

**Agenda for the
Regular Meeting of the
Englewood City Council
Monday, May 5, 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 April 21, 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. On behalf of the Englewood Cultural Arts Commission, City Council Member Jill Wilson and other Cultural Arts Commission members, members of the Englewood School District and the Englewood Education Foundation will present scholarships to area students.
 - b. Paul Evans and/or Lila Downing will be present to accept the 2014 Aid to Other Agencies donation for the Englewood High School After Prom and the Homecoming Parade.
 - c. Students from the joint Englewood High School/Colorado's Finest Alternative High School Destination Imagination Team will be present to address City Council regarding the team's acceptance into the global finals.

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.

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. Proclamation naming Kells Waggoner as Englewood's Citizen of the Year for 2014.
 - b. Proclamation recognizing May 2014 as Older Americans Month.
 - c. Proclamation recognizing May 11 through 17, 2014 as National Police Week.
 - d. Proclamation declaring May 17, 2014 as National Kids to Parks Day.

9. Consent Agenda Items
 - a. Approval of Ordinances on First Reading.
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 22, amending sections of Title 16 of the Englewood Municipal Code pertaining to non-conforming structures.
 - ii. Council Bill No. 23, authorizing an Intergovernmental Agreement to allow the City of Englewood's participation in the Colorado Information Sharing Consortium (CISC).
 - iii. Council Bill No. 25, authorizing an Intergovernmental Agreement with Colorado Department of Public Safety Division of Fire Prevention and Control regarding joint staffing and operation of a state Wildland Fire Engine.
 - c. Resolutions and Motions.
 - i. Recommendation from the Finance and Administrative Services Department to approve a resolution quantifying and appropriating funds for the construction of Duncan Park improvements. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Services.**
 - ii. Recommendation from the Public Works Department to approve, by motion, a contract for the construction of Duncan Park improvements. Staff further recommends awarding the contract to the lowest acceptable bidder, American Civil Constructors, Inc. in the total estimated amount of \$1,448,765.15. **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. 27 – Recommendation from the Finance and Administrative Services Department to adopt a bill for an ordinance authorizing the addition of Section 6 to Title 7, Chapter 5 of the Englewood Municipal Code adding language regarding the method used (resolution) for setting fees and charges related to the registration of sex offenders. **Staff Source: Frank Grylewicz, Director of Finance and Administrative Services.**
- ii. Council Bill No.26 – Recommendation from the City Attorney’s office to adopt a bill for an ordinance authorizing an amendment to Title 7, Chapter 6B, Subsection (A)(2) of the Englewood Municipal Code pertaining to the prohibition of loitering in or about a school building or grounds. **Staff Source: Dugan Comer, Prosecuting Attorney.**
- iii. Council Bill No. 24 – 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 site improvement plans. Staff further recommends that Council set a Public Hearing for May 19, 2014 to gather public input on the proposed amendments. **Staff Source: Chris Neubecker, Senior Planner.**

b. Approval of Ordinances on Second Reading.

c. Resolutions and Motions.

- i. Recommendation from the Finance and Administrative Services Department to approve a resolution authorizing a supplemental appropriation to the 2014 Budget for a search firm to assist in the hiring of a new City Manager. **Staff Source: Frank Grylewicz, Director of Finance and Administrative Services.**
- ii. Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to approve, by motion, a construction contract for the Interim Disinfection Improvement Project located at the Littleton/Englewood WWTP. Staff further recommends awarding the contract to the lowest acceptable bidder, RN Civil Construction, in the amount of \$432,000. **Staff Source: Stewart Fonda, Director of Utilities and Chong Woo, Engineering and Maintenance Manager.**

12. General Discussion.

a. Mayor’s Choice.

- b. Council Members' Choice.
 - i. Selection of a search firm to hire a new City Manager.
 - ii. Arapahoe County Fair sponsorship on July 24, 2014.

- 13. City Manager's Report.

- 14. City Attorney's Report.

- 15. Adjournment.



PROCLAMATION

WHEREAS, each year the City Council of the City of Englewood, Colorado honors a Citizen of the Year who has made significant contributions to the community of Englewood; and

WHEREAS, Kells Waggoner is a long-time Englewood resident who has devoted years of service to the City of Englewood; and

WHEREAS, Mr. Waggoner served as Englewood's Public Works Director from 1964 to 1990, during a period of major growth and development in Englewood; and

WHEREAS, even after he left his employment at the City of Englewood, Mr. Waggoner was committed to making a difference in his community and he successfully ran and served eight years on Englewood City Council; and

WHEREAS, Mr. Waggoner has also helped develop policy and guide improvements in Englewood through his volunteer service on Englewood's Planning and Zoning Commission and the Englewood Water and Sewer Board; and

WHEREAS, Mr. Waggoner has maintained a strong commitment to the City of Englewood for nearly four decades; and

WHEREAS, the Englewood City Council wishes to honor Kells Waggoner for his many contributions to the City and community of Englewood;

NOW, THEREFORE, we, the City Council of the City of Englewood, Colorado hereby take great pride in proclaiming

Kells Waggoner as Englewood's Citizen of the Year for 2014

ADOPTED AND APPROVED this 5th day of May, 2014.

Randy P. Penn, Mayor

Rick Gillit, City Council Member

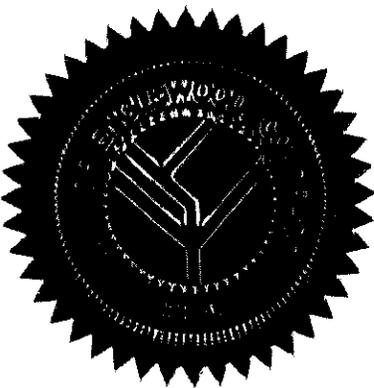
Linda Olson, Mayor Pro Tem

Joe Jefferson, City Council Member

Bob McCaslin, City Council Member

Jill Wilson, City Council Member

Steven R. Yates, City Council Member





PROCLAMATION

WHEREAS, Senior Citizens Month was established in 1963 by President John F. Kennedy encouraging the nation to pay tribute in some way to older people across the country; and

WHEREAS, in 1980, President Jimmy Carter changed the name to Older Americans Month; and

WHEREAS, ten percent of the City of Englewood, Colorado population is over the age of sixty; and

WHEREAS, the older adults in the City of Englewood, Colorado have made countless contributions and sacrifices to ensure a better life for future generations; and

WHEREAS, we recognize the value of injury prevention and safety awareness in helping older adults remain healthy and active; and

WHEREAS, the Englewood community can provide opportunities to enrich the lives of individuals young and old by:

- Emphasizing the need to take action to safeguard themselves from unintentional injuries where they live, work and socialize.
- Providing information on avoiding leading causes of injury for older adults.
- Helping older adults take control of their safety.

WHEREAS, the City of Englewood, Colorado Malley Senior Recreation Center which has a membership of 2,634 is committed to helping all individuals live longer, healthier lives; and

WHEREAS, the Malley Senior Recreation Center will be celebrating Older Americans Month with a variety of activities to support the mission to keep seniors healthy and independent.

NOW THEREFORE, I, Randy P. Penn, Mayor of the City of Englewood, Colorado, hereby proclaim
May 2014:

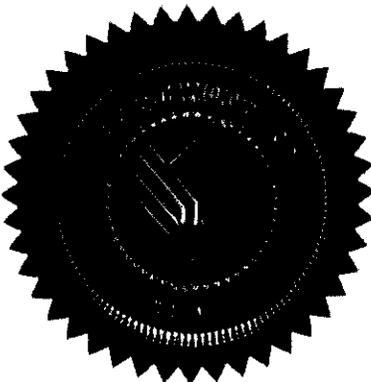
OLDER AMERICANS MONTH: SAFE TODAY. HEALTH TOMORROW

in the City of Englewood, Colorado. I urge all every resident to take time this month to recognize older adults and the people who serve and support them as powerful and vital individuals who greatly contribute to the City of Englewood, Colorado.

BE IT FURTHER RESOLVED that the Mayor and City Council of the City of Englewood, Colorado reaffirm our commitment to

GIVEN under my hand and seal this 5th day of May, 2014.

Randy P. Penn, Mayor





PROCLAMATION

WHEREAS, there are approximately 900,000 law enforcement officers serving in communities across the United States, including the dedicated members of the Englewood Police Department; and

WHEREAS, nearly 60,000 assaults against law enforcement officers are reported each year, resulting in approximately 16,000 injuries; and

WHEREAS, since the first recorded death in 1791, almost 20,000 law enforcement officers in the United States have made the ultimate sacrifice and been killed in the line of duty; and

WHEREAS, the names of these dedicated public servants are engraved on the walls of the National Law Enforcement Officers Memorial in Washington, D.C.; and

WHEREAS, the service and sacrifice of all officers killed in the line of duty will be honored during the National Law Enforcement Officers Memorial Fund's 26th Annual Candlelight Vigil, on the evening of May 13th, 2014; and

WHEREAS, the names of these fallen heroes are being added to the National Law Enforcement Officers Memorial this spring; and

WHEREAS, Peace Officers Memorial Day occurs on May 15th, in honor of all fallen officers and their families where U.S. flags are flown at half staff;

NOW THEREFORE, I, Randy P. Penn, Mayor of the City of Englewood, Colorado, hereby proclaims the week of **May 11th through the 17th, 2014**, as:

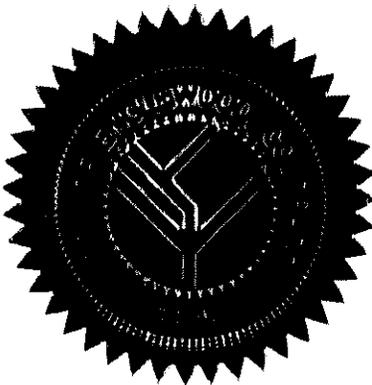
POLICE WEEK

and publicly salutes the service of law enforcement officers in the City of Englewood and in communities across the nation.

I urge all citizens of Englewood, Colorado to join in the commemoration of police officers, past and present, who by their faithful and loyal devotion to their responsibilities have rendered a dedicated service to the City of Englewood and, in doing so, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens

GIVEN under my hand and seal this 5th day of May, 2014.

Randy P. Penn, Mayor





PROCLAMATION

WHEREAS, May 17th, 2014 is the second National Kids to Parks Day organized and launched by the National Park Trust; and

WHEREAS, National Kids to Parks Day empowers kids and encourages families to get outdoors and visit America's National Parks; and

WHEREAS, it is important to introduce a new generation to our National Parks because of the decline in park attendance over the last decades; and

WHEREAS, we encourage children to lead a more active lifestyle to combat the issues of childhood obesity, diabetes mellitus, hypertension and hypercholesterolemia; and

WHEREAS, National Kids to Parks Day is open to all children and adults across the country to encourage a large and diverse group of participants; and

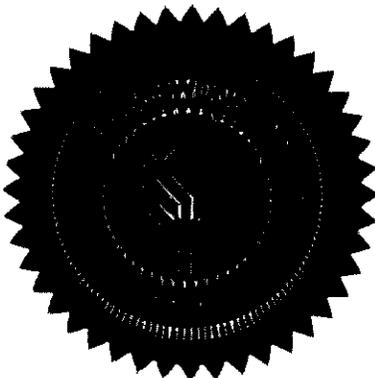
WHEREAS, National Kids to Parks Day will broaden children's appreciation for nature and the outdoors;

NOW THEREFORE, I, Randy P. Penn, Mayor of the City of Englewood, Colorado, hereby proclaim May 17th, 2014 as:

NATIONAL KIDS TO PARKS DAY

in the City of Englewood, Colorado. I urge all of our residents to take the children in their lives to a neighborhood, State or National Park.

GIVEN under my hand and seal this 5th day of May, 2014.



Randy P. Penn, Mayor

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2014

COUNCIL BILL NO. 22
 INTRODUCED BY COUNCIL
 MEMBER GILLIT

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>△</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.

A Public Hearing was held on April 21st, 2014.

Read by title and passed on final reading on the 5th day of May, 2014.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2014, on the 9th day of May, 2014.

Published by title on the City's official website beginning on the 7th day of May, 2014 for thirty (30) days.

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

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

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 23
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT OF THE
COLORADO INFORMATION SHARING CONSORTIUM (CISC).

WHEREAS, the Colorado Information Sharing Consortium (CISC) was established in 2007 to further the sharing of information between and among law enforcement agencies within the State of Colorado through the use of “COPLINK”; and

WHEREAS, COPLINK is a software product that connects disparate police records management systems and other data systems; and

WHEREAS, allowing police officers to conduct ad hoc inquiries to match evidence, explore tips and hunches, generate leads and solve crime; and

WHEREAS, in 2007 the original CISC was formed via a memorandum of understanding between the participating agencies which created no legal status or authority for the original CISC; and

WHEREAS, the purpose in creating a governmental authority under Colorado Revised Statutes is to allow the CISC to legally enter into contracts to purchase updated products for a statewide entity, to pursue grant opportunities to fund new and improved technologies and systems, and to provide governmental immunity; and

WHEREAS, the passage of this Ordinance authorizes the City of Englewood to participate in the Colorado Information Sharing Consortium (CISC); and

WHEREAS, financial obligations and governance of the CISC are contained within the intergovernmental agreement; and

WHEREAS, no federal funding will be used by the City in the execution of this agreement.

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 Intergovernmental Agreement for the City of Englewood to participate in the Colorado Information Sharing Consortium (CISC), attached hereto as “Exhibit A”.

Section 2. The Englewood City Council hereby authorizes the Mayor to sign the agreement for and on behalf of the City of Englewood, attached as Exhibit A.

Introduced, read in full, and passed on first reading on the 21st day of April, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of April, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of April, 2014 for thirty (30) days.

Read by title and passed on final reading on the 5th day of May, 2014.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2014, on the 9th day of May, 2014.

Published by title on the City's official website beginning on the 7th day of May, 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

**INTERGOVERNMENTAL AGREEMENT
OF THE
COLORADO INFORMATION SHARING CONSORTIUM**

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**INTERGOVERNMENTAL AGREEMENT
OF THE
COLORADO INFORMATION SHARING CONSORTIUM**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is effective as of the [_____] day of [_____], 2014 (the "Effective Date," as further defined below) by and between the Adams County Sheriff's Office, the Arapahoe County Sheriff's Office, the City of Aurora, the Colorado Department of Public Safety of the State of Colorado, the City of Colorado Springs, the City of Commerce City, the City and County of Denver, the Douglas County Sheriff's Office, the City of Grand Junction, the Board of County Commissioners of the County of Jefferson, the Board of County Commissioners of the County of Mesa, and all other entities or agencies that sign this Agreement consistent with the requirements herein (individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Parties are each authorized to lawfully provide, establish, maintain, and operate law enforcement services;

WHEREAS, Part 2 of Article 1, Title 29 of the Colorado Revised Statutes (the "C.R.S.") encourages and authorizes intergovernmental agreements for the joint and cooperative provision of public services;

WHEREAS, C.R.S. § 29-1-203 authorizes governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each and to establish a separate legal entity to do so;

WHEREAS, 21 U.S.C. § 873 and regulations promulgated thereunder authorize certain agencies within the Federal government to cooperate with local, state, tribal, and Federal agencies for the purpose of exchanging certain information;

WHEREAS, the Parties, along with other Colorado law enforcement entities, have previously entered into a nonbinding and voluntary memorandum of understanding (the "MOU") to jointly develop the statewide Colorado Information Sharing Consortium (the "CISC") with the purpose and intent of sharing law enforcement information, primarily through a software product known as COPLINK;

WHEREAS, the Parties, along with the other signatories of the MOU, have determined that it is in the public's best interest to formalize the CISC into a legal entity in order to permit the CISC to enter into contracts and utilize economies of scale for the purchase of future services, products, and maintenance and to enter into information sharing agreements with jurisdictions outside the State of Colorado;

WHEREAS, the Parties and other signatories of the MOU have agreed to organize and operate a separate legal entity pursuant to C.R.S. § 29-1-203(4), which shall be known as the Colorado Information Sharing Consortium; and

WHEREAS, the Parties intend for other entities or agencies to join as Parties to this Agreement by signing a separate signature page to this Agreement consistent with the requirements herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

DEFINITIONS

1. Definitions. In addition to the above defined terms, the following terms shall have the meaning ascribed to them.

- a. "Assigned Employee" shall mean a Party's employee assigned to work full- or part-time on behalf of the CISC.
- b. "Board" shall mean the Board of Directors of the CISC.
- c. "Data" shall mean facts, detailed information, police report narratives, supplemental report narratives, other text-related information as determined and released by each Party's internal information sharing policy, and other materials provided by a Party to the CISC. "Data" shall not mean Intelligence Information (defined below).
- d. "Director" shall mean a director on the Board of the CISC.
- e. "Effective Date" shall be the date written in the preamble, which shall be the date on which the sixth Party signed this Agreement.
- f. "Intelligence Information" shall mean evaluated data relevant to the identification of criminal activity engaged in by an individual or organization reasonably suspected of involvement in criminal activity that meets criminal intelligence system submission criteria as set forth in Part 23 of Title 28 of the Code of Federal Regulations. Intelligence Information is a criminal justice record pursuant to C.R.S. § 24-72-302(4).
- g. "Manager" shall mean a person who is assigned to manage the day-to-day operations of the CISC.
- h. "Representative" shall mean the chief law enforcement officer of each Party or the person designated by the chief law enforcement officer of each Party.

