approved the lease to Clint A. Burnet on March 4, 2014.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood hereby authorizes a "Farm Lease" between Clint A. Burnet and the Cities of Littleton and Englewood commencing on January 1, 2014, for a term of one (1) year, renewable for one (1) year, ending on December 31, 2015; attached hereto as Exhibit A.

Section 2. The Mayor is hereby authorized to sign the Farm Lease Agreement for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 7th day of April, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 11th day of April, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 9th day of April, 2014 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 7th day of April, 2014.

Loucrishia A. Ellis

FARMLEASE

THIS LEASE is dated as of March 4, 2014, and is made and entered into by and between the Cities of Littleton and Englewood, collectively referred to hereinafter as "Lessor", and Clint A. Burnet, referred to hereinafter as "Lessees". On this date, Lessor has leased to the Lessees the following described premises situated in the County of Arapahoe, State of Colorado, to wit:

That tract of land described as the S/2 of Section 23, except the W 40 feet deeded in Book 636 at Page 9, and the SW/4 of Section 24, all in Township 5 South; Range 63 West of the 6th P.M., containing 477.5 acres, more or less,

together with all buildings and improvements on the premises (hereinafter referred to as the "Leased Property") in accordance with the following terms:

1. This lease replaces and supersedes in its entirety, any prior lease agreement between the parties. This lease shall be for the term of one (1) year, renewable annually for one (1) additional year commencing on January 1, 2014, at the rent of \$8.00 (Eight dollars) per acre per year on farmable acres on the Leased Property (477.5 acres) for a total annual lease payment of \$3,820.00.

2. The lease payment is to be made payable to the order of:

Littleton/Englewood WWTP

and delivered to:

Littleton/Englewood WWTP
c/o Treatment Division Manager
2900 South Platte River Drive
Englewood, CO 80110

by December 31 (following the harvest) of each year that this lease is in effect.

3. Lessees shall thoroughly plow, cultivate and farm in accordance with good farming practices, all lands comprising the Leased Property that are not in grass, fallowed by mutual agreement of the parties, or otherwise unfarmable.

4. Lessees shall use the Leased Property as a dryland farm and for no other purpose whatsoever, and especially will not let or permit the Leased Property to be used for any other business or purpose whatsoever.

5. Lessees shall be responsible for all costs and expenses associated with use of the Leased Property as a dryland farm, except that Lessor, at its own cost and expense, shall be responsible for furnishing, transporting, and applying all fertilizer, in the form of biosolids, to the Leased Property.

6. All fertilizer to be used on the Leased Property shall be transported, furnished, and applied by Lessor at such times and at agronomic rates as determined by Lessor. Lessees shall not apply any fertilizer on the Leased Property without the prior written consent of Lessor. Lessor may use a portion of the Leased Property for staging areas for biosolids application. Staging area size and location will be as determined by Lessor.

7. Lessees shall not assign this lease, sublet, or relinquish the Leased Property, under the penalty of a forfeiture of all the rights of the Lessees under or by virtue of this lease, at the election of the Lessor.

8. Lessees shall protect the Leased Property, including buildings, gates, fences, shrubbery, and improvements thereon from all damages and shall keep the same in the same condition as they are now in, or may be at any time placed in by the Lessor, subject to normal wear and tear. Lessees shall do no act whereby any insurance on buildings may be invalidated and shall not remove, or allow any other person to remove, from the Leased Property any of the buildings, gates, fences, shrubbery, and improvements of any kind.

9. Lessees shall not run furrows so as to cause ditches to wash the Leased Property, unless first having a written consent of the Lessor. Lessees shall clean out and maintain in good repair, during the operation of this Lease, all ditches belonging or appertaining to the Leased Property.

10. Lessees shall well and seasonably put in and tend to the crops grown on the Leased Property, shall have all small grain harvested and threshed by October 1 of each year; and if not harvested and threshed as stated, the Lessor may proceed to do so after ten (10) days notice to the Lessee, and take enough of the Lessee's grain to pay expense of such harvesting or threshing.

11. Lessees shall accept the fences upon said Leased Property as they are now existing.

12. Lessees shall, at the expiration of this Lease, or upon a breach by the Lessees of any of the covenants herein contained, without further notice of any kind, quit and surrender the possession and occupancy of Leased Property in as good condition as careful use and natural wear and tear thereof will permit.

13. All goods and chattels, or any other property used or kept on the Leased Property, shall be held for the rent or damages under this Lease, whether exempt from execution or not, meaning or intending hereby to give the Lessor a valid and first lien upon any and all goods and chattels, crops and other property belonging to the Lessees.

14. Lessees shall cultivate around any structures or facilities constructed by Lessor and where applicable, and shall not impair or hinder, but shall cooperate with Lessor in the use of domestic wastewater biosolids application on the Leased Property.

15. The Lessor reserves the right to cancel the lease during its term for any of the following reasons: a) if the Lessees should take any action or fail to take any action that threatens the Lessor's interest in the Leased Property, including the violation of any

environmental laws, rules, regulations or standards; b) if the Lessees should fail to abide by the Lessor's instructions concerning residual nitrogen levels in the soil and agronomic rates of application of biosolids; c) if the Lessees are farming in a manner which limits the Lessor's ability to apply biosolids to the Leased Property; d) if the Lessees are not farming in a manner that constitutes good farming practices; e) if the Lessor determines that it will no longer utilize the Leased Property for the production of crops.

16. Lessor also reserves the right for itself, its agents and its designees, including other government officials, to enter and to have access, at all reasonable times during the term of this lease, to the Leased Property for the purpose of sampling, application, monitoring, testing, screening, mapping, plotting or doing any other procedure, task or function deemed necessary by Lessor in conjunction with its biosolids production and application operation and for any other purpose including, but not limited to, inspecting the Leased Property and to make such repairs, additions, or improvements as Lessor may deem necessary.

17. It is understood and agreed that the Lessor reserves the right to cancel this lease at its sole discretion. Should Lessor elect to exercise its right of cancellation, it must do so in writing, on or before October 1 prior to the anniversary date hereof, in which event this lease shall be terminated effective on the anniversary date and neither party shall be entitled to further payments or damages as the result of said termination except for any payments due and owing at the time of cancellation.

18. All payments from the Lessee shall become due and payable upon forfeiture of said Lease, or upon abandoning said Leased Property, and if it becomes necessary for the Lessor to bring action at law to recover possession, damage or rent, the Lessees agree to pay a reasonable attorney's fee therefore, and all costs attending the same.

19. Lessees shall indemnify, defend and hold harmless Lessor and its successors, assigns and representatives from and against any and all damages, claims, losses, costs, liabilities, and expenses of any kind whatsoever (including but not limited to reasonable attorney fees) which may be asserted against or suffered by Lessor or the Leased Property or any part thereof, as a result of, on account of or arising from (i) any breach of any covenant, representation; promise, warranty or agreement made by Lessee, or (ii) injuries or damages to person or property resulting or alleged to result from any fault or negligence of Lessee or his agents or employees, or from the possession, use, occupancy, or maintenance of the Leased Property by Lessees, their agents, employees, or affiliates.

20. This Lease shall not be sublet or assigned. Any purported sublease or assignment shall be void, and shall result in immediate termination of this lease.

21. Lessor reserves the right to sell, contract to sell, or grant easements or rights-of-way over, through, under, or on, the Leased Property at any time during the term of this lease, subject to the rights and interests of the Lessees hereunder.

22. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed

effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO LESSOR:

Littleton/Englewood WWTP
c/o Treatment Division Manager
2900 South Platte River Drive
Englewood, CO 80110

TO LESSEES:

Clint A. Burnet
50555 East County Road 30
Bennett, CO 80102

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

This lease shall be in effect as of the date first above written.

LESSOR:

CITY ENGLEWOOD

By: Randy P. Penn, Mayor

CITY OF LITTLETON

By: Phil Gammec, Mayor

By: [Signature] Littleton, CO
Date: [Signature]

LESSEES:

By: Clint A. Burnet

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 15
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT ENTITLED "MEMORANDUM OF UNDERSTANDING" BETWEEN THE UNITED STATES SECRET SERVICE AND THE CITY OF ENGLEWOOD, COLORADO PERTAINING TO COLORADO ELECTRONIC CRIMES TASK FORCE.

WHEREAS, the U.S. Secret Service was mandated to establish a nationwide network of Electronic Crimes Task Forces (ECTFs); and

WHEREAS, the Electronic Crimes Task Force (ECTF) network is to bring together not only federal, state and local law enforcement, but also prosecutors, private industry and academia for the purpose of prevention, detection, mitigation and aggressive investigation of attacks on the nation's financial and critical infrastructures; and

WHEREAS, the U. S. Secret Service's ECTF and Electronic Crimes Working Group initiatives prioritize investigative cases that involve electronic crimes; and

WHEREAS, these initiatives provide necessary support and resources to field investigations which meet the following criteria: significant economic or community impact; participation of organized criminal groups involving multiple districts or transnational organizations; and the use of schemes involving new technology; and

WHEREAS, the MOU is established pursuant to provisions of the Treasury Forfeiture Fund Act of 1992, 31 USC 9703, as amended; which established the Department of the Treasury Forfeiture Fund and authorized the payment of certain overtime expenditures, travel, fuel, training, equipment and other similar costs of State and Local Law enforcement officers, that are involved in joint operations, with a Department of the Treasury law enforcement organization, as prescribed in 31 USC 9703 (a) (I) (hereinafter "overtime costs and other expenses"); and

WHEREAS, the Englewood Police Department will assign Englewood officer(s) to the Task Force to assist the U.S. Secret Service's Colorado Electronic Crimes Task Force in conducting official investigations, and Englewood will remain responsible for establishing the salary and benefits, including overtime of the officer(s) assigned to the Task Force and making all payments due to the assigned officer(s); and

WHEREAS, Englewood will submit all reimbursement hours of overtime costs and all other expenses of the assigned Englewood officer(s) to the U.S. Secret Service Task Force for reimbursement; and

WHEREAS, federal funds are being used for this project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the Memorandum of Understanding Between the United States Secret Service and the City of Englewood, Colorado pertaining to Englewood's participation in the Colorado Electronic Crimes Task Force (ECTF) and reimbursement to the City by the ECTF, attached hereto as "Exhibit A".

Section 2. The Mayor is hereby authorized to sign said Agreement for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 17th day of March, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 21st day of March, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 19th day of March, 2014 for thirty (30) days.

Read by title and passed on final reading on the 7th day of April, 2014.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2014, on the 11th day of April, 2014.

Published by title on the City's official website beginning on the 9th day of April, 2014 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2014.

Loucrishia A. Ellis

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE Englewood Police Department
AND
THE UNITED STATES SECRET SERVICE**

The Englewood Police Department and the United States Secret Service (USSS) enter into this memorandum of understanding (MOU), which becomes effective with the signatures of both parties and remains in effect until terminated by the mutual agreement of the Englewood Police Department and the USSS or upon 30 day written notice by either party to this agreement.

I. AUTHORITY

This MOU is established pursuant to provisions of the Treasury Forfeiture Fund Act of 1992, 31 USC 9703, as amended. This act established the Department of the Treasury Forfeiture Fund and authorized the payment of certain overtime expenditures, travel, fuel, training, equipment and other similar costs of State and Local law enforcement officers, that are involved in joint operations, with a Department of the Treasury law enforcement organization, as prescribed in 31 USC 9703 (a)(1)(I)(hereinafter "overtime costs and other expenses").

II. PURPOSE

This MOU establishes the procedures and responsibilities of both the Englewood Police Department and the USSS for the reimbursement of certain overtime costs and other expenses pursuant to 31 USC 9703.

III. CONDITIONS AND PROCEDURES

The parties agree to the following conditions:

- (a) The Englewood Police Department may request reimbursement of payment of overtime costs and other expenses directly related to work performed by its officer(s) assigned to assist the U.S. Secret Service's Colorado Electronic Crimes Task Force in conducting official investigations. The Englewood Police Department will submit all requests for reimbursement payments, together with appropriate documentation, to the U.S. Secret Service's Colorado Electronic Crimes Task Force Supervisor. Request for reimbursement will be based solely upon overtime worked and other expenses performed on behalf of the U.S. Secret Service's Colorado Electronic Crimes Task Force.

- (b) All reimbursement hours of overtime costs and all other expenses covered under this MOU must be approved and certified by the U.S. Secret Service Task Force supervisor. The reimbursable overtime payments will be based upon the actual

hourly overtime rate, exclusive of matching employer contributions for any taxes or benefits.

- (c) The U.S. Secret Service Task Force supervisor will forward all approved reimbursement requests through the Special Agent in Charge (SAIC) Criminal Investigative Division, Office of Investigations, to the Treasury Forfeiture Fund's payment agent, the U.S. Customs National Finance Center (NFC).
- (d) During the period of assignment to the Colorado Electronic Crimes Task Force, the Englewood Police Department will remain responsible for establishing the salary and benefits, including overtime of the officer(s) assigned to the Task Force and making all payments due them. Reimbursement under this MOU is contingent upon the availability of mandatory funds allocated to the U.S. Secret Service through the Department of the Treasury Forfeiture fund.
- (e) The Englewood Police Department shall permit and have readily available for examination and auditing by the U.S. Secret Service, the Department of Treasury, the Comptroller of the United States, and any of their duly authorized agents and representatives, any and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. They shall maintain all such records and reports until all audits and examinations are completed and resolved, or for a period of three (3) years, which ever is sooner.
- (f) Payments may be made to the extent they are included in the U.S. Secret Service Fiscal Year Plan and the monies are available within the Department of Treasury Forfeiture Fund to satisfy the request(s) for reimbursable expenses. It should also be understood that the total amount(s) made available to the U.S. Secret Service through the Department of the Treasury Forfeiture Fund, for reimbursement to the Englewood Police Department, could change at any time.
- (g) Pursuant to the Treasury Executive Office for Asset Forfeiture (TEOAF) directive number 18, the maximum reimbursement entitlement for overtime costs to any one law enforcement official cannot exceed fifteen-thousand (\$15,000.00) dollars during the fiscal year.
- (h) This document does not obligate funds. Funding authority will be provided through other documents.

- (i) The Englewood Police Department shall provide the U.S. Secret Service within 10 days of the signing of this MOU, with their agency's mailing address, contact name, telephone number and tax identification number. Further, this agency must provide the name, account number and ABA routing number of the financial institution where the (Name of Law Enforcement Agency) wants the Electronic Funds transfer (EFT) payment deposited for the reimbursement of overtime salary costs. Failure to provide this information within the prescribed period of time will nullify this MOU agreement.

IV. REVISIONS

The terms of this MOU may be amended upon the written approval of both the (Name of Law Enforcement Agency) and the U.S. Secret Service. Such amendment is effective upon the date of approval.

U.S. Secret Service
Denver Field Office

Englewood Police Department

SAIC Bruce Ward

Mayor Randy Penn

Date: _____

Date: _____

SAIC Edward Lowery
U.S. Secret Service, Office of Investigations
Criminal Investigative Division

Date: _____

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 16
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT AND HOMELAND SECURITY INVESTIGATIONS AND THE CITY OF ENGLEWOOD, COLORADO PERTAINING TO IMMIGRATION AND CUSTOMS ENFORCEMENT.

WHEREAS, the agreement is established pursuant to the provisions of 31 U.S.C. 9703, the Treasury Forfeiture Fund Act of 1992, which provides for the reimbursement of certain expenses incurred by local, county, and state law enforcement agencies as participants of joint operations/task forces with a federal agency participating in the Treasury Forfeiture Fund; and

WHEREAS, the agreement with Homeland Security Investigations (HSI) and Immigration and Customs Enforcement (ICE) establishes the City of Englewood Police Department participation as needed on joint operations and investigations that have a nexus to the City of Englewood; and

WHEREAS, the Englewood Police Department will assign Englewood officer(s) to the Homeland Security Investigations or joint operations and

WHEREAS, Englewood will remain responsible, as the employer of the officers assigned to the investigation, for payment of overtime salaries and related benefits (tax withholdings, insurance coverage, etc.) and all other requirements under the law, regulation, ordinance, or contract, regardless of the reimbursable overtime charges incurred; and

WHEREAS, the Treasury Forfeiture Fund will reimburse overtime salaries only; and

WHEREAS, Englewood will submit a Englewood Request for Reimbursement of Joint Operations Expenses for reimbursement for all reimbursement hours of overtime costs and all other expenses of the assigned Englewood officer(s) to the Treasury Forfeiture Fund for reimbursement; and

WHEREAS, federal funds are being used for this project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the Agreement between the U.S. Immigration and Customs Enforcement and the City of Englewood, Colorado pertaining to Englewood’s participation in the Homeland Security Investigations (HSI), Immigration and Customs Enforcement (ICE), joint operations/task forces, attached hereto as “Exhibit A”.

Section 2. The Mayor is hereby authorized to sign said Agreement for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 17th day of March, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 21st day of March, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 19th day of March, 2014 for thirty (30) days.

Read by title and passed on final reading on the 7th day of April, 2014.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2014, on the 11th day of April, 2014.

Published by title on the City's official website beginning on the 9th day of April, 2014 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2014.

Loucrishia A. Ellis

**MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN
IMMIGRATION AND CUSTOMS ENFORCEMENT
AND
LOCAL, COUNTY, OR STATE LAW ENFORCEMENT AGENCY
FOR THE REIMBURSEMENT OF JOINT OPERATIONS EXPENSES FROM
THE TREASURY FORFEITURE FUND**

This Memorandum of Understanding (hereafter, "agreement") is entered into by the Englewood Police Department (NCIC CODE CODPD0000) and Homeland Security Investigations (HSI), Immigration and Customs Enforcement (ICE), for the purpose of reimbursing costs incurred by the Englewood Police Department in providing resources to joint operations/task forces.

Payments may be made to the extent that they are included in the ICE Fiscal Year Plan and the funding is available in the Treasury Forfeiture Fund to satisfy request(s) for the reimbursement of overtime and other law enforcement expenses related to joint operations.