CREATION OF THE COLORADO INFORMATION SHARING CONSORTIUM

2. Creation of the CISC. Pursuant to C.R.S. § 29-1-203(4), the Parties hereby create a separate legal entity known as the Colorado Information Sharing Consortium, or CISC, which shall have the powers, authorities, duties, privileges, immunities, rights, and responsibilities as set forth herein.

3. Principal Place of Business. The principal place of business of the CISC shall be 15001 East Alameda Parkway, Aurora, CO 80012, unless and until otherwise established from time to time by the Board.

4. CISC Purpose. The purpose of the CISC is to facilitate the sharing of Data and Intelligence Information between the Parties and non-Party governmental entities and agencies authorized by the Board.

DATA SHARING AGREEMENT

5. Data Sharing. Each Party shall share Data with the Parties and with non-Party governmental entities or agencies authorized by the Board.

6. Data Use. Shared Data shall only be used for law enforcement purposes consistent with the welfare and protection of the general public.

7. Personnel Authorized to Access Data. Only the Parties' employees and employees of non-Party governmental entities or agencies authorized by the Board shall be allowed to access the Data. All persons with access to the Data must first pass an adequate background screen. The Board shall determine what constitutes an adequate background screen for the purpose of access to Data.

8. Data Security. The Parties and any non-Party governmental entities or agencies authorized by the Board shall maintain, enforce, and follow security requirements for the Data as specified by the Board, including requirements on network configuration and network access.

9. Data Custody and Control. Each Party shall retain custody and control and shall remain the official custodian of any Data shared by that Party. The CISC shall not have custody and control and shall not be the official custodian of any Data. The CISC shall not release any Data pursuant to a request under Part 2 or Part 3 of Article 72, Title 24, C.R.S. or pursuant to a subpoena unless specifically ordered to do so by a court of competent jurisdiction.

10. Data Accuracy. The Parties understand that the Data shared by the Parties may not be accurate. The Board may set standards and requirements for Parties to correct inaccurate Data.

11. Intelligence Information.

a. No Obligation to Share. No Party shall be required to share Intelligence Information and may deny a request to share Intelligence Information for any reason.

b. Standard for Sharing. When Intelligence Information is disseminated through the CISC, it shall be disseminated consistent with Part 23 of Title 28 of the Code of Federal Regulations.

c. Policies and Procedures. The Board may set policies and procedures regarding Intelligence Information use, receipt, maintenance, security, and dissemination not inconsistent with Part 23 of Title 28 of the Code of Federal Regulations.

d. Intelligence Information Custody and Control. All Intelligence Information shall remain the sole proprietary information of the Party contributing that Intelligence Information. Each Party shall retain custody and control and shall remain the official custodian of any Intelligence Information shared by that Party. The CISC shall not have custody and control and shall not be the official custodian of any Intelligence Information. The CISC shall not release any Intelligence Information pursuant to a

request under Part 2 or Part 3 of Article 72, Title 24, C.R.S. or pursuant to a subpoena unless specifically ordered to do so by a court of competent jurisdiction.

POWERS OF THE COLORADO INFORMATION SHARING CONSORTIUM

- 12. Powers of the CISC.** In order to enable the CISC to carry out its functions and provide the services described herein, the CISC shall have the power:
- a. **Acquire Property.** To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any legal or equitable interest in real or personal property;
 - b. **Add Parties.** To approve other governmental entities or agencies authorized to lawfully provide, establish, maintain, or operate law enforcement services to join the CISC on the conditions determined by the Board;
 - c. **Adopt Rules and Regulations.** To adopt rules and regulations regarding the exercise of its powers and the carrying out of its purposes;
 - d. **Apply for Grants.** To apply for and receive grants in its own name;
 - e. **Conduct Business.** To conduct its business and affairs for the benefit of the Parties and their residents;
 - f. **Contract.** To enter into, make, and perform contracts of every kind;
 - g. **Engage Agents.** To engage, employ, or appoint agents, including but not limited to accountants, architects, attorneys, consultants, employees, engineers, and managers and to pay the direct and indirect reasonable costs of such agents for services rendered to the CISC;
 - h. **Fees and Charges.** To assess, fix, maintain, and revise fees and charges for functions, services, or facilities provided by the CISC or to cover the cost of operating and managing the CISC; however, pursuant to paragraph 28, neither the CISC nor any Party shall have the power to compel a Party to pay any fees, rates, or charges;
 - i. **Incur Debt.** To incur debts and obligations, deliver bonds or notes for monies borrowed or other obligations of the CISC, and to secure the payment of such bonds or obligations, except that no party shall be liable for any debts or obligations of the CISC;
 - j. **Legal Process.** To litigate, arbitrate, or mediate in its own name;
 - k. **Receive Contributions.** To receive contributions of gifts, grants, or services; and
 - l. **Terminate a Party's Participation in this Agreement.** To terminate or limit a Party's participation in this Agreement.
- 13. Restrictions on Powers of the CISC.** The CISC shall not have the power:
- a. **Eminent Domain.** To take property by eminent domain;

- b. Obligate Payment. To obligate a Party to pay any money to the CISC or to another Party, except that the CISC may enter into contracts with Parties for the payment of money; or
- c. Tax. To impose taxes.

BOARD OF DIRECTORS

14. Board of Directors. The governing body of the CISC shall be the Board, in which all administrative and legislative power of the CISC is vested. The purpose of the Board is to set policy for the CISC and decide important issues of the CISC.
15. Number of Directors, Term, and Term Limits. There shall be eleven (11) Directors on the Board. Six (6) Directors shall have terms that expire on March 31 of every even numbered year. Five (5) Directors shall have terms that expire on March 31 of every odd numbered year. There shall be no limit to the number of terms an individual may serve as a Director.
16. Eligibility, Appointment, Removal, and Vacancies. Each Director must be an employee of a Party. If a Director is no longer employed by a Party, the Director shall no longer be a Director. A Director may resign at any time and for any reason by giving two weeks prior written notice to the Board. A vacant Director position shall be filled by majority vote of the Representatives as soon as practicable.
- a. Initial Appointment. The initial Directors shall be appointed by the Representatives of the eleven named Parties listed in the preamble of this Agreement. The Representatives of the first six (6) named Parties that agree to and sign this Agreement shall each appoint one Director, whose terms shall expire on March 31, 2016. The Representatives of the next five (5) named Parties that agree to and sign this Agreement shall each appoint one Director, whose terms shall expire on March 31, 2015.
 - b. Subsequent Appointment. After the initial Directors' terms expire, all subsequent Directors shall be appointed by a majority vote of the Representatives.
17. Compensation. A Director shall not receive compensation for the Director's service to the CISC. The Board may provide for reimbursement to a Director, Representative, or other person for actual and reasonable expenses incurred while performing duties for the CISC. At no time shall a Director or a Representative be considered an employee of the CISC.
18. Action by the Board at a Meeting. Meetings of the Board may be held at any place that a majority of the Directors on the Board may determine. Directors may attend the meeting in person or by conference telephone or similar communications equipment, and such participation at a meeting shall constitute attendance. The following rules shall apply.
- a. Quorum. The attendance of at least a majority of the Directors of the Board shall constitute a quorum for the transaction of business.
 - b. Voting. The affirmative vote of a majority of the Directors on the Board that are present at any meeting at which there is a quorum shall be an act of the Board, unless a supermajority is specified herein or by rules adopted by the Board.

c. Minutes. Minutes of each meeting and a record of each decision shall be kept by the Board.

19. Committees. The Board may designate one or more committees that shall serve at the pleasure of the Board. Any committees shall have the powers and responsibilities granted by the Board to that committee.

20. Alternates and Absentee Voting. A Director may appoint an alternate who will have the same voting rights as the Director when participating in Board meetings in the absence of the Director. Alternates must be employed by a Party. Absentee voting, where a Director votes without attending a meeting (whether in person or by other communications equipment) or without appointing an alternate, is not allowed.

21. Representative's Right to Attend Meetings. Each Representative, or an alternate, shall have the right to attend, whether in person or by conference telephone or similar communications equipment, any meeting of the Board and to voice opinions on any matter concerning the CISC.

MANAGEMENT OF THE CISC

22. CISC Manager.

a. Appointment. Upon request from the Board, the Representatives shall jointly nominate one or more persons to be the Manager and submit those persons' names to the Board. Based on those nominations, the Board shall select one or more persons to be the Manager. The appointment of a Manager shall be contingent upon the approval of the Representative of the Party employing the Manager.

b. CISC Manager. The Manager shall manage the day-to-day operations of the CISC and undertake and execute the Board's instructions and directions. The Manager shall have the administrative authority necessary to perform the tasks and responsibilities assigned pursuant to this Agreement. The Board may grant to the Manager any additional administrative authority as the Board deems necessary. The Manager shall attend all meetings of the Board and follow the Board's instructions and directions.

c. Eligibility and Employment. The person(s) serving as the Manager must be an employee of a Party at all times during that person's tenure as the Manager. The Manager shall not be considered an employee of the CISC. The Board may hire an employee of the CISC under terms written and negotiated by the Board to perform the duties of the Manager under the supervision and direction of the Board.

d. Term. The Manager's term is expected to last for two (2) years, but the actual length (whether longer or shorter) shall be determined by agreement between the Board and the Representative of the Party employing the Manager. Whether the Manager works full- or part-time on CISC matters shall be determined by agreement between the Board and the Representative of the Party employing the Manager. The Board may remove the Manager at any time and for any reason. The Representative of the Party employing the Manager may recall the Manager at any time and for any reason by giving sixty (60) days prior written notice to the Board, unless the Representative and the Board agree to other notification requirements.

e. Compensation. The Party employing the Manager shall bear the full cost of the Manager. The CISC shall not be obligated to reimburse the Party employing the Manager for the cost of the Manager. However, the Board may assess an annual fee on the Parties to reimburse the Party employing the Manager (or the CISC, if the CISC hires an employee to perform the duties of the Manager) for all or part of the costs associated with employing the Manager. As is stated in paragraph 28 of this Agreement, and consistent with that paragraph, no Party is obligated to pay any annual fees but may be denied access to the CISC or face other non-monetary penalties.

23. Additional Assistance from Assigned Employees.

a. Appointment. The Board may seek an Assigned Employee from the Parties. Upon request from the Board, any Representative may volunteer one or more Assigned Employees to work full- or part-time on behalf of the CISC. The Board may accept or decline the person volunteered to become an Assigned Employee.

b. Assigned Employees. Each Assigned Employee shall work under the supervision and direction of the Manager. Each Assigned Employee shall have the administrative authority necessary to undertake and execute the tasks and responsibilities assigned by the Manager and the Board. The Board may grant to any Assigned Employee any additional administrative authority as the Board deems necessary. An Assigned Employee shall attend meetings of the Board if and when the Board or the Manager requests that Assigned Employee's presence.

c. Eligibility and Employment. Any person serving as an Assigned Employee must be an employee of a Party at all times during that person's tenure as an Assigned Employee. The Assigned Employee shall not be considered an employee of the CISC. The Board may hire one or more full- or part-time employees of the CISC under terms written and negotiated by the Board to work under the supervision and direction of the Manager and the Board.

d. Term. The Assigned Employee's term shall be determined by agreement between the Board and the Representative of the Party employing the Assigned Employee. Whether the Assigned Employee works full- or part-time on CISC matters shall be determined by agreement between the Board and the Representative of the Party employing the Assigned Employee. The Board may remove the Assigned Employee at any time and for any reason. The Representative of the Party employing the Assigned Employee may recall the Assigned Employee at any time and for any reason by giving thirty (30) days prior written notice to the Board, unless the Representative and the Board agree to other notification requirements.

e. Compensation. The Party employing an Assigned Employee shall bear the full cost of that Assigned Employee. The CISC shall not be obligated to reimburse the Party employing the Assigned Employee for the cost of the Assigned Employee. However, the Board may assess an annual fee on the Parties to reimburse the Party employing the Assigned Employee (or the CISC, if the CISC employs an employee to perform the duties of the Assigned Employee) for all or part of the costs associated with employing the Assigned Employee. As is stated in paragraph 28 of this Agreement, and consistent

with that paragraph, no Party is obligated to pay any annual fees but may be denied access to the CISC or face other non-monetary penalties.

FINANCIAL

24. Deposits and Expenditures. All funds of the CISC shall be deposited to the credit of the CISC in an interest bearing account. No payments or withdrawals of such funds in an amount over five hundred dollars (\$500) shall be allowed without prior approval of the Board and the written authorization of two (2) Directors. Payments or withdrawals of such funds in amounts up to and including five hundred dollars (\$500) may be authorized by the Manager.
25. Fiscal Agent. The Board may request that a Party or other entity be the fiscal agent for the CISC.
26. Fiscal Year. The fiscal year of the CISC shall be January 1 through December 31 of each year.
27. No Multiple Year Fiscal Obligations. The Parties do not intend to create a multiple year fiscal obligation for any Party by virtue of this Agreement. The Parties acknowledge that any future monetary obligations of any Party are subject to sufficient appropriations by each Party and such appropriations are not guaranteed to be made.

RIGHTS OF PARTIES

28. No Duty to Pay Membership, Annual, or Other Fees. No Party shall be required by this Agreement to pay any membership, annual, or other fees or charges imposed by the Board. The sole remedy for the failure of a Party to pay any fees or charges shall be, at the Board's discretion, (a) exclusion from the CISC, (b) denial of Data and Intelligence Information sharing with other Parties through the CISC, (c) loss of any or all of the privileges and rights of a Party, (d) termination of the non-paying Party's participation in this Agreement, or (e) any combination of the foregoing as determined by the Board.
29. Voluntary Assumption of Debts. A Party may voluntarily elect to be liable, in whole or in part, for any or all of the debts, liabilities, or obligations of the CISC at the sole discretion of that Party.
30. Financial Responsibility. The CISC shall not be required to pay any Party's costs associated with acquiring or maintaining any hardware or licensed software necessary for that Party to participate in the CISC. The Board may agree to pay for expenses incurred by a Party that, in furtherance of the CISC's purposes, (a) maintains goods for use by other Parties or (b) provides services to other Parties.
31. Examination of Records. Any authorized agent of a Party, including an authorized auditor or his or her representative, has the right to access and the right to examine any pertinent fiscal books, documents, papers, and records of the CISC involving fiscal transactions for three (3) years after the date of the fiscal transaction.

32. Addition of New Parties.

a. Law Enforcement Requirement. All Parties, and any entity or agency that becomes a Party, must be governmental entities or agencies that are authorized to lawfully provide, establish, maintain, and operate law enforcement services.

b. Signatories of the MOU. All entities and agencies that signed the MOU prior to the Effective Date are vested with approval to become Parties by signing a separate signature page to this Agreement that states that the new Party agrees to the terms and conditions of this Agreement. Upon delivery of the signed signature page to the Manager, satisfaction of any conditions imposed by the Board, and payment of any CISC membership fees, if applicable, such entity or agency shall be a Party.

c. Non-Signatories of the MOU. Any entity or agency that did not sign the MOU prior to the Effective Date may become a Party by (i) gaining approval of the Board and (ii) signing a separate signature page to this Agreement that states that the new Party agrees to the terms and conditions of this Agreement. Upon delivery of the signed signature page to the Manager, satisfaction of any conditions imposed by the Board, and payment of any CISC membership fees, if applicable, such entity or agency shall be a Party.

d. CISC Membership Fee. Any entity or agency that signed the MOU prior to the Effective Date and paid a CISC membership fee at that time shall not be required to pay an additional membership fee in order to join the CISC. Any entity or agency that (i) signed the MOU prior to the Effective Date but did not pay a CISC membership fee at the time or (ii) did not sign the MOU prior to the Effective Date may be required to pay a CISC membership fee in an amount determined by the Board as a condition of becoming a Party.

33. Right to Terminate Participation. A Party may terminate its participation in this Agreement by giving written notice to the Board at least sixty (60) days prior to the date of termination, unless the Board and a specific Party have agreed on a different notice period.

GENERAL PROVISIONS

34. Amendments. This Agreement shall not be amended unless seventy-five percent (75%) of the Representatives approve such amendment in writing. The sole remedy for any Party that disagrees with any amendments is to terminate its participation in this Agreement.