I. LIFE OF THIS AGREEMENT

This agreement becomes effective on the date it is signed by both parties and will remain in force unless explicitly terminated, in writing, by either party.

II. AUTHORITY

This agreement is established pursuant to the provisions of 31 U.S.C. 9703, the Treasury Forfeiture Fund Act of 1992, which provides for the reimbursement of certain expenses incurred by local, county, and state law enforcement agencies as participants of joint operations/task forces with a federal agency participating in the Treasury Forfeiture Fund.

III. PURPOSE OF THIS AGREEMENT

This agreement establishes the responsibilities of both parties and the procedures for the reimbursement of certain overtime expenses and other law enforcement expenses pursuant to 31 U.S.C. 9703.

IV. APPLICABILITY OF THIS AGREEMENT

This agreement is valid for all joint investigations led by HSI with the participation of the Englewood Police Department and until terminated, in writing, by either party.

V. TERMS, CONDITIONS, AND PROCEDURES

A. Assignment of Officers

To the maximum extent possible, the Englewood Police Department shall assign dedicated officers to HSI investigations or joint operations. The Englewood Police Department shall provide HSI with the names, titles, last four digits of SSNs, badge or ID numbers, and hourly overtime wages of the officers assigned to the joint operation.

B. Submission of Requests for Reimbursement and Supporting Documentation

1. The Englewood Police Department may request the reimbursement of overtime salary expenses directly related to work on a joint operation with HSI performed by officers assigned to this joint operation. Other investigative expenses (i.e., travel, fuel, training, equipment and other similar costs) incurred by members of the designated joint operation may also be reimbursable.

Requests for reimbursement of overtime expenses should be submitted to the Special Agent in Charge, 5445 DTC Parkway, Suite 600, Greenwood Village, Colorado 80111, within thirty (30) days after the overtime costs have been incurred.

The Englewood Police Department may not request reimbursement of the same expenses from any other Federal law enforcement agency that may also be participating in the investigation.

2. Reimbursement payments will not be made by check. The Englewood Police Department must ensure that the U.S. Customs and Border Protection, National Finance Center (CBP/NFC) has a current ACH form on file for the receipt of reimbursable expenses by electronic funds transfer. The completed, signed ACH form must be sent to:

U.S. Customs and Border Protection
National Finance Center
Attn: Eliot VanVelzen - Forfeiture Fund Team
6650 Telecom Drive, Suite 100
Indianapolis, IN 46278

If any of the requesting agency's bank account information changes, a new ACH form must be completed and provided to the NFC as soon as possible.

3. In order to receive reimbursement of officers' overtime and other expenses related to joint operations, the Englewood Police Department must submit the "Local, County, and State Law Enforcement Agency Request for Reimbursement of Joint Operations Expenses" (invoice), signed by an authorized representative of the agency, and accompanied by a request for reimbursement on agency letterhead, along with supporting documents (i.e., copies of time sheets or receipts).
4. The Englewood Police Department remains fully responsible, as the employer of the officers assigned to the investigation, for payment of overtime salaries and related benefits (tax withholdings, insurance coverage, etc.) and all other requirements under the law, regulation, ordinance, or contract, regardless of the reimbursable overtime charges incurred. The Treasury Forfeiture Fund will reimburse overtime salaries only; benefits are not reimbursable.

- 5. The maximum reimbursable entitlement for overtime worked on behalf of joint investigations is set at \$15,000 per officer per year.
- 6. Requests for reimbursement of joint operations overtime and/or other expenses must be submitted to the Special Agent in Charge, Denver, Colorado, for certification and submission for payment.

VI. PROGRAM AUDIT

This agreement and its provisions are subject to audit by ICE, the Department of the Treasury/Office of Inspector General, the General Accounting Office, and other government designated auditors. The Englewood Police Department agrees to permit such audits and agrees to maintain all records relating to these transactions for a period not less than 3 years and, in the event of an ongoing audit, until the audit is complete.

These audits may include reviews of any and all records, documents, reports, accounts, invoices, and receipts of expenditures related to this agreement, as well as interviews of any and all personnel involved in these transactions.

VII. REVISIONS

The terms of this agreement may only be amended upon the written approval of both parties. The revision becomes effective on the date of approval.

VIII. NO PRIVATE RIGHT CREATED

This is an internal government agreement between ICE and Englewood Police Department and is not intended to confer any right or benefit to any private person or party.

Kumar C. Kibble, Special Agent in Charge
 U.S. Immigration & Customs Enforcement
 5445 DTC Parkway, Suite 600
 Denver, Colorado 80204

Randy Penn, Mayor
 City of Englewood
 1000 Englewood Parkway
 Englewood, CO 80110

Date: _____

Date: _____

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 17
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT REGARDING THE APPLICATION FOR AND ACCEPTANCE OF AN URBAN AREAS SECURITY INITIATIVE (UASI)/NORTH CENTRAL ALL-HAZARDS EMERGENCY MANAGEMENT REGION (NCR) PROGRAM GRANT.

WHEREAS, the North Central All-Hazards Emergency Management Region (NCR) is one of nine emergency preparedness and response Regions within the State of Colorado; and

WHEREAS, formation of the regions has led to a more efficient use of available limited funding and resources; and

WHEREAS, the NCR is responsible for managing the State Homeland Security Grant Program and has a strong partnership the Denver Area Urban Security Initiative (UASI); and

WHEREAS, although the NCR and UASI have different governing structures, many of the committees are joint and work in an integrated, collaborative method; and

WHEREAS, the Urban Areas Security Initiative (UASI)/ North Central All-Hazards Emergency Management Region (NCR) Program is intended to provide financial assistance to address the unique multi-discipline planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, and to assist these areas in building and sustaining capabilities to prevent, protect against, mitigate, respond to, and recover from threats or acts of terrorism using the Whole Community approach; and

WHEREAS, activities implemented with UASI/NCR funds must support terrorism preparedness by building or enhancing capabilities that relate to the prevention of, protection from, mitigation of, response to or recovery from terrorism in order to be considered eligible; and

WHEREAS, many capabilities which support terrorism preparedness simultaneously support preparedness for other hazards; and

WHEREAS, the Urban Areas Security Initiative (UASI)/North Central All-Hazards Emergency Management Region (NCR) will be applying for a grant, and the Englewood Police Department will submit two separate proposals to UASI/NCR to receive grant funding:

- Englewood Police Department will submit a proposal to UASI/NCR to receive grant funding to be used for the purchase of new equipment for the Englewood SWAT Team. \$52,576 - to equip the Englewood SWAT officers to ensure they are prepared to protect the citizens of Englewood and provide additional support to neighboring jurisdictions during a response to a critical incident.
- Englewood Police Department will submit a proposal to UASI/NCR to receive grant funding in the amount of \$7,440.86, for the purchase of new equipment to upgrade the Englewood Police/Fire Command Van and one Police Command Vehicle to ensure the City has the capability to respond to critical incidents.

WHEREAS, the Urban Areas Security Initiative (UASI)/North Central All-Hazards Emergency Management Region (NCR) Grant will be using federal funds for these grants.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the City to apply for and accept the Urban Areas Security Initiative (UASI)/ North Central All-Hazards Emergency Management Region (NCR) Grant Funding for the proposals attached hereto as Exhibits A and B.

Section 2. The Mayor is authorized to execute accept of the UASI/NCR grants for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 17th day of March, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 21st day of March, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 19th day of March, 2014 for thirty (30) days.

Read by title and passed on final reading on the 7th day of April, 2014.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2014, on the 11th day of April, 2014.

Published by title on the City's official website beginning on the 9th day of April, 2014 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2014.

Loucrishia A. Ellis

Grant Project Application

Agency:	Englewood Police Department
Project Title:	SWAT Equipment

The purpose of this project is to equip Englewood SWAT officers to ensure they are prepared to protect the citizens of Englewood and provide additional capability to neighboring jurisdictions during response to a critical incident.

The following information addresses the specific requirements identified in the *interim* grant guidance:

- **This project supports THIRA Planning Scenario 2: Active Shooter**
- **This project supports the following Core Capabilities:**
 - Communications
 - Operation Coordination
 - Incident Operations

- **This project supports NCR Goal 1: Operational Communications**

Public Safety agencies which comprise the responder community of the UASI/NCR will have the ability to talk within and across agencies and jurisdictions via radio and associated communications systems, exchange voice, data and/or video with one another on demand, in real time, when needed, when authorized.

- Measure I: Agencies have operable communications systems that are in place to meet their everyday internal agency requirements.

- **This project supports NCR Goal 8: Incident Operations**

Provide adequate capabilities and resources to effectively manage, equip, prepare and train for critical multi-jurisdictional incidents, ensuring responder safety and health as well as fostering inter-jurisdictional and interdisciplinary coordination and collaboration between each of the different first responder disciplines.

- **This project supports the following Major Event Improvement Plans:**

- Operation Mountain Guardian
- Englewood Active Shooter Exercise
- Various "real-world" incident responses

- **Regional Risk Level:** The City of Englewood lies within the North Central Region (NCR) and borders the City of Denver. Regional risk data indicates the NCR has an overall risk rating of "high"; the only region in the state to hold that level. Department of Local Affairs (DOLA) population data shows that approximately 56% of Colorado's population is housed within the boundaries of the NCR. In addition, the 2009 state capabilities assessment shows that 47% of total first responders in Colorado reside in the NCR. With more than half the civilian population, and less than half of the first responder population housed inside of the NCR, the need for funding to establish and maintain activities that allow for improved responder capability greatly mitigates the risk to the region.

Grant Project Application

Agency:	Englewood Police Department
Project Title:	Command Vehicles Upgrade

The purpose of this project is to upgrade the Englewood Police and Fire Response Command Van and Police Commander's Response vehicle to ensure we have the capability to respond to critical incidents.

The following information addresses the specific requirements identified in the *interim* grant guidance:

• **This project supports the following THIRA Planning Scenarios:**

- Planning Scenario 1: Hazmat Chemical Release
- Planning Scenario 2: Active Shooter
- Planning Scenario 3: Flood

• **This project supports the following Core Capabilities:**

- Communications
- Operation Coordination
- Incident Operations
- Access control
- On-scene security and protection
- Information Sharing and Intelligence; Interdiction & Disruption

• **This project supports the following NCR Goals:**

○ **Goal 1: Operational Communications**

Public Safety agencies which comprise the responder community of the UASI/NCR will have the ability to talk within and across agencies and jurisdictions via radio and associated communications systems, exchange voice, data and/or video with one another on demand, in real time, when needed, when authorized.

- Measure I: Agencies have operable communications systems that are in place to meet their everyday internal agency requirements.

Facilitate the synthesis of information by encouraging agencies and responders to gather information and share that information vertically with the State & Federal agencies, as well as, horizontally with agencies and disciplines in order to facilitate better information sharing capabilities from an all hazards and all crimes perspective. A concerted effort will be placed on outreach in order to enhance relevancy to local jurisdictions.

○ **Goal 8: Incident Operations**

Provide adequate capabilities and resources to effectively manage, equip, prepare and train for critical multi-jurisdictional incidents, ensuring responder safety and health as well as fostering inter-jurisdictional and interdisciplinary coordination and collaboration between each of the different first responder disciplines.

- **This project supports the following Major Event Improvement Plans:**
 - Operation Mountain Guardian
 - Englewood Active Shooter Exercise
 - Various “real-world” incident responses

- **Regional Risk Level:** The City of Englewood lies within the North Central Region (NCR) and borders the City of Denver. Regional risk data indicates the NCR has an overall risk rating of “high”; the only region in the state to hold that level. The Department of Local Affairs (DOLA) population data shows that approximately 56% of Colorado’s population is housed within the boundaries of the NCR. In addition, the 2009 state capabilities assessment shows that 47% of total first responders in Colorado reside in the NCR. With more than half the civilian population, and less than half of the first responder population housed inside of the NCR, the need for funding to establish and maintain activities that allow for improved responder capability greatly mitigates the risk to the region.

Budget

Item	Quantity	Cost Estimate	Total
Desktop pc	1	757.00	757.00
PC lock	1	99.00	99.00
Computer Monitors	2	156.99	313.98
Monitor wall mounts	2	32.99	65.98
Tellular device	1	375.00	375.00
External modem	1	150.00	150.00
Modem antennas	2	189.95	379.90
Printer	1	300.00	300.00
Command Unit Extension Bed for Suburban	1	5000.00	5000.00

Grand Total \$7440.86

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 18
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF COLORADO INTERNET CRIMES AGAINST CHILDREN TASK FORCE GRANT AWARD BETWEEN THE CITY OF COLORADO SPRINGS AND MEMBER PARTIES INCLUDING THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the Englewood City Council previously authorized Englewood's participation in the Internet Crimes Against Children Regional Task Force by the passage of Ordinance No. 58, Series of 2008; and

WHEREAS, The Colorado Internet Crimes Against Children (COICAC) Task Force has been established to assist state and local law enforcement agencies in developing an effective response to cyber enticement and child pornography investigations; and

WHEREAS, this support encompasses investigative, prosecutorial and forensic components, training and technical assistance, victim services, prevention and community education; and

WHEREAS, the COICAC Task Force is partially funded by a grant from the Department of Justice/Office of Juvenile Justice and Delinquency Prevention and grant funds may be provided for training, equipment and investigations; and

WHEREAS, the Colorado Springs Police Department is the grant holder and lead task force agency; and

WHEREAS, Colorado Springs Police Department has received a grant award under the Internet Crimes Against Children grant; and

WHEREAS, the Englewood Police Department, which is in the process of joining the COICAC Task Force, has been approved to receive a sub-award in the amount of \$6,200, which will be used to purchase a laptop computer and "Cellbrite" software which is used for forensic inspections of cell phones; and

WHEREAS, by the passage of this ordinance the Englewood City Council authorizes the City of Englewood Police Department to accept Grant funding which has been awarded to the Englewood; and

WHEREAS, federal funding is used for this Grant which is awarded by the Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. The Colorado Springs Police Department (CSPD) Statement of Grant Award (SOGA), attached hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

Section 2. The Mayor is hereby authorized to sign the acceptance of grant award for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 17th day of March, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 21st day of March, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 19th day of March, 2014 for thirty (30) days.

Read by title and passed on final reading on the 7th day of April, 2014.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2014, on the 11th day of April, 2014.

Published by title on the City's official website beginning on the 9th day of April, 2014 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2014.

Loucrishia A. Ellis



**COLORADO INTERNET CRIMES
AGAINST CHILDREN TASK FORCE**

705 South Nevada Avenue
Colorado Springs, CO 80903
Ph. 719.444.7560 Fax 719.444.7380



February 24, 2014

Hello Officer Fowler:

Enclosed you will find the cover letter signed by Colorado Springs Police Chief Peter Carey, followed by the Statement of Grant Award (SOGA), and your approved budget. The cover letter and SOGA acknowledge your sub-award for funding under the Internet Crimes Against Children Task Force grant, in which CSPD is the lead fiscal agency.

Please read through the cover letter and SOGA; then have the SOGA signed by an authorized signatory for your Agency. Your authorized signatory may be someone from your Agency, your City or County. Once the SOGA is signed, please return the document to the address listed below. The SOGA must be signed (fully executed) PRIOR to spending any grant funds. Once CSPD has received your signed copy and it has been signed by our office, I will scan and email the signed copy back to your ICAC Project Director.

If you have any questions, please do not hesitate to contact me!

Thank you!

Janet Van Kampen
ICAC Task Force Program Coordinator

**Colorado Springs Police Department
Investigations Division
Attn: Janet Van Kampen
Internet Crimes Against Children Task Force
705 South Nevada Avenue
Colorado Springs, CO 80903**

POLICE DEPARTMENT
Peter Carey
Chief of Police



February 18, 2014

Englewood Police Department
Chief John Collins
3615 South Elard Street
Englewood, CO 80110

RE: Statement of Grant Award (SOGA) and Assurances
Grant #2012-MC-FX-K009, Internet Crimes Against Children

Dear Chief Collins:

On behalf of the City of Colorado Springs and the Colorado Springs Police Department, it is my pleasure to inform you that the Colorado Springs Police Department has received a grant award under the Internet Crimes Against Children grant, in which your sub-award for funding has also been awarded in the amount of \$6,200. This grant is offered through the Department of Justice (DOJ), Office of Justice Programs (OJP) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Enclosed you will find the Statement of Grant Award (SOGA). This award is subject to all administrative and financial requirements of the funding source, to include OMB circulars, the Colorado Internet Crimes Against Children Administrative Guide, and the Office of Justice Programs (OJP) Financial Guide, including the timely submission of all financial and programmatic reports.

Prior to expending any grant funds, a fully executed Statement of Grant Award (SOGA), must be returned to our office with the signature of the authorized recipient official. A fully executed Statement of Grant Award is accomplished when the sub-grantee returns a signed original Statement of Grant Award (SOGA) and the Colorado Springs Police Department returns a copy of the fully signed Statement of Grant Award back to the sub-grantee. The original will be kept on file at the Colorado Springs Police Department.

Please return your signed SOGA to:

Colorado Springs Police Department
Investigations Division
Internet Crimes Against Children Task Force
Attention: Janet Van Kampen
705 South Nevada Avenue, MC-1502
Colorado Springs, CO 80903

If you have questions regarding this award, please contact: Janet Van Kampen, at 719-444-7560 or via email at

Congratulations, and we look forward to working with you!

Sincerely,

Peter Carey, Chief of Police

Attachments: Statement of Grant Award (SOGA), 2014 Approved Budget, Special Conditions and Certified Assurances

**COLORADO SPRINGS POLICE DEPARTMENT (CSPD)
STATEMENT OF GRANT AWARD (SOGA)**

SUB GRANTEE AGENCY NAME:	Englewood Police Department
PROJECT DIRECTOR:	Officer Joe Fowler
PROJECT DIRECTOR ADDRESS:	3615 South Elati Street Englewood, CO 80110
GRANT NUMBER:	2012-MC-FX-K009
PROJECT TITLE:	Colorado Internet Crimes Against Children Task Force, Internet Crimes Against Children Grant Award
GRANT PERIOD:	2/18/14 - 5/16/14
DATE ISSUED:	2/18/14
*AWARD AMOUNT:	\$6,200

****Award amount may be changed by written agreement between both parties.***

The attached grant application, including Special Provisions and Certified Assurances, is incorporated herein as a part of this document.