35. Construction and Interpretation. The table of contents and the section and other headings and subheadings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

36. Duplicate Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original. The signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

37. Entire Agreement. This Agreement embodies the entire understanding and agreement among the Parties concerning the CISC and supersedes any and all prior negotiations, understandings, or agreements, including the MOU.
38. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Colorado to the extent not inconsistent with Federal law.
39. Indemnification. Without waiving the protections, limitations, and requirements of the Colorado Governmental Immunity Act in Article 10, Title 24, C.R.S., each Director, Representative, Manager, Assigned Employee, officer, agent, and volunteer shall be provided with a legal defense and indemnification as provided by that person's employer to the extent not inconsistent with Federal law.
40. Mediation. In the event of a dispute between the Parties regarding the interpretation of this Agreement or regarding any issue arising under this Agreement, the Parties hereby agree to the following mediation procedure. First, the disagreeing Parties will submit the issue to the Representatives, who will mediate the disagreement and try to devise an acceptable solution. If that process fails, the disagreeing Parties will submit the issue to the highest elected officials of each Party (e.g., the Mayor of a city or the County Commissioners of a county) who will mediate the disagreement and try to devise an acceptable solution. The highest elected official of each Party may approve a designee to mediate on behalf of that Party. The Parties agree to mediate in good faith. If any disagreeing Party requests a mediator, the disagreeing Parties shall jointly select a mediator and share the cost of the mediator equally. Decisions by the Board are not subject to mediation. This paragraph shall apply to the extent not inconsistent with Federal law.
41. No Third-Party Beneficiaries. Nothing in this Agreement shall be deemed to create any third-party benefits or beneficiaries or create a right or cause of action for the enforcement of this Agreement's terms in any entity or person not a Party to this Agreement including any agents, employees, officers, or volunteers of any Party or any entity with whom the CISC contracts.
42. Severability. In the event that any of the terms, covenants, or conditions of this Agreement or their application shall be held invalid as to any Party, entity, or person by a court of competent jurisdiction, (a) the remainder of this Agreement shall not be affected thereby, (b) such determination shall not affect or impair the validity or enforceability of any other provision, and (c) the remaining provisions shall be interpreted and applied so far as possible to reflect the original intent and purpose of this Agreement.
43. Term. The term of this Agreement shall be unlimited and shall extend until terminated as provided herein.
44. Termination. This Agreement may be terminated upon agreement in writing of seventy-five percent (75%) of the Representatives. Upon termination of the CISC, any monetary funds held by the CISC shall be distributed, after paying the debts and obligations of the CISC, to the Parties proportionate with the number of sworn law enforcement officers employed by each Party. Additionally, upon termination of the CISC, any non-monetary assets shall become the property of the Party in possession of those assets.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

The Adams County Sheriff's Office

By: _____

Name: Doug Darr _____

Title: Adams County Sheriff _____

Date: _____

Attest: _____

Name: _____

The Arapahoe County Sheriff's Office

By: _____

Name: David C. Walcher _____

Title: Arapahoe County Sheriff _____

Date: _____

Attest: _____

Name: _____

The City of Aurora

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Name: _____

The Colorado Department of Public Safety

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Name: _____

The City of Colorado Springs

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Name: _____

The City of Commerce City

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Name: _____

The City and County of Denver

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Name: _____

The Douglas County Sheriff's Office

By: _____

Name: David Weaver

Title: Douglas County Sheriff

Date: _____

Attest: _____

Name: _____

The City of Grand Junction

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Name: _____

The Board of County Commissioners of the County of Jefferson

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Name: _____

The Board of County Commissioners of the County of Mesa

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Name: _____

**SEPARATE SIGNATURE PAGE
TO THE
INTERGOVERNMENTAL AGREEMENT
OF THE
COLORADO INFORMATION SHARING CONSORTIUM**

By signing this separate signature page to the Intergovernmental Agreement of the Colorado Information Sharing Consortium (the "Agreement"), the undersigned agrees to be bound by the terms and conditions of the Agreement. Consistent with paragraph 32 of the Agreement, upon delivery of this signed signature page to the Manager of the CISC, satisfaction of any conditions imposed by the Board, if applicable, and payment of any CISC membership fees, if applicable, the undersigned shall be a Party to the Agreement with all the rights and responsibilities thereunder. This signature page shall be appended to the Agreement and shall become part of the Agreement as of the date listed below.

Name of Entity: City of Englewood

By: _____

Name: Randy Penn

Title: Mayor

Date: May 5, 2014

Attest: _____

Name: Loucrishia A. Ellis, City Clerk

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 25
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF PUBLIC SAFETY DIVISION OF FIRE PREVENTION AND CONTROL REGARDING JOINT STAFFING AND OPERATION OF A STATE WILDLAND FIRE ENGINE AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, wildland fire protection responsibilities on non-federal lands in Colorado follow a hierarchy of local jurisdictions (fire protection districts) with the State of Colorado with the Department of Public Safety Division of Fire Prevention and Control (DFPC) being the lead state agency for wildland fire management; and

WHEREAS, it is the duty of the Sheriffs of the various counties of the State of Colorado to report as soon as practicable the occurrence of any fire in any forest in the state, either on private or public lands, to the DFPC “or its authorized agent”; and

WHEREAS, the chief of the fire department in each Colorado fire protection district is responsible for the management of wildland fires that occur within the district boundaries and that are within the capability of the fire protection district to control or extinguish; and

WHEREAS, when wildland fires exceed the capability of the fire department to control or extinguish, the fire chief may transfer responsibility for the fire to the county sheriff with the concurrence of the sheriff; and

WHEREAS, when wildland fires exceed the capability of the county sheriff to control or extinguish, DFPC may assist the sheriff in controlling or extinguishing such fires, and may assume command of such incidents with the concurrence of the sheriff; and

WHEREAS, the Director of DFPC shall determine, in consultation with local authorities and with the approval of the Governor, geographic areas of the state, including Wildland-Urban Interface areas, in which the state has a financial responsibility for managing forest and wildland fires; and

WHEREAS, it is the intent of the Parties that DFPC resources, including engines, and firefighters, be available to assist in fire management activities on lands throughout Colorado and as needed as part of a resource mobilization for fires in other states; and

WHEREAS, it is the intent of the Parties that the City resources be available to assist in fire management activities on lands for which DFPC is responsible for protecting, as needed, as part of a resource mobilization for fires; and

WHEREAS, it is to the Parties' mutual advantage to coordinate efforts for the prevention, detection, and suppression of wildland fires, fuels management, prescribed fire, non-wildland fire emergencies (as authorized), and cooperative projects for resource protection in their areas of responsibility, and to limit duplication and improve efficiency and effectiveness; and

WHEREAS, the intergovernmental agreement between the Colorado Department of Public Safety Division of Fire Prevention and Control and the City of Englewood is for the joint staffing and operation of a State-owned wildland fire engine; and

WHEREAS, the accompanying Memorandum of Understanding (MOU) is designed to provide guidance to all parties involved relating to the expectations of daily operations of the jointly staffed wildland fire engine; and

WHEREAS, the concepts contained in the MOU are the most effective means currently known for rapidly making resources available to fight wildland fires; and

WHEREAS, there is no cost to the City to house the wildland fire engine other than providing garage space for the wildland fire engine and office space for the State wildland firefighter assigned to the vehicle.

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 "Intergovernmental Agreement By and Between Colorado Department of Public Safety Division of Fire Prevention and Control and the City of Englewood Regarding Joint Staffing and Operation of A State Wildland Fire Engine," attached hereto as "Exhibit A".

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes the "Memorandum of Understand By and Between Colorado Department of Public Safety Division of Fire Prevention and Control", attached hereto as "Exhibit B".

Section 3. The Englewood City Council hereby authorizes the Englewood Fire Chief to sign the agreement and the Memorandum of Understanding for and on behalf of the City of Englewood, attached as Exhibits A and B.

Section 4 The City will be reimbursed by the State of Colorado for temporary staffing and operation. Federal funds may be used to reimburse the State under this agreement.

Introduced, read in full, and passed on first reading on the 21st day of April, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of April, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of April, 2014 for thirty (30) days.

Read by title and passed on final reading on the 5th day of May, 2014.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2014, on the 9th day of May, 2014.

Published by title on the City's official website beginning on the 7th day of May, 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

INTERGOVERNMENTAL AGREEMENT
By and Between
COLORADO DEPARTMENT OF PUBLIC SAFETY
DIVISION OF FIRE PREVENTION AND CONTROL
And
ENGLEWOOD FIRE DEPARTMENT

Regarding
JOINT STAFFING AND OPERATION OF
A STATE WILDLAND FIRE ENGINE

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between the Colorado Department of Public Safety, Division of Fire Prevention and Control ("DFPC") and the Englewood Fire Department ("EFD"). EFD and DFPC are referred to collectively as the "Parties" and individually as a "Party".

PARTIES AND STATUTORY AUTHORITIES

EFD is a political subdivision of the State of Colorado and a body corporate with those powers of a public or quasi-municipal corporation which are specifically authorized by, and in compliance with, Section Title 32, Article 1, C.R.S.

DFPC is a division of the Department of Public Safety, a principal department of the executive department of state government created pursuant to C.R.S. § 24-1-110 (1) (u) and 24-33.5-103.

Statutory Authorities

C.R.S. § 13-21-113.7	Firefighter and Incident Management Team Immunity
Title 24, Article 10, C.R.S.	Governmental Immunity
C.R.S. § 24-33.5-1201 (4)	Transfer of State Forest Service Authority to DFPC
C.R.S. § 24-33.5-1203	Duties of DFPC
C.R.S. § 24-33.5-1218	DFPC Cooperation with Governmental Units
C.R.S. § 24-33.5-1219	Wildland Fires - Duty of Sheriff to Report
Title 29, Article 22.5, C.R.S.	Wildland Fire Planning
C.R.S. § 29-1-201 thru 203	Authority to Enter Into Intergovernmental Agreements
C.R.S. § 30-10-513 and 513.5	Duties of Sheriff Relating to Fires
C.R.S. § 30-11-124	Fire Planning Authority
Title 32, Article 1, C.R.S.	Special District Provisions

RECITALS

Wildland fire protection responsibilities on non-federal lands in Colorado follow a hierarchy of local jurisdiction (fire protection districts) to the County Sheriff to the State of Colorado with the DFPC being the lead state agency for wildland fire management.

It is the duty of the Sheriffs of the various counties of the State of Colorado to report as soon as practicable the occurrence of any fire in any forest in the state, either on private or public lands, to DFPC "or its authorized agent."

The chief of the fire department in each fire protection district in the state is responsible for the management of wildland fires that occur within the boundaries of his or her district and that are within the capability of the fire district to control or extinguish. When wildland fires exceed the capability of the fire department to control or extinguish, the fire chief may transfer responsibility for the fire to the county sheriff with the concurrence of the sheriff. When wildland fires exceed the capability of the county to control or extinguish, DFPC may assist the sheriff in controlling or extinguishing such fires, and may assume command of such incidents with the concurrence of the sheriff.

The Director of DFPC shall determine, in consultation with local authorities and with the approval of the Governor, geographic areas of the state, including wildland-urban interface areas, in which the state has a financial responsibility for managing forest and wildland fires.

DFPC is committed to cost-effective and innovative service delivery partnerships for wildland fire suppression within Colorado. It is the intent of the Parties that DFPC resources, including engines and firefighters, be available to assist in fire management activities on lands for which the EFD is responsible for protecting.

EFD is committed to provide cost-effective service to its citizens, is ideally situated to provide regional mutual aid response, and currently has a wildland fire suppression program in place. It is the intent of the Parties that EFD resources be available to assist in fire management activities on lands for which DFPC is responsible for protecting.

It is to the Parties' mutual advantage to coordinate efforts for the prevention, detection, and suppression of wildland fires, fuels management, prescribed fire, non-wildland fire emergencies (as authorized), and cooperative projects for resource protection in their areas of responsibility, and to limit duplication and improve efficiency and effectiveness.

A joint staffing program will provide a cost-effective means to meet the Parties' respective missions and will be a benefit locally, regionally and statewide through the provision of additionally staffed wildland fire engine resources.

The Parties wish to enter into this Intergovernmental Agreement ("Agreement") to jointly staff a state-owned wildland fire engine for use locally, regionally and state wide to reduce the impact of wildland fire on the citizens of Colorado.

NOW, THEREFORE, in consideration of mutual promises and covenants, the Parties agree as follows:

AGREEMENT

1. Term of Agreement. The term of this Agreement shall commence upon execution by all Parties and shall terminate on December 31 of the year in which it is executed. However, the term of this agreement shall be extended automatically for consecutive one-year terms, unless any party notifies the other parties in writing prior to the end of the present term of its intent not to extend the term of this agreement.

2. Joint Staffing of State Fire Engine

2.1 The Parties agree to jointly staff one state-owned wildland fire engine for use locally, regionally and state-wide to reduce the impact of wildland fire on the citizens of Colorado.

2.2 DFPC will provide one state-owned wildland fire engine and associated equipment ("DFPC Engine") and one qualified engine captain (NWCG ENGB qualified) with the possibility of additional DFPC staff if funds are available. If available, EFD will provide one, possibly two NWCG qualified full-time or seasonal firefighters (FFT2 or FFT1) to provide a total staff of three (3) during the fire season. "Fire Season" will be the period between May 1 and October 31 of each year. For purposes of this agreement only, the term "employee(s)" shall mean paid and/or volunteer personnel. Due to the nature of EFD being paid full time employees; both parties understand that full staffing of the DFPC engine may not always be possible. EFD will attempt at all possibilities to provide staffing during peak times of the season if EFD has personnel who are willing to staff the DFPC engine. Staffing levels may change as deemed necessary by the EFD Fire Chief during high fire danger or at the discretion of the EFD Fire Chief due to local conditions within the EFD Boundaries. Other DFPC employees and Cooperators from other departments/agencies may be used to staff the DFPC Engine during these times. The EFD must have signed at least one of the following agreements to staff DFPC engines; Temporary Staffing of DFPC Engines for Wildfire Assignments Agreement, Call When Needed Staffing and Operation of a State Wildland Fire Engine Agreement, or Joint Staffing and Operation of a State Wildland Fire Engine Agreement.

2.3 Except when on assignment, the DFPC Engine and personnel will be housed at EFD facilities and be made available for response. The DFPC Engine and crew will be available for response to any incident for which they are trained and equipped, including wildland fire, structural fires, emergency medical situations, hazardous materials, motor vehicle accidents and natural disasters within the boundaries of the EFD and its mutual aid partners. Response is provided on an "as available" basis.

2.4 Personnel will maintain their respective agency identities and will not infer that they are employed by any agency other than their actual employer and will be subject to their respective personnel system laws and rules.

2.5 The Engine Captain or ranking firefighter (in the absence of the Engine Captain) shall maintain operational control of the DFPC Engine and assigned firefighters at an incident in accordance with the Incident Command System (ICS). The Parties commit to adhering to the ICS for the command and control of all resources and personnel.

3. DFPC Engine and Operation

3.1 The DFPC Engine provided to the EFD will be a Type 6 wildland fire engine, which shall be operated and maintained by DFPC at its cost. The DFPC Engine will maintain DFPC logos and markings, but may also have the EFD logo attached as appropriate. The DFPC Engine will be fully equipped by DFPC at no cost to the EFD.

3.2 The Parties will provide appropriate Personal Protective Equipment (PPE) to their respective employees.

3.3 The Parties agree that their respective personnel may ride, drive, operate, and work on, in, and around each other's vehicles, apparatus, stations and equipment based upon needs and training and pursuant to any applicable laws. All employees of the Parties who will be driving the DFPC Engine shall have a current and valid Colorado Driver's license.

4. Apportionment of Expenses

4.1 For regular day to day operations each Party will cover its own operating expenses, including equipment purchases, vehicle maintenance, salaries and benefits, and office equipment. DFPC will be permitted to occupy and use EFD facilities at no cost, subject to a separate memorandum of understanding concerning such occupancy and use.

4.2 When the DFPC Engine responds to mutual aid incidents, each Party to this Agreement will be responsible for employee costs for its respective employees during the mutual aid period. After which, each Party may bill the requesting agency as outlined in the mutual aid agreement or annual operating plan.

4.3 When EFD personnel are requested for an extended period outside of their District boundaries for the benefit of DFPC, DFPC will provide reimbursement to EFD for employee costs. Payment will follow standard DFPC reimbursement guidelines for interagency incident responses.

4.4 Neither Party may encumber the funds of the other Party for any purpose at any time without separate written authorization to do so.

4.5 Each Party's obligations under this Agreement are subject to annual appropriation by its governing body and shall not constitute or give rise to a general obligation or other indebtedness of either Party.

5. Insurance and Liability

5.1 The Parties are each responsible for the acts or omissions of its respective personnel, and any such liability is controlled and limited by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. ("CGIA") and C.R.S. § 13-21-113.7, as applicable.

5.2 Each Party shall be solely responsible for providing worker's compensation insurance covering its own employees acting under the provisions of this Agreement, including accidents, injuries and diseases that occur while the employee is acting under the direction of or at the request of the other Party. Each Party will maintain its own liability insurance coverage for all of its real and personal property as required by law. Neither Party will cover the other Party's liabilities or fiduciary responsibilities or workers compensation, unless expressly authorized by a written agreement executed by the Parties.

6. Accident and Incident Reporting and Investigation. If an accident or incident occurs related to this Agreement, all parties shall be notified as soon as practical. The Parties shall initiate a joint investigation of the accident or incident, as needed.

7. Training. During the term of this Agreement, the Parties agree to provide each other's personnel with any training necessary for successfully performing the duties and responsibilities related to interagency wildland engine and crew operations.
8. Memorandum of Understanding. A separate Memorandum of Understanding ("MOU") will be governing day-to-day operational issues related to this Agreement will be entered into by the Parties. The MOU will be the guiding document for the employees participating in the joint engine staffing program and shall include such things as chain of command; authorities; care and maintenance of equipment, facilities, vehicles and apparatus; response procedures and protocols; staffing and scheduling; and other matters. The MOU may be amended by the Parties as needed. In the event of a conflict between this Agreement and the MOU, this Agreement shall control.
9. Amendments. This Agreement may only be amended by a written document executed by the Parties.
10. Severability. If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those in which it is held invalid, shall not be affected thereby.
11. Relationship of Parties. The Parties enter into this Agreement as separate and independent governmental entities and each shall maintain such status throughout the term of this Agreement. Nothing contained in this Agreement and no performance under this Agreement by personnel of a Party shall in any way alter or modify the status of that Party's directors, officers, volunteers, agents, or employees for purposes of workers' compensation or their benefits or entitlements, pension, levels or types of training, internal discipline, certification, or rank procedures, methods, or categories, or for any purpose, or other conditions or requirements of employment.
12. Authority. The persons who sign and execute this Agreement represent that they are duly authorized to execute this Agreement on behalf of their Party.
13. Counterpart Signatures. This Agreement may be executed in counterparts and by facsimile or electronic PDF, all of which shall constitute full and final execution of this Agreement.

**COLORADO DEPARTMENT OF PUBLIC SAFETY
DIVISION OF FIRE PREVENTION AND CONTROL**

APPROVAL:

By: _____

**Paul L. Cooke, Director
Division of Fire Prevention and Control**

Date: _____

ENGLEWOOD FIRE DEPARTMENT

APPROVAL:

By: _____

**Andy Marsh, Chief
Englewood Fire Department**

Date: _____

MEMORANDUM OF UNDERSTANDING
By and Between
COLORADO DIVISION OF PUBLIC SAFETY
DIVISION OF FIRE PREVENTION AND CONTROL
And
ENGLEWOOD FIRE DEPARTMENT
Regarding
JOINT STAFFING AND OPERATION OF
A STATE WILDLAND FIRE ENGINE

01-01-18

1. BACKGROUND AND PURPOSE

The Colorado Division of Fire Prevention and Control (DFPC) and the Englewood Fire Department (EFD) have entered into an Agreement for the provision of a jointly staffed wildland fire engine based at EFD. The Agreement is the legal document providing authority for this action and will supersede this, or any other document as necessary. This Memorandum of Understanding (MOU) is designed to provide guidance to all parties involved on the expectations of daily operations of the jointly staffed wildland fire engine.

This MOU outlines the framework for the Standard Operating Guidelines (SOG) for how both parties will operate the program. This MOU does NOT take the place of either parties existing policies, procedures, or guidelines. In cases where this MOU conflicts with and agencies written policy, procedure, or guideline, the agencies policy, procedure, or guideline will prevail.

This MOU holds no legal standing and is simply an admittal by both parties to jointly work together within the framework outlined herein. This MOU may be amended as needed during the effective period with concurrence of all parties.

2. 2014 STAFFING PLAN

2.1 DFPC will provide one permanent Engine Captain. Additional DFPC employees may staff the engine if funds are available. The Captain will work a 40 hour work week. The Captain will be available for call-back during off duty hours when there is a high likelihood of a fire response. The Captain will communicate with the EFD Fire Chief, or his designee, regarding the availability of the engine during off duty hours each week. The Captain's schedule may only be altered with approval of DFPC supervisory staff.

2.2 EFD will provide if available; one, possibly two Firefighters from June 1 to September 30. Firefighters will be assigned to the engine crew. EFD may adjust the length of the term as needed after consultation with DFPC. EFD may change the schedule of the Firefighters as needed, but must inform DFPC if such change will affect the availability of the engine to respond. If no EFD personnel are available for response during this time, DFPC may utilize surrounding fire departments/fire protection districts for personnel as long as the FD/FPD has signed a staffing IGA (call when needed, temporary staffing, joint staffing) with DFPC.

2.3 In the event of a temporary absence of the DFPC Captain (Illness, vacation, other assignment), DFPC will make every attempt to cover the vacancy with another fully ENGB qualified DFPC employee. If DFPC is unable to provide another Captain, consultation between the DFPC Regional Fire Management Officer and the EFD Fire Chief will occur to determine the best course of action. Due to state fleet rules, regulations and insurance requirements a DFPC employee must be present on the engine for the engine to be available for assignment in or out of district. Solutions may include, but are not limited to;

- A. Move any DFPC/EFD staff to a EFD engine during the absence. An EFD employee must be present on the EFD engine.
- B. Have the DFPC/EFD staff remain on the DFPC engine, but respond jointly with another engine (DFPC or EFD) to ensure adequate supervision. A DFPC employee must be present on the DFPC engine.
- C. Have an EFD Engine Boss cover the absence. A DFPC employee must be present on the DFPC engine.
- D. If no DFPC employee is available to staff the engine, the DFPC engine will be unavailable.

2.4 In the event of a temporary absence of either of the EFD employees, EFD will make every attempt to cover the vacancy with another fully qualified EFD employee. If EFD is unable to provide another employee, or if there are no EFD personnel available, consultation between the DFPC Regional Fire Management Officer and the EFD Fire Chief will occur to determine the best course of action. These may include options described above.

2.5 Due to the nature of EFD being full time employees; both parties understand that staffing of the DFPC engine may not always be possible. EFD will attempt at all possibilities to provide staffing during peak times of the season if EFD has personnel that are willing to staff the DFPC engine. Staffing levels may change as deemed necessary by the EFD Fire Chief during High fire danger or at the discretion of the EFD Fire Chief due to local conditions within the EFD Boundaries.

3. DAILY OPERATIONS

3.1 The crew assigned to the DFPC engine will maintain a standard daily schedule. This schedule may be amended as needed due to incident responses or other issues. The Engine Captain will devise a written schedule. This schedule should be made in conjunction with EFD so as to avoid duplication or conflict.

3.2 The crew will be required to participate in at least 60 minutes of physical conditioning each day. The exercise routine may be varied, but should focus on cardiovascular and endurance exercises. The exercise period may be scheduled anytime during the day.

3.3 The crew will be required to perform daily vehicle and equipment inspections on all assigned apparatus at the beginning of each day to ensure operational readiness.

3.4 The crew will be required to perform daily station maintenance and cleaning. This will be directed by EFD personnel as needed. DFPC personnel will keep assigned work and storage areas clean and tidy.

3.5 The crew will be required to hold at least one wildland fire specific training each week. This may be classroom or field and is not limited to standard National Wildfire Coordinating Group trainings. The DFPC will also notify the Fire Chief of such trainings and allow other EFD personnel to attend such trainings so long as it will not interfere with the DFPC Engine Captain's outcomes and goals of said training.

3.6 The crew will participate in provided EFD training where appropriate.

3.7 The crew is encouraged to participate in public education events held in the area.

3.8 The crew is encouraged to provide trainings to agencies in Adams, Arapaho, Douglas, Elbert and Jefferson Counties.

3.9 Ensure that Pueblo Interagency Dispatch is aware of the engine status.

4. CHAIN OF COMMAND

4.1 In general, each agency is responsible for its own employee. Each agency will conduct any needed performance planning, evaluations, or corrective actions. The direct supervisor for the DFPC Engine Captain is the Regional Fire Management Officer.

4.2 EFD employees assigned to the DFPC engine, will follow the direction of the DFPC Engine Captain, so long as this direction is not in violation of law, EFD policy, or safety standards.

4.3 The DFPC Engine Captain will take direction from the Fire Chief or designee, when conducting daily activities. This is to ensure that obligations are met, and that schedule conflicts are minimized.

4.5 When assigned to an incident, either within the EFD or outside, all parties agree to follow the Incident Command System (ICS). Every person will take direction from their assigned incident supervisor. Every employee retains the right to refuse an unsafe assignment.

4.6 When confusion, or a conflict occurs regarding the chain of command, the Englewood Fire Chief and the DFPC Regional Fire Management Officer will confer and resolve the issue to the benefit of the program.

5. DISCIPLINARY ISSUES

5.1 Disciplinary issues should be handled at the lowest level possible. In most cases, a disciplinary issue is caused by a lack of understanding and can be resolved through discussion and explanation of expectations.

5.2 In the event that a disciplinary issue involving any member of the jointly staffed engine cannot be resolved, the issue will be brought to both the EFD Fire Chief and The DFPC Regional Fire Management Officer. The situation will be reviewed and each agencies personnel policies will be taken into account. An attempt to resolve the issue at this level will be made before elevating it to a higher authority.

5.3 Either EFD or DFPC may request the other party have an employee removed from the engine crew due to performance, safety or disciplinary issues. The parties will attempt resolution before removal.

6. IN DISTRICT RESPONSE

6.1 The DFPC engine and crew may respond to incidents within the EFD boundaries as requested by EFD, this includes DFPC supervisory personnel such as Regional Fire Management Officers. The engine will be operated following the DFPC Engine SOG #03-10. This limits the incidents to which a DFPC engine may be driven emergent.

6.2 As the engine is a regional resource, it will coordinate through the Pueblo Interagency Dispatch Center (PBC) on a daily basis. The engine may be dispatched through "200" for local and mutual aid incidents. The engine will advise PBC if they have been requested through 200 to respond to an incident.

6.3 DFPC personnel may operate in the following functions for non-wildland fire incidents; Per the IGA, the DFPC Engine and crew will be available for response to any incident for which they are trained and equipped, including wildland fire, structural fires, emergency medical situations,

hazardous materials, motor vehicle accidents and natural disasters within the boundaries of the EFD and its mutual aid partners. Response is provided on an "as available" basis.

- A. Structure fires: The DFPC employee can assist as needed, but must be trained by EFD on the specific operation to be conducted.
- B. Medical situations: Assist EMS personnel with scene control, patient movement, and support functions. May provide direct patient care up to the First Responder Level if so trained or EMT level as long as DFPC employee is currently recognized at the minimum of Colorado State EMT certification and or National Registry EMT
- C. Traffic accidents: Assist with scene control and general hazard mitigation. May assist with extrication but must be trained by EFD.
- D. Hazardous Materials: Support function only, unless the DFPC employee is trained by EFD on the specific operation to be conducted and proper equipment is provided by EFD
- E. Others: This may include technical rescue, water and ice rescue, service calls, bomb threats, etc. DFPC may perform a support role, if properly trained. At no time should a DFPC employee be expected to perform a function which places them in to an IDHL environment.

7. ZONE RESPONSE

7.1 The Initial Attack Zone for the engine is roughly designated as Douglas, Elbert, Arapaho, and Adams Counties. However, when requested by Pueblo Interagency Dispatch (PBC) for IA response within the PBC Zone, the engine should honor the request.

7.2 In general, the engine will normally be dispatched through PBC for zone response. There may be occasions when the engine is requested through another channel to respond, but the crew must immediately notify PBC of the response.

7.3 When the engine responds to incidents outside of the EFD boundaries, EFD agrees to cover the cost of its employees as does DFPC during the mutual aid period. There may be times when the mutual aid period has passed, yet the fire is still not in a reimbursable status. If there is an imminent threat to life or property, the crew shall remain engaged without regard to the end of the mutual aid period until the threat has passed.

Once the mutual aid period has lapsed, and the incident will not be reimbursable, the Engine Captain should make every effort to be released. If the benefiting agency is still in need of the resource, for example: the engine is needed in a rural area to assist with mop-up the next day as there are no volunteer firefighter available; then the Engine Captain should consult with both the DFPC Regional Fire Management Officer and the EFD Fire Chief. If the assignment can be completed with minimal impacts to either agency (logistically or financially), then approval is likely.

8. OFF ZONE RESPONSE

8.1 The DFPC engine is part of the PBC Engine Rotation Program. As such, there is an opportunity for the engine and crew to travel to incidents outside of the immediate response

zone. The Engine Captain will coordinate with the DFPC Regional Fire Management Officer and the EFD Fire Chief for approval to become available for off zone incidents.

8.2 When approved for off zone availability the DFPC Engine Captain will status the engine appropriately in ROSS and ensure that the assigned personnel are also available as LOCAL in ROSS. The Captain may also check with PBC to ensure they are status correctly.

8.3 EFD may maintain a list of call when needed personnel for use on the DFPC engine when sent off zone. These personnel may be utilized to augment or replace the seasonal personnel as needed. Also, EFD may choose to replace a seasonal employee in favor of priority trainee for off zone assignments.

8.4 The DFPC Captain will be responsible for the readiness of the engine and crew both while available and while assigned to an incident. EFD personnel will follow the direction of the DFPC Captain while assigned off zone.

8.5 The DFPC Captain will maintain all resource orders and reimbursement documentation associated with the incident until return to station. Each agency will then be responsible for its own billing.

9. DFPC PREPOSITIONING

9.1 DFPC reserves the right to preposition its engine anywhere within Colorado for the good of the people. Engine prepositions are normally coordinated well in advance of the actual movement. EFD will be included in the discussions on engine prepositioning.

9.2 When the engine is prepositioned outside of the PBC zone, a resource order will be generated and the Off Zone guidelines will be in effect. The resource order will designate DFPC as the payee and EFD will bill DFPC for personnel costs.

9.3 The cost of back-fill is normally not permitted for preposition orders, but may be considered on a case by case basis.

9.4 DFPC may choose, after consultation with EFD, to preposition the engine utilizing on DFPC personnel.

10. ACCIDENTS AND INJURIES

10.1 An accident involving a DFPC vehicle will be handled according to the current State of Colorado policy. Both DFPC and EFD should be notified when an accident occurs.

10.2 Injuries occurring on duty must be reported to the employee's supervisor within 24 hour of occurrence. Each agency is responsible for its own employee's workers compensation claims. The engine will carry forms for both DFPC and EFD workers compensation claims.

11. HOUSING

11.1 EFD will provide a secure, heated, indoor location for the storage of the DFPC engine. This location may change based upon the needs of the district, but will occur with consultation of DFPC prior to moving the location of the engine.

11.2 EFD will provide an "office" for the DFPC Captain. This office will, at a minimum, consist of a semi-private area with a desk, power outlets and a lockable file storage area.

11.3 EFD will, where currently available, provide the DFPC Captain with access to the EFD wireless internet network. If not available, DFPC will provide wireless access for its personnel.

11.4 DFPC personnel assigned to a EFD will have full access to the facilities, to include; kitchen, bathroom, shower, bay, and common storage areas.

11.5 In addition to the space required for the storage of the engine, DFPC will need approximately 75 square feet of floor space for storage of additional equipment. This area should be clearly marked for the storage of State owned assets only.

12. SIGNATURES

Kirk A. Will, DFPC
Regional Fire Management Officer

Date

Andy Marsh, EFD
Fire Chief

Date

COUNCIL COMMUNICATION

Date: May 5, 2014	Agenda Item: 9 c i	Subject: Resolution to Appropriate Funds for Duncan Park Improvements
Initiated By: Finance and Administrative Services Department		Staff Source: Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has discussed the Duncan Park improvements on a number of occasions. Council gave direction to move forward with awarding the construction contract to American Civil Constructors, Inc. at the April 14, 2014 Study Session.

RECOMMENDED ACTION

Staff recommends City Council approve the attached resolution quantifying and appropriating funds for the Duncan Park project.

SOURCES AND USES OF FUNDS:

CONSERVATION TRUST FUND:

SOURCE OF FUNDS:

CTF Contingency Account	\$107,905
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USE OF FUNDS:

Transfer Out to Open Space Fund	\$107,905
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OPEN SPACE FUND:

SOURCE OF FUNDS:

Grant Funds	\$600,000
Matching Funds	\$615,860
Duncan Park Development	\$25,000
Unassigned Fund Balance	\$100,000
Transfer in from Conservation Trust Fund	<u>\$107,905</u>
Total Source of Funds	\$1,448,765

USE OF FUNDS:

Construction Contract	\$1,283,717
Britina Design Group	\$19,975
Construction Contingency	<u>\$145,073</u>
Total Use of Funds	\$1,448,765

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Redevelopment of Duncan Park is supported by the Parks Master Plan, adopted in 2006. The Parks and Recreation Commission identified redevelopment of Duncan Park as a high priority.