SPECIAL CONDITIONS AND REQUIREMENTS:

1. The sub-grantee agrees to submit to the Colorado Springs Police Department (CSPD), who in turn submits to Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention any written materials that will be published through funds from this award at least thirty (30) working days prior to the targeted dissemination date. All publications must contain the Internet Crimes Against Children logo unless otherwise notified. All publications shall include the following language:

"This project was supported by Grant No. 2012-MC-FX-K009, awarded by the Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice."
2. The sub-grantee must submit yearly to the CSPD one copy of your most recent A-133 audit or financial review, including any management or other auditor comments.
3. All recipients of Federal financial assistance, regardless of the particular funding source, the amount of the grant award, or the number of employees in the workforce, are subject to the prohibitions against unlawful discrimination. In the event of a Federal or State court or Federal or State administrative agency makes and adverse finding of discrimination against your organization after a due process hearing, on the grounds of race, color, religion, national origin, or sex, your organization must submit a copy of the finding to the Colorado Springs Police Department.
4. The sub-grantee agrees to take reasonable steps to provide meaningful access to their programs and activities for persons with limited English proficiency (LEP). For more information on the civil rights responsibilities that sub grantees have in providing language services to LEP individuals, please see the website at www.lep.gov.

5. Grant activities must be based on the approved budget form, within this grant award, which supersedes any earlier budget request submitted. The sub-grantee must secure prior written approval from the Colorado Springs Police Department, Internet Crimes Against Children Unit if there is to be a change in any budget category. Failure to seek prior approval may result in denial of reimbursement.
6. The sub-grantee agency affirms that the parties' agreement consists of a multi-part document; the award letter, Statement of Grant Award (SOGA), approved budget form, grant requirements (by reference), Federal Certified Assurances (by reference), and signatures of persons authorized to sign on behalf of the sub-grantee agency on each part of the document.
7. Review carefully the Office of Justice Programs (OJP) Financial Guide, which includes procedures regarding this document, reimbursement for grant funds, reporting requirements, procurement procedures, as well as the Colorado Internet Crimes Against Children Grant Administration Guide.
8. This grant award will be effective upon the final approval by the CSPD. **No payment or reimbursements will be made for purchases charged to the grant prior to approval from the CSPD.**
9. The authorized official to whom this award letter is addressed is the authorized signing official for this Statement of Grant Award (SOGA). The sub-grantee must promptly notify the CSPD in writing, of any changes in the authorized official, project director, or financial officers.
10. Commencement within 60 days. If the ICAC sub-grantee agency has not commenced this project within 60 days of the start of the approved expenditure request, the sub-grantee must report the following to the CSPD:
 - a. The steps taken to initiate the project;
 - b. The reasons for delay; and
 - c. The expected start date.
11. Operational within 80 days. If the CSPD concludes the project is not operational within 80 days of the original start date of the grant period, the CSPD may begin termination or reduction in grant proceedings.
12. The sub-grantee is expected to consistently perform the funded activities under the grant throughout the duration of the grant period. If the sub-grantee goes a quarter with no grant activity, (to include lack of submission of timely required monthly reporting) it may be cause for the funder to reallocate the funding. The sub-grantee is encouraged to develop a quarterly deployment plan to ensure funds are consistently spent and reporting requirements are met. The CSPD may amend the grant period and provide written notice to the sub-grantee.
13. The recipient agrees that if it currently has an open award of federal funds or if it receives an award of federal funds other than this OJP award, and those award funds have been, are being, or are to be used, in whole or part, for one or more of the identical cost items for which funds are being provided under this OJP award, the recipient will promptly notify, in writing, the CSPD ICAC Program Coordinator for this OJP award, and, if so requested by the CSPD ICAC Program Coordinator, seek a budget modification or change-of-project-scope notice to eliminate any inappropriate duplication of funding.
14. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Department encourages recipients and sub recipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.
15. Financial and Administrative Management:
 - a. The sub-grantee agency assures that fund accounting, auditing, monitoring, evaluation procedures and such records as necessary will be maintained to assure adequate internal fiscal controls, proper financial management, efficient disbursement of funds received, and maintenance of required source documentation for all costs incurred. These principles must be applied for all costs incurred whether charged on a direct or indirect basis.
 - b. All expenditures must be supported by appropriate documentation. Only actual, approved, allowable expenditures will be permitted.

- c. The sub-grantee agency assures that it will comply with the provisions in the current applicable Office of Justice Programs (OJP) Financial Guide, which is hereby incorporated by reference. However, such a guide cannot cover every foreseeable contingency, and the sub grantee agency is ultimately responsible for compliance with applicable state and federal laws, rules and regulations.
- d. The sub-grantee understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of the Colorado Springs Police Department.
- e. The sub-grantee agency will retain all financial records, supporting document and other pertinent records for this award for a least seven (7) years following the end of the nearest upcoming end of state fiscal year, OR at least seven (7) years following the closure of its audit report covering the entire award period, whichever is later.
- f. The sub-grantee agrees to comply with the approved Colorado ICAC Task Force Grant Guide.
- g. The sub-grantee agrees to comply with the OJJDP approved ICAC Task Force Operational and Investigative Standards.
- h. The sub-grantee will accept any and all investigative leads occurring in its jurisdiction that are received from the granting agency and/or the National Center for Missing and Exploited Children (NCMEC), and will report the disposition of pursuant investigations to the granting agency.
- i. The sub-grantee agrees to forward the ICAC Task Force Program Monthly Performance Measures by the 10th of each month for the stats pertaining to the preceding month to the ICAC Program Coordinator, Janet Van Kampen, via email a
- j. The sub-grantee agrees to report any other ICAC related reporting information as needed / requested by the Colorado ICAC Task Force Commander, Administrator or Program Coordinator, as needed to complete OJP/OJJDP requests and requirements.
- k. The sub-grantee will attend meetings and trainings for the Colorado ICAC Task Force when agency resources allow.

16. Payment and Reporting:

- a. The CSPD will pay the sub-grantee agency the reasonable and allowable costs of performance, in accordance with current Colorado State Fiscal rules, not to exceed the amount specified within the Request for Expenditure submitted to the ICAC Task Force Commander for approval.
- b. The CSPD may withhold payment in the event the sub-grantee agency fails to comply with conditions, including all financial reporting requirements and certifications contained in this award.
- c. The sub-grantee agency assures that monthly invoice and cost-reporting submissions in support of monthly award activity shall be submitted by the 20th of each month. Submissions shall be current and actual and shall include supporting documentation. The final request must be made by May 16th, 2014.
- d. The sub-grantee will provide required data and programmatic report to CSPD within 10 days of a deployment under the grant. If deployments occur near the end of a month, the information must be provided to CSPD within 3 days of the end of the month to meet grant deadlines.

17. Procurement and Contracts:

- a. The sub-grantee agency assures that open, competitive procurement procedures will be followed for all purchases under the grant.
- b. The sub-grantee agency assures that no contract or agreement will be made for execution of project activities or provisions of services (other than purchase of supplies or standard commercial or maintenance services) that is not incorporated in the approved application or approved in advance by the CSPD.
- c. The sub-grantee agency assures that contractors/vendors who assist the sub grantee agency to develop specifications, requirements statements of work and/or Request for Proposal for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.
- d. The sub-grantee agency agrees they will not submit items for reimbursement to the CSPD that have not been purchased in accord with the sub grantee's procurement policies, OMB circulars, the Colorado Internet Crimes Against Children Task Force Administrative Guide, and the Office of Justice Programs (OJP) Financial Guide. Submissions that do not meet these procurement requirements may not be reimbursed by the CSPD or the funding agency at CSPD's discretion.

18. Termination or Reduction in grant award:

- a. The CSPD will monitor the performance of the sub-grantee agency against goals and performance standards as found in the request for expenditure. The CSPD will provide reasonable technical assistance to the sub grantee agency in the performance standards and sub grant requirements. Any determination of substandard performance on the part of the sub-grantee agency shall be within the discretion of the CSPD, based upon the CSPD's review of the terms and conditions of the grant award, the application and project summary, the grant terms and assurance, and the requirements of applicable law. Substandard performance, as determined by the CSPD, shall constitute non-compliance, which may result in termination for cause, or reduction of the grant award for cause.
- b. The CSPD may terminate this contract in whole or in part for the CSPD's convenience or because of the failure of the sub-grantee agency to fulfill the grant obligations.

19. Non-supplanting of funds:

- a. The sub-grantee agency certifies that federal funds made available under this grant:
 - i. Will not be used to supplant state or local funds;
 - ii. Where there is a reduced or unchanged local investment, then the sub-grantee agency shall give a written explanation demonstrating the sub grantee-agency's reduced or unchanged commitment would have been necessitated even if federal financial support under this federal grant program had not been made available.

RETURN:

An original signed copy of the Statement of Grant Award (SOGA) shall be returned to:

**Colorado Springs Police Department
Investigations Division
Attention: Janet Van Kampen
705 South Nevada Avenue, MC-1502
Colorado Springs, CO 80903**

After all signatures are obtained, a copy of the Statement of Grant Award (SOGA) and attached letter, will be returned to the sub-grantee agency.

The parties hereto have executed this binding sub grant award

Persons signing for sub-grantee hereby swear and affirm that they are authorized to act on sub-grantee's behalf and acknowledge that the Colorado Springs Police Department is relying on their representations to that effect.

COLORADO SPRINGS POLICE DEPARTMENT APPROVAL		SUB-GRANTEE ACCEPTANCE	
Name and Title of Approving Official:		Name and Title of Authorized Sub-Grantee Official	
Chief Peter Carey Colorado Springs Police Department		Randy P. Penn Mayor	
Signature and Date of Authorized Official		Signature and Date of Authorized Sub-Grantee Recipient Official	
Signature	Date	Signature	Date

**COLORADO ICAC TASK FORCE
2013-2014
APPROVED BUDGET
ENGLEWOOD POLICE DEPARTMENT**

	APPROVED AWARD AMOUNT
BUDGET LINE ITEMS*	
1 POLICE ICAC OVERTIME	\$0
2 TRAVEL/TRAINING	\$0
AIRFARE/FEES	\$0
GROUND TRANSPORTATION	\$0
LODGING	\$0
PER DIEM	\$0
REGISTRATION FEES	\$0
3 COMPUTER EQUIPMENT	\$700
4 SOFTWARE/LICENSE/SUPPLY	\$5,500
TOTAL	\$6,200

***NOTES ON BUDGET LINE ITEMS:**

3 COMPUTER EQUIPMENT - Laptop w/Windows 7 (1@\$700) to be used with Cellebrite software

4 SOFTWARE/LICENSE/SUPPLY - Cellebrite PC Logical Software (1@\$4,500)

Cellebrite 1 yr SMS license (1@\$1,000)

COUNCIL COMMUNICATION

Date April 7, 2014	Agenda Item 9 c i	Subject: Award Professional Services Agreement for "Vehicle Wash & Fluid Distribution Station"
INITIATED BY: Department of Public Works		STAFF SOURCE: Dave Henderson, Deputy Public Works Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Staff discussed this proposed project at the February 3, 2014 Study Session.

RECOMMENDED ACTION

Staff recommends that City Council approve, by motion, a Professional Services Agreement, in the amount of \$45,000, with See Architecture, LLC for design of "Vehicle Wash & Fluid Distribution Station" and authorize the Director of Public Works to execute the agreement.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The City's Servicer Facility requires upgrades to meet current environmental regulations. Our facility's proximity to the S. Platte River requires a diligent effort to keep contaminants from entering the river or contaminating ground water.

Our existing vehicle washing stations require major upgrades. Staff utilized the services of a consultant familiar with current and proposed MS4 Stormwater Regulations to make recommendations. The recommendations include constructing an enclosed vehicle washing station. The enclosed washing station would be a new bay addition at the south end of the existing garage. In conjunction with this addition to the building, staff recommends adding an oil room. Presently, our oils, lubricates, antifreeze, etc. are stored along the wall in the bay area. Our mechanics must pump from the drums into containers and transport within the shop area. The potential for cross contamination and spills, along with the inefficiency of this process is not desirable. A new oil room would provide an area to store drums with a pumping system and hoses to dispense fluids directly to the vehicle being serviced.

See Architecture, LLC assembled a team with experience in the design of other commercial fleet vehicle washing stations. See Architecture has successfully completed other design projects for the City of Englewood and we are confident in the qualifications of team proposed for this design project.

FINANCIAL IMPACT

This Professional Services Agreement is for Phase One (Design and Construction Documents) only. Phases Two (Bidding) and Phase Three (Construction Observation) may be added at a later date pending the City's desire to move forward with construction (see attached proposal from See Architecture, LLC).

Funds for design are budgeted and available in the Servicer Administration account.

LIST OF ATTACHMENTS

Professional Services Agreement
Scope of Work Letter from See Architecture, LLC
Fee Proposal letter from See Architecture, LLC

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this _____ day of _____, 20__, (the "Effective Date") by and between See Architecture, LLC ("Consultant"), and The City of Englewood, Colorado, a municipal corporation organized under the laws of the State of Colorado ("City").

City desires that Consultant, from time to time, provide certain consulting services, systems integration services, data conversion services, training services, and/or related services as described herein, and Consultant desires to perform such services on behalf of City on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Definitions. The terms set forth below shall be defined as follows:

(a) "Intellectual Property Rights" shall mean any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

(b) "Work Product" shall mean all patents, patent applications, inventions, designs, mask works, processes, methodologies, copyrights and copyrightable works, trade secrets including confidential information, data, designs, manuals, training materials and documentation, formulas, knowledge of manufacturing processes, methods, prices, financial and accounting data, products and product specifications and all other Intellectual Property Rights created, developed or prepared, documented and/or

delivered by Consultant, pursuant to the provision of the Services.

2. Statements of Work. During the term hereof and subject to the terms and conditions contained herein, Consultant agrees to provide, on an as requested basis, the consulting services, systems integration services, data conversion services, training services, and related services (the "Services") as further described in Schedule A (the "Statement of Work") for City, and in such additional Statements of Work as may be executed by each of the parties hereto from time to time pursuant to this Agreement. Each Statement of Work shall specify the scope of work, specifications, basis of compensation and payment schedule, estimated length of time required to complete each Statement of Work, including the estimated start/finish dates, and other relevant information and shall incorporate all terms and conditions contained in this Agreement

3. Performance of Services.

(a) **Performance.** Consultant shall perform the Services necessary to complete all projects outlined in a Statement of Work in a timely and professional manner consistent with the specifications, if any, set forth in the Statement of Work, and in accordance with industry standards. Consultant agrees to exercise the highest degree of professionalism, and to utilize its expertise and creative talents in completing the projects outlined in a Statement of Work.

(b) Delays. Consultant agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Consultant's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement or any Statement of Work. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure. Time is expressly made of the essence with respect to this Agreement.

(c) Discrepancies. If anything necessary for the clear understanding of the Services has been omitted from the Agreement specifications or it appears that various instructions are in conflict, Vendor shall secure written instructions from City's project director before proceeding with the performance of the Services affected by such omissions or discrepancies.

4. Invoices and Payment. Unless otherwise provided in a Statement of Work, City shall pay the amounts agreed to in a Statement of Work within thirty (30) days following the acceptance by City of the work called for in a Statement of Work by City. Acceptance procedures shall be outlined in the Statement of Work. If City disputes all or any portion of an invoice for charges, then City shall pay the undisputed portion of the invoice by the due date and shall provide the following notification with respect to the disputed portion of the invoice. City shall notify Consultant as soon as possible of the specific amount disputed and shall provide reasonable detail as to the basis for the dispute. The parties shall then attempt to resolve the disputed portion of such invoice as soon as possible. Upon resolution of the disputed portion, City shall pay to Consultant the resolved amount.

5. Taxes. City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be included in quoted prices. City shall not be obligated to pay or reimburse Consultant for any taxes attributable to the sale of any Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or

assessments, nor any of the foregoing imposed on or payable by Consultant. Upon written notification by City and subsequent verification by Consultant, Consultant shall reimburse or credit, as applicable, City in a timely manner, for taxes erroneously paid by City. City shall provide Consultant with, and Consultant shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

6. Out of Pocket Expenses. Consultant shall be reimbursed only for expenses which are expressly provided for in a Statement of Work or which have been approved in advance in writing by City, provided Consultant has furnished such documentation for authorized expenses as City may reasonably request.

7. Audits. Consultant shall provide such employees and independent auditors and inspectors as City may designate with reasonable access to all sites from which Services are performed for the purposes of performing audits or inspections of Consultant's operations and compliance with this Agreement. Consultant shall provide such auditors and inspectors any reasonable assistance that they may require. Such audits shall be conducted in such a way so that the Services or services to any other customer of Consultant are not impacted adversely.

8. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall continue unless this Agreement is terminated as provided in this Section 8.

(a) Convenience. City may, without cause and without penalty, terminate the provision of Services under Statements of Work upon thirty (30) days prior written notice. Upon such termination, City shall, upon receipt of an invoice from Consultant, pay Consultant for Services actually rendered prior to the effective date of such termination. Charges will be based on time expended for all incomplete tasks as listed in the applicable Statement of Work, and all completed tasks will be charged as indicated in the applicable Statement of Work.

(b) No Outstanding Statements of Work. Either party may terminate this Agreement by providing the other party with at least thirty (30) days prior written notice of termination if there are no outstanding Statements of Work.

(c) Material Breach. If either party materially defaults in the performance of any term of a Statement of Work or this Agreement with respect to a specific Statement of Work (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting party may terminate this Agreement or outstanding Statements of Work by providing ten (10) days prior written notice of termination to the defaulting party.