In 2007, Council authorized a phased, three-year purchase of Duncan Park from Englewood Schools. Acquisition of the final parcel was completed in 2010.

In 2011, Parks and Recreation, along with Britina Design Group, began the formal process of designing improvements to Duncan Park. The design process included extensive public involvement. Citizens, neighbors and user groups were offered ample opportunity to provide input toward the amenities they seek for the park. Three open house meetings were held, along with presentations to the Parks and Recreation Commission, Planning Commission, and City Council. Members of the community helped finalize the overall park design and select the preferred park improvements.

In 2012, demolition of the old school building was completed. The demolished area was graded, seeded, and irrigated to provide additional green space for the park.

In 2013, Britina Design Group completed construction drawings (for bidding) and the project was advertised in early 2014. The base bid includes all of the major elements and amenities. Additional alternatives were included in the bid documents for potential upgrades to the playground surfacing, restroom facility, lighting, seat walls, and phasing. Acceptance of the alternatives is at the City's discretion. Staff recommends accepting one alternative (Alternative Number 4). This Alternative requires the contractor to perform work in two phases, always leaving a portion of the park open for the public's use.

Pending Council approval of this action, construction will begin in May, 2014. Notification regarding the anticipated construction schedule will be provided to the adjacent neighborhood.

FINANCIAL IMPACT

Funds available in the Conservation Trust Fund will be reduced by \$107,905. The remainder of the funds will come from closing out projects and reducing the Open Space Fund reserves.

LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. _____
SERIES OF 2014

A RESOLUTION QUANTIFYING AND APPROPRIATING FUNDS FOR DUNCAN PARK IMPROVEMENTS.

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

WHEREAS, the 2014 Budget was submitted and approved by the Englewood City Council on October 21, 2013; and

WHEREAS, the Englewood City Council authorized a phased, three-year purchase of Duncan Park from Englewood Schools, with the acquisition of the final parcel completed in 2010; and

WHEREAS, in 2011 the City began the formal process of designing improvements to Duncan Park; and

WHEREAS, in 2012 demolition of the old school building was completed and the area was graded, seeded and irrigated to provide additional green space for the park; and

WHEREAS, in 2013 construction drawings (for bidding) were completed and the project was advertised in early 2014; and

WHEREAS, the base bid includes all of the major elements and amenities; additional alternatives were included in the bid documents for potential upgrades to the playground surfacing, restroom facility, lighting, seat walls, and phasing with the acceptance of the alternates at the City's discretion; and

WHEREAS, the alternative recommended for acceptance requires the contractor to perform work in two phases, always leaving a portion of the park open for the public's use.

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

Section 1. The Budget for the General Fund of the City of Englewood, Colorado, is hereby amended for the year 2014, as follows:

CONSERVATION TRUST FUND:

SOURCE OF FUNDS:

CTF Contingency Fund	\$107,905
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USE OF FUNDS:

Transfer Out to Open Space Fund	\$107,905
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OPEN SPACE FUND:

SOURCE OF FUNDS:

Grant Funds	\$600,000
Matching Funds	\$615,860

Duncan Park Development	\$ 25,000
Unassigned Fund Balance	\$100,000
Transfer in from Conservation Trust Fund	<u>\$107,905</u>
Total Source of Funds	\$1,448,765

USE OF FUNDS:

Construction Contract	\$1,283,717
Britina Design Group (Addendum for Construction Administration Phase)	\$ 19,975
Construction Contingency	<u>\$ 145,073</u>
Total Use of Funds	\$1,448,765

Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2014 Budget for the City of Englewood.

ADOPTED AND APPROVED this 5th day of May, 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: May 5, 2014	Agenda Item: 9 c ii	Subject: Duncan Park Construction Award and Amendment to Professional Services Agreement
Initiated By: Department of Public Works		Staff Source: Dave Henderson, Deputy Public Works Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

- Resolution No. 33, Series of 2013 in support of the City's Great Outdoors Colorado grant application.
- Resolution No. 6, Series of 2013 in support of the City's Arapahoe County Open Space grant application.
- Council approved by motion, a professional services agreement on March 19, 2012, with Major Environmental Services for the environmental remediation and demolition of the former Duncan School building.
- Council approved by motion, a professional services agreement on August 15, 2011, with Britina Design Group for design of improvements to Duncan Park.
- Council Bill No. 20, Series of 2011 an ordinance authorizing the agreement between the City of Englewood and the State Board of the Great Outdoors Colorado Trust Fund for the Duncan Park planning grant.
- Resolution No. 75, Series of 2010 in support of the City's Great Outdoors Colorado (GOCO) grant application for Duncan Park planning grant.
- Council Bill No. 52, Series of 2009 supporting the Great Outdoors Colorado grant application for Duncan Park development funding.
- Council Bill No. 6, Series of 2008 authorizing an Intergovernmental Agreement regarding the 2007 grant from Great Outdoors Colorado between the State Board of the Great Outdoors Colorado Trust Fund and the City of Englewood for Duncan Park acquisition.
- Council Bill No. 41, Series of 2007 authorizing a Contract for Deed for the purchase of Duncan Park between the City of Englewood and Englewood Schools.
- Ordinance No. 35, Series of 1978 an Intergovernmental Agreement between the City of Englewood and Englewood Schools for the lease of Duncan School property for park and recreational purposes.

RECOMMENDED ACTION

Staff recommends Council award, by motion, the construction of "**Duncan Park Construction**". The total estimated construction cost (**\$1,448,765.15**) consists of a construction contract with American Civil Constructors, Inc. in the amount of \$1,283,717.15, which includes the addition of Alternate No. 4, and an amendment to the existing Professional Services Agreement with Britina Design Group for Construction Administration in the amount of \$19,975, as well as a construction contingency for unidentified work and material testing in the amount of \$145,073. Staff recommends authorizing the Director of Public Works to execute the contracts and agreements.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Redevelopment of Duncan Park is supported by the Parks Master Plan, adopted 2006. The Parks and Recreation Commission identified redevelopment of Duncan Park as a high priority.

In 2007, Council authorized a phased, three-year purchase of Duncan Park from Englewood Schools. Acquisition of the final parcel was completed in 2010.

In 2011, Parks and Recreation, along with Britina Design Group, began the formal process of designing improvements to Duncan Park. The design process included extensive public involvement. Citizens, neighbors and user groups were offered ample opportunity to provide input toward the amenities they seek for the park. Three open house meetings were held, along with presentations to the Parks and Recreation Commission, Planning Commission, and City Council. Members of the community helped finalize the overall park design and select the preferred park improvements.

In 2012, demolition of the old school building was completed. The demolition area was graded, seeded, and irrigated to provide additional green space for the park.

In 2013, Britina Design Group completed construction drawings (for bidding) and the project was advertised in early 2014. The base bid includes all of the major elements and amenities. Add alternates were included in the bid documents for potential upgrades to the playground surfacing, restroom facility, lighting, seat walls, and phasing. Acceptance of alternates is at the City's discretion. Staff recommends accepting one alternate (Alternate No. 4). This alternate requires the contractor to perform work in two phases, always leaving a portion of the park open for the public's use.

Pending Council approval of this action, construction will begin in May, 2014. Notification regarding the anticipated construction schedule will be provided to the adjacent neighborhood.

FINANCIAL IMPACT

American Civil Constructors submitted the only bid on April 3rd as detailed in the attached Bid Proposal Tabulation. Their base bid, in the amount of \$1,269,817.15, is approximately 20.4% above the Architects estimate of \$1,054,930.56. Staff and our consultant believe the Architects estimate did not account for our schedule that requires completion in 150 calendar days, along with how busy landscape contractors are this season.

Detailed below are the costs associated with the construction of the project:

American Civil Constructors (base bid)	\$1,269,817.15
Add Alternate No. 4 (Phasing)	<u>13,900.00</u>
Subtotal American Civil	\$1,283,717.15
Britina Design Group	19,975.00
Construction Contingency	<u>145,073.00</u>
Total Estimated Construction Cost	\$1,448,765.15

LIST OF ATTACHMENTS

Construction Contract Form-American Civil Constructors.
Amendment to Professional Services Agreement-Britina Design Group
Bid Tabulation

CONTRACT

CITY OF ENGLEWOOD, COLORADO

THIS CONTRACT and agreement, made and entered into this 21st day of April, 2014, by and between the City of Englewood, a municipal corporation of the State of Colorado hereinafter referred to as the "City", and American Civil Constructors, Inc., whose address is 4901 S. Windermere St., Littleton, CO. 80120, ("Contractor"), commencing on the 4th day of March, 2014, and continuing for at least ten (10) days thereafter the City advertised that sealed proposals would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the following:

PROJECT: Duncan Park Construction Project

WHEREAS, proposals pursuant to said advertisement have been received by the Mayor and City Council and have been certified by the Director of Public Works to the Mayor and City Council with a recommendation that a contract for work be awarded to the above named Contractor who was the lowest reliable and responsible bidder therefore, and

WHEREAS, pursuant to said recommendation, the Contract has been awarded to the above named Contractor by the Mayor and City Council and said Contractor is now willing and able to perform all of said work in accordance with said advertisement and his proposal.

NOW THEREFORE, in consideration of the compensation to be paid and the work to be performed under this contract, the parties mutually agree as follows:

- A. Contract Documents: It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached or incorporated by reference constitute and shall be referred to either as the Contract Documents or the Contract and all of said instruments, drawings, and documents taken together as a whole constitute the Contract between the parties hereto and they are as fully a part of this agreement as if they were set out verbatim and in full:

- Invitation to Bid
- Contract (this instrument)
- Insurance
- Performance Payment Maintenance Bond
- Plans and Specifications prepared by Britina Design Group

- B. Scope of Work: The Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all the work described, drawn, set forth, shown and included in said Contract Documents. **The Scope of Work includes the Base Bid and Alternate No. 04.**

- C. Terms of Performance: The Contractor agrees to undertake the performance of the work under this Contract within **ten (10) days** from being notified to commence work by the Director of Public Works and agrees to fully complete said work within **150 Calendar days**, plus such extension or extensions of time as may be granted by the Director of Public Works in accordance with the provisions of the Contract Documents and Specifications.

- D. Indemnification: The city cannot and by this Agreement/Contract does not agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity, for any purpose. The Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature including Worker's Compensation claims, in any way resulting from or arising out of this Agreement/Contract: provided, however, that the Contractor need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and Employees.
- E. Termination of Award for Convenience: The City may terminate the award at any time by giving written notice to the Contractor of such termination and specifying the effective date of such termination, at least thirty (30) days before the effective date of such termination. In that event all finished or unfinished service, reports, material (s) prepared or furnished by the Contractor after the award shall, at the option of the City, become its property. If the award is terminated by the City as provided herein, the Contractor will be paid that amount which bears the same ratio to the total compensation as the services actually performed or material furnished bear to the total services/materials the successful firm agreed to perform under this award, less payments of compensation previously made. If the award is terminated due to the fault of the Contractor the clause relating to termination of the award for cause shall apply.
- F. Termination of Award for Cause: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations or if the Contractor shall violate any of the covenants, agreements or stipulations of the award, the City shall have the right to terminate the award by giving written notice to the Contractor of such termination and specifying the effective date of termination. In that event, all furnished or unfinished services, at the option of the City, become its property, and the Contractor shall be entitled to receive just, equitable compensation for any satisfactory work documents, prepared completed or materials as furnished.

Notwithstanding the above, the Contractor shall not be relieved of the liability to the City for damages sustained by the City by virtue of breach of the award by the Contractor and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor is determined.

- G. Terms of Payment: The City agrees to pay the Contractor for the performance of all the work required under this contract, and the Contractor agrees to accept as his full and only compensation therefore, such sum or sums of money as may be proper in accordance with the price or prices set forth in the Contractor's proposal attached and made a part hereof, the total estimated cost thereof being **ONE MILLION TWO HUNDRED EIGHTY THREE THOUSAND SEVEN HUNDRED SEVENTEEN dollars and FIFTEEN cents (\$1,283,717.15)**. A 10% retainage of the awarded project amount will be withheld until final inspection and acceptance by the Project Manager.

- H. Appropriation of Funds: At present, **\$1,283,717.15** has been appropriated for the project. Notwithstanding anything contained in this Agreement to the contrary, 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/Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated. The City shall immediately notify the Contractor or its assignee of such occurrence in the event of such termination.
- I. Liquidated Damages: The City and Contractor recognize that time is of the essence in this Agreement because of the public interest in health and safety, and that the City will suffer financial loss, and inconvenience, if the Work is not complete within the time specified in the bid documents, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by the City if the Work is not complete on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay, but not as a penalty, Contractor shall pay the City **\$250.00** for each day that expires after the time specified for substantial completion until the Work is complete, and **\$250.00** for each day that expires after the time specified for final completion until the Work is finally complete.
- J. Assignment: Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the City specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the Assignor from any duty or responsibility under the Contract Documents.
- K. Contract Binding: It is agreed that this Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns, and successors.
- L. Contractors Guarantee: The Contractor shall guarantee that work and associated incidentals shall remain in good order and repair for a period of two (2) years from all causes arising from defective workmanship and materials, and to make all repairs arising from said causes during such period without further compensation. The determination of the necessity for the repair or replacement of said project, and associated incidentals or any portion thereof, shall rest entirely with the Director of

Public Works whose decision upon the matter shall be final and obligatory upon the Contractor.

VERIFICATION OF COMPLIANCE WITH C.R.S. 8-17.5-101 ET.SEQ. REGARDING HIRING OF ILLEGAL ALIENS

(a) **Employees, Contractors and Subcontractors:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor 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:** Contractor 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. Contractor 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 Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall:

(1) notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

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

(d) **Duty to Comply with State Investigation:** Contractor 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 Contractor's breach of any section of this paragraph or provisions required pursuant to C.R.S. 8-17.5-102. Contractor shall be liable for actual and consequential 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.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first written above.

CITY OF ENGLEWOOD

By: _____

Date: _____

ATTEST: _____
City Clerk

American Civil Constructors
(Contractor / print company name)

By: _____
(Signature)
Randy Maher President
(Print name and Title)

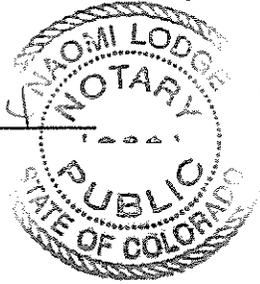
Date: 4/15/14

STATE OF Colorado)
COUNTY OF Arapahoe) ss.

On this 15th day of April, 2014, before me personally appeared Randy Maher, known to me to be the President of American Civil Constructors, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My commission expires: 9/14/14



NOTARY _____

SCHEDULE A

ADDENDUM #3 TO STATEMENT OF WORK

1. **GENERAL**
Britina Design Group, Inc. and The City of Englewood executed a Professional Services Agreement on August 15, 2011.
The City and Britina have agreed on a revised scope and fee for additional work related to the Duncan Park project.
Per Section No. 21 of the Agreement, Additional Work may be authorized by executing an addendum to the Statement of Work (this document).
Work authorized in Addendum #1 and #2 is complete and the project has been awarded to a General Contractor.
This Addendum #3 will add services for the "Construction Administration Phase".
2. **NAMES OF PROJECT COORDINATORS**
For Britina Design Group **Robert M. Couri, President/Landscape Architect and
Tim Piper, Senior Associate/Landscape Architect**
For City of Englewood **Dave Lee, Open Space Manager (for Design Phase)
Dave Henderson, Deputy Public Works Director and
Dave Coffman, Engineer II (for Construction Phase)**
3. **SUMMARY OF PURPOSE FOR STATEMENT OF WORK**
Revisions to original scope and fee per attached proposal from Britina dated December 19, 2013; Revised January 7, 2014.
4. **EQUIPMENT AND PROGRAMMING TO BE PROVIDED BY CITY (IF ANY)**
N/A
5. **OTHER CONSULTANT RESOURCES**
N/A
6. **DESCRIPTION OF WORK PRODUCT AND DELIVERABLES**
Per attached proposal from Britina dated December 19, 2013; Revised January 7, 2014.
7. **SPECIAL TERMS, IF ANY**
Fee Schedule from original Agreement to be revised as follows:

Original Total Fee	\$74,980.00
Current Fee Amount adjusted by Addendum #1 & #2	\$96,255.00
Add "Construction Bidding Phase"	\$19,975.00
New Total Fee	\$116,230.00

Note: Construction Bidding Phase, estimated at \$4,125, may be added when the City advertises the construction project.
Construction Administration Phase, estimated at \$19,975, may be added at the time a contract for construction is presented to City Council.
8. **MODE OF PAYMENT**
Payment by Check
Standard Purchase Order

9. PAYMENT SCHEDULE
Per City of Englewood schedule (monthly)

10. SCHEDULE AND PERFORMANCE MILESTONES
Per attached proposal from Britina dated December 19, 2013; Revised January 7, 2014.

11. ACCEPTANCE AND TESTING PROCEDURES
N/A

12. LOCATION OF WORK FACILITIES
Substantially all of the work will be conducted by Consultant at its regular office located in Arvada, Colorado.
Field visits and meetings will be conducted at Duncan Park or at the Englewood Recreation Center Conference Room.

IN WITNESS WHEREOF, pursuant and in accordance with the Professional Services Agreement between the parties hereto dated August 15, 2011, the parties have executed this Addendum to Statement of Work as of this _____ day of _____, 20__.

CITY OF ENGLEWOOD, COLORADO

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____

Britina Design Group, Inc

C

B

(Signature)
ROBERT M. COURT
(Print Name)

Title: PREIDENT

Date: 4/10/14

City of Englewood Bid Tabulation Sheet

Bid Opening Date: April 03, 2014 2:00 P.M. MDT

ITEM BID: ITB-14-006 Duncan Park Construction Project

Contractor	American Civil Constructors, Inc
Base Bid	\$1,269,817.15
Alternate 1: Promenade Pedestrian lighting	\$27,940.00
Alternate 2: 50% PIP Rubber & 50% EWF Playground Surfacing	\$74,691.50
Alternate 3: Inclusion of Seat Walls	\$66,100.00
Alternate 4: Construction Phasing	\$13,900.00
Alternate 5: Prefabricated Restroom Constructed with Concrete Block	\$30,875.00
Alternate 6: Brick Veneer on Shelter Columns & Restroom Walls	\$41,510.00

COUNCIL COMMUNICATION

Date: May 5, 2014	Agenda Item: 11 a i	Subject: Bill for an Ordinance Adding Section 6 to Title 7, Chapter 5 of the Englewood Municipal Code
Initiated By: Finance and Administrative Services Department		Staff Source: Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has not discussed this particular issue but on July 12, 2004 Council approved Resolution 77, Series of 2004 establishing fees and charges related to the registration of sex offenders.

RECOMMENDED ACTION

Staff recommends City Council approve the attached Bill for an Ordinance adding Section 6 to Title 7, Chapter 5 of the Englewood Municipal Code. Section 6 adding language regarding the method used (resolution) for setting fees and charges related to the registration of sex offenders. The proposed addition follows:

7-3-6 Determination of Fees

The City Council shall determine and set all fees required for the registration of sex offenders by resolution.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

N/A

FINANCIAL IMPACT

Funds collected for registering sex offenders are collected and used to offset the cost of administering the registering of sex offenders in the City of Englewood.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 27
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING TITLE 7, CHAPTER 3, OF THE ENGLEWOOD MUNICIPAL CODE 2000 BY THE ADDITION OF A NEW SECTION 6, ENTITLED DETERMINATION OF FEES.

WHEREAS, 24-72-306(1) C.R.S. allows fees to be charged for the search, retrieval and copying of Criminal Justice Records; and

WHEREAS, 16-22-108(6) C.R.S. mandates that persons who are subject to mandatory registration with the Police Department as sex offenders shall bear the cost of the photograph or image and fingerprinting required for registration; and

WHEREAS, the cost of registering sex offenders and responding to requests from the public for information on registered sex offenders are substantial and should be reimbursed to the City; and

WHEREAS, the passage of this Ordinance will amend the Englewood Municipal Code stating that the determination of these fees shall be set by resolution.

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 amending Title 7, Chapter 3, by adding a new Section 7, entitled *Determination of Fees* of the Englewood Municipal Code 2000, to read as follows:

7-3: Prohibited Residency of Sex Offenders.

7-3-6: Determination of Fees.

The City Council shall determine and set all fees required for the registration of sex offenders by resolution.

Section 2. 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 3. 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 4. 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 5. 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 6. 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 5th day of May, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of May, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of May, 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 5th day of May, 2014.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: May 5, 2014	Agenda Item: 11 a ii	Subject: Amendment of 7-6B-7(A)(2): Loitering
Initiated By: City Attorney		Staff Source: Dugan Comer, Prosecuting Attorney

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The current ordinance in subsection (A) (2) uses language taken from the State Statute C.R.S. 18-9-112(2) (d), and prohibits loitering in or about a school building or grounds.

RECOMMENDED ACTION

To approve a bill for an ordinance to remove Title 7, Chapter 6B, Subsection (A)(2) of the Englewood Municipal Code. The State section was held unconstitutional by the Colorado Supreme Court in People v C.M., 630 P.2d 593 (Colo. 1981).

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In reviewing and researching issues surrounding the current signage defining prohibited behavior and conduct on Englewood Environmental Foundation, Inc. property, the City undertook a review of its current loitering ordinance, and discovered that the language of Title 7, Chapter 6B, Subsection (A)(2) was identical to the language that was previously used in the State Statute, C.R.S. 18-9-112(2)(d).

Further research into the case law regarding loitering laws and ordinances revealed that in 1981 the Colorado Supreme Court had held subsection (2)(D) of the State Statute was unconstitutional.

In order to conform the current City ordinance to this Colorado Supreme Court decision, and to avoid challenges to the City's ordinance as currently written, the deletion of subsection (A)(2), of Title 7, Chapter 6B is strongly recommended.

There are no alternatives identified.

FINANCIAL IMPACT

No financial impact to the City is contemplated.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. 26
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING TITLE 7, CHAPTER 6B, OF THE ENGLEWOOD MUNICIPAL CODE BY DELETING SUBSECTION A(2) REGARDING LOITERING ON SCHOOL BUILDINGS OR GROUNDS.

WHEREAS, in 1985 the Englewood City Council enacted 7-6B-7(A)(2) making it illegal to loiter in or about a school building or grounds; and

WHEREAS, during research into loitering issues surrounding prohibited conduct on Englewood Environmental Foundation, Inc., property it was discovered that the State Statute C.R.S. 18-9-112(2)(d) which was used as the model for the language in the City's ordinance at Subsection (A)(2) was held to be unconstitutional by the Colorado Supreme Court in People v. C.M., 630 P.2d 593 (Colo. 1981); and

WHEREAS, The City Council of the City of Englewood, Colorado deems it in the best interest of the City to update the Code and to bring it in line with the Colorado Supreme Court's decision in People v. C.M. 630 P.2d 593 (Colo. 1981).

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 amending Title 7, Chapter 6B, Section 7, entitled *Loitering* of the Englewood Municipal Code 2000, to read as follows:

7-6B-7: Loitering.

A. It shall be unlawful to:

1. Loiter for the purpose of begging; or
- ~~2. Loiter in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil, or any other specific and legitimate reason for being there, and not having written permission from a school administrator; or~~
- ~~3.~~ 2. Loiter in a place, at a time and in a manner not usual and appropriate for the place, or where circumstances warrant alarm or concern for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that such person takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself, or conceal or dispose of any object. Unless flight by the person or other circumstance makes it impracticable, a peace officer shall, prior to any arrest

for an offense under this section, afford such person an opportunity to dispel any alarm which would otherwise be warranted by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the person was true and, if believed by the peace officer at the time, would have dispelled the alarm.

43. Loiter so as to interfere with the free and unobstructed use of a public way or place by other persons.

B. For purposes of this section, "loiter" means to be dilatory, to stand idly around, to linger, delay or wander about, or to tarry in a public place.

Section 2. 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 3. 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 4. 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 5. 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 6. 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 5th day of May, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of May, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of May, 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 5th day of May, 2014.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: May 5, 2014	Agenda Item: 11 a iii	Subject: An Ordinance Adopting Amendments to Title 16 Concerning Site Improvement Plans
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. However, this ordinance advances the City Council goals of having clear regulations, and also ensuring that large developments can obtain approval of site plans before applying for building permits, which involves significantly more investment in architectural and structural plans.

PREVIOUS PLANNING COMMISSION ACTION

The Planning and Zoning Commission discussed this proposal to amend Title 16: Unified Development Code, Site Improvement Plans at a Study Session on January 22, 2014. The Commission conducted a Public Hearing on February 20, 2014. There were no members of the public that testified at the public hearing. Following discussion, the Commission voted in favor of forwarding to City Council the proposed amendments to Title 16, Chapter 2: "Development Review and Approval Procedures", 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 Site Improvement Plans on First Reading, and setting May 19, 2014 as the date for a Public Hearing to consider testimony on the proposed amendments.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The current Zoning Site Plan Review process in the Unified Development Code (Section 16-2-9) does not fully address projects that involve site work not associated with a building permit. For example, the developer of Sprouts Farmers Market on South Broadway was seeking approval of their site plan before applying for a building permit, which requires much greater plan detail and additional cost to the developer.

The Sprouts developer needed approval of a site plan in order to secure financing. This is a fairly common requirement in the development financing industry. Site plan review is not currently required for major landscaping or major site work, other than paving parking lots. The current Development Code also lacks sufficient detail on submittal requirements and needs updating to reflect new size thresholds for building permits.

In addition, staff recommends changing from "Zoning Site Plan" to "Site Improvement Plan." This change is proposed because most of the plan review performed by staff relates more to the proposed site improvements than to the zoning. This change will clarify that site work, or "site improvements," require

review and approval by the City. This is particularly relevant for existing uses, where there is no need to review the zoning, but where site improvements requiring plan review are proposed.

ANALYSIS

Site plan review is performed by planners in the Community Development Department with input from other members of the Development Review Team. Staff reviews and approves (or denies) the proposed development based on the zoning, as well as dimensional standards such as setbacks, height, parking and landscaping. In many cases, current codes are not clear if certain development activities require site plan review. Also, in many cases, property owners or developers are seeking approval of the site plan (which is relatively inexpensive to produce) before committing resources to the building design (which is more expensive).

The proposed changes will clarify requirements on the plan format and information that must be included for plan review. For example, the current regulations do not specify the sheet size of the plan, or the scale required on the plan. These are basic elements of site planning that should be listed in the regulations.

The primary changes proposed to the existing Zoning Site Plan Review process (Section 16-2-9 EMC) include the following:

- Change from “Zoning Site Plan” to “Site Improvement Plan”
- Require Site Improvement Plan review for site work and landscaping over \$5,000 in value. (This amount was chosen because it was determined as a cutoff between “minor” and “major” landscaping.)
- Require Site Improvement Plan review for alterations to existing structures resulting in a change of floor area of 10% or greater, or any change that reduces the setback to a property line
- Provide more detail on the submittal requirements for plans and plan format
- The lapsing period for approval of site improvement plans would change from 60 days to 180 days
- Change the size threshold for building permits to match new building codes
- Other syntax changes to improve readability and enforceability of the code

Site Improvement Plan review will remain an administrative decision. Appeals to administrative decisions are to the Board of Adjustment and Appeals. As proposed, this policy would apply to both residential and nonresidential properties.

FINANCIAL IMPACT

There should be a positive financial impact on the City through additional collection of Use Tax identified through the Site Improvement Plan review process. This ordinance should also have a positive financial impact by encouraging new development and facilitating approval of site plans before developers move on to the more expensive architectural and structural plans required for a building permit.

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. 2013-09
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 2013-09 – Public Hearing
Site Improvement Plans

Recommendations

The Community Development Department request that the Planning & 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 2, Development Review and Approval Procedures, relating to Zoning Site Plan Review.

Background

The current Zoning Site Plan Review process outlined in the Unified Development Code (Section 16-2-9) does not fully address projects that involve site planning not associated with a building permit. For example, Sprouts Farmers Market on S. Broadway was seeking approval of their site plan before moving forward with the building permit process which requires much greater plan detail. Landscaping and major site work are also not listed as activities requiring site plan review. The current code also lacks sufficient detail on submittal requirements and needs to be updated to reflect current size thresholds for building permit. In addition, staff recommends changing from "Zoning Site Plan" to "Site Improvement Plan" to clarify that plan review applies to improvements proposed, and not just compliance with zoning.

Analysis

The current regulations list examples of where formal Zoning Site Plan review is required. Plan review is performed by planners in the Community Development Department. Staff reviews and approves (or denies) the proposed uses based on the zoning, as well as dimensional standards such as setbacks and height, parking and landscaping. In many cases, it is not clear if certain development activities require zoning site plan review. Also, in many cases, property owners or developers are seeking approval of the site plan (which is

relatively inexpensive to produce) before committing resources to the building design (which is more expensive).

The proposed changes will also set clear requirements on the plan format and information that must be supplied for plan review. For example, the current regulations do not specify the sheet size of the plan, or the scale required on the plan. These are basic elements of a site plan that should be listed in the regulations.

The primary changes proposed to the existing Zoning Site Plan Review process (Section 16-2-9 EMC) include the following:

- Change from “Zoning Site Plan” to “Site Improvement Plan”
- Require Site Improvement Plan review for site work and landscaping over \$5,000 in value
- Require Site Improvement Plan review for alterations to existing structures resulting in a change of floor area of 10% or greater, or any change that reduces the setback to a property line
- Provide more detail on the submittal requirements for plans and plan format
- Other syntax changes that improve the readability and enforceability of the code.

Information on the Development Review Team (DRT) that was included in previous versions of this proposal has been removed. We have determined that while this service is valuable to property owners and developers, it is not something that directly regulates the review process, and should not be included in the Unified Development Code.

Site Improvement Plan review will remain an administrative decision. Appeals to administrative decisions are to the Board of Adjustment and Appeals.

Recommendation

Staff recommends that the Planning & Zoning Commission support the proposed code changes as presented.

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 Site Improvement Plans

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 #2013-09,)
FINDINGS OF FACT, CONCLUSIONS)
AND RECOMMENDATIONS RELATING) FINDINGS OF FACT AND
TO THE AMENDMENT OF THE UNIFIED) CONCLUSIONS OF THE
DEVELOPMENT CODE ZONING SITE) CITY PLANNING AND
PLAN REVIEW) 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 no public was present 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 16-2-9 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 title of 16-2-9 will Change from "Zoning Site Plan" to "Site Improvement Plan".
5. THAT property owners will be required to complete a Site Improvement Plan Review for site work and landscaping over \$5,000 in value.
6. THAT the revised code will provide more detail on the submittal requirements for plans and plan format as outlined in the revised Site Improvement Plan Review process.
7. THAT other syntax changes will improve the readability and enforceability of the code.
8. THAT the proposed amendments related to the Zoning Site Improvement Plan Review are consistent with the goals and objectives of Roadmap Englewood: The 2003 Englewood Comprehensive Plan.
9. THAT the proposed Amendments related to the Zoning Site Plan Review process should be adopted as part of Title 16: Unified Development Code of the Englewood Municipal Code.
10. THAT the proposed updates are necessary to clarify the submittal requirements and review process for approval of a Site Improvement Plan.
11. THAT the proposed code amendment helps citizens to better understand the review process, and that this revision advances the health, safety and welfare of the community.

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 title of 16-2-9 will Change from "Zoning Site Plan" to "Site Improvement Plan".
5. THAT property owners will be required to complete a Site Improvement Plan Review for site work and landscaping over \$5,000 in value.
6. THAT the revised code will provide more detail on the submittal requirements for plans and plan format as outlined in the revised Site Improvement Plan Review process.
7. THAT Other syntax changes will improve the readability and enforceability of the code.
8. THAT the proposed amendments related to Zoning Site Plan Review are consistent with the goals and objectives of Roadmap Englewood: The 2003 Englewood Comprehensive Plan and the Englewood.
9. THAT the proposed Amendments related to 16-2-9 Zoning Site Plan Review should be adopted as part of Title 16: Unified Development Code of the Englewood Municipal Code.
10. THAT the proposed updates are necessary to clarify the submittal requirements and review process for approval of a Site Improvement Plan.
11. THAT the proposed code amendment helps citizens to better understand the review process, and that this revision advances the health, safety and welfare of the community.

DECISION

THEREFORE, it is the decision of the City Planning and Zoning Commission that Case #2013-09, Amendments to 16-2-9 Zoning Site Plan Review 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 #2013-09, AMENDMENTS TO TITLE 16: UNIFIED DEVELOPMENT CODE RELATED TO 16-2-9 ZONING SITE PLAN REVIEW AS STATED BE RECOMMENDED FOR APPROVAL TO CITY COUNCIL WITH A

**FAVORABLE RECOMMENDATION WITH THE FOLLOWING
CONDITION:**

1. *16-2-9 (E)(2) Lapse: General Development Applications. A Site Improvement Plan shall lapse and be of no further force and effect if a building permit, or City Manager or designee approval, as required, is not issued for the property subject to the Site Improvement Plan within one hundred eighty (180) days from the date of approval of the Site Improvement Plan.*

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. 24
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING TITLE 16, CHAPTER 2, SECTIONS 2, 7, 9, AND TITLE 16, CHAPTER 3, SECTION 2, OF THE ENGLEWOOD MUNICIPAL CODE 2000, PERTAINING TO ZONING SITE PLAN REVIEW.

WHEREAS, the current regulations list examples of where formal Zoning Site Plan review is required. Plan review is performed by the Community Development Department. Staff reviews and approves or denies the proposed use based on the zoning, as well as dimensional standards such as setbacks, height, parking and landscaping; and

WHEREAS, the current Zoning Site Plan Review process outlined in the Unified Development Code (Section 16-2-9) does not address projects that involve site planning not associated with a building permit; and

WHEREAS, the changes proposed to the existing Zoning Site Plan Review process (Section 16-2-9 EMC) include a change from the term "Zoning Site Plan" to "Site Improvement Plan"; and

WHEREAS, the changes proposed require Site Improvement Plan review for site work and landscaping over \$5,000 in value; and

WHEREAS, the Planning and Zoning Commission was concerned that \$5,000 would become outdated and discussed including a CPI component; however, such was not included in the proposal to City Council; and

WHEREAS, under 16-2-9(A)(4) EMC, the Planning and Zoning Commission had a great deal of discussion regarding the exception of residential driveways; however, no recommendation was made; and

WHEREAS, the Planning and Zoning Commission extended the lapse date from 60 days to 180 days, which requires a correction in Chart 16-2-2 EMC; and

WHEREAS, Site Improvement Plan review will remain an administrative decision; and

WHEREAS, appeals to administrative decisions are to the Board of Adjustment and Appeals; 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 9, of the Englewood Municipal Code 2000, to read as follows:

16-2-9: Zoning Site Improvement Plan Review.

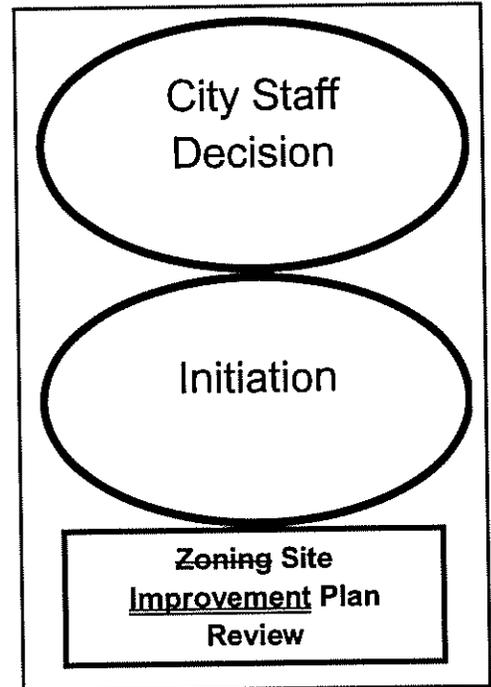
- A. *Applicability.* No land or structure shall be used, occupied, built, constructed upon, altered or developed for any use without complying with the Zoning Site Improvement Plan requirements and procedures provided in this Section, as applicable. A Zoning-Site Improvement Plan shall be required for any of the following:
1. The commencement of all any development, improvement, or construction requiring a building permit, except for interior remodel and or interior tenant finish.
 2. The construction or expansion of fences, walls, and or accessory structures (e.g., garages, carports, storage sheds, decks) in all any zone districts, including decks and patios less than thirty inches (30") in height and residential accessory structures containing less than ~~one~~ two hundred ~~twenty~~ (120 200) square feet in floor area, or commercial accessory structures containing less than one hundred twenty (120) square feet that ~~do~~ may not otherwise require a building permit.
 3. Accessory uses, not including home occupations, marked as "A" in the applicable table cell in Table 16-5-1.1, "Table of Allowed Uses".
 4. The construction, re-installation, expansion, alteration, removal, surfacing, paving, or resurfacing of a parking area, except for a residential driveway.
 5. Site work, landscaping, grading, or excavation in excess of five thousand dollars (\$5,000) in value as determined by a reasonable contract or bid consistent with prices for such materials and services in the Denver metropolitan area.
 6. Additions and exterior alterations of any structure resulting in a change equal to or greater than ten percent (10%) of the floor area of the structure.
 7. Any change that reduces the setback to a property line.
- B. *Initiation.* An application for a Zoning Site Improvement Plan may only be initiated by those parties identified in Section 16-2-3(A) EMC. The "Applicant" shall be the person, persons or legal entity that initiates the application for a Site Improvement Plan.
- C. *City Review.* The Applicant shall submit a plan of the proposed development or improvement showing the location of all property boundaries, the location and dimensions of all existing and proposed structures (including accessory structures

such as garages, sheds, outbuildings, trash enclosures, shelters, etc.), the location and surface material of all parking areas, driveways and sidewalks, the location of all landscaping (including species and size), fences and retaining walls. Applicant shall also submit plans showing the location of all existing and proposed storm water detention facilities as required by Section 16-6-8 EMC. The Applicant shall submit copies of plans, including site plan, floor plans and elevations of all proposed structures. In addition, the applicant shall submit either as-built plans or photographs of all existing structures on the property.

1. General Development Applications.

a. *Development/Use Requiring a Building Permit.* The City Manager or designee shall review the proposed Zoning Site Improvement Plan as part of the building permit application process. Based on the results of ~~these~~ that reviews, the City Manager or designee shall act to approve, approve with conditions, or deny the proposed Zoning Site Improvement Plan based on the review criteria stated in Section 16-2-9(D) EMC, below.

b. *Development/Uses Not Requiring a Building Permit.*
 The City Manager or designee shall review the proposed Zoning Site Improvement Plan for compliance with applicable standards of this Title. Based on the results of ~~these~~ that reviews, the City Manager or designee shall act to approve, approve with conditions, or deny the proposed Zoning Site Improvement Plan based on the review criteria stated in Section 16-2-9(D) EMC, below. A copy of the approved Zoning Site Improvement Plan shall be maintained by the City.



2. Preliminary Review: Applicants are encouraged to contact the City in advance of submittal for formal Site Improvement Plan Review or application for a Building Permit to obtain preliminary feedback on the proposed development.

3. Plan Format: The Site Improvement Plan shall meet the following requirements:

Sites <10,000 square feet: Scale: 1" = 20' or 1" = 10'
Sheet size: 24" x 36" or 8 1/2" x 11" or 11" x 17"

Sites >10,000 square feet: Scale: 1" = 10' or other increments of 10' as approved by the City of Englewood.
Sheet size: 24" x 36" or 30" x 42" or 36" X 48"

Site plans shall depict the property corners and all permanent survey monuments. All plans shall clearly indicate the size of the site (in square feet and in acres), existing and proposed building areas (in square feet), building setbacks to property lines, and proposed building height. In addition, all existing and proposed exterior building materials shall be shown on the plan elevations. A landscaping plan shall accompany all site plans and shall include existing and proposed ground surfaces, location of all existing trees and other significant vegetation, as well as size, species and number of all proposed landscaping. (Exception: A landscaping plan shall not be required for development that does not involve the removal of existing landscaping, or the addition of new landscaping.)

- D. *Criteria.* All Zoning Site Improvement Plans shall be reviewed, and shall be approved, approved with conditions, or denied based on the following criteria:
1. Consistency with Adopted Plans and Standards.
 - a. Consistency with the spirit and intent of the City's Comprehensive Plan and this Title;
 - b. Compliance and consistency with any applicable Station Area Standards and Guidelines for property in the TSA district;
 - c. If approval of a conditional use is being requested as part of a Zoning Site Improvement Plan, ~~consistency~~ compliance with all applicable conditional use standards and criteria listed in this Section and in Section 16-2-12 EMC; and
 - d. If approval of a limited use is being requested as part of a Site Improvement Plan, compliance with all applicable limited use standards and criteria listed in this Section and in Section 16-2-13 EMC; and
 - ~~d e.~~ Consistency- Compliance with all other applicable standards, guidelines, policies, and plans adopted by Council.
 2. Impact on Existing City Infrastructure and Public Improvements. The proposed development shall not result in undue or unnecessary burdens on the City's existing infrastructure and public improvements, or ~~that~~ arrangements are shall be made to mitigate such impacts.
 3. Internal Efficiency of Design. The proposed design of the site shall achieve internal efficiency for its users, provide adequate ~~of~~ recreation; allow for safe public access; ~~safety and other factors, including but not limited to~~ provide adequate storm drainage facilities, ~~sewer and water facilities, grades, and matters relating directly to~~ and promote public health and convenience. All sites shall be designed and constructed to safely accommodate pedestrians, bicyclists and automobiles.
 4. Control of External Effects. The proposed development ~~controls~~ shall reduce external negative effects on: ~~N~~nearby land uses; and movement and

congestion of traffic; ~~This shall include negative impacts from noise, lighting, signage, landscaping, accumulation of litter noise generated, arrangement of signs and lighting to prevent nuisances, landscaping, features to prevent littering or accumulation of trash, and other factors deemed to affect public health, welfare, safety and convenience.~~

E. ~~After-Approval.~~

1. The City shall approve the proposed Site Improvement Plan if the plan meets all requirements of this chapter or an applicable Planned Unit Development (PUD); complies with all required adopted plans, codes and standards; and any negative impacts on existing or planned city infrastructure have been mitigated.

Compliance with Zoning Site Improvement Plan Approval. The Zoning Site Improvement Plan shall limit and control the issuance and validity of all building permits and occupancy permits and shall restrict and limit the construction, location, use, and operation of all land and structures included within the Zoning Site Improvement Plan to all limitations and conditions set forth in the approved Zoning Site Improvement Plan. Failure to maintain a property in compliance with its approved Zoning Site Improvement Plan shall be a basis for enforcement action under this Title.

2. Lapse: General Development Applications. A Zoning Site Improvement Plan shall lapse and be of no further force and effect if a building permit, or City Manager or designee approval, as required, is not issued for the property subject to the Zoning Site Improvement Plan within sixty one hundred and eighty (60 180) days from the date of approval of the Zoning Site Improvement Plan's approval.
3. ~~Lapse: PUD and TSA Applications. A Zoning Site Plan shall lapse and be of no further force and effect if a building permit, as required, is not issued for the property subject to the Zoning Site Plan within three (3) years from the date of the Zoning Site Plan's approval.~~

F. Modification and Amendment of Zoning Site Improvement Plans.

1. Any approved Zoning Site Improvement Plan may be modified or amended as provided in this subsection or entirely withdrawn by the landowner Applicant if a building permit has not been issued. Once a building permit has been issued, the building permit and Site Improvement Plan shall control, unless both the building permit and Site Improvement Plan are thereafter amended or abandoned as identified in this chapter.
2. The City Manager or designee may approve, or approve with conditions, an administrative modification to an approved TSA district Zoning Site Improvement Plan without notice to the public, if the proposed change does not produce any of the following conditions:

- a. An increase in residential density, nonresidential floor area ratio (FAR), or ground coverage of structures of more than ten percent (10%).
 - b. An increase in external effects concerning traffic, circulation, safety noise, or provision of utilities.
 - c. A reduction or increase in building setbacks that would violate the requirements of the TSA district standards by more than ten percent (10%).
 - d. A reduction in the amount of required off-street parking.
 - e. A reduction in the amount of required landscaping.
3. Any proposed amendment that does not qualify for review and approval as an administrative modification to a ~~Zoning~~ Site Improvement Plan shall be reviewed and approved in the same manner as an application for a new ~~Zoning~~ Site Improvement Plan, and shall be subject to the same approval criteria and appeal as a new application for a ~~Zoning~~ Site Improvement Plan.
 4. An application for administrative modifications to an approved ~~Zoning~~ Site Improvement Plan shall be subject to the administrative rules and regulations established by the City Manager or designee. Any proposed amendment shall comply with the current regulations, standards, and guidelines for development in the zone district in which the property is located.

Section 2. 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	16-2-	✓	D	A						1 year

Permits	13									
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
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 Improvement Plan	16-2-9		D	A						3-years 180 days
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 3. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 2, Section 7 entitled *Official Zoning Map Amendments (Rezoning)* of the Englewood Municipal Code 2000, to read as follows:

16-2-7: Official Zoning Map Amendments (Rezoning).

The City may initially zone annexed property, or the boundaries or areas of any zone district may be changes, or the zone classification of any parcel of land may be changed pursuant to this Section. Rezoning shall not be used as a way to legitimize nonconforming uses or structures, and should not be used when a conditional use, Zoning Variance, or Administrative Adjustment could be used to achieve the same result. Rezoning to a Planned Unit Development district (PUD) or Transit Station Area (TSA) district are subject to additional procedures and criteria as set forth in this Section.

I. *After Approval—Lapsing Period.*

1. Base District Rezoning. An approved base district rezoning shall not lapse, but shall remain in effect until superceded by a later or inconsistent amendment to, or replacement of, the official zoning map. However, if the City has required the submission of a Zoning Site Improvement Plan as part of the rezoning process, and has approved a Zoning Site Improvement Plan for the rezoned property, and the Zoning Site Improvement Plan later lapses pursuant to Section 16-2-9-(E) EMC, the Council may initiate a rezoning of the property to its prior zone map designation, or to an alternative designation more consistent with the Comprehensive Plan.
2. PUD or TSA rezoning. An approved PUD or TSA district rezoning shall not lapse, but shall remain in effect until superceded by a later or inconsistent amendment to, or replacement of, the official zoning map.

Section 4. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, of the Englewood Municipal Code 2000, to change the term “Zoning Site Plan” to “Site Improvement Plan” in the following Sections:

- 16-2-7(D)(1) – in 3 places
- 16-2-13(A)
- 16-2-13(D)
- 16-2-15 – in the intro paragraph
- 16-2-15(A)
- 16-2-15(E)
- 16-2-19(B)(3)
- 16-2-19(C)(3) – in 4 places
- 16-2-19(E)
- 16-2-19(H)
- 16-3-2(D)(1)
- 16-5-2(A)(7)
- 16-5-3(7)
- 16-5-5(D)(1)
- 16-5-5(E)(1)(b)(3)
- 16-6-3(F)(2)(c)(3)

16-6-3(F)(2)(f) –in 2 places
16-6-5(E)
16-6-6(B)(2) – in heading
16-6-6(B)(2)(a)
16-6-6(B)(2)(b)
16-6-6(B)(2)(c) – in 2 places
16-6-7(C)
16-6-7(E)(3)(b)
16-6-10(B)(3)
16-6-10(B)(5)(d)(2) – in 2 places
16-6-10(B)(5)(d)(4)
16-6-13(D)(3)
16-6-14(E)(2)
16-6-14(E)(3)
16-6-14(E)(3)(b)
16-6-14(E)(3)(d) – in 2 places
16-6-14(F)(3)
16-6-14(G)(3)
16-11-2 – Definitions – Site specific Development Plan (c)
Zoning Site Plan

Section 5. 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 6. 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 7. 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 8. 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 9. 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 5th day of May, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of May, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of May, 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 5th day of May, 2014.

Loucrishia A. Ellis



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 2013-09 – Public Hearing
Site Improvement Plans

Recommendations

The Community Development Department request that the Planning & 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 2, Development Review and Approval Procedures, relating to Zoning Site Plan Review.

Background

The current Zoning Site Plan Review process outlined in the Unified Development Code (Section 16-2-9) does not fully address projects that involve site planning not associated with a building permit. For example, Sprouts Farmers Market on S. Broadway was seeking approval of their site plan before moving forward with the building permit process which requires much greater plan detail. Landscaping and major site work are also not listed as activities requiring site plan review. The current code also lacks sufficient detail on submittal requirements and needs to be updated to reflect current size thresholds for building permit. In addition, staff recommends changing from "Zoning Site Plan" to "Site Improvement Plan" to clarify that plan review applies to improvements proposed, and not just compliance with zoning.

Analysis

The current regulations list examples of where formal Zoning Site Plan review is required. Plan review is performed by planners in the Community Development Department. Staff reviews and approves (or denies) the proposed uses based on the zoning, as well as dimensional standards such as setbacks and height, parking and landscaping. In many cases, it is not clear if certain development activities require zoning site plan review. Also, in many cases, property owners or developers are seeking approval of the site plan (which is

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

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

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

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.

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 #2013-09,)	
FINDINGS OF FACT, CONCLUSIONS)	
AND RECOMMENDATIONS RELATING)	FINDINGS OF FACT AND
TO THE AMENDMENT OF THE UNIFIED)	CONCLUSIONS OF THE
DEVELOPMENT CODE ZONING SITE)	CITY PLANNING AND
PLAN REVIEW)	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 no public was present 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 16-2-9 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.

4. THAT the title of 16-2-9 will Change from "Zoning Site Plan" to "Site Improvement Plan".
5. THAT property owners will be required to complete a Site Improvement Plan Review for site work and landscaping over \$5,000 in value.
6. THAT the revised code will provide more detail on the submittal requirements for plans and plan format as outlined in the revised Site Improvement Plan Review process.
7. THAT Other syntax changes will improve the readability and enforceability of the code.
8. THAT the proposed amendments related to Zoning Site Plan Review are consistent with the goals and objectives of Roadmap Englewood: The 2003 Englewood Comprehensive Plan and the Englewood.
9. THAT the proposed Amendments related to 16-2-9 Zoning Site Plan Review should be adopted as part of Title 16: Unified Development Code of the Englewood Municipal Code.
10. THAT the proposed updates are necessary to clarify the submittal requirements and review process for approval of a Site Improvement Plan.
11. THAT the proposed code amendment helps citizens to better understand the review process, and that this revision advances the health, safety and welfare of the community.

DECISION

THEREFORE, it is the decision of the City Planning and Zoning Commission that Case #2013-09, Amendments to 16-2-9 Zoning Site Plan Review 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 #2013-09, AMENDMENTS TO TITLE 16: UNIFIED DEVELOPMENT CODE RELATED TO 16-2-9 ZONING SITE PLAN REVIEW AS STATED BE RECOMMENDED FOR APPROVAL TO CITY COUNCIL WITH A

COUNCIL COMMUNICATION

Date: May 5, 2014	Agenda Item: 11 c i	Subject: Resolution for a Supplemental Appropriation to the 2014 Budget
Initiated By: Finance and Administrative Services Department		Staff Source: Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has discussed recruiting a new City Manager since Gary Sears announced his retirement on March 2, 2014. Council directed staff to prepare a request for proposal (RFP) to recruit a professional recruiter. Council discussed and narrowed the field to three candidate firms at the April 21, 2014 Study Session.

RECOMMENDED ACTION

Staff recommends City Council approve the attached resolution for a supplemental appropriation to the 2014 Budget as follows:

SOURCES AND USES OF FUNDS:

GENERAL FUND:

SOURCE OF FUNDS:

Unassigned Fund Balance \$25,000

USE OF FUNDS:

Human Resources Department - Professional Services \$25,000

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

City Council hires and retains a City Manager as the chief executive and head of the executive branch of the City Government. City Council enacts legislation, sets public policy and determines the City's direction and goals. It is the City Manager's responsibility to allocate the necessary human and capital resources to implement legislation and achieve Council's goals.

Funds were not budgeted for this expenditure as the City Manager's retirement was not known at the time the 2014 Budget was prepared.

FINANCIAL IMPACT

The General Fund's Unassigned Fund Balance will be reduced \$25,000.

LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. _____
SERIES OF 2014

A RESOLUTION APPROVING A SUPPLEMENTAL APPROPRIATION TO THE 2014 BUDGET.

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

WHEREAS, the 2014 Budget was submitted and approved by the Englewood City Council on October 21, 2013; and

WHEREAS, in March 2014 the City Manager announced his retirement and City Council requested staff prepare a request for proposal (RFP) to recruit a professional recruiter; and

WHEREAS, funds were not budgeted for this expenditure as the City Manager's retirement was not known at the time the 2014 Budget was prepared; and

WHEREAS, the Englewood City Council hires and retains a City Manager as the chief executive and head of the executive branch of the City Government.

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

Section 1. The Budget for the General Fund of the City of Englewood, Colorado, is hereby amended for the year 2014, as follows:

GENERAL FUND

SOURCE OF FUNDS:

Unassigned Fund Balance	\$25,000
-------------------------	----------

USE OF FUNDS:

Human Resources Department -- Professional Services	\$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 2014 Budget for the City of Englewood.

ADOPTED AND APPROVED this 5th day of May, 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 May 5, 2014	Agenda Item 11 c ii	Subject Interim Disinfection Improvements Project – Award of Construction Contract
INITIATED BY Littleton/Englewood WWTP Supervisory Committee	STAFF SOURCE Stewart H. Fonda, Director of Utilities Chong Woo, Engineering/Maintenance Manager	

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approval of the 2014 Littleton/Englewood WWTP Construction in Process Budget.

RECOMMENDED ACTION

The recommended action is to approve, by Motion, a construction contract for the Interim Disinfection Improvements Project located at the Littleton/Englewood WWTP. Staff recommends awarding the contract to the lowest reliable and responsive bidder, RN Civil Construction, in the amount of \$432,000.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

On August 12, 2013, staff presented to City Council a recommendation to proceed with an Interim Disinfection Improvements Project. The recommendation was based on two separate engineering reports. The first report, prepared by Brown and Caldwell, evaluated the existing liquid chlorine system and recommended conversion to an alternate disinfection system (ultraviolet light disinfection). The second report, prepared by CH2MHill, assessed the need for conversion against the acceptability of risk and the potential for violations. While the CH2MHill report did not make recommendations regarding the acceptability of violations, it did make several recommendations for a small scale project to minimize the potential for violations in lieu of a large scale capital project. Based largely on the CH2MHill report, a project to convert to ultraviolet light disinfection was stopped.

The Interim Disinfection Improvements Project is designed to maintain the asset reliability of the existing liquid chlorine system. The project intent is to minimize risk and maintain permit compliance until such time when an alternate disinfection system would be required. Staff reviewed the CH2MHill recommendations and incorporated portions into this project. Brown and Caldwell performed the project design, developed the bidding specifications, and conducted the bid evaluations. At the time of the initial design, the construction cost was estimated at \$1,000,000, which included contingencies and fees. However, through an evaluation of our existing processes, staff was able to minimize the project scope and reduce the overall construction cost. Staff worked with Brown and Caldwell to model our processes and better optimize our existing control systems. Additionally, staff evaluated the initial design and worked to develop more cost effective solutions.

The Interim Disinfection Improvements Project includes:

- Installation of new Oxidation/Reduction Potential probes, controllers and transmitters, and completion of programming integration. Provides redundant control devices for the liquid chlorine system.
- Installation of new level sensors and transmitters at each of the eight Denitrification Filters, and completion of programming integration. Provides accurate monitoring and control of backwash cycles to minimize flow variations which impacts the downstream chlorine system. In addition, provides added benefit to reduce energy expenditures by minimizing daily backwash sequences.
- Coating of the Denitrification Clearwells to mitigate algae growth which interferes with the downstream chlorine system.
- Installation of parallel liquid chlorine feed system in the Disinfection Building. Provides redundancy during routine maintenance of the piping system.
- Improvements to the final effluent sampling, pumping, piping and supports. Provides accessibility for routine maintenance of the pumps, replacement of sample hoses, and provides redundant sampling lines.

The project was advertised on the Rocky Mountain E-Purchasing System (Bidnet). Bid Opening was conducted on April 10, 2014. A total of three (3) Bids were received, with the following base bid results.

RN Civil Construction, Centennial, CO	\$432,000
Stanek Constructors, Inc., Golden, CO	\$496,000
Aslan Construction, Inc., Berthoud, CO	\$536,000

RN Civil Construction was identified as the apparent low bidder. Based on our review, RN Civil's Bid is responsive and complete. RN Civil is a general construction contractor specializing in water-wastewater projects. RN Civil is well known in the industry, and qualified and competent to perform the scope of work for this project.

FINANCIAL IMPACT

The project was budgeted, and the contract amount (\$432,000) is available in the 2014 Budget. The Bid amount is included in the 2014 Construction in Process Budget and will be shared 50/50 by the Cities of Englewood and Littleton.

LIST OF ATTACHMENTS

Bid Tabulation Sheet
Contract

City of Englewood Bid Tabulation Sheet

Bid Opening Date: April 10, 2014 2:00 P.M. MDT

Apparent Low Bidder

ITEM BID: ITB-14-007 Interim Disinfection Improvements Project

Vendor	Bid Bond Y/N	SOQ Y/N	Receipt of Addendums 1 & 2 Y/N	Total Bid	Exceptions:
Stanek Constructors, Inc.					
651 Corporate Cir., Ste 108					
Goldon, CO 80401					
Robert Stanek - President					
303-980-8233	Y	Y	Y	\$ 496,000.00	
Aslan Construction, Inc.					
120 Bunyan Ave., Ste 200					
Berthoud, CO 80513					
Michael Peiphrey - President					
970-344-1040	Y	Y	Y	\$ 536,000.00	
RN Civil Construction					
5975 S Quebec St. Ste 140					
Centennial, CO 80111					
Daniel Niehus - Owner					
303-482-3059	Y	Y	Y	\$ 432,000.00	

CONTRACT

CITY OF ENGLEWOOD, COLORADO

THIS CONTRACT and agreement, made and entered into this ____ day of _____, 20__, by and between the City of Englewood, a municipal corporation of the State of Colorado hereinafter referred to as the "City", and RN Civil Construction, whose address is 5975 South Quebec Street, Suite #140, Centennial, Colorado 80111, ("Contractor"), commencing on the ____ day of _____, 20__, and continuing for at least ten (10) days thereafter the City advertised that sealed proposals would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the following:

PROJECT: L/E WWTP Interim Disinfection Improvements Project

WHEREAS, proposals pursuant to said advertisement have been received by the Mayor and City Council and have been certified by the Director of Utilities to the Mayor and City Council with a recommendation that a contract for work be awarded to the above named Contractor who was the lowest reliable and responsible bidder therefore, and

WHEREAS, pursuant to said recommendation, the Contract has been awarded to the above named Contractor by the Mayor and City Council and said Contractor is now willing and able to perform all of said work in accordance with said advertisement and his proposal.

NOW THEREFORE, in consideration of the compensation to be paid and the work to be performed under this contract, the parties mutually agree as follows:

- A. Contract Documents: It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached or incorporated by reference constitute and shall be referred to either as the Contract Documents or the Contract and all of said instruments, drawings, and documents taken together as a whole constitute the Contract between the parties hereto and they are as fully a part of this agreement as if they were set out verbatim and in full:

Invitation to Bid
Contract (this instrument)
Insurance
Performance Payment Maintenance Bond
General Conditions
Technical Specifications
Drawings sheets G-00-001-005, M-00-001-002, M-11-102-201, M-12-202, P-00-001-003, P-11-001, P-12-201-204, E-00-001-005, E-11-001,291, E-12-001, E-12-907
Contractor Health and Safety Agreement
Spill Prevention, Countermeasure, Control and Clean Up Document

1000 Englewood Parkway, Englewood, Colorado 80110 Phone (303) 762-2412
Fax (303) 783-6951
www.Englewoodgov.org

- B. Scope of Work: The Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all the work described, drawn, set forth, shown and included in said Contract Documents.
- C. Terms of Performance: The Contractor agrees to undertake the performance of the work under this Contract within ten (10) days from being notified to commence work by the Director of Utilities and agrees to fully complete said work by December 30, 2014, plus such extension or extensions of time as may be granted by the Director of Utilities in accordance with the provisions of the Contract Documents and Specifications.
- D. Indemnification: The City cannot and by this Agreement/Contract does not agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity, for any purpose. The Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature including Worker's Compensation claims, in any way resulting from or arising out of this Agreement/Contract: provided, however, that the Contractor need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and Employees.
- E. Accidental Spills and/or Releases of Chemicals, Process Wastewater or Other Unpermitted Substances to the Site: If a release of chemicals, process wastewater or other unpermitted substance is spilled, leaked, or otherwise released to the environment or Site, by CONTRACTOR, subcontractors, suppliers, or anyone else for whom CONTRACTOR is responsible, CONTRACTOR will take immediate steps to secure or otherwise isolate such condition, immediately notify the Littleton/Englewood Wastewater Treatment Plant staff and contain and clean up any such substance or spill. CONTRACTOR is responsible for making all notifications and complying with all regulatory requirements related to such an incident. Any waste generated as a result of a spill, leak, or other release to the environment or Site by CONTRACTOR, subcontractors, suppliers, or anyone else for whom CONTRACTOR is responsible shall become the property of CONTRACTOR and shall be disposed of in accordance with all applicable requirements. In addition to cleanup and disposal costs, CONTRACTOR is responsible for all costs associated with demobilization, remobilization, medical examinations, and all other costs, claims, losses, and damages, including but not limited to attorney fees and litigation costs as well as fines and penalties, incurred by Littleton/Englewood Wastewater Treatment Plant as a result of any substance or material that is spilled, leaked, or otherwise released to the environment or Site by CONTRACTOR, subcontractors, suppliers, or anyone else for whom CONTRACTOR is responsible.
- F. Termination of Award for Convenience: The City may terminate the award at any time by giving written notice to the Contractor of such termination and

specifying the effective date of such termination, at least thirty (30) days before the effective date of such termination. In that event all finished or unfinished service, reports, material (s) prepared or furnished by the Contractor after the award shall, at the option of the City, become its property. If the award is terminated by the City as provided herein, the Contractor will be paid that amount which bears the same ratio to the total compensation as the services actually performed or material furnished bear to the total services/materials the successful firm agreed to perform under this award, less payments of compensation previously made. If the award is terminated due to the fault of the Contractor the clause relating to termination of the award for cause shall apply.

- G. Termination of Award for Cause: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations or if the Contractor shall violate any of the covenants, agreements or stipulations of the award, the City shall have the right to terminate the award by giving written notice to the Contractor of such termination and specifying the effective date of termination. In that event, all furnished or unfinished services, at the option of the City, become its property, and the Contractor shall be entitled to receive just, equitable compensation for any satisfactory work documents, prepared completed or materials as furnished.

Notwithstanding the above, the Contractor shall not be relieved of the liability to the City for damages sustained by the City by virtue of breach of the award by the Contractor and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor is determined.

- H. Terms of Payment: The City agrees to pay the Contractor for the performance of all the work required under this contract, and the Contractor agrees to accept as his full and only compensation therefore, such sum or sums of money as may be proper in accordance with the price or prices set forth in the Contractor's proposal attached and made a part hereof, the total estimated cost thereof being Four Hundred Thirty Two Thousand and 0/100 Dollars (\$432,000.00). A 5% retainage of the awarded project amount will be withheld until final inspection and acceptance by the Project Manager.
- I. Appropriation of Funds: At present, \$432,000.00 has been appropriated for the project. Notwithstanding anything contained in this Agreement to the contrary, 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/Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31.

Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated. The City shall immediately notify the Contractor or its assignee of such occurrence in the event of such termination.

- J. Liquidated Damages: The City and Contractor recognize that time is of the essence in this Agreement because of the public interest in health and safety, and that the City will suffer financial loss, and inconvenience, if the Work is not complete within the time specified in the bid documents, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by the City if the Work is not complete on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay, but not as a penalty, Contractor shall pay the City \$1,000 for each day that expires after the time specified for substantial completion until the Work is complete, and \$1,000 for each day that expires after the time specified for final completion until the Work is finally complete.
- K. Assignment: Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the City specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the Assignor from any duty or responsibility under the Contract Documents.
- L. Contract Binding: It is agreed that this Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns, and successors.
- M. Contractors Guarantee: The Contractor shall guarantee that work and associated incidentals shall remain in good order and repair for a period of two (2) years from all causes arising from defective workmanship and materials, and to make all repairs arising from said causes during such period without further compensation. The determination of the necessity for the repair or replacement of said project, and associated incidentals or any portion thereof, shall rest entirely with the Director of Utilities whose decision upon the matter shall be final and obligatory upon the Contractor.

**VERIFICATION OF COMPLIANCE WITH C.R.S. 8-17.5-101 ET. SEQ. REGARDING
HIRING OF ILLEGAL ALIENS**

(a) **Employees, Contractors and Subcontractors:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor 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:** Contractor 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. Contractor 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 Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall:

(1) notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

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

(d) **Duty to Comply with State Investigation:** Contractor 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 Contractor's breach of any section of this paragraph or provisions required pursuant to C.R.S. 8-17.5-102. Contractor shall be liable for actual and consequential 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.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first written above.

CITY OF ENGLEWOOD

By: _____
(Signature)

Date: _____

(Print name and Title)

ATTEST: _____
City Clerk

RN Civil Construction

By _____
(Signature)

Date: _____

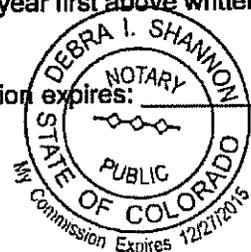
Daniel P. Niehus, owner-managing partner
(Print name and Title)

STATE OF Colorado)
COUNTY OF Arapahoe) ss.

On this _____ day of _____, 20____, before me personally, appeared Daniel P. Niehus, known to me to be the owner-managing partner of RN Civil Construction, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

My commission expires: _____



NOTARY
5975 S. Quebec St. #140
Centennial, CO 80111