(d) Bankruptcy or Insolvency. Either party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency laws is filed against that other party and is not dismissed within sixty (60) days after it was filed.

(e) TABOR. The parties understand and acknowledge that each party 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, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period ending upon the next

succeeding December 31. Financial obligations of 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 and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

(f) Return of Property. Upon termination of this Agreement, both parties agree to return to the other all property (including any Confidential Information, as defined in Section 11) of the other party that it may have in its possession or control.

9. City Obligations. City will provide timely access to City personnel, systems and information required for Consultant to perform its obligations hereunder. City shall provide to Consultant's employees performing its obligations hereunder at City's premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services. With respect to all third party hardware or software operated by or on behalf of City, City shall, at no expense to Consultant, obtain all consents, licenses and sublicenses necessary for Consultant to perform under the Statements of Work and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

10. Staff. Consultant is an independent consultant and neither Consultant nor Consultant's staff is, or shall be deemed to be employed by City. City is hereby contracting with Consultant for the Services described in a Statement of Work and Consultant reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by Consultant or Consultant's staff, and City shall not be required to hire, supervise or pay any assistants to help Consultant perform the Services under this Agreement. Except to the extent that Consultant's work must be performed on or with City's computers or City's

existing software, all materials used in providing the Services shall be provided by Consultant.

11. Confidential Information.

(a) **Obligations.** Each party hereto may receive from the other party information which relates to the other party's business, research, development, trade secrets or business affairs ("Confidential Information"). Subject to the provisions and exceptions set forth in the Colorado Open Records Act, CRS Section 24-72-101 et. seq., each party shall protect all Confidential Information of the other party with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Without limiting the generality of the foregoing, each party hereto agrees not to disclose or permit any other person or entity access to the other party's Confidential Information except such disclosure or access shall be permitted to an employee, agent, representative or independent consultant of such party requiring access to the same in order to perform his or her employment or services. Each party shall insure that their employees, agents, representatives, and independent consultants are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section 11. Further, each party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other party. A party hereto shall undertake to immediately notify the other party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall restrict either party with respect to information or data identical or similar to that contained in the Confidential Information of the other party but which (1) that party rightfully possessed before it received such information from the other as evidenced

by written documentation; (2) subsequently becomes publicly available through no fault of that party; (3) is subsequently furnished rightfully to that party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure.

(b) **Know-How.** For the avoidance of doubt neither City nor Consultant shall be prevented from making use of know-how and principles learned or experience gained of a non-proprietary and non-confidential nature.

(c) **Remedies.** Each of the parties hereto agree that if any of them, their officers, employees or anyone obtaining access to the Confidential Information of the other party by, through or under them, breaches any provision of this Section 11, the non-breaching party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching party, its officers or employees directly or indirectly realize or may realize as a result of or growing out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section 11, the parties agree that the non-breaching party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching party arising from a violation of this Section 11 would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the parties agree that the non-breaching party shall be entitled to temporary and permanent injunctive relief against the breaching party, its officers or employees and such other rights and remedies to which the non-breaching party may be entitled to at law, in equity or under this Agreement for any violation of this Section 11. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.

12. Project Managers. Each party shall designate one of its employees to be its Project Manager under each Statement of Work, who shall act for that party on all matters

under the Statement of Work. Each party shall notify the other in writing of any replacement of a Project Manager. The Project Managers for each Statement of Work shall meet as often as either one requests to review the status of the Statement of Work.

13. Representations.

(a) **Authority.** Consultant represents that: (1) Consultant has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (2) the execution of this Agreement by Consultant, and the performance by Consultant of its obligations and duties hereunder, do not and will not violate any agreement to which Consultant is a party or by which it is otherwise bound under any applicable law, rule or regulation; (3) when executed and delivered by Consultant, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (4) Consultant acknowledges that City makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement

(b) **Service.** Consultant agrees that its employees and consultants shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

(c) **Personnel.** Unless a specific number of employees is set forth in the Statement of Work, Consultant agrees it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement or as set forth in the Statement of Work.. During the course of performance of Services, City may, for any or no reason, request replacement of an employee or a proposed employee. In such event, Consultant shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. Consultant shall require employees providing

Services at a City location to comply with applicable City security and safety regulations and policies.

(d) **Compensation and Benefits.** Consultant shall provide for and pay the compensation of employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Consultant or to any employee for Consultant's failure to perform its compensation, benefit, or tax obligations. Consultant shall indemnify and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

14. Indemnification.

(a) **Consultant Indemnification.** Consultant shall indemnify and hold harmless City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the "City Indemnitees") from and against losses, liabilities, expenses and costs (including reasonable fees and disbursements of legal counsel and accountants), bodily and other personal injuries, damage to tangible property, and other damages suffered or incurred by a City Indemnitee to the extent caused by (1) any negligent act or omission by Consultant or its representatives in the performance of Consultant's obligations under this Agreement, or (2) any material breach in a representation, covenant or obligation of Consultant contained in this Agreement.

(b) **Infringement.** Consultant will indemnify, and hold City harmless from all Indemnifiable Losses arising from any third party claims that any Work Product or methodology supplied by Consultant infringes or misappropriates any Intellectual Property rights of any third party; provided, however, that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on: (1) use of the Work Product in combination with products or

services not provided by Consultant to the extent that such infringement or misappropriation would have been avoided if such other products or services had not been used; (2) any modification or enhancement to the Work Product made by City or anyone other than Consultant or its sub-consultants; or (3) use of the Work Product other than as permitted under this Agreement.

(c) Indemnification Procedures.

Notwithstanding anything else contained in this Agreement, no obligation to indemnify which is set forth in this Section 14 shall apply unless the party claiming indemnification notifies the other party as soon as practicable to avoid any prejudice in the claim, suit or proceeding of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge and gives the other party the opportunity to control the response thereto; provided, however, that the party claiming indemnification shall have the right to participate in any legal proceedings to contest a claim for indemnification involving a third party and to be represented by its own attorneys, all at such party's cost and expense; provided further, however, that no settlement or compromise of an asserted third-party claim other than the payment/money may be made without the prior written consent of the party claiming indemnification.

(d) Immunity. City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to City, its officers, or its employees.

15. Insurance.

(a) Requirements. Consultant agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance during the term of this Agreement:

(1) The Consultant shall comply with the Workers' Compensation Act of Colorado and shall provide compensation

insurance to protect the City from and against any and all Workers' Compensation claims arising from performance of the work under this contract. Workers' Compensation insurance must cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, as well as the Employers' Liability within the minimum statutory limits.

(2) Commercial General Liability Insurance and auto liability insurance (including contractual liability insurance) providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence.

(3) Professional Liability/Errors and Omissions Insurance covering acts, errors and omissions arising out of Consultant's operations or Services in an amount not less than one million dollars (\$1,000,000) per claim and in the annual aggregate.

(4) Employee Dishonesty and Computer Fraud Insurance covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Consultant personnel, acting alone or with others.

(b) Approved Companies. All such insurance shall be procured with such insurance companies of good standing, permitted to do business in the country, state or territory where the Services are being performed.

(c) Certificates. Consultant shall provide City with certificates of insurance evidencing compliance with this Section 15 (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Certificates of insurance will list the City of Englewood as an additional insured. Each certificate of insurance shall provide that the issuing company shall not cancel the insurance afforded under the above policies unless notice of such cancellation has been provided to City.

16. Rights in Work Product.

(a) **Generally.** Except as specifically agreed to the contrary in any Statement of Work, all Intellectual Property Rights in and to the Work Product produced or provided by Consultant under any Statement of Work shall remain the property of Consultant. With respect to the Work Product, Consultant unconditionally and irrevocably grants to City during the term of such Intellectual Property Rights, a non-exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, to reproduce, create derivative works of, distribute, publicly perform and publicly display by all means now known or later developed, such Intellectual property Rights.

REUSE DISCLAIMER

Any and all unauthorized reuse of Consultant's Instruments of Service will be at the Owner's sole risk and without liability to the Consultant.

(b) **Know-How.** Notwithstanding anything to the contrary herein, each party and its respective personnel and consultants shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information of the other party.

17. Relationship of Parties. Consultant is acting only as an independent consultant and does not undertake, by this Agreement, any Statement of Work or otherwise, to perform any obligation of City, whether regulatory or contractual, or to assume any responsibility for City's business or operations. Neither party shall act or represent itself, directly or by implication, as an agent of the other, except as expressly authorized in a Statement of Work.

18. Complete Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the matters covered herein.

19. Applicable Law. Consultant shall comply with all applicable laws in performing Services but shall be held harmless for violation of any governmental procurement regulation to which it may be subject but to which reference is not made in the applicable Statement of Work. This Agreement shall be construed in accordance with the laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Arapahoe County, Colorado and each party hereto consents to jurisdiction and venue before such courts.

20. Scope of Agreement. If the scope of any provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.

21. Additional Work. After receipt of a Statement of Work, City, with Consultant's consent, may request Consultant to undertake additional work with respect to such Statement of Work. In such event, City and Consultant shall execute an addendum to the Statement of Work specifying such additional work and the compensation to be paid to Consultant for such additional work.

22. Sub-consultants. Consultant may not subcontract any of the Services to be provided hereunder without the prior written consent of City. In the event of any permitted subcontracting, the agreement with such third party shall provide that, with respect to the subcontracted work, such sub-consultant shall be subject to all of the obligations of Consultant specified in this Agreement.

23. Notices. Any notice provided pursuant to this Agreement shall be in writing to the parties at the addresses set forth below and shall be deemed given (1) if by hand delivery,

upon receipt thereof, (2) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested or (3) one (1) day after deposit with a nationally-recognized overnight courier, specifying overnight priority delivery. Either party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other party hereto.

24. Assignment. This Agreement may not be assigned by Consultant without the prior written consent of City. Except for the prohibition of an assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

25. Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the parties hereto and shall not confer any rights upon any person or entity not a party to this Agreement.

26. Headings. The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth on the first page of this Agreement are incorporated into the body of this Agreement. The exhibits referred to throughout this Agreement and any Statement of Work prepared in conformance with this Agreement are incorporated into this Agreement.

27. Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

28. Force Majeure. If performance by Consultant of any service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of labor disputes, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communications failures,

earthquakes, war, revolution, civil commotion, acts of public enemies, blockade, embargo or any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any governmental or judicial authority or representative of any such government, or any other act whether similar or dissimilar to those referred to in this clause, which are beyond the reasonable control of Consultant, then Consultant shall be excused from such performance to the extent of such prevention, restriction, delay or interference. If the period of such delay exceeds thirty (30) days, City may, without liability, terminate the affected Statement of Work(s) upon written notice to Consultant.

29. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

30. Permits. Consultant shall at its own expense secure licenses, permits or certificates that may be required by any federal, state or local statute, ordinance or regulation for the performance of the Services under the Agreement. Consultant shall also comply with the provisions of all Applicable Laws in performing the Services under the Agreement. At its own expense and at no cost to City, Consultant shall make any change, alteration or modification that may be necessary to comply with any Applicable Laws that Consultant failed to comply with at the time of performance of the Services.

31. Media Releases. Except for any announcement intended solely for internal distribution by Consultant or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Consultant, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Consultant or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of City, shall be coordinated with and approved in writing by City prior to the release thereof. Consultant shall not represent directly or indirectly that any Services provided by Consultant to City has

been approved or endorsed by City or include the name, trade mark, or symbol of City on a list of Consultant's customers without City's express written consent.

32. Nonexclusive Market and Purchase Rights. It is expressly understood and agreed that this Agreement does not grant to Consultant an exclusive right to provide to City any or all of the Services and shall not prevent City from acquiring from other suppliers services similar to the Services. Consultant agrees that acquisitions by City pursuant to this Agreement shall neither restrict the right of City to cease acquiring nor require City to continue any level of such acquisitions. Estimates or forecasts furnished by City to Consultant prior to or during the term of this Agreement shall not constitute commitments.

33. Survival. The provisions of Sections 5, 8(g), 10, 11, 13, 14, 16, 17, 19, 23, 25 and 31 shall survive any expiration or termination for any reason of this Agreement.

34. Verification of Compliance with C.R.S. 8-17.5-101 ET.SEQ. Regarding Hiring of Illegal Aliens:

(a) **Employees, Consultants and Sub-consultants:** Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Consultant shall not contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]

(b) **Verification:** Consultant will participate in either the E-Verify program or the Department program, as defined in C.R.S. 8-17.5-101 (3.3) and 8-17.5-101 (3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services. Consultant is prohibited from using the E-Verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

(c) **Duty to Terminate a Subcontract:** If Consultant obtains actual knowledge that a sub-consultant performing work under this Contract knowingly employs or contracts with an illegal alien, the Consultant shall;

(1) notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and

(2) terminate the subcontract with the sub-consultant if, within three days of receiving notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

(d) **Duty to Comply with State Investigation:** Consultant shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation by that the Department is undertaking pursuant to C.R.S. 8-17.5-102 (5)

(e) **Damages for Breach of Contract:** The City may terminate this contract for a breach of contract, in whole or in part, due to Consultant's breach of any section of this paragraph or provisions required pursuant to CRS 8-17.5-102. Consultant shall be liable for actual damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract under this Paragraph 34.

CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners,

employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY OF ENGLEWOOD, COLORADO

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____

ATTEST:

City Clerk

See Architecture, LLC
(Consultant Name)

1668 S Ogden St.
Address

Denver, CO 80210
City, _____

By: _____
(Signature)
Suzette E. Emerson
(Print Name)

Title: Principal

Date: _____

February 10, 2014

Mr. Dave Henderson
City of Englewood Public Works Department
1000 Englewood Parkway
Englewood, CO. 80110



RE: Service Center Vehicle Wash & Fluid Distribution Station
Statement of Work

Dear Mr. Henderson,

Thank you for providing **See architecture** the opportunity to submit a proposal for design services for a new Vehicle Wash & Fluid Distribution Station (VWFDS) to be located at the City of Englewood's Service Center.

Prior to submitting the formal proposal we would like to submit our understanding of the scope of work related to this project. Based on the site walk and discussions last week with our design team we believe the scope of the project (not including the new entrance & gate) to include the following:

Vehicle Wash Bay:

- A new building/structure addition to the south end of the existing vehicle service building.
- Structure to be CMU with Steel roof trusses to match existing adjacent structure.
- Drive through station with 18' clear ceiling height.
- 2 Garage doors to match size and style of existing garage doors.
- Scaffolding along both side walls to allow for washing out dump trucks, etc.
- Existing exit doors from current service station will remain – new east and west walls shall be set back so as to not interfere with these existing exits.
- An existing conduit, near the west door, (which may include a fiber run) may need to be relocated and must be coordinated with the design team. This work to be completed by the City of Englewood's IT department.
- Existing light pole (located near the new south wall of the wash bay) will need to be relocated or re-aimed; another option is to light drive area from wall mounted fixtures on new wall.
- Demolition of the existing sand and oil interceptor.
- New washing equipment (type to be verified with City).
- New domestic cold water distributions from existing service with separate backflow prevention device and connection to vehicle wash equipment as directed by vendor.
- New sand and oil drainage piping with new sand and oil interceptor sized per Englewood requirements.
- Sanitary drainage and vent piping as required for general purpose floor drainage in wash equipment area.
- Natural gas distribution from existing gas meter to new heating equipment and vehicle equipment as directed by vendor; coordination with Xcel for increase in load and resultant gas service and meter upgrades.
- Roof drainage piping with discharge to on grade locations.
- General purpose water outlets such as hose bibs and exterior wall hydrants as may be desired by user.
- Gas fired unit heater and supplemental ventilation for vehicle wash bay
- New power for new wash equipment & pumps.
- New lighting inside Wash Bay; this will need to be sealed fixtures suitable for spray down & extremely wet and corrosive locations.

- Heat to include gas fired infrared radiant tube heaters and gas fired unit heaters to maintain required space temperatures and prevent freezing.
- Ventilation to include roof mounted exhaust fan with interface to outside air intake louver.
- Controls to be electronic or if a central automation system exists at the facility, tie-in will be specified.
- New power for new mechanical equipment.
- Existing switchboard does not have spare spaces to feed a new panel for the additional equipment. Metering of sub-feeds may be required. Metering is not within the scope of these services – but can be overseen and assisted by the design team. A new panel will need to be located.
- Provide a performance based specification for extension of existing fire sprinkler system to provide coverage at the new addition.
- Tele/Comm, security or similar devices will be shown as rough-in only and no specification of these systems will be provided – the City of Englewood IT department will be responsible for coordination and specification of these systems.
- All equipment and finishes will be specified of material suitable for atmosphere anticipated.

Fluid Storage and Distribution:

- A separate room located between the new Wash Bay & the existing Service Station.
- One exit door will be provided to this room.
- Heat to include gas fired unit heater to maintain space temperature as required by fluids stored.
- Ventilation to include a roof mounted exhaust fan with interface to outside air intake louver.
- Revisions to the existing radiant tube heaters to accommodate new hose reel installation within existing service bays.
- Controls to be electronic or if a central automation system exists at the facility, tie-in will be specified.
- Specify a new compressor and/or equipment as required for fluid/oil pump stations.
- Extend compressed air from current location to new points of pneumatic pump connection.
- Existing air compressor to remain in service; however, potentially a new compressor and/or equipment will be required for fluid/oil pump stations.
- New pump specifications for distribution to overhead hose reels. Includes (6) pumps as follows:
 - 5-40 Engine Oil
 - 0-30 Engine Oil
 - Antifreeze
 - Dexron 6 Transmission Fluid
 - AW-32 Hydraulic Fluid
 - AW-46 Hydraulic Fluid
- Pumps will be specified for bung mounting to storage tanks. Carbon steel fluid distribution tubing from pumps to hose reel connections.
- New hose reel specifications to include hose reels, metering nozzles, hose and covers. (2) Hose reels for each fluid noted are anticipated at this time and are to be positioned near the center walk-aisle centered between service bays. Support framing will need to be coordinated with structural engineer.
- Demolition of existing hose reels and piping systems that are no longer in operation.
- Extension and reconnection of existing trench drain to new sand and oil interceptor. Note: this may be a separate interceptor than that mentioned in the vehicle wash section above.

Proposed Design Team:

Lead (Architect):	See architecture, LLC
Geotechnical Engineer (if required):	American Geotechnical
Structural Engineer:	Ziehler Engineering, LLC
Mechanical/Plumbing Engineer:	Envision Mechanical Engineers, Inc.
Electrical Engineer:	Klok Group, LLC

Upon approval of the scope of services we will present you with a fee proposal.

Sincerely,

Suzette E. Emerson, AIA
Principal

February 10, 2014

Mr. Dave Henderson
City of Englewood Public Works Department
1000 Englewood Parkway
Englewood, CO. 80110



RE: Service Center Vehicle Wash & Fluid Distribution Station
Fee Proposal

Dear Mr. Henderson,

Thank you for providing See architecture, LLC the opportunity to submit a proposal for design services for a new Vehicle Wash & Fluid Distribution Station (VWFDS) to be located at the City of Englewood's Service Center at 2800 S. Platt River Drive in Englewood, CO. The scope of services listed in the letter to you, dated February 10, 2014, has been approved. In addition to the scope of services listed in that letter will be the completion of as-built drawings for the existing Service Center garage and adjacent grounds.

The plumbing and mechanical systems are the most intricate portion of a car wash facility. We have Envision Mechanical Engineers, Inc. as part of our team due to their extensive experience in wash facilities.

PROPOSED TEAM:

Lead (Architect):	See architecture, LLC
Geotechnical Engineer:	American Geotechnical
Structural Engineer:	Ziehler Engineering, LLC
Mechanical/Plumbing Engineer:	Envision Mechanical Engineers, Inc.
Electrical Engineer:	Klok Group, LLC

PROPOSED FEES:

We propose to provide the above scope of services for a total fee of \$59,845, as outlined below:

See architecture, LLC: Lead:	\$ 22,500
American Geotechnical	\$ 600
Ziehler Engineering, LLC	\$ 5,750
Envision Mechanical Engineers, Inc.	\$ 24,245
Klok Group, LLC	\$ 6,750

The project will be divided into 3 Phases, as listed below, with corresponding costs per phase:

Phase One: Design and Construction Documents:	\$45,000
Phase Two: Bidding and Negotiations:	\$2,400
Phase Three: Construction Observation:	\$12,445

ARCHITECTURE

INTERIORS

URBAN DESIGN

1668 S. Ogden St., Denver, CO 80210 Phone 303-921-9022 Fax 303-777-0724 see.architecture.suzette@gmail.com

The design team can commence work on the project with the approval of a single phase or all three phases.

Reimbursable expenses relating to the work (i.e., printing, postage, mileage, parking, etc.) will be billed in addition to our base fee charged at a rate of 1.15 times our cost.

INVOICES:

Invoices for services and for project related expenses will be submitted approximately monthly. Invoices for fees will be based on a percent of project completion. Client agrees to review invoices upon receipt and notify **See architecture, LLC** immediately of any irregularities or errors that would preclude prompt payment.

Sincerely, 

Suzette E. Emerson, AIA
Principal

ARCHITECTURE

INTERIORS

URBAN DESIGN

1668 S. Ogden St., Denver, CO 80210 Phone 303-921-9022 Fax 303-777-0724 see.architecture.suzette@gmail.com

COUNCIL COMMUNICATION

Date: April 7, 2014	Agenda Item: 11 a i	Subject: An Ordinance Adopting Amendments to Title 16 Concerning Nonconforming Structures
Initiated By: Community Development Department		Staff Source: Chris Neubecker, Senior Planner

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

This item has not been previously discussed by City Council. This issue was brought to staff by a citizen through a Zoning Text Amendment application.

PREVIOUS PLANNING COMMISSION ACTION

The Planning and Zoning Commission discussed this proposal to amend Title 16: Unified Development Code, Nonconforming Structures at three different Study Sessions: September 17, 2013; December 3, 2014; January 7, 2014. The Commission conducted a Public Hearing on February 20, 2014. One member of the public was present and also testified at the Public Hearing. Following discussion, the Commission voted in favor of forwarding to City Council the proposed amendments to Chapter 9: Nonconformities, as presented in the attached Bill for an Ordinance.

RECOMMENDED ACTION

The Community Development Department recommends adoption of a Bill for an Ordinance authorizing amendments to Title 16: Unified Development Code regarding Nonconforming Structures on First Reading, and setting April 21, 2014 as the date for a Public Hearing to consider testimony on the proposed amendments.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In August 2013, the Community Housing Development Association (CHDA) applied to the City requesting a Zoning Text Amendment to the Unified Development Code concerning nonconforming structures. The request centered on the fact that the current regulations prohibit reconstructing nonconforming structures to the same density or unit count as they previously existed, if the existing structures are over the allowed density for the zone district (based on lot area).

CHDA recently purchased and renovated the Canterbury East (21 units) and Canterbury South (22 units) Apartments, located at 3550 and 3600 S. Delaware Street, respectively. The properties are zoned MU-R-3-B, and are used for affordable housing with a variety of rental rates. The apartment buildings are

nonconforming for the zone district due to the number of units. If the buildings were damaged or destroyed to the extent of more than 60% of their value, the existing buildings could not be rebuilt with the same number of units under the current regulations. The new buildings would need to be reduced in size (based on the zoning and lot size), with a maximum of 11 units in one building, and 12 units in the other. CHDA and its financing partners are concerned about the potential loss of value in case of significant damage to the buildings.

The concerns raised by the CHDA are not unique. Staff is aware of 104 properties in the City that are nonconforming due to density. If any of these properties were to burn down, or were otherwise damaged or destroyed by more than 60% of the value of the structure, then the rebuilt structures would need to conform to the existing zoning at the lower density. This situation can happen when zoning is changed to a new density lower than that of the pre-existing structures.

Due to this potential loss of value, some banks have concerns financing these properties. In an effort to support investment in the community and to maintain the existing density, the proposed code amendments would allow nonconforming buildings and structures to be rebuilt up to their previous density.

ANALYSIS

Nonconforming structure policies usually require that rebuilt structures come into compliance with the new requirements of the zone district, including unit count, setbacks, height, parking, landscaping, and other dimensional requirements. These policies help ensure that new buildings, and those rebuilt after significant damage, are compatible with the character of the neighborhood. However, meeting the new density of the zone district may result in a smaller building, and a reduction in property values.

By rebuilding to the same size and density, nonconforming structures should have no more impact than currently. Neighbors of existing nonconforming structures already understand their impacts, since, in many cases, neighbors purchased their investment after the nonconforming structure was built. As proposed, owners of nonconforming structures would be required to comply with current regulations where it is "practicable" to do so. Exceptions to this are building and safety codes, which must be met. Specifically, the proposal requires that rebuilt buildings "*be brought into compliance as much as practicable with existing standards of this code*". This requirement strikes a balance between what is "possible" and what is "reasonable". For example, a rebuilt structure might be able to conform to new landscaping and parking requirements, but not setbacks. Other developments may be able to comply with setbacks, but may not be able to meet current parking standards. The proposed ordinance provides flexibility for the owner and staff to work together on a plan that protects property rights while reducing impacts on adjacent properties. Zoning Site Plan review would be required for new structures.

As proposed, this policy would apply to both residential and nonresidential properties. This ordinance would not affect nonconforming uses.

Some of the key elements of this proposal include:

- Allow re-building to the same unit count or density (square feet)
- Require re-built structures to comply with current codes where reasonable
- Applicants would be required to demonstrate why they are not able to meet current codes, if reprieve is requested
- Allow voluntary redevelopment to the same unit count or density
- Building permit applications must be submitted within one year of "destruction" event

Voluntary Redevelopment

In addition to disasters such as fire, this proposal would encourage redevelopment of older, nonfunctional properties through voluntary teardowns and new construction. Language is proposed to encourage voluntary redevelopment by allowing the existing density to be rebuilt. Redeveloped and rebuilt structures could maintain the existing density or other nonconformities, but owners would also be required conform to current standards, to the extent practicable. Staff believes that this language encourages redevelopment, although it is unlikely to be used frequently if additional density or other incentives are not provided.

FINANCIAL IMPACT

There is no direct financial impact on the City as a result of this ordinance. Indirectly, it is anticipated that this ordinance will have a positive financial impact on the community by allowing redevelopment of nonconforming structures in case of disasters, and encouraging redevelopment. The ordinance would allow buildings to be rebuilt to their current size, which could result in additional residential and commercial activity and additional revenue to the City when compared to smaller structures. The change will also facilitate financing of nonconforming structures, which should help to support investment and property values.

LIST OF ATTACHMENTS

Planning and Zoning Commission Staff Report – February 20, 2014
Planning and Zoning Commission Minutes – February 20, 2014
Planning and Zoning Commission Findings of Fact - Case No. 2013-06
Map of Nonconforming Structures
Bill for an Ordinance



M E M O R A N D U M

TO: Planning and Zoning Commission

THROUGH: Alan White, Community Development Director

FROM: Chris Neubecker, Senior Planner

DATE: February 20, 2014

SUBJECT: Case 2013-06 – Public Hearing
Nonconforming Structures

Recommendations

The Community Development Department request that the Planning and Zoning Commission review, take public testimony, and forward to City Council a recommendation for adoption the proposed amendments to the Unified Development Code of the Englewood Municipal Code, Title 16, Chapter 9, Nonconformities, relating to Nonconforming Structures.

Background

In August 2013, the Community Housing Development Association (CHDA) applied to the City requesting a Zoning Text Amendment to the Unified Development Code concerning nonconforming structures. The request centered on the fact that damaged or destroyed nonconforming structures cannot be rebuilt to the same density, if the existing structures are over the allowed density.

CHDA recently purchased and renovated the Canterbury East (21 units) and Canterbury South (22 units) Apartments, located at 3550 and 3600 S. Delaware Street, respectively. The properties are zoned MU-R-3-B, and are used for affordable housing with a variety of rental rates. The apartment buildings are nonconforming to the existing zoning due to the number of units. If the buildings were damaged or destroyed to the extent of more than 60% of their value, the existing buildings could not be rebuilt under the current development code with the same number of units. The new buildings would need to be reduced in size, with a maximum of 11 units in one building, and 12 units in the other. Understandably, CHDA and its financing partners are concerned about the potential loss of value in case of significant damage to the buildings.

The concerns raised by the CHDA are not unique. There are 104 properties in the City that are nonconforming due to density. (The numbers of units on the properties exceed the allowed density based on the lot dimensions or the underlying zoning.) If any of these

properties were to burn down, or were otherwise damaged or destroyed by more than 60% of the value of the structure, then the rebuilt structures would need to conform to the existing zoning at the lower density. This situation can happen when zoning is changed to a new density lower than that of the pre-existing structures. Due to this potential loss of value, some lenders have concerns financing these properties. In an effort to support investment in the community and to maintain the existing density, Staff supports the proposed code amendment, which would allow nonconforming buildings and structures to be rebuilt up to their previous density. Furthermore, in an effort to promote economic development and improve the quality and design of buildings in the City, Staff also supports voluntary redevelopment of such nonconforming buildings and structures, up to the existing density.

As proposed, this policy would apply to both residential and nonresidential properties.

Analysis

The proposed text amendment language is broader than originally proposed by the Community Housing Development Association (CHDA). Based on support from the Commission and Staff, the proposed ordinance would allow any nonconforming structure that is damaged or destroyed to be rebuilt. However, the proposal requires that rebuilt buildings *“be brought into compliance as much as practicable with existing standards of this code”*. This language gives Staff the flexibility to work with architects and property owners to find a building design and site plan that accommodates the density, but also updates the property to reasonable, current standards.

We believe that this language helps strike an important balance between maintaining value for the property owner and the desire of the neighborhood for compatibility. For example, a rebuilt building may not be able to meet setbacks, but might include better landscaping and more parking. Other projects may include updated design and materials, but may not solve the site planning issues that previously existed. This flexibility will allow the Staff, property owner and architect to find the best option for the situation. The new building or structure would be no less conforming than it existed before redevelopment; in most cases, the new building or structure will be more conforming.

Voluntary Redevelopment

In addition to disasters such as fire, this proposal would encourage redevelopment of older, nonfunctional properties through voluntary teardowns and new construction. Language is proposed to encourage voluntary redevelopment by allowing the existing density to be rebuilt. Redeveloped and rebuilt structures would be allowed to maintain the existing density or other nonconformities, but owners would also be asked to come into conformance with then-current standards, to the extent practicable. Staff believes that this language encourages redevelopment, although it is unlikely to be used extensively if additional density or other incentives are not provided.

Timeframe for Redevelopment

The timeframe for rebuilding a nonconforming building has been included in the proposed ordinance. As proposed, a one year deadline for application for a building permit is proposed. This will ensure that a site is not cleared for redevelopment (after a disaster or

voluntarily), then vacant for several years. It will ensure that building owners do not claim that a nonconforming structure previously existed on the site, with no records or evidence on file.

Definition of Nonconforming Structures

Following is the existing definition of nonconforming structures. This definition, which along with the proposed modification to Section 16-9-3, would clarify when current codes and standards apply:

“Nonconforming Building or Structure: Unless otherwise exempt by Chapter 16-9 EMC, a structure or building, the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment to this Title, but which fails by reason of such adoption, revision, or amendment, to conform to the present requirements of the zone district in which such structure or building is located.”

No changes are proposed to the current definition. Rather than adding language to the definition, as previously proposed by Staff and reviewed by the Commission, we have left the definition as it exists. This will ensure that the definition merely defines nonconforming buildings and structures, and is not used to regulate.

Recommendation

Major damage or destruction of a nonconforming building or structure will be very rare, and this text amendment should not negatively impact the community. In some situations, the building that was destroyed will be rebuilt to look like it did prior to the destruction. In other cases, the new building will be an improvement on those design elements that were nonconforming. This code amendment will also encourage voluntary redevelopment of out-of-date buildings. Either way, these text amendments are significant to investors and lenders, and should help reduce concerns about financing a real estate investment.

A motion to recommend approval of the proposed code amendments to City Council is needed.

Next Steps

If the Planning & Zoning Commission recommends approval, we intend to move forward with first reading of an ordinance by City Council.

Attachments

Amendments to Title 16 pertaining to Nonconforming Structures

Attachment to Planning Commission Meeting of February 20, 2014

16-9-3: Nonconforming Structures

(New language shown in double underline. Language removed shown in ~~strikethrough~~.)

A. Applicability and Exemptions. This Section shall apply to all nonconforming structures, as defined in Chapter 16-11 EMC, except that the following structures shall not be considered nonconforming structures and shall be considered exempt from the terms and limitations of this Section and Chapter:

1. Principal one-unit residential dwellings existing on the effective date of this Title, and which as of that date are not in compliance with the minimum ~~side~~ setback standards established in Chapter 16-6 EMC, shall not be considered nonconforming structures due solely to the dwelling's noncompliance with the minimum ~~side~~ setback standards. Such dwellings are "grandfathered," and shall be considered legal, conforming structures for the purposes of sale and development under this Title and other City building and safety regulations. All future expansions and alterations of such grandfathered dwellings shall comply with all applicable standards of this Title, including minimum side setback standards, unless the City grants a variance.
2. Multi-unit dwellings existing on the effective date of this Title, which are not in compliance with the required minimum lot area per dwelling unit standards, shall not be considered nonconforming due solely to noncompliance with the minimum lot area per dwelling unit standards. Such dwellings are "grandfathered," and shall be considered legal, conforming buildings or structures for the purpose of sale and development under this Title and other City building and safety regulations. However, all future expansions and alterations of such grandfathered dwellings shall comply with all applicable standards of this Title, including minimum setbacks standards, unless the City grants a variance.

B. Nonconforming Building or Structure.

1. A nonconforming building or structure may continue to be used, except as otherwise provided herein.
2. A nonconforming building or structure may be repaired, structurally altered, or expanded only if the alteration, repair, or expansion complies with this Title. If the nonconforming building or structure or any portion thereof, is declared unsafe by the Chief Building Official, the building may be strengthened or restored to a safe condition.
3. Notwithstanding the provisions of subsection A.B.2, above, a nonconforming building or structure in a Flood Plain District may be modified, altered, or repaired to incorporate floodproofing measures, but shall not be extended or expanded.

4. ~~No nonconforming building or structure that is destroyed or damaged to the extent of more than sixty percent (60%) of its value, as determined pursuant to the method of determining the valuation of buildings for building permit issuance, shall be repaired or rebuilt except in compliance with the requirements of this Title.~~

45. If a nonconforming building or structure becomes conforming, it shall not be changed back to a nonconforming building or structure.

56. No person shall move a nonconforming building or structure to another parcel unless the building or structure and its location on the new parcel comply with the use regulations of the zone district applicable to the new parcel.
(Ord. 045)

C. Redevelopment of Nonconforming Buildings or Structures.

1. The City of Englewood encourages redevelopment of outdated, nonfunctional or obsolete buildings and structures. In an effort to encourage redevelopment of such buildings or structures and to promote economic development, nonconforming buildings and structures may be removed and reconstructed, whether damaged or not, only in compliance with the following requirements:

a. The reconstructed building or structure shall not be more nonconforming than the structure as it existed immediately prior to the reconstruction. Redeveloped or reconstructed buildings or structures shall be allowed up to, but not to exceed, the current allowed density or the density of the nonconforming building or structure as it existed immediately prior to the redevelopment, whichever is greater.

b. The reconstructed building or structure shall be brought into compliance as much as practicable with existing zoning standards of this code (Examples: setbacks, parking, landscaping, bulk plane, etc.). The determination of "practicable" will be made by the City Manager or designee based upon the proposed use and design of the structure, site conditions, and current industry construction methods and standards. The City Manager or designee shall consider not only what is possible, but also what is reasonable based on the unique circumstances of the building or structure, proposed use, site conditions, and where meeting such zoning standards does not create an undue burden on the owner.

c. If the damage to the nonconforming building or structure was caused by the intentional act or criminal conduct of the owner of the nonconforming building or structure, or the owner's agent or representative, the building or structure shall only be rebuilt in compliance with this Title and shall not be considered grandfathered under this Section, and furthermore shall not be eligible for redevelopment under Section 16-9-3 C of this Title.

d. Regardless of any waivers or lessening of standards otherwise required in this Title, all new development (including reconstruction of nonconforming buildings or structures) shall meet the applicable building, fire and safety codes in effect at the time of application for a building permit.

D. Application Process.

1. Reconstruction of a nonconforming building or structure shall follow the Zoning Site Plan Review process identified in Section 16-2-9 of this Title, unless variances are requested for other dimensional or development standards. In such cases, variances shall follow the Zoning Variance process in Section 16-2-16 of this Title.
2. A building permit application for reconstruction of a damaged or destroyed nonconforming building or structure shall be submitted within one (1) year from the date of the event that caused the damage or destruction. If no building permit application is submitted within one (1) year, damaged or destroyed nonconforming buildings or structures on the site shall no longer be eligible for redevelopment under Section 16-9-3 C above, and redevelopment shall conform to the dimensional and development standards of the applicable zone district.

**CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION
REGULAR MEETING
Englewood Civic Center City Council Chambers
February 20, 2014**



I. CALL TO ORDER

The regular meeting of the City Planning and Zoning Commission was called to order at 7:00 p.m. in the City Council Chambers of the Englewood Civic Center, Chair Brick presiding.

Present: Roth, Knoth, Brick, Kinton, Townley, Fish, Freemire, Madrid (alternate)

Absent: Bleile (Excused), King (Excused)

Staff: Alan White, Director, Community Development
Chris Neubecker, Senior Planner
Dan Brotzman, City Attorney

Chair Brick added election of officers to the agenda.



II. APPROVAL OF MINUTES

February 4, 2013

Fish moved;

Freemire seconded: TO APPROVE THE FEBRUARY 4, 2013 MINUTES

Chair Brick asked if there were any modifications or corrections. Mr. Fish requested that the attendance record be modified to remove Mr. Welker and reflect that Ms. Townley and Mr. Knoth were in attendance.

AYES: Fish, Kinton, Knoth, Roth, Townley, Freemire

NAYS: None

ABSTAIN: Brick

ABSENT: Bleile, King

Motion carried.



III. PUBLIC HEARING 2013-06 NON-CONFORMING STRUCTURES

Fish moved;

Knoth seconded: To open public hearing for Case #2013-06 Non-Conforming Structures

AYES: Fish, Kinton, Knoth, Roth, Townley, Freemire, Brick

NAYS: None

ABSTAIN: None

ABSENT: Bleile, King

Chris Neubecker, Senior Planner, was sworn in. Mr. Neubecker reviewed the history of Case #2013-06 Non-Conforming Structures. The issue was raised when the Community Housing Development Association (CHDA) contacted the City in August, 2013, requesting a zoning text amendment. The existing UDC contains language which prohibits non-conforming structures from being rebuilt to the same size and scale as they currently exist if that element of the design is not conforming. CHDA purchased and renovated properties in the MU-R-3B district that are over the allowed density for that site (21 and 22 units each) based on the lot area. If the buildings were destroyed or incurred damage of 60% or more based on cost, the buildings could only be rebuilt at 11 and 12 units respectively. The entities financing the properties are concerned because of the potential loss of value.

The UDC was reviewed and revised language is being proposed to allow the buildings to be rebuilt. Language has also been revised to allow voluntary redevelopment in the event that a property owner would want to demolish and rebuild, even when there is no damage to the building. A time limit is also proposed that would require the applicant to obtain a building permit within one year from the time the building was damaged or destroyed.

Staff recommends that the text amendment be submitted to City Council for First Reading.



Questions from the Commission:

Ms. Townley requested clarification that the issue is the non-conforming structure or the land use. Mr. Neubecker responded that this ordinance does not address the

nonconforming use of the land, only the structure.

Mr. Knoth asked if the density could be increased; Mr. Neubecker responded that the structure could be rebuilt to the current allowed density for that zoning area or the previous density of the non-conforming structure, whichever is greater.

Mr. Freemire inquired as to what the remedy would be for an aggrieved party who did not agree with the changes made by the Planning and Zoning Commission. Mr. Neubecker responded that the decision would be made by staff and would not come before the Planning and Zoning Commission. Appeals of administrative decisions go to the Board of Adjustments and Appeals.

Mr. Roth commented on the actual number of structures in R-1-A, of which 5 are known, and the desire of City Council to preserve the standards for R-1-A. He expressed that in C (1)(b) of the proposal, he was concerned with the language in the last sentence regarding "undue burden on the owner" in regards to meeting the zoning standards. Mr. Neubecker explained that the intent is to determine the impact of the redevelopment in the area and the rights of property owners, seeking a balance between the two. Mr. Roth asked who makes the determination of undue burden and Mr. Neubecker responded that the staff is responsible for the administrative decisions regarding redevelopment.

Mr. Fish asked how it is determined if a property is deemed to be non-conforming in light of the fact that there is no accurate list of properties. Mr. Neubecker replied that the list that the Community Development department has is a list of non-conformities based specifically on lot size and existing density. The list is created using information from Arapahoe County Assessors office, which contains information regarding the number of units in a structure.

Dan Brotzman, City Attorney, was sworn in to address the issue of "undue burden" as it relates to property development. Mr. Brotzman explained that "undue burden" will always be defined by discussion between Staff and the property owner. Mr. Brotzman agreed to supply the Commission with a document defining "undue burden."



Chair Brick verified that the City Attorneys office would like "undue burden" to not be tied to economic factors.



Chris Neubecker, Senior Planner, stated that when applicants seek remedy with the Board of Adjustments, the result is generally a variance. He read the standards that

apply to variances, and suggested that similar criteria would be used to determine “undue burden”. He offered that the language in 16-9-3:C(1)(b) can be amended to delete the statement “and where meeting such zoning standards does not create an undue burden on the owner.”



Jo Ellen Davidson, Director of Community Housing Development Association (CHDA), 325 Inverness Drive South, Englewood, was sworn in.

Ms. Davidson thanked the Commissioners for their consideration of CHDA's request for amendment. Ms. Davidson described the mission of the CHDA and its history in Englewood. She supplied the Commissioners with information regarding the financial investment CHDA has made in the buildings comprising the Canterbury East and South apartments and the Presidential Arms apartments in Englewood. One objective of CHDA is to make a significant improvement in the community. Their funding is from a variety of both public and private resources. She expressed that they are concerned over the potential loss of the properties in light of the fact that all improvements are completed up front when CHDA acquires the property. They have a long term commitment to the properties and make improvements for long term use.



The Commissioners did not have any questions for Ms. Davidson.

Staff did not have a rebuttal to present.

Mr. Knoth motioned;

Mr. Fish seconded: To close the public hearing for Case #2013-06 Non-Conforming Structures

AYES:Fish, Kinton, Knoth, Roth, Townley, Freemire, Brick

NAYS:None

ABSTAIN:None

ABSENT:Bleile, King

Motion to approve staff recommendation for Case #2013-06 Non-Conforming Structures

Knoth moved;

Roth seconded: TO APPROVE STAFF RECOMMENDATION FOR CASE #2013-06
NON CONFORMING STRUCTURES

Mr. Roth offered a friendly amendment to strike language from 16-9-3 C(1)(b) "and where meeting such zoning standards does not create an undue burden on the owner."

Mr. Brick commented that in line with the Comprehensive Plan, it is important to support organizations both private and public that are interested in improving the housing stock in the City of Englewood and it is important that the Commission support these efforts, particularly for buildings such as CHDAs to promote the health and welfare of the community.

Mr. Fish agreed with the exclusion of the language due to the fact that the property owner does have recourse if they disagree with the decision of the staff.

Mr. Knoth commented that the amendment would protect the income of the property owner by insuring that they could continue to receive the same income from the property if they are allowed to reconstruct the building with the same number of units.

Mr. Fish added that the Board of Adjustment and Appeals does not rule based on monetary issues, but strictly deals with variances which are exceptions to the code regarding safety issues. His experience with the Board of Adjustment and Appeals is that they would not rule based on financial impact.

Mr. Roth reiterated that the intent of the change in the zoning code is to allow the owner to rebuild to the original density.



Vote: TO APPROVE CASE #2013-06 NON CONFORMING STRUCTURES AS RECOMMENDED BY STAFF WITH FRIENDLY AMENDMENT TO STRIKE LANGUAGE IN 16-9-3 C(1)(b) "AND WHERE MEETING SUCH ZONING STANDARDS DOES NOT CREATE AN UNDUE BURDEN ON THE OWNER."



Mr. Fish – We have series of non-conforming buildings that will continue to degrade and as a community need to seek a mechanism to maintain and improve these buildings. As evidenced by testimony received, at least one situation has occurred in which these buildings that were non-conforming have not only been maintained but improved. This is something that needs to be encouraged by the city as it pertains to the Comprehensive Plan. Higher density exceptions have been granted through the PUD process as exceptions to the underlying zoning structure and this is a trend for the City of Englewood and may be included in a future Comprehensive Plan to align with

the trend not only in Englewood but nationally.

Mr. Kinton agreed with Mr. Fish that anything that can be done to improve the housing stock should be encouraged.



AYES:Fish, Kinton, Knoth, Roth, Townley, Freemire, Brick

NAYS:None

ABSTAIN:None

ABSENT:Bleile, King

Motion carries.

IV. PUBLIC HEARING 2013-09 ZONING SITE PLAN REVIEW



Knoth moved;

Roth seconded: TO OPEN THE PUBLIC HEARING FOR CASE #2013-09 ZONING SITE PLAN REVIEW

AYES:Fish, Kinton, Knoth, Roth, Townley, Freemire, Brick

NAYS:None

ABSTAIN:None

ABSENT:Bleile, King



Chris Neubecker, Senior Planner, described the Zoning Site Plan Review process as outlined in 16-2-9 of the UDC. The proposed amendment would change the title of 16-2-9 to Site Improvement Plan Review. The proposed amendment would outline the process staff uses to review an application that is not otherwise going to the Planning and Zoning Commission. Examples are a building permit, review of a landscaping plan, a major site plan and projects that are not large enough to require Planning Commission or Board of Adjustment approval. The majority of the work performed by current planning staff is review of plans against current codes.



The proposed changes would allow an applicant to go through the Site Improvement Plan process before moving on to the permitting process which requires a higher level of detail and formal building plans. The process is not always about zoning, but about the actual layout of the site itself. The proposed changes would clarify when the Site Plan Review process is necessary and also the types of application materials that are required to be submitted including the size and the scale of the plans for review. Should a property owner be challenged by these requirements, staff can assist with

creating plans containing the information.



The major changes proposed include changing the title of the code to Site Improvement Plan Review, the requirement of plan review for large site work projects and landscaping over \$5,000 in value, alterations of floor area in excess of 10% of the floor area or reduction in the setback to a property line, additional detail on the plans submitted and minor syntax changes that improve the readability and enforceability of the code. Previous recommendations, including language on the DRT (Development Review Team), have been removed from the proposed amendment. Site Improvement Plan Review remains an administrative function and appeals to administrative decisions are made through the Board of Adjustments and Appeals.



Ms. Townley asked if this process would apply to any type of property. Mr. Neubecker responded that it would apply to all properties regardless of zone area. He also clarified that the requirement for the process would not preclude a property owner from occupying their home.

Mr. Freemire commented on the language in 16-2-9 A(5) and the threshold of \$5,000 for the project value. He suggested that some type of multiplier or index be included to account for inflation and increased cost of a project. Mr. Neubecker stated that there is not precedence for including a contingency for inflation, which would be difficult to calculate and hard for some people to understand.

Mr. Roth questioned the need for the additional language in 16-2-9 (A)(4) regarding residential driveways. The current code does not contain a definition of a residential driveway. Mr. Neubecker supplied the Commissioners with information on the definition of a driveway as it is stated in the City of Englewood UDC as well as from other sources. The reason for adding the phrase “residential driveway” is to clarify that Site Improvement Plan Review is not necessary, and to eliminate a conflict with a previous citizens initiative.



Mr. Fish noted a change to 16-2-9 (B)(3) to correct a typographical error “Sites \geq 10,000 square feet: Scale 1” = 10.



Fish proposed changes to 16-2-9 D(1)(b and e) to associate the term “compliance” with standards and policy, and the term “consistency” with guidelines.



No public was present at the hearing.

Alan White, Director, spoke about the 180 day time limit as a commonly accepted standard for a time frame for a project to be completed from the time it has gone through the Site Improvement Plan Review process.



Knoth moved;

Roth seconded: TO CLOSE THE PUBLIC HEARING FOR CASE #2013-09 SITE IMPROVEMENT PLAN REVIEW

AYES:Fish, Kinton, Knoth, Roth, Townley, Freemire, Brick

NAYS:None

ABSTAIN:None

ABSENT:Bleile, King

Knoth moved;

Fish seconded: TO APPROVE CASE #2013-09 ZONING SITE PLAN REVIEW AS WRITTEN BY STAFF



Mr. Fish requested that the length of the lapse between review and implementation be changed from 60 days to 180 days. Mr. Knoth accepted the Friendly Amendment. The clerical error will be corrected to reflect the proper scale for plans.

AYES:Fish, Kinton, Knoth, Roth, Townley, Freemire, Brick

NAYS:None

ABSTAIN:None

ABSENT:Bleile, King

Motion passes.

IV.PUBLIC FORUM

No Public was present.

V.ATTORNEYS CHOICE



Attorney Brotzman had no comment.



VI.STAFFS CHOICE

Mr. Neubecker announced that the March 4th meeting will be a continuation of the discussion regarding the TSA overlay in the industrial area. Staff members attended the "Safe Routes to School" meeting and information received was helpful. He thanked Commissioner Townley and Commissioner Kinton for attending.



VII.COMMISSIONERS CHOICE

Chair Brick requested a motion for a nomination for Chair.

Mr. Roth moved;

Mr. Knoth seconded: To nominate Mr. Fish for Chair and Mr. King for Vice Chair of the Commission

AYES:Fish, Kinton, Knoth, Roth, Townley, Freemire, Brick

NAYS:None

ABSTAIN:None

ABSENT:Bleile, King



Ms. Townley - Legislation in House of Representatives may allow Planning and Zoning commissioners to receive pay. She also attended a meeting with DRCOG regarding Healthy Spaces in regard to Comprehensive Plan and is encouraging cities to include health and safe routes to school.

Mr. Fish complimented staff for the helpful way in which the cases were presented for consideration and for the information provided to the Commission regarding Home Occupations and City Councils opinion.



The meeting adjourned at 8:40 p.m.

/s/ Julie Bailey, Recording Secretary

CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION

IN THE MATTER OF CASE #2013-06,)	
FINDINGS OF FACT, CONCLUSIONS)	
AND RECOMMENDATIONS RELATING)	FINDINGS OF FACT AND
TO THE AMENDMENT OF THE UNIFIED)	CONCLUSIONS OF THE
DEVELOPMENT CODE NONCONFORM-)	CITY PLANNING AND
ING STRUCTURES)	ZONING COMMISSION
)	
)	
INITIATED BY:)	
COMMUNITY DEVELOPMENT)	
DEPARTMENT)	
1000 ENGLEWOOD PARKWAY)	
ENGLEWOOD, CO 80110)	

Commission Members Present: Fish, Freemire, Knoth, Roth, Kinton, Brick, Townley

Commission Members Absent: Bleile, King

This matter was heard before the City Planning and Zoning Commission on February 20, 2014 in the City Council Chambers of the Englewood Civic Center.

Testimony was received from staff and one member of the public was present and testified at the hearing. The Commission received notice of Public Hearing, the Staff Report, and a copy of the proposed amendment to the Unified Development Code which were incorporated into and made a part of the record of the Public Hearing.

After considering the statements of the witnesses, and reviewing the pertinent documents, the members of the City Planning and Zoning Commission made the following Findings and Conclusions.

FINDINGS OF FACT

1. **THAT** the Public Hearing on the Amendment of the Unified Development Code Section 16-9-3 Nonconforming Structures was brought before the Planning Commission by the Department of Community Development, a department of the City of Englewood.
2. **THAT** notice of the Public Hearing was published in the *Englewood Herald* on February 7, 2014 and was on the City's website from February 6th through 20th.

3. **THAT** all testimony received from staff members and the public has been made part of the record of the Public Hearing.
4. **THAT** the change in the zoning code would allow an owner of a Nonconforming Structure to rebuild to the original density in the event of destruction or damage of more than 60% of cost.
5. **THAT** voluntary redevelopment would be allowed in the event that a property owner would choose to demolish and rebuild to the current allowed density for that zoning district or to the previous density of the nonconforming structure, whichever is greater.
6. **THAT** a Building Permit application to rebuild any building or structure destroyed or damaged would be required to be submitted within one (1) year from the date of the event that caused such damage, and that if such Building Permit is not submitted within one (1) year, then such rebuilt a structure shall comply with all applicable zoning codes and shall conform to the dimensional and development standards of the applicable zone district.
7. **THAT** the City staff is aware of 104 structures in the City that are nonconforming due to their density or unit count.
8. **THAT** the existing nonconforming structures in the City will degrade over time, and that the City encourages renovation of the local housing stock.
9. **THAT** the proposed amendments related to the Nonconforming Structures are consistent with the goals and objectives of Roadmap Englewood: The 2003 Englewood Comprehensive Plan, which supports renovation and improvements to local housing.
10. **THAT** higher density has been approved in Planned Unit Developments in the past, and that the trend in Englewood is to encourage higher density.
11. **THAT** the proposed Amendments related to Section 16-9-3 Nonconforming Structures should be adopted as part of Title 16: Unified Development Code of the Englewood Municipal Code.

CONCLUSIONS

1. **THAT** the Public Hearing on the Amendment of the Unified Development Code Zoning Site Plan Review was brought before the Planning Commission by the Department of Community Development, a department of the City of Englewood.
2. **THAT** notice of the Public Hearing was published in the *Englewood Herald* on February 7, 2014 and was on the City's website from February 6th through 20th.

3. **THAT** all testimony received from staff members and the public has been made part of the record of the Public Hearing.
4. **THAT** the change in the zoning code should allow an owner of a Nonconforming Structure to rebuild to the original density in the event of destruction or damage of more than 60% of cost.
5. **THAT** voluntary redevelopment should be allowed in the event that a property owner would choose to demolish and rebuild to the current allowed density for that zoning district or to the previous density of the nonconforming structure, whichever is greater.
6. **THAT** a Building Permit application to rebuild any building or structure destroyed or damaged should be required to be submitted within one (1) year from the date of the event that caused such damage, and that if such Building Permit is not submitted with one (1) year, then such rebuilt a structure shall comply with all applicable zoning codes and shall conform to the dimensional and development standards of the applicable zone district.
7. **THAT** the City staff is aware of 104 structures in the City that are nonconforming due to their density or unit count.
8. **THAT** the existing nonconforming structures in the City will degrade over time, and that the City encourages renovation of the housing stock.
9. **THAT** the proposed amendments related to the Nonconforming Structures are consistent with the goals and objectives of Roadmap Englewood: The 2003 Englewood Comprehensive Plan, which supports renovation and improvements to local housing.
10. **THAT** higher density has been approved in Planned Unit Developments in the past, and that the trend in Englewood is to encourage higher density.
11. **THAT** the proposed amendments related to Section 16-9-3 Nonconforming Structures are consistent with the goals and objectives of Roadmap Englewood: The 2003 Englewood Comprehensive Plan and the Englewood.
12. **THAT** the proposed Amendments related to Section 16-9-3 Nonconforming Structures should be adopted as part of Title 16: Unified Development Code of the Englewood Municipal Code.

DECISION

THEREFORE, it is the decision of the City Planning and Zoning Commission that Case #2013-06, Amendments to Section 16-9-3 Nonconforming Structures should be referred to the City Council with a favorable recommendation.

The decision was reached upon a vote on a motion made at the meeting of the City Planning and Zoning Commission on February 20, 2014, by Mr. Knoth, seconded by Mr. Fish, which motion states:

CASE #2013-06, AMENDMENTS TO TITLE 16: UNIFIED DEVELOPMENT CODE RELATED TO 16-9-3 NONCONFORMING STRUCTURES AS STATED BE RECOMMENDED FOR APPROVAL TO CITY COUNCIL WITH A FAVORABLE RECOMMENDATION WITH THE FOLLOWING CONDITION:

- 1. 16-9-3 C(1)(B): TO STRIKE THE PROPOSED LANGUAGE "AND WHERE MEETING SUCH ZONING STANDARDS DOES NOT CREATE AN UNDUE BURDEN ON THE OWNER."*

AYES: Knoth, Roth, Fish, Brick, Kinton, Freemire, Townley
NAYS: None
ABSTAIN: None
ABSENT: Bleile, King

Motion carried.

These Findings and Conclusions are effective as of the meeting on February 20, 2014.

BY ORDER OF THE CITY PLANNING & ZONING COMMISSION

John Brick, Chair

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 22
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING TITLE 16, CHAPTER 2, SECTION 2 AND CHAPTER 9, SECTION 3, OF THE ENGLEWOOD MUNICIPAL CODE 2000 PERTAINING TO NONCONFORMING STRUCTURES.

WHEREAS, in August 2013, the Community Housing Development Association (CHDA) applied to the City requesting a zoning text amendment to the Unified Development Code concerning nonconforming structures. The request centered on the fact that damaged or destroyed nonconforming structures cannot be rebuilt to the same density, if the existing structures are over the currently allowed density; and

WHEREAS, CHDA recently purchased and renovated the Canterbury East (21 units) and Canterbury South (22 units) Apartments, located at 3550 and 3600 South Delaware Street, respectively. If these properties are zoned MU-R-3-B, and are used for affordable housing with a variety of rental rates. If these apartment buildings were damaged or destroyed to the extent of more than 60% of their value, the existing buildings could not be rebuilt under the current development code with the same number of units. The new buildings would need to be reduced in density, with a maximum of 11 units in one building, and 12 units in the other. CHDA and its financing partners are concerned about the potential loss of value in case of significant damage to the buildings; and

WHEREAS, the concerns raised by the CHDA are not unique. There are 104 properties in the City that are nonconforming due to density; and

WHEREAS, if any of these properties were to burn down, or were otherwise damaged or destroyed by more than 60% of the value of the structure, the rebuilt structure would need to conform to the existing zoning at the lower density; and

WHEREAS, due to this potential loss of value, some lenders have concerns about the financing of these properties; and

WHEREAS, the proposed text amendment language is broader than originally proposed by the Community Housing Development Association (CHDA).

WHEREAS, based on support from the Commission and Staff, the proposed ordinance would allow any nonconforming structure that is damaged or destroyed to be rebuilt at its original density. However, the proposal requires that rebuilt buildings "be brought into compliance as much as practicable with existing standards of this Code"; and

WHEREAS, this language gives staff the flexibility to work with architects and property owners to find a building design and site plan that accommodates the density, but also updates the property to current standards; and

WHEREAS, a one year timeframe for submitting a building permit application to rebuild a nonconforming building has been included in the proposed ordinance; and

WHEREAS, the Englewood Planning and Zoning Commission recommended approval of these changes at the February 20, 2014 meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 2, Section 2 entitled *Summary Table of Administrative and Review Roles* of the Englewood Municipal Code 2000, to read as follows:

16-2-2: Summary Table of Administrative and Review Roles.

The following table summarizes the review and decision-making responsibilities of the entities that have specific roles in the administration of the procedures set forth in this Chapter. For purposes of this table, an "(Approval) Lapsing Period" refers to the total time from the application's approval that an applicant has to proceed with, and often complete, the approved action. Failure to take the required action within the specified "lapsing period" will automatically void the approval. See Section 16-2-3.L EMC, "Lapse of Approval," below.

TABLE 16-2-2.1: SUMMARY OF DEVELOPMENT REVIEW AND DECISION-MAKING PROCEDURES										
Procedure	Section Ref.	Pre-App. Mtg. Req'd	Review (R) Decision-Making (D) or Appeal (A) Bodies				Notice Required ¹			Lapsing Period
			CM/D	PC	CC	BAA	Pub	Mail	Post	
Adaptive Reuse of Designated Historical Buildings	16-5-3	✓	R	R	D		✓		✓	None
Administrative Adjustments	16-2-17	✓	D			A				None
Administrative Land Review Permit	16-2-11	✓	D	A						60 days to record
Amendments to the Text of this Title	16-2-6		R	R	D		✓			None
Annexation Petitions	16-2-5	✓	R	R	D		✓		✓	None
Appeals to Board	16-2-18	✓				D	✓			None
Comprehensive Plan Amendments	16-2-4		R	R	D		✓			None
Conditional Use Permits	16-2-12	✓	R	D	A		✓		✓	1 year
Conditional Use - Telecommunication	16-7	✓	R	D	A		✓	✓	✓	None
Development Agreements	16-2-15		R		D					As stated in Agreement
Floodplain Dev't. Permit and Floodplain Variances	See Chapter 16-4 for applicable procedures and standards									
Historic Preservation	16-6-11	✓	R	R	D		✓		✓	None
Landmark Sign	16-6-13	✓		D	A		✓		✓	

Limited Review Use Permits	16-2-13	✓	D	A						1 year
Major Subdivisions	16-2-10									
Preliminary Plat		✓	R	R	D		✓	✓	✓	6 months to submit Final Plat
Final Plat			R	R	D		✓	✓	✓	60 days to record
Simultaneous Review Preliminary Plat/Final Plat		✓	R	R	D		✓	✓	✓	60 days to record
Recorded Final Plat										None
Minor Subdivision	16-2-11									
Preliminary Plat		✓	D	A						6 months to submit Final Plat
Final Plat			D	A						60 days to record
Recorded Final Plat										None
<u>Nonconforming Structures</u>	<u>16-9-3</u>	<u>✓</u>	<u>D</u>				<u>Δ</u>			
Official Zoning Map Amendments (Rezoning)	16-2-7	✓	R	R	D		✓	✓	✓	None
PUD and TSA Rezoning	16-2-7	✓	R	R	D		✓	✓	✓	None
Temporary Use Permits	16-2-14	✓	D	A						As stated in Permit
Unlisted Use Classifications	16-5-1.B	✓	D	A						None
Zoning Site Plan	16-2-9		D	A						3 years
Zoning Variances	16-2-16	✓	R			D	✓		✓	180 days
CM/D = City Manager or Designee (Including the Development Review Team) PC = Planning and Zoning Commission CC = City Council BAA = Board of Adjustment and Appeals										
¹ Notice Required: See Table 16-2-3.1 Summary of Mailed Notice Requirements										

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 9, Section 3 entitled *Nonconforming Structures* of the Englewood Municipal Code 2000, to read as follows:

16-9-3 Nonconforming Structures.

A. Applicability and Exemptions. This Section shall apply to all nonconforming structures, as defined in Chapter 16-11 EMC, except that the following structures shall not be considered nonconforming structures and shall be considered exempt from the terms and limitations of this Section and Chapter:

1. Principal one-unit residential dwellings existing on the effective date of this Title, and which as of that date are not in compliance with the minimum ~~side~~ setback standards established in Chapter 16-6 EMC, shall not be considered nonconforming structures due solely to the dwelling's noncompliance with the minimum ~~side~~ setback standards. Such dwellings are "grandfathered," and shall be considered legal, conforming structures for the purposes of sale and development under this Title and other City building and safety regulations. All future

expansions and alterations of such grandfathered dwellings shall comply with all applicable standards of this Title, including minimum side setback standards, unless the City grants a variance.

2. Multi-unit dwellings existing on the effective date of this Title, which are not in compliance with the required minimum lot area per dwelling unit standards, shall not be considered nonconforming due solely to noncompliance with the minimum lot area per dwelling unit standards. Such dwellings are “grandfathered,” and shall be considered legal, conforming buildings or structures for the purpose of sale and development under this Title and other City building and safety regulations. However, all future expansions and alterations of such grandfathered dwellings shall comply with all applicable standards of this Title, including minimum setbacks standards, unless the City grants a variance.

B. Nonconforming Building or Structure.

1. A nonconforming building or structure may continue to be used, except as otherwise provided herein.
2. A nonconforming building or structure may be repaired, structurally altered, or expanded only if the alteration, repair, or expansion complies with this Title. If the nonconforming building or structure or any portion thereof, is declared unsafe by the Chief Building Official, the building may be strengthened or restored to a safe condition.
3. Notwithstanding the provisions of subsection A B.2, above, a nonconforming building or structure in a Floodplain District may be modified, altered, or repaired to incorporate floodproofing measures, but shall not be extended or expanded.
4. ~~No nonconforming building or structure that is destroyed or damaged to the extent of more than sixty percent (60%) of its value, as determined pursuant to the method of determining the valuation of buildings for building permit issuance, shall be repaired or rebuilt except in compliance with the requirements of this Title.~~
- 5 4. If a nonconforming building or structure becomes conforming, it shall not be changed back to a nonconforming building or structure.
- 6 5. No person shall move a nonconforming building or structure to another parcel unless the building or structure and its location on the new parcel comply with the use regulations of the zone district applicable to the new parcel.

C. Redevelopment of Nonconforming Buildings or Structures.

1. The City of Englewood encourages redevelopment of outdated, nonfunctional or obsolete buildings and structures. In an effort to encourage redevelopment of such buildings or structures and to promote economic development, nonconforming buildings and structures may be removed and reconstructed, whether damaged or not, only in compliance with the following requirements:

- a. The reconstructed building or structure shall not be more nonconforming that the structure as it existed immediately prior to the reconstruction. Redeveloped or reconstructed buildings or structures shall be allowed up to, but not to exceed, the density of the nonconforming building or structure as it existed immediately prior to the redevelopment, whichever is greater.
- b. The reconstructed building or structure shall be brought into compliance as much as practicable with existing zoning standards of this Code (Examples: setbacks, parking, landscaping, bulk plane, etc.). The determination of "practicable" will be made by the City Manager or designee based upon the proposed use and design of the structure, site conditions, and current industry methods and standards. The City Manager or designee shall consider not only what is possible, but also what is reasonable based on the unique circumstances of the building or structure, proposed use, and site conditions.
- c. If the damage to the nonconforming building or structure was caused by the intentional act or criminal conduct of the owner of the nonconforming building or structure, or the owner's agent or representative, the building or structure shall only be rebuilt in compliance with this Title and shall not be considered grandfathered under this Section, and furthermore shall not be eligible for redevelopment under Section 16-9-3(C) EMC.
- d. Regardless of any waivers or lessening of standards otherwise required in this Title, all new development (including reconstruction of nonconforming buildings or structures) shall meet the applicable building, fire and safety codes in effect at the time of application for a building permit.

D. Application Process.

- 1. Reconstruction of a nonconforming building or structure shall follow the Site Improvement Plan Review process identified in Section 16-2-9 EMC, unless variances are requested for other dimensional or development standards. In such cases, variances shall follow the Zoning Variance process in Section 16-2-16 EMC.
- 2. A building permit application for reconstruction of a damaged or destroyed nonconforming building or structure shall be submitted within one (1) year from the date of the event that caused the damage or destruction. If no building permit application is submitted within one (1) year, damaged or destroyed nonconforming buildings or structures on the site shall no longer be eligible for redevelopment under Section 16-9-3(C) EMC, above and the redevelopment shall conform to the dimensional and development standards of the applicable zone district

E. Appeals.

Any appeal from the City Manager or designee's decision shall be to the Board of Adjustment and Appeals pursuant to 16-2-18(B) EMC.

Section 3. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 4. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 5. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 6. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 7. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 7th day of April, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 11th day of April, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 9th day of April, 2014 for thirty (30) days.

ATTEST:

Randy P. Penn, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 7th day of April, 2014.

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2014

COUNCIL BILL NO. 14
 INTRODUCED BY COUNCIL
 MEMBER WILSON

AN EMERGENCY ORDINANCE CREATING A MORATORIUM ON THE
 ESTABLISHMENT OF ANY NEW MEDICAL MARIJUANA BUSINESS WHICH SELLS,
 MANUFACTURES OR CULTIVATES MEDICAL MARIJUANA.

WHEREAS, the Englewood City Council received complaints concerning posting and criteria for businesses which manufacture or cultivate medical marijuana at the meeting of February 18, 2014; and

WHEREAS, Council made a motion to implement an emergency ordinance creating a moratorium on the establishment of medical marijuana businesses which manufacture or cultivate medical marijuana; and

WHEREAS, Council desires a six month moratorium on any future applications for any Medical Marijuana businesses which manufacturer or cultivate medical marijuana to evaluate the City's current posting requirements and criteria for such businesses; and

WHEREAS, staff will evaluate this information and forward it on to the Englewood Liquor and Marijuana Licensing Authority for recommendations ultimately to City Council; and

WHEREAS, the moratorium allows the two current applicants for the Medical Marijuana Optional Premises Cultivation licenses to be reviewed by the Englewood Liquor and Medical Marijuana Licensing Authority; and

WHEREAS, if the Englewood Liquor and Medical Marijuana Authority finds that the current applicants for the Medical Marijuana Optional Premises Cultivation Licenses were posted incorrectly, they will be allowed to correct the posting immediately; and

WHEREAS, Council added Medical Marijuana Centers to the moratorium at the March 17, 2014 Council Meeting.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT THERE SHALL BE A MORATORIUM FOR THE MEDICAL MARIJUANA OPTIONAL PREMISES CULTIVATION LICENSES.

Section 1. An emergency is hereby declared requiring immediate passage of this Ordinance for the immediate preservation of the public property, health, peace and safety; it is hereby declared that an emergency exists and that this Ordinance shall take effect upon its final passage.

Section 2. The moratorium allows the two current applicants for the Medical Marijuana Optional Premises Cultivation Licenses to be reviewed by the Englewood Liquor and Medical Marijuana Licensing Authority to determine if they had posted their Public Hearing Notices correctly and if found incorrect, they will be allowed to correct the posting immediately. Complete applications for Centers submitted prior to April 7, 2014 will be processed.

Section 3. The moratorium declares a six month moratorium on any future Medical Marijuana Centers, Manufacture Infused Products and Optional Premises Cultivation License applications.

Section 4. During said moratorium the City Council directs City staff to develop appropriate recommendations to Council, consistent with the Constitutional Amendment language and State regulations.

Section 4. The City Council finds the provisions of this Ordinance are temporary in nature and are intended to be replaced by subsequent legislative enactment so that the moratorium or temporary suspension as specified in this Ordinance shall terminate after October 7, 2014.

Introduced, read in full, and passed on first reading as an emergency Ordinance on the 3rd day of March, 2014.

Published by Title as an Emergency Bill for an Ordinance in the City's official newspaper on the 7th day of March, 2014.

Published as an Emergency Bill for an Ordinance on the City's official website beginning on the 5th day of March, 2014 for thirty (30) days.

Read by title, amended and passed as amended on the 17th day of March, 2014.

Published by title as an amended Emergency Bill for an Ordinance in the City's official newspaper on the 21st day of March, 2014.

Published as an amended Emergency Bill for an Ordinance on the City's official website beginning on the 19th day of March, 2014 for thirty (30) days.

Read by title as amended and passed as amended on final reading on the 7th day of April, 2014.

Published by title as amended in the City's official newspaper as Ordinance No. ____, Series of 2014, on the 11th day of April, 2014.

Published by title as amended on the City official website beginning on the 9th day of April, 2014 for thirty (30) days.

This Ordinance shall take effect immediately upon final reading on the 7th day of April, 2014.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the amended Emergency Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2014.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: April 7, 2014	Agenda Item: 11 c i	Subject: Resolution for a year-end supplemental appropriation to the 2013 Budget
Initiated By: Finance and Administrative Services Department		Staff Source: Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has not discussed this supplemental appropriation or transfer specifically. Council approved the 2013 Budget and Appropriations Ordinances on final reading on October 15, 2012. Council is scheduled to discuss the audit and 2013 Comprehensive Annual Financial Report at the May 19, 2014 Study Session.

RECOMMENDED ACTION

Staff recommends City Council approve the attached resolution for a supplemental appropriation to the 2013 Budget for the following funds:

SOURCES AND USES OF FUNDS:

GENERAL FUND:

SOURCE OF FUNDS:

Building Division Plan Review Fees Offsetting Related Expenditures \$120,000

USE OF FUNDS:

Fire Department - Professional Services \$120,000

CENTRAL SERVICES FUND:

SOURCE OF FUNDS:

Unassigned Fund Balance \$10,000

USE OF FUNDS:

Unanticipated Equipment Purchases \$10,000

NEIGHBORHOOD STABILIZATION FUND:

SOURCE OF FUNDS:

Unassigned Fund Balance (Fund Close Out) \$30,000

USE OF FUNDS:

Transfer Out to Housing Rehabilitation Fund \$30,000

HOUSING REHABILITATION FUND:

SOURCE OF FUNDS:

Transfer In From Neighborhood Stabilization Fund \$30,000

USE OF FUNDS:

Unassigned Fund Balance \$30,000

CONCRETE UTILITY FUND:

SOURCE OF FUNDS:

Unassigned Fund Balance \$25,000

USE OF FUNDS:

Capital Spending Budgeted in 2012 Completed in 2013 \$25,000

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The supplemental appropriations for 2013 are presented for Council's consideration at this time because total expenditures for the year are often not fully known until all expenditures are paid, which is often months after year-end.

Building Division (General Fund) overspent their budget due to unanticipated professional services related to increased construction in the City.

The Central Services Fund purchased a wide-format printer for \$15,000 in 2013 that was not anticipated when the 2013 Budget was prepared. The wide-format printer is a necessity for a number of City departments.

The Neighborhood Stabilization Fund (NSF) completed its activities in 2013 leaving \$30,000 to transfer to the Housing Rehabilitation Fund. These funds will be available for future appropriation.

The Concrete Utility Fund had budgeted funds for capital spending in 2012 but the project was not completed until 2013. The capital costs were not part of the 2013 budget but there will be not unanticipated financial impact as the funds were unused in 2012.

FINANCIAL IMPACT

Central Services' Unassigned Reserve will decrease \$10,000. Only the Central Services Fund will have a direct financial impact as a result of the Resolution. The General Fund will not have a financial impact from the increased professional services due to offsetting revenues.

LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. _____
SERIES OF 2014

A RESOLUTION APPROVING A SUPPLEMENTAL APPROPRIATION TO THE 2013 BUDGET AND TRANSFER BETWEEN FUNDS.

WHEREAS, the City of Englewood is required by City Charter to ensure that expenditures do not exceed legally adopted appropriations; and

WHEREAS, the 2013 Budget was submitted and approved by the Englewood City Council on October 15, 2012; and

WHEREAS, this supplemental appropriation to the 2013 Budget is due to total expenditures for the year not being fully known until all expenditures are paid, which is often months after year-end and therefore not anticipated or appropriated at the time the 2013 Budget was prepared.

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

Section 1. The Budget for the City of Englewood, Colorado, is hereby amended for the year ending 2013, as follows:

2013 SUPPLEMENTAL APPROPRIATION

SOURCES AND USES OF FUNDS:

GENERAL FUND

SOURCE OF FUNDS:

Building Division Plan Review Fees Offsetting Related Expenditures \$ 120,000

USE OF FUNDS:

Fire Department - Professional Services \$ 120,000

CENTRAL SERVICES FUND

SOURCE OF FUNDS:

Unassigned Fund Balance \$ 10,000

USE OF FUNDS:

Unanticipated Equipment Purchases \$ 10,000

NEIGHBORHOOD STABILIZATION FUND

SOURCE OF FUNDS:

Unassigned Fund Balance (Fund Close Out) \$ 30,000

USE OF FUNDS:

Transfer Out to Housing Rehabilitation Fund \$ 30,000

HOUSING REHABILITATION FUND

SOURCE OF FUNDS:

Transfer In From Neighborhood Stabilization Fund \$ 30,000

USE OF FUNDS:

Unassigned Fund Balance \$ 30,000

CONCRETE UTILITY FUND

SOURCE OF FUNDS:

Unassigned Fund Balance \$ 25,000

USE OF FUNDS:

Capital Spending Budgeted in 2012 Completed in 2013 \$ 25,000

Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2013 Budget for the City of Englewood.

ADOPTED AND APPROVED this 7th day of April, 2014.

ATTEST:

Randy P. Penn, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2014.

Loucrishia A. Ellis, City Clerk

COUNCIL COMMUNICATION

Date April 7, 2014	Agenda Item 11 c ii	Subject Purchase of Jet/Vacuum Vector Truck
INITIATED BY Utilities Department		STAFF SOURCE Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved purchase of a Vector flusher truck in August 1995 in the amount of \$142,750.

Council approved the purchase of a Vector flusher truck in January, 2003 in the amount of \$143,364.

Council approved the purchase of a sewer line cleaning/vacuuming machine (Vector truck) in May, 2006 to Williams Equipment in the amount of \$149,600.

RECOMMENDED ACTION

At their March 11, 2014 meeting, the Englewood Water and Sewer Board recommended Council approval, by motion of the purchase of a combination unit jet cleaning/vacuuming machine (Vector truck). Staff recommends awarding the bid to the lowest acceptable bidder, Williams Equipment, in the amount of \$278,700.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The proposed combination unit jet cleaning/vacuuming truck is designed to simultaneously clean and remove all liquids and solids from sanitary sewers, storm drain lines and other conduits. This piece of equipment is necessary for routine and emergency sewer line maintenance and will be replacing the existing outdated unit. This is part of the planned CERF replacement program.

The proposed combination unit jet cleaning/vacuum truck that is being requested will allow the crew to remove the blockage at the first point of contact rather than having to flush the debris to the nearest trunk line. The proposed combination truck will allow removal of the blocking solids at the point of the problem rather than proceeding through the entire system to the treatment plant.

A Request for Bid was published. Seven responses were received:

Faris Machinery Company	\$276,937.00
Williams Equipment Co.	\$278,700.00
McCandless Truck Center	\$282,862.00
Macdonald Equipment Co.	\$284,538.00
Volvo Trucks w/McDonald Equip.	\$305,210.00
Kois Brothers Equipment Co.	\$309,056.00
Global Machinery	\$324,400.00
Volvo Trucks w/Kois Equip.	\$329,728.00

Utilities staff determined that Williams Equipment (VacCon) is the lowest, most technically acceptable bidder. The Request for Bid required a 3000 psi pump for adequate pressure necessary for root cutting. Faris Machinery's quote was for a 2500 psi pump.

FINANCIAL IMPACT

Williams Equipment Company (VacCon) is the recommended bidder at \$278,700.00. The new vacuum/flusher truck will replace unit #1405, which is a 2004 Freightliner flusher unit.

This is a normal CERF replacement, with funds available in the CERF fund and approved in the 2014 budget.

LIST OF ATTACHMENTS

Bid Proposal Tabulation

Approved minutes from the March 11, 2014 Water and Sewer Board meeting

SERVICENTER GARAGE

**SUMMARY SPECIFICATION SHEET
FOR
NEW VEHICLES**

STATE AWARD # _____

ENGLEWOOD BID# IFB-14-003

MANUFACTURER OF VEHICLE Freightliner/VacCon

MODEL OF VEHICLE VacCon Combination Unit

AIR CONDITIONING	YES	NO
AUTOMATIC TRANSMISSION	YES	NO
POWER WINDOWS	YES	NO
POWER DOOR LOCKS	YES	NO
4 WHEEL DRIVE	YES	NO
FLEX FUEL OPTION	YES	NO
CERF REPLACEMENT	YES	NO
NEW ADDITION TO FLEET	YES	NO

DEPARTMENT VEHICLE ASSIGNED TO 411605-Utilities

COMMENTS: This unit will replace Unit 1405, a 2004 Freightliner flusher unit that has met the minimum requirements of hours of use, maintenance dollars expended, and years of service for replacement. This purchase was approved in the 2014 budget and funds are available in the Capital Equipment Replacement Fund (CERF). The cost of the replacement unit is \$278,700.00.

City of Englewood Bid Tabulation Sheet

Bid Opening Date: February 19, 2014 2:00 P.M. MST

ITEM BID: IFB-14-003 Sewer Jet and Vacuum Truck

Apparent Low Bidder

Vendor	Sewer Jet and Vacuum Truck	Operations Manuals X3	Parts & Service Manual	Total Bid	Exceptions:
Volvo Trucks of Denver w/McDonald Equipment					
7250 E 56th Ave.					
Commerce City, CO 80022					25,500lb rear spring
303-289-4707					w/helper in lue of
Greg Leupold - Sales	\$ 305,210.00	Included	Included	\$ 305,210.00	30,000lb
Volvo Trucks of Denver w/Kois Equipment					
7250 E 56th Ave.					
Commerce City, CO 80022					
303-289-4707					
Greg Leupold - Sales	\$ 329,728.00	Included	Included	\$ 329,728.00	None
Macdonald Equipment Co.					
7333 Hwy 85/PO Box 1865					
Commerce City, CO 80022					
303-287-7401					
Bill Phelps - General Manager	\$ 284,538.00	Included	Included	\$ 284,538.00	Please see attached
Kois Brothers Equipment Company					
5200 Colorado Blvd.					
Commerce City, CO 80022					
303-298-7370					No exceptions, see attached
Jesse McKinley - Central Colorado Sales	\$ 309,056.00	Included	Included	\$ 309,056.00	where we exceed specifications
Faris Machinery Company					Water storage tanks: no top mount
5770 East 77th Ave.					inspection port Water pump: 2500
Commerce City, CO 80022					PSI, Vacuum system: fan housing
303-289-5743					has auto flushout system, Hose Reel:
Larry Johnson - Environmental Division Mgr	\$ 276,934.00	Included	Included	\$ 276,937.00	No quick disconnect system
Williams Equipment, LLC					
9670 Dallas St. Unit J					
Henderson, CO 80640					Chassis Bid: Freightliner 114SD

COUNCIL COMMUNICATION

Date April 7, 2014	Agenda Item 11 c iii	Subject Two 3 Million-Gallon S. Clarkson Water Storage Roof Rehab. Project ITB-002
INITIATED BY Utilities Department	STAFF SOURCE Stewart H. Fonda, Director of Utilities	

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved, at their March 16, 2004 meeting, the bid award for one tank repair for the west 3-million-gallon S. Clarkson reservoir to RN Civil Construction in the amount of \$201,173.00.

Council approved, at their September 19, 2005 meeting, the bid award for the one tank repair for the east Clarkson Street two 3-million-gallon reservoirs to Premier Spec. constructors in the amount of \$261,285.00

RECOMMENDED ACTION

The Water and Sewer Board, at their March 11, 2014 meeting, recommended City Council approval of the bid from Moltz Construction, Inc. as the lowest acceptable bidder at \$1,188,500.00 for repairing the two 3MG water storage tank roof slabs.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The two S. Clarkson Street 3-million-gallon covered reservoirs, located two blocks east of the intersection of Clarkson and Sunset Ridge in the City of Greenwood Village, were originally constructed in 1952 and 1956 as water storage facilities for treated water for the City of Englewood. The tanks provide fire protection and back-up water during power outages for Englewood's Zone 1, which encompasses 60% of the City.

An inspection of the 3-million-gallon tanks determined that the floor slabs, columns and walls were in good condition. The tank roof slabs, however, have deteriorated and are in poor condition, and if left unrepaired, deterioration will become more extensive. Substantial repair and protection measures are recommended to extend the serviceability of the tanks. These repairs should extend the service life of the tanks by at least 20 years. The bid proposed will include piping modifications, structural repairs, and lightweight concrete installation with a PVC membrane roof system.

One bid received was a "no bid" due to not having qualified personnel for the necessary processes.

FINANCIAL IMPACT

This project requires two specialty contractors that are certified by the project manufacturer. Two bids were received, but the "no bid" submittal was disqualified. The Utilities Engineer determined that Moltz Construction, Inc. was the lowest acceptable bidder at \$1,188,500. The engineer's estimate was \$1,200,000.00. \$1,600,000.00 was budgeted in the Utilities Fund.

LIST OF ATTACHMENTS

Bid Proposal Form
Approved minutes from the March 11, 2014 Water and Sewer Board meeting.

COPY

ITB-14-002
South Clarkson Water Storage Roof Rehab Project

BID PROPOSAL FORM

Name of Firm: Moltz Construction, Inc.

Base Bid Grand Total - Sum of Structural Repairs, Lightweight Concrete Installation, PVC Roof System Installation and Project Mobilization and Administration. Construct the Project complete with structural repair to existing concrete slabs and installation of new roofing system with insulating lightweight concrete substrate, for the Contract Sum of:

ONE MILLION, ONE HUNDRED EIGHTY EIGHT THOUSAND, FIVE HUNDRED Dollars
(\$ 1,188,500)

Indicate the costs for each component of work (note, the Base Bid total entered above shall be the sum of the following breakout costs):

Structural Repairs (all work indicated on Sheets S1 and S2)	\$ <u>88,100</u>
Pricing for Item E includes the use of <u>PVC</u> or steel pipe?	\$ <u>162,500</u>
Lightweight Concrete Installation	\$ <u>396,500</u>
PVC Roof System Installation	\$ <u>391,250</u>
Project Mobilization, Administration, Permits, etc.	\$ <u>150,150</u>

BIDDERS ARE REQUESTED TO SUBMIT BIDS AS FOLLOWS:

Receipt of Addenda Nos. #1, 2/19/14 _____ is hereby acknowledged.

One such bid for the construction and installation of those improvements on the **South Clarkson Water Storage Roof Rehab Project.**

TOTAL AMOUNT OF BID
ONE MILLION, ONE HUNDRED EIGHTY EIGHT THOUSAND, FIVE HUNDRED (\$ 1,188,500)

Should the repair quantities for the structural work exceed the amounts shown on Sheet S1, the contractor agrees to perform the additional work for the following unit prices:

<u>Repair Item</u>	<u>Description</u>	<u>Unit Price</u>
A	Remove and replace deteriorated concrete on vertical surface of beam	\$ <u>332</u> /SF
B	Remove and replace deteriorated concrete on slab soffit	\$ <u>285</u> /SF
C	Remove and replace deteriorated concrete on top surface of slab	\$ <u>161</u> /SF
D	Remove and replace deteriorated concrete on edge of slab	\$ <u>210</u> /LF

This Contract will be awarded to the lowest reliable, responsive and responsible bidder.

This offer shall be open to acceptance and is irrevocable for sixty (60) days from the bid closing date.

The undersigned bidder hereby agrees to be ready and to appear at the office of the Department of Utilities, to execute the attached form of Contract in conformity of this bid and also to have ready and furnish the required bond in the sum of the full amount of this proposal, executed by a surety company acceptable to the City of Englewood, at any time within ten (10) days from the date of a written notice from the Director of Utilities to do so, mailed to the address hereinafter given.

This Proposal is made without any connection with any other persons, firms, or corporations making any other bid for this same work and is in all respects fair and without collusion or fraud.

The Undersigned Bidder acknowledges the right of the City to reject any or all bids submitted and to waive informalities therein.

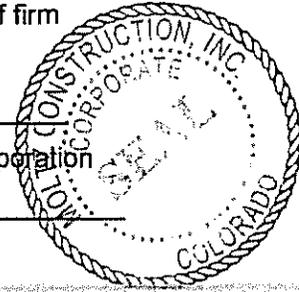
Dated at Salida, Colorado this 27 day of February, 2014

Signature of Bidder:

If an individual: N/A doing business as _____

If a partnership: N/A
By: N/A member of firm

If a corporation: Moltz Construction, Inc.
a Colorado corporation
By: Eric Moltz, President ✓



Business address, name and phone number of Bidder:

8807 Cty Rd 175, PO Box 729, Salida, CO 81201
719-539-7319, eric@moltzconstruction.com

The name and location of the last work of this kind herein contemplated upon which Bidder was engaged is as follow:

Plum Creek Water Purification Facility, 1929 N. Liggett Road, Castle Rock, CO 80109

For information relative hereto please refer to:

Name Eric Moltz Title President
Address 8807 Cty Rd 175, PO Box 729, Salida, CO 81201
719-539-7319,

Motion approved unanimously.



8. S. PLATTE WATER RELATED ACTIVITIES PROGRAM – ENDANGERED SPECIES ACT.

The South Platte Water Related Activities Program (SPWRAP) is an agreement with the Department of the Interior to improve the habitat of endangered species. The SPWRAP program improves the endangered species habitat by providing more water in the critical area along the Platte River in Nebraska. This agreement provides compliance with the Endangered Species Act to participating entities.

Englewood's portion of the assessment for the program for 2014 is \$10,458, with an annual assessment for an additional six years. Future assessment amounts will be computed on treated water use and number of participants.

Motion: To recommend Council approval of Englewood's continued participation in the S. Platte Water Related Activities Program and assessment for 2014 and approving the assessment, based on water consumption, for six years thereafter.

Moved: Habenicht

Seconded: Waggoner

Motion approved unanimously.

The meeting adjourned at 5:30 p.m.

The next Water and Sewer Board meeting will be Tuesday, April 8, 2014 at 5:00 p.m. in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary