

**Agenda for the  
Regular Meeting of the  
Englewood City Council  
Monday, November 17, 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 November 3, 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. City Council will recognize the student artists whose artwork is included in the 2015 Englewood Calendar.
    - Tracy Zhai, an 8<sup>th</sup> Grader at West Middle School
    - Marisa Cordova-Gama, a 6<sup>th</sup> Grader at Bishop Elementary School
    - Correen Martinez, an 11<sup>th</sup> Grader at Englewood High School
    - Megan Summers, a 4<sup>th</sup> Grader at Bishop Elementary School
    - Rebecca Flynn, a 12<sup>th</sup> Grader at Colorado's Finest Alternative High School
    - Ashley Berry, a 1<sup>st</sup> Grader at Clayton Elementary School
    - Tess Bray, an 11<sup>th</sup> Grader at East High School
    - Sarah Hagan, a Kindergartner at All Souls School
    - Illiana Johnson, a 2<sup>nd</sup> Grader at Clayton Elementary School
    - Michaelanne Jordan, an 8<sup>th</sup> Grader at Englewood Middle School
    - Aidan Trujillo, a 1<sup>st</sup> Grader at Cherrelyn Elementary School
    - Shawn Michaelis, a 12<sup>th</sup> Grader at Colorado's Finest Alternative High School
    - Gianna Ditsworth, a 4<sup>th</sup> Grader at Clayton Elementary School

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. An email from Marty Mosman announcing her resignation from the Malley Center Trust Fund.

9. Consent Agenda Items

- a. Approval of Ordinances on First Reading.

- b. Approval of Ordinances on Second Reading.

- i. Council Bill No. 65, authorizing Supplement #38 for inclusion of land within the South Arapahoe Sanitation District.
- ii. Council Bill No. 66, authorizing Sanitary Sewer Supplement #5 for inclusion of land within the Cherry Hills Village Sanitation District.
- iii. Council Bill No. 67, authorizing approval of the City of Cherry Hills Village Sanitation District Wastewater Connector's Agreement.
- iv. Council Bill No. 68, authorizing the execution and delivery of a First Supplement to Financing Agreement for the Boy Scouts of America.

- c. Resolutions and Motions.

10. Public Hearing Items. (None Scheduled)

11. Ordinances, Resolutions and Motions.

- a. Approval of Ordinances on First Reading.

- b. Approval of Ordinances on Second Reading.

- c. Resolutions and Motions.

- i. Recommendation from the Police Department to approve, by motion, the license agreement and a maintenance agreement for the Coplogic DeskOfficer Online Reporting System. **Staff Source: Jeff Sanchez, Deputy Police Chief.**

- ii. Recommendation from the Littleton/Englewood Wastewater Treatment Plant to approve, by motion, the purchase of an Inductively Coupled Plasma Metals Analysis System for the Littleton/Englewood Wastewater Laboratory. Staff recommends awarding the contract to the lowest acceptable bidder, Thermo Scientific, in the amount of \$135,936.07. **Staff Source: Stewart H. Fonda, Utilities Director and Philip A. Russell, Environmental Services Manager.**

12. General Discussion.

- a. Mayor's Choice.
- b. Council Members' Choice.

13. City Manager's Report.

14. City Attorney's Report.

15. Adjournment.

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**Subject:** FW: Malley Trust Fund

November 5, 2014

To Englewood Malley Recreation Center staff and administration:

I deeply regret that I must resign my chair on the Malley Trust Fund Committee. At this time, that seems the best for all concerned. The time I have spent not only on the Trust Fund Committee and on other volunteer endeavors have been some of the happiest and most fulfilling of my time. I will always be grateful for the opportunities, friendships and activities. You all do a superb job keeping things going. Thank you so much.

Love you all. Marty Mosman

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2014

COUNCIL BILL NO. 65  
INTRODUCED BY COUNCIL  
MEMBER OLSON

AN ORDINANCE APPROVING SUPPLEMENT NO. 38 TO THE SOUTH ARAPAHOE  
SANITATION DISTRICT CONNECTOR’S AGREEMENT FOR THE INCLUSION OF LAND  
WITHIN THE DISTRICT BOUNDARIES.

WHEREAS, South Arapahoe Sanitation District recommends the inclusion of Aspen Academy  
Investment Fund Property of approximately 4.047 acres into the District; and

WHEREAS, said inclusion is located on the North West corner of University and Orchard  
Avenue in Greenwood Village; and

WHEREAS, the zoning of this property in Greenwood Village is currently zoned R-1.0 PUD  
which is the proposed use of this property; and

WHEREAS, said inclusion of this parcel of land will not increase or decrease the tap  
allocation to the South Arapahoe Sanitation District; and

WHEREAS, the Englewood Water and Sewer Board recommended approval of this Agreement  
at its September 9, 2014 meeting;

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

Section 1. The Agreement between the City of Englewood and South Arapahoe Sanitation  
District entitled “Supplement No. 38, to Connector’s Agreement”, for inclusion of the Aspen  
Academy Investment Fund Property consisting of 4.047 acres located on the North West corner of  
University and Orchard Avenue in Greenwood Village, is hereby accepted and approved by the  
Englewood City Council. A copy of said Agreement is attached hereto as “Attachment 1” and  
incorporated herein by reference.

Section 2. The Mayor and City Clerk are hereby authorized to sign and attest, respectively, the  
said Agreement for and on behalf of the City Council and the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 3rd day of November, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7<sup>th</sup> day of November, 2014.

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

Read by title and passed on final reading on the 17 day of November, 2014.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2014, on the 21st day of November, 2014.

Published by title on the City's official website beginning on the 19th day of November, 2014 for thirty (30) days.

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Randy P. Penn, Mayor

ATTEST:

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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.

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Loucrishia A. Ellis

SUPPLEMENT NO. 38 TO CONNECTOR'S AGREEMENT

THIS AGREEMENT, made and entered into by and between the **CITY OF ENGLEWOOD**, acting by an through its duly authorized Mayor and City Clerk, hereinafter called the "**City**," and **SOUTH ARAPAHOE SANITATION DISTRICT**, dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, Arapahoe and Douglas Counties, Colorado, hereinafter called the "**District**,"

WITNESSETH:

WHEREAS, on the 17th day of October, 1988 the City and the District entered into an Agreement in which the city agreed to treat sewage originating from the District's sanitary sewer system within the area served by the District, which Agreement was renewed by Connector's Agreement dated January 17, 2011.

WHEREAS, said Connector's Agreement provides that the district may not enlarge its service area without the written consent of the City;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein set forth, the parties agree as follows:

1. The City hereby consents to the inclusion of certain additional area located in Arapahoe County, Colorado, owned by Aspen Academy, 5859 S. University Blvd., Littleton, CO 80121 and more fully described on Exhibit A attached hereto and incorporated herein by reference, into South Arapahoe Sanitation District. The City agrees that said additional area may be served with the sewer facilities of the district, and that the City will treat the sewage discharged into the City's trunk line from said additional area, all in accordance with the Connector's Agreement dated October 17, 1988 and Amended January 17, 2011. Accordingly, Exhibit A referred to in Paragraph 1 of the Connector's Agreement dated October 17, 1988 and Amended October 17, 2011, is hereby amended to include such additional area.
2. Each and every other provision of the said Connector's Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties have set their hands and seals this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CITY OF ENGLEWOOD**

BY \_\_\_\_\_  
**MAYOR**

ATTEST:

\_\_\_\_\_  
**CITY CLERK**  
(SEAL)

**SOUTH ARAPAHOE SANITATION  
DISTRICT  
ARAPAHOE COUNTY, COLORADO**

By: \_

ATTEST:

\_\_\_\_\_  
**SECRETARY**  
(SEAL)

## ASPEN ACADEMENY INVESTMENT FUND PROPERTY

**PARCEL A:** A PARCEL OF LAND BEING IN THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF EAST ORCHARD ROAD, BEING 30 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SAID SOUTHEAST 1/4, WITH THE WEST RIGHT OF WAY LINE OF SOUTH UNIVERSITY BOULEVARD BEING 45 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST 1/4; THENCE NORTHERLY ALONG SAID WEST RIGHT OF WAY LINE A DISTANCE OF 178.70 FEET; THENCE WESTERLY AND PARALLEL WITH SAID SOUTH LINE ON AN INTERIOR ANGLE TO THE RIGHT OF 88 DEGREES 41 MINUTES 20 SECONDS A DISTANCE OF

163.70 FEET; THENCE SOUTHERLY AND PARALLEL WITH THE EAST LINE OF THE SAID SOUTHEAST 1/4 ON AN INTERIOR ANGLE TO THE RIGHT OF 91 DEGREES 18 MINUTES 40 SECONDS A DISTANCE OF 178.70 FEET TO A POINT ON THE SAID NORTH RIGHT OF WAY LINE; THENCE EASTERLY ALONG THE SAID NORTH RIGHT OF WAY LINE ON AN INTERIOR ANGLE TO THE RIGHT OF 88 DEGREES 41 MINUTES 20 SECONDS A DISTANCE OF 163.70 FEET TO THE POINT OF BEGINNING, COUNTY OF ARAPAHOE, STATE OF COLORADO.

**PARCEL B:** A PARCEL OF LAND BEING IN THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT ON THE NORTH RIGHT OF WAY LINE OF EAST ORCHARD ROAD, BEING 30 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST 1/4, 208.7 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST 1/4; THENCE NORTHERLY AND PARALLEL TO THE SAID WEST RIGHT OF WAY LINE A DISTANCE OF 178.70 FEET; THENCE WESTERLY AND PARALLEL WITH SAID SOUTH LINE ON AN INTERIOR ANGLE TO THE RIGHT OF 88 DEGREES 41 MINUTES 20 SECONDS A DISTANCE OF 206.70 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF THE PARCEL DESCRIBED IN BOOK 814 AT PAGE 585; THENCE SOUTHERLY ALONG SAID EASTERLY BOUNDARY LINE AND PARALLEL WITH THE EAST LINE OF THE SAID SOUTHEAST 1/4, ON AN INTERIOR ANGLE TO THE RIGHT OF 90 DEGREES 18 MINUTES 40 SECONDS A DISTANCE OF 178.70 FEET TO A POINT ON THE SAID NORTH RIGHT OF WAY LINE; THENCE EASTERLY ALONG SAID NORTH RIGHT OF WAY LINE ON AN INTERIOR ANGLE TO THE RIGHT OF 88 DEGREES 41 MINUTES 20 SECONDS A DISTANCE OF 206.70 FEET TO THE POINT OF BEGINNING. COUNTY OF ARAPAHOE, STATE OF COLORADO.

**PARCEL C:** A PARCEL OF LAND BEING IN THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 500 FEET NORTH OF THE SOUTHEAST CORNER OF SAID SECTION 14; THENCE WEST 417.4 FEET TO THE NORTHEAST CORNER OF THE TRACT OF LAND DESCRIBED IN DEED RECORDED MAY 31, 1952 IN BOOK 759 AT PAGE 178; THENCE SOUTH ALONG THE EAST LINE OF SAID TRACT A DISTANCE OF 291.3 FEET; THENCE EAST 417.4 FEET, MORE OR LESS, TO THE EAST LINE OF SAID SECTION 14; THENCE NORTH ALONG THE EAST LINE OF SAID SECTION 14 A DISTANCE OF 291.3 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PART OF SAID TRACT LYING EAST OF THE WEST LINE OF THE PARCEL CONVEYED TO THE DEPARTMENT OF HIGHWAYS IN BOOK 1655 AT PAGE 253, COUNTY OF ARAPAHOE, STATE OF COLORADO.

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2014

COUNCIL BILL NO. 66  
INTRODUCED BY COUNCIL  
MEMBER OLSON

AN ORDINANCE APPROVING SUPPLEMENT NO. 5 TO THE CHERRY HILLS VILLAGE SANITATION DISTRICT CONNECTOR'S AGREEMENT FOR THE INCLUSION OF LAND WITHIN THE DISTRICT BOUNDARIES.

WHEREAS, Cherry Hills Village Sanitation District recommends the inclusion of approximately 16.269 acres into the District for residential use; and

WHEREAS, said inclusion is located in the 3800-4000 Blocks of E. Belleview Avenue in Greenwood Village; and

WHEREAS, the proposed inclusion is to install a sewer line and connect to the existing sewer main in the street; and

WHEREAS, the zoning of this property in Greenwood Village is currently zoned Residential which is the proposed use of this property; and

WHEREAS, said annexation of this parcel of land will not increase the tap allocation to the Cherry Hills Village Sanitation District; and

WHEREAS, the Englewood Water and Sewer Board recommended approval of this Agreement at its October 7, 2014 meeting;

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

Section 1. The Agreement between the City of Englewood and Cherry Hills Village Sanitation District entitled "Supplement No. 5, to Connector's Agreement", which includes 16.269 acres located in the 3800-4000 Blocks of E. Belleview Avenue in Greenwood Village, is hereby accepted and approved by the Englewood City Council. A copy of said Agreement is attached hereto as "Attachment 1" and incorporated herein by reference.

Section 2. The Mayor and City Clerk are hereby authorized to sign and attest, respectively, the said Agreement for and on behalf of the City Council and the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 3rd day of November, 2014.

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

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

Read by title and passed on final reading on the 17 day of November, 2014.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2014, on the 21st day of November, 2014.

Published by title on the City's official website beginning on the 19th day of November, 2014 for thirty (30) days.

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Randy P. Penn, Mayor

ATTEST:

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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.

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Loucrishia A. Ellis

SUPPLEMENT NO. 5 TO CONNECTOR'S AGREEMENT

THIS AGREEMENT, made and entered into by and between the **CITY OF ENGLEWOOD**, acting by an through its duly authorized Mayor and City Clerk, hereinafter called the "**City**," and the City of Cherry Hills Village Sanitation District, Arapahoe and Douglas Counties, Colorado, hereinafter called the "**District**,"

WITNESSETH:

WHEREAS, on the 2<sup>nd</sup> day of June, 1975 the City and the District entered into an Agreement in which the City agreed to treat sewage originating from the District's sanitary sewer system within the area served by the District, which Agreement was renewed by Connector's Agreement dated May 12, 1997.

WHEREAS, said Connector's Agreement provides that the district may not enlarge its service area without the written consent of the City;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein set forth, the parties agree as follows:

1. The City hereby consents to the inclusion of certain additional area located in Arapahoe County, Colorado, owned by Harrison Oaks North LLC and more fully described on Exhibit A attached hereto and incorporated herein by reference, into the City of Cherry Hills Village Sanitation District. The City agrees that said additional area may be served with the sewer facilities of the district, and that the City will treat the sewage discharged into the City's trunk line from said additional area, all in accordance with the Connector's Agreement dated June 2, 1975, and Amended May 12, 1997. Accordingly, Exhibit A referred to in Paragraph 1 of the Connector's Agreement dated June 2, 1975 and Amended May 12, 1997, is hereby amended to include such additional area.
2. Each and every other provision of the said Connector's Agreement dated June 2, 1975 and Amended May 12, 1997, shall remain unchanged.

**IN WITNESS WHEREOF**, the parties have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF ENGLEWOOD**

BY \_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK  
(SEAL)

**CITY OF CHERRY HILLS VILLAGE  
SANITATION DISTRICT  
ARAPAHOE COUNTY, COLORADO**

By: \_\_\_\_\_

ATTEST:

✓ SECRETARY  
(SEAL)

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\_\_\_\_\_

## EXHIBIT A – LEGAL DESCRIPTION

### CHERRY HILLS VILLAGE SANITATION DISTRICT INCLUSION

#### PROPERTY DESCRIPTION

A PARCEL OF LAND BEING ALL OF AMENDED PLAT OF TRACT 215 AND TRACT 216, SOUTH DENVER GARDENS RECORDED UNDER RECEPTION NO. 94-4907, THAT PORTION OF TRACTS 214, 217, 218 AND THE EAST 48 FEET OF TRACT 213 LYING NORTH OF THE HIGHLINE CANAL RIGHT-OF-WAY ALONG WITH ALL THAT PORTION OF VACATED CHAMBERLIN AVENUE LYING NORTH OF THE HIGHLINE CANAL, SOUTH DENVER GARDENS RECORDED IN PLAT BOOK A2 AT PAGE 32B AND THE WEST HALF OF VACATED COLORADO BOULEVARD VACATED IN BOOK 1620 AT PAGE 526, LYING NORTH OF THE HIGHLINE CANAL, ALL IN SECTION 13, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO, BEING MONUMENTED AT THE NORTHEAST CORNER BY A 3" ALUMINUM CAP IN A RANGE BOX STAMPED "COLO DEPT OF HIGHWAY 1991 PLS 27278" AND AT THE EAST QUARTER CORNER BY A 2-1/2" ALUMINUM CAP IN A RANGE BOX STAMPED "PLS 25379 2009", BEING ASSUMED TO BEAR S00°15'42"W, A DISTANCE OF 2642.51 FEET.

COMMENCING AT THE NORTHEAST CORNER OF SECTION 13, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN;

THENCE ON THE EAST LINE OF SAID SECTION 13, S00°15'42"W A DISTANCE OF 75.00 FEET, TO THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST BELLEVIEW AVENUE AND THE POINT OF BEGINNING;

THENCE CONTINUING ON SAID EAST LINE, S00°15'42"W A DISTANCE OF 979.13 FEET, TO THE NORTHERLY RIGHT-OF-WAY LINE OF THE HIGHLINE CANAL;

THENCE ON SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING FIVE (5) COURSES:

1. N46°40'15"W A DISTANCE OF 36.98 FEET, TO A POINT OF CURVE;
2. ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1030.37 FEET, A CENTRAL ANGLE OF 07°19'00" AND AN ARC LENGTH OF 131.58 FEET, TO A POINT OF TANGENT;
3. N53°59'15"W A DISTANCE OF 228.50 FEET, TO A POINT OF CURVE;

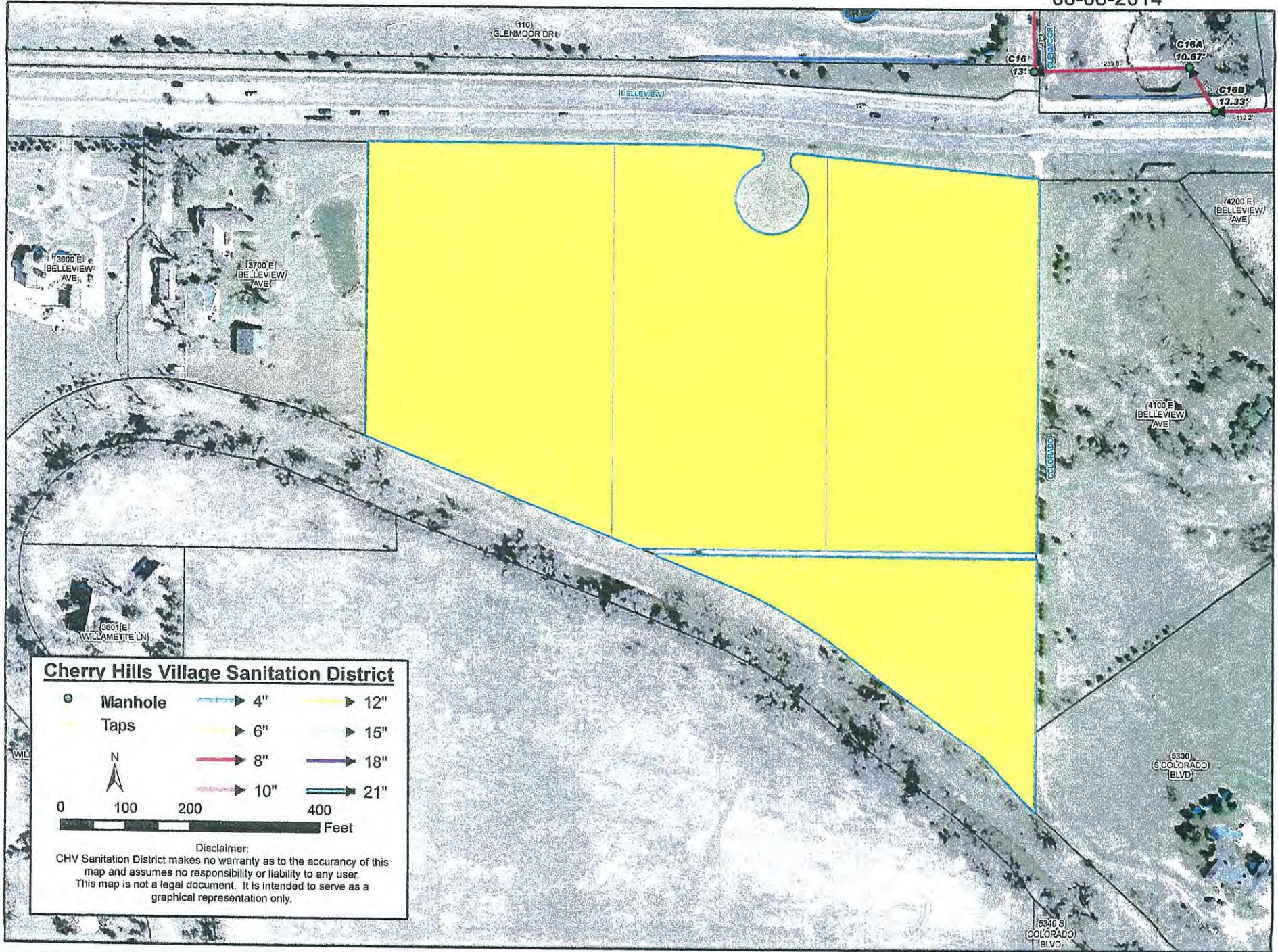
4. THENCE ON THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1030.37 FEET, A CENTRAL ANGLE OF 13°14'00" AND AN ARC LENGTH OF 237.98 FEET, TO A POINT OF TANGENT;
  
5. N67°13'15"W A DISTANCE OF 554.48 FEET, TO A POINT MONUMENTED BY A NO. 5 REBAR WITH NO CAP;

THENCE ON A LINE BEING PARALLEL WITH AND 48.00 FEET WESTERLY OF THE EASTERLY LINE OF TRACT 213, SOUTH DENVER GARDENS, N00°22'37"E A DISTANCE OF 458.30 FEET, TO THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST BELLEVIEW AVENUE MONUMENTED BY A NO. 4 REBAR WITH NO CAP;

THENCE ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S89°29'48"E A DISTANCE OF 538.93 FEET;

THENCE CONTINUING ON SAID SOUTHERLY RIGHT-OF-WAY LINE, S84°17'32"E A DISTANCE OF 496.06 FEET, TO THE POINT OF BEGINNING.

CONTAINING A TOTAL CALCULATED AREA OF 708,679 SQUARE FEET OR 16.269 ACRES.



**Cherry Hills Village Sanitation District**

○	Manhole	4"	12"
—	Taps	6"	15"
		8"	18"
		10"	21"

0 100 200 400 Feet

Disclaimer:  
CHV Sanitation District makes no warranty as to the accuracy of this map and assumes no responsibility or liability to any user.  
This map is not a legal document. It is intended to serve as a graphical representation only.

BY AUTHORITY

ORDINANCE NO. \_\_\_\_  
SERIES OF 2014

COUNCIL BILL NO. 67  
INTRODUCED BY COUNCIL  
MEMBER OLSON

AN ORDINANCE APPROVING A NEW CONNECTOR'S AGREEMENT BETWEEN THE CITY OF CHERRY HILLS VILLAGE AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the Englewood City Council approved the original Connector's Agreement between the City of Cherry Hills Village on September 30, 1993; and

WHEREAS, the City and Englewood amended the Connector's Agreement on November 15, 1995 (the "1995 Modification") to enlarge the service area under the Connector's Agreement to include the entire geographic area of the City of Cherry Hills Village as the same now exists or may be amended from time to time, and as such service area is more particularly described and set forth in the 1995 Modification; and

WHEREAS, the Connector's Agreement, as modified by the 1995 Modification, is set to expire on September 30, 2014; and

WHEREAS, the Englewood Water and Sewer Board recommended City Council's approval of this Agreement at the May 13, 1997 meeting of the Board; and

WHEREAS, the City will continue to receive and treat sewage gathered by the City of Cherry Hills Village; and

WHEREAS, the Connector's Agreement enables the City of Cherry Hills Village to utilize the facilities owned by the City and the Bi-City Wastewater Treatment Plant for the treatment of sewage; and

WHEREAS, the City of Englewood Utilities Department will bill the City of Cherry Hills Village users directly for service charges; and

WHEREAS, the Connector's Agreement provides that the City's permitting requirements will be followed by the City of Cherry Hills Village and its users; and

WHEREAS, the Connector's Agreement provides that no permit shall be final or service provided until construction is approved by the City of Englewood; and

WHEREAS, the term of the Connector's Agreement is for a three year period and is automatically renewed for six subsequent three year periods unless either party gives a minimum of six months written notice;

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

Section 1. The Connector's Agreement between City of Cherry Hills Village and the City of Englewood which enables the City of Cherry Hills Village to utilize the facilities owned by the City and the Bi-City Wastewater Treatment Plant for the treatment of sewage; is hereby approved for a three year period and is automatically renewed for six subsequent three year periods unless either party gives a minimum of six months written notice, a copy of said Agreement is attached hereto as Exhibit 1.

Section 2. The Mayor and City Clerk are hereby authorized to sign and attest, respectively, the said Agreement for and on behalf of the City Council and the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 3rd day of November, 2014.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7<sup>th</sup> day of November, 2014.

Published as a Bill for an Ordinance on the City's official website beginning on the 5<sup>th</sup> day of November, 2014 for thirty (30) days.

Read by title and passed on final reading on the 17 day of November, 2014.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2014, on the 21st day of November, 2014.

Published by title on the City's official website beginning on the 19th day of November, 2014 for thirty (30) days.

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Randy P. Penn, Mayor

ATTEST:

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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.

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Loucrishia A. Ellis

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4/19/2012  
Revision

WASTEWATER  
CONNECTOR'S AGREEMENT  
For CITY OF CHERRY HILLS

Sewer Contract No. \_\_\_\_\_

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ to be effective as of \_\_\_\_\_, 20\_\_; by and between the CITY OF ENGLEWOOD, COLORADO, a municipal corporation, hereinafter referred to as "City," acting by and through its duly elected, qualified and authorized Mayor and City Clerk, and the CITY OF CHERRY HILLS, a municipal corporation and subdivision of the State of Colorado, hereinafter called "Cherry Hills," acting by and through its authorized Representative.

WITNESSETH

WHEREAS, the City owns and operates a sewage system, including a sewage treatment plant which is jointly owned and operated with the City of Littleton, so situated physically as to be able to receive and treat the sewage from a designated area served by Cherry Hills and gathered by the Cherry Hills' sanitary-sewage system; and

WHEREAS, it is the desire of Cherry Hills to utilize the facilities owned by the City for the treatment of sewage and the City is willing to serve Cherry Hills for treatment of sewage under certain conditions;

NOW, THEREFORE, IN CONSIDERATION of the promises and for other good and valuable consideration hereinafter set forth, it is mutually agreed by the parties as follows:

1. The City hereby agrees under the conditions hereinafter set forth, to treat the sewage originating from the Cherry Hills' sanitary sewer system within the area served by Cherry Hills as approved by the City and as indicated in the description attached hereto, incorporated herein and marked as "Exhibit A."

Cherry Hills specifically agrees to prevent sewage from any area other than that described herein, from being discharged into Cherry Hills' sanitary sewage system connected to the City's trunk line and to prevent connections to the system from or in any area other than those described herein.

2. In the operation of the Cherry Hills sanitary sewer system, Cherry Hills agrees that all applicable Code provisions and rules and regulations of the City, including amendments thereto during the term of the contract, shall be the minimum standards for the Cherry Hills' system. Cherry Hills further agrees to abide by all applicable state and federal laws, rules, regulations, or permits, including those of the Environmental Protection Agency (the EPA) as they become effective or implemented or upon notice from the City. Cherry Hills shall inform all users, contractors and subcontractors of such standards, rules and regulations upon inquiry from such persons, and shall not furnish any information inconsistent therewith. In this regard, it shall be the responsibility of Cherry Hills to obtain the applicable requirements from the appropriate governing body.

The City shall attempt to maintain and provide information on all requirements to Cherry Hills; however, the City does not guarantee the accuracy or completeness of government regulations other than the City's own regulations.

3. Regarding the provision of sewer service, the City's permitting requirements shall be followed by Cherry Hills and its users. All sewer plans, specifications and methods of work within Cherry Hills shall be submitted to the City in writing and approved by the City prior to any construction or tap in Cherry Hills' designated area. No permit shall be final and no service shall be provided to property until construction is approved, in writing by the City.
4. Cherry Hills shall be responsible for the proper maintenance of its sewer system and shall rectify any problems or conditions which have been determined by Cherry Hills or the City to be detrimental to the City's treatment process or system. Should the City determine that any discharge enters the sewer system contrary to applicable laws, ordinances, statutes, rules, regulations or permits; Cherry Hills agrees to proceed at once to take whatever lawful means may be necessary to rectify any such problem or condition.
5. The City shall have the right to allocate service under this Contract, and the City may deny additional service for any utility-related reason, but in no event will the City terminate or refuse any service without cause. The City shall have the right to disconnect service to any area annexed to Cherry Hills when such annexation takes place without prior written City approval.

Within one year of this agreement, Cherry Hills shall provide the City with an estimate of the number of equivalent service taps needed for the next five (5) years under current zoning and planned build out in the Cherry Hills area as shown on Exhibit A. Cherry Hills shall continue to monitor zoning changes within its area to estimate its tap requirements and provide the City with notice of tap requirement for the next five (5) year period which time shall be given to the City on each anniversary date of this Agreement in a form satisfactory to the City.

6. The City may impose and collect reasonable fees, tolls and charges, which shall be uniform as to all outside-City users for the services provided by the City under this Connector's Agreement.

The City shall bill Cherry Hills' users directly for all applicable City charges for services rendered under this Agreement. Should any user not pay the City, the City shall bill Cherry Hills and Cherry Hills shall pay the amount due to City within forty-five (45) days of such billing. These charges are subject to adjustment by the City from time to time. When such adjustment to these charges are made, the City shall give Cherry Hills forty-five (45) days advance written notice.

The City may bill and collect "District Charges" imposed by Cherry Hills as an additional item to be billed and collected by the City along with the City's Treatment charge and other fees. The "District Charges" received by the City shall be remitted by the City to Cherry Hills annually; less an amount equal to the City and Cherry Hills charges which remain delinquent. Cherry Hills shall notify the City of any changes in the Cherry Hills charges to be imposed and the remittance schedule before May 1<sup>st</sup> of each year.

7. Subject to the terms of the Taxpayer's Bill of Rights (TABOR), the term of this Agreement is for a period of three (3) years from the date of execution and automatically renewed for six (6) subsequent three (3) year periods unless either party gives a minimum of six (6) months written notice, during which time Cherry Hills agrees that all effluent produced from taps within Cherry Hills shall not be in violation of any federal, state or City laws, rules or regulations, or any other applicable governmental regulations or the permits under which the City operates its sewage treatment system. The City agrees, during the term hereof, to treat said effluent and to maintain adequate facilities for treating the same.
8. Cherry Hills agrees that it will maintain, at its own expense, all lines now owned and operated by Cherry Hills, it being specifically agreed that the City assumes no responsibility should any of Cherry Hills' lines become clogged, damaged, or require maintenance. Cherry Hills shall, if it deems necessary, notify its users of Cherry Hills' procedure to remedy service disruption.
9. The City is providing only sewage treatment service and, pursuant thereto; any permits incidental to the use of the City's sewage lines shall be governed only by this individual Contract with Cherry Hills and the City does not, by this Contract, offer treatment service except in strict accordance with the terms hereof. This Contract does not offer, and shall not be construed as offering, sewage treatment service to the public generally or to any area outside the limits of Cherry Hills' service area described in Exhibit A.
10. This Contract may not be assigned, sold or transferred by Cherry Hills without the City's written consent.
11. Should any federal law, rule, permit or regulation or should a decree or order of a court render void or unenforceable any provision of this Contract, in whole or in part, the remainder shall remain in full force and effect.
12. Cherry Hills shall enforce this Agreement and each of its terms and conditions within the area described in "Exhibit A." Cherry Hills shall refuse to serve a user or potential user; disconnect the service of any user pursuant to appropriate law; or take other appropriate action in the event of:
  - a. Nonpayment of such user of any charge made by the City for services;
  - b. Any violation or noncompliance by such user with the terms of this Agreement;
  - c. Any violation or noncompliance by such user with the applicable laws, rules, permits or regulations of the City, the United States government, including the EPA, the State of Colorado, the Department of Health, or other law, rule, permit or applicable regulation.

13. Continued breach of this Agreement by Cherry Hills and/or its users shall be considered cause for the City to terminate this Agreement. Should Cherry Hills fail to promptly rectify a breach of any provisions identified herein, after notice thereof, the City may take such steps and do such work as it deems necessary to enforce this Agreement, including litigation and specifically a right to injunction or specific performance against Cherry Hills or any of its users as is necessary to protect the City's system and operations. The prevailing party shall be entitled to expenses and costs of suit, including attorney fees.
14. Should more than one district or City be connected to a sewer line, all districts or Cities on the sewer line who are in breach of this Agreement shall be jointly and severally liable for any such breach of this Agreement and each such district shall immediately, after notice, rectify any problem or condition detrimental to the treatment process arising within its legal boundaries. When more than one district is connected to a sewer line, and the City discovers any violation of the terms of this connector's agreement; the City shall not be required to prove which district is at fault but shall make available to all such affected districts and Cities all information developed or accumulated by the City pertaining to such breach. Nothing contained herein shall preclude a claim for indemnity or contribution by any District or City against another District or City connected to a common sewer line. CRS-13-21-111.5, as amended shall govern the percentage of liability of any district on a common sewer line in the event the City seeks to impose liability based upon negligence or fault.
15. This Contract shall not be used as a legal defense or prohibition to the mandatory consolidation of facilities by either party as may be required by the laws of the State of Colorado of all existing sewer collection systems and facilities to a governmental entity created to assume responsibility for sewer service in the area in which both the City and State are a part under statutory or constitutional authority.

CITY OF ENGLEWOOD, COLORADO

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Randy P. Penn, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

Douglas M. Misdale, Mayor, authorized pursuant to Resolution No. 17, Series 2014

ATTEST:

~~\_\_\_\_\_~~  
Laura Smith, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Linda C. Michow, City Attorney

## EXHIBIT "A"

Geographic boundaries of the City of Cherry Hills Village, County of Arapahoe, State of Colorado:

Commencing at the NW corner of the S 1/2 of the NW 1/4 of the NW 1/4 of Section 2, Township 5 South, Range 68 West of the 6th Principal Meridian; thence East to the SW corner of the NW 1/4 of the NE 1/4 of the NW 1/4, thence North to the NW corner of the NE 1/4 of the NE 1/4 of the NW 1/4 of said Section 2, thence East along the North line of Section 2 to the NW corner of Section 1, Township 5 South, Range 68 West, continuing East along the North line of said Section 1 to the NW corner of Section 6, Township 5 South, Range 67 West of the 6th Principal Meridian, continuing East along the North line of said Section 6 to the NE corner of the NW 1/4 of said Section 6, thence South along the East line of the NW 1/4 of said Section 6 to the center of Section 6, Township 5 South, Range 67 West, thence East along the North line of the SE 1/4 of said Section 6, 2,642.16 feet to the NE corner of the SE 1/4 of said Section 6, thence North along the East line of said Section 6, 10.88 feet to the center line of Happy Canyon Road, thence South 44°35'35" East 3,708.45 feet to the North 1/4 corner of Section 8, Township 5 South, Range 67 West of the 6th Principal Meridian, thence South on the West line of the NE 1/4 of Section 8, Township 5 South, Range 67 West to the center of said Section 8, continuing South along the West line of the SE 1/4 of said Section 8 to the SW corner of the SE 1/4 of said Section 8, thence West to the SE corner of Section 7, Township 5 South, Range 67 West of the 6th Principal Meridian; continuing West along the South line of said Section 7 to the SE corner of Section 12, Township 5 South, Range 68 West of the 6th Principal Meridian, continuing West along the South line of said Section 12 to the SE corner of Section 11, Township 5 South, Range 68 West of the 6th Principal Meridian, continuing West along the South line of said Section 11 to the SW corner of said Section 11, thence North along the west line of said section 11 to the SW corner of Section 2, Township 5 South, Range 68 West of the 6th Principal Meridian, continuing North along the West line of said section 2 to the point of beginning.

EXCLUDING THE PROPERTY ON THE SOUTHEAST CORNER OF UNIVERSITY AND EAST HAMPDEN AVENUE KNOWN AS THE BUELL PROPERTY

LEGAL DESCRIPTION  
OF THE PROPERTY KNOWN AS  
THE BUELL PROPERTY

A parcel of land lying in the Northwest one-quarter (NW 1/4) of Section 1, Township 5 South, Range 68 West of the 6th Principal Meridian, City of Cherry Hills Village, County of Arapahoe, State of Colorado, more particularly described as follows:

For the purpose of this description the bearing are based on the easterly line of said NW 1/4 to bear South 00°18'12" West.

Commencing at the Northwest corner of said Section 1;  
Thence South 00°18'00" West along the westerly line of said Section 1 a distance of 75.00 feet to a point;  
Thence North 89°57'19" East parallel with and 75.00 feet southerly of the northerly line of said Section 1 a distance of 87.00 feet to the POINT OF BEGINNING;  
Thence continuing North 89°57'19" East along the southerly right of way of East Hampden Avenue (US 285) as described in Book 1153 at Page 81 a distance of 992.16 feet to a point;  
Thence South 00°02'41" East continuing along said southerly right of way line a distance of 5.00 feet to a point;  
Thence North 89°57'19" East continuing along said southerly right of way line a distance of 826.67 feet to a point;  
Thence South 00°19'28" West a distance of 2077.26 feet to a point;  
Thence North 89°13'30" West a distance of 1165.00 feet to a point on the easterly line of The Reserve at Cherry Hills;  
Thence North 00°18'00" East along said easterly line a distance of 1180.00 feet to the northeast corner of said Reserve;  
Thence North 89°13'30" West a distance of 680.00 feet along the northerly line of said Reserve to a point on the easterly right of way line of South University Avenue as described in Book 1597 at Page 237;  
Thence North 00°18'00" East along said easterly right of way line a distance of 601.03 feet to a point;  
Thence North 07°06'00" East continuing along said easterly right of way line a distance of 100.70 feet to a point;  
Thence North 00°18'00" East continuing along said easterly right of way line a distance of 160.00 feet to a point;  
Thence North 45°27'02" East continuing along said easterly right of way line a distance of 21.27 feet to the POINT OF BEGINNING.

Containing 69.07 acres, more or less.



## BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
 SERIES OF 2014

COUNCIL BILL NO. 68  
 INTRODUCED BY COUNCIL  
 MEMBER OLSON

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENT TO FINANCING AGREEMENT, WHICH RELATES TO THE CITY'S PRIOR ISSUANCE AND SALE OF THAT CERTAIN \$6,724,000 REVENUE BOND (DENVER AREA COUNCIL, BOY SCOUTS OF AMERICA PROJECT) SERIES 2008.

WHEREAS, upon approval as set forth in Ordinance No. 08-56, as adopted by City Council ("*City Council*") of the City of Englewood, Colorado (the "*City*") on October 6, 2008, the City issued and sold that certain \$6,724,000 Revenue Bond (Denver Area Council, Boy Scouts of America Project) Series 2008 (the "*Bond*"), to BOKF, NA, a national banking association dba Colorado State Bank and Trust and successor in interest to Colorado State Bank and Trust, N.A. (the "*Lender*"), pursuant to the terms, provisions, and conditions as set forth in that certain Financing Agreement, dated October 9, 2008 (the "*Financing Agreement*"), by and among the City, the Lender, and Denver Area Council, Boy Scouts of America, a Colorado nonprofit corporation (the "*Borrower*"); and

WHEREAS, representatives of the Lender and the Borrower have informed representatives of the City as to the following matters, on which the Lender and the Borrower have agreed: (1) the Borrower desires to cause a partial redemption of the Bond; and (2) upon the partial redemption of the Bond, the Lender and Borrower desire that (a) the Bond payment schedule be re-amortized and (b) the mandatory redemption date of the Bond be extended, all upon and in accordance with the terms, provisions, and conditions to be set forth in that certain First Supplement to Financing Agreement (the "*First Supplement*"); and

WHEREAS, the form of the First Supplement has been presented to City Council at this meeting; and

WHEREAS, the First Supplement must be executed and delivered by the City to be effective, and the Lender and the Borrower have requested that the City execute and deliver the First Supplement; and

WHEREAS, City Council has considered the request of the Lender and the Borrower and concluded that the City should execute and deliver the First Supplement;

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

Section 1 Approval and Authorization of First Supplement. The First Supplement (attached as Exhibit 1) is approved and authorized. The Mayor is authorized and directed to execute, and the City Clerk is authorized and directed to affix the seal of the City and to attest, the First Supplement in substantially the form and content as presented to City Council on this date, but

with such changes, modifications, additions, and deletions therein as deemed necessary, desirable, or appropriate to the Mayor, upon consultation with the City's counsel and Director of Finance, the execution thereof by the Mayor to constitute conclusive evidence of the City's approval of any and all changes, modifications, additions, and deletions from the form thereof presented to City Council on this date.

Section 2 Authority to Execute and Deliver Additional Documents. The officers, employees, and agents of the City shall, as permitted by the City's home rule charter and other applicable law, execute and deliver such other documents, instruments, and certificates, and take such action, as required by the First Supplement or as otherwise appropriate to consummate the transactions contemplated thereby.

Section 3 Prior Action. All action consistent with the provisions of this Ordinance taken by City Council and the officers of the City prior to the date hereof is ratified and approved.

Section 4 Repealer. All ordinances, codes, or parts thereof inconsistent with this Ordinance are repealed or otherwise modified.

Section 5 Severability. If any provision of this Ordinance is held to be invalid or unenforceable, the invalidity or unenforceability of such provision will not affect the remaining provisions of this Ordinance.

Introduced, read in full, and passed on first reading on the 3rd day of November, 2014.

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

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

Read by title and passed on final reading on the 17 day of November, 2014.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2014, on the 21st day of November, 2014.

Published by title on the City's official website beginning on the 19th day of November, 2014 for thirty (30) days.

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Randy P. Penn, Mayor

ATTEST:

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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.

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Loucrishia A. Ellis

**FIRST SUPPLEMENT**

**TO FINANCING AGREEMENT**

**by and among**

**CITY OF ENGLEWOOD, COLORADO,**

**BOKF, NA,**

**and**

**DENVER AREA COUNCIL, BOY SCOUTS OF AMERICA**

*Relating to:*

*\$6,724,000 City of Englewood, Colorado  
Revenue Bond (Denver Area Council, Boy Scouts of America Project) Series 2008*

December 18, 2014

This **FIRST SUPPLEMENT TO FINANCING AGREEMENT** (this "*First Supplement*"), dated December 18, 2014, is by and among the following parties:

*The City:*

City of Englewood, Colorado, a municipal corporation and political subdivision duly organized as a home rule city under the provisions of Article XX of the Constitution, the laws of the State of Colorado, and its home rule Charter;

*The Lender:*

BOKF, NA, a national banking association dba Colorado State Bank and Trust and successor in interest to Colorado State Bank and Trust, N.A.; and

*The Borrower:*

Denver Area Council, Boy Scouts of America, a Colorado nonprofit corporation.

*Recitals*

- A. The City, the Lender, and the Borrower each executed and delivered that certain Financing Agreement, dated as of October 9, 2008 (the "*Financing Agreement*"), by which the City issued its \$6,724,000 Revenue Bond (Denver Area Council, Boy Scouts of America Project) Series 2008 (the "*Bond*").
- B. The City sold the Bond to the Lender and loaned the sales proceeds therefrom to the Borrower pursuant to the terms, provisions, and conditions as set forth in the Financing Agreement (the "*Loan*"). Pursuant to the Financing Agreement, the City assigned all Loan Payments to the Lender to effect repayment of the Bond, and the Borrower made and delivered that certain Note, dated October 9, 2008, in the original principal amount of \$6,724,000.00, payable to the Lender (the "*Promissory Note*"), to evidence repayment of the Loan to the Lender.
- C. The Lender currently owns the Bond, and the outstanding principal balance of the Bond and the Promissory Note as of the date hereof equals \$6,724,000.00.
- D. The Lender and the Borrower have notified the City as to the following matters, on which the Lender and the Borrower have agreed: (1) the Borrower desires to prepay the Loan in part in the principal amount of \$[4,324,000.00], and therefore cause a partial redemption of the Bond in the same principal amount, such that immediately following such prepayment and redemption the outstanding principal balance of the Bond and the Loan will equal \$[2,400,000.00]; and (2) upon the Borrower's partial prepayment of the Loan, and partial redemption of the Bond, and subject to the terms, provisions, and conditions as set forth in this First Supplement, the Lender shall (a) re-amortize the Bond and the Loan on the basis of the \$[2,400,000.00] outstanding principal balance and remaining maturity, (b) extend the date on which the Lender may demand redemption of the Bond, and (c) subject to satisfaction of the Loan to Value covenant as set forth in **Section 4** and as further set forth in **Section 6**, release of the Deed of Trust (Elbert County).
- E. The City, the Lender, and the Borrower execute and deliver this First Supplement to set forth the terms, conditions, and provisions upon which they will consummate the foregoing transactions.

## *Agreement*

The City, the Lender, and the Borrower agree as follows:

**Section 1. Definitions.** Capitalized terms used but not defined in this First Supplement have the respective meanings ascribed to them in the Financing Agreement.

**Section 2. Amendment to Section 3.9.** From and after the date on which all conditions precedent as set forth in *Section 5* are either satisfied or waived as provided in *Section 5* (the “*Effective Date*”), the reference in Section 3.9 of the Financing Agreement to “October 9, 2018” will be deleted and replaced with “October 9, 2024”.

**Section 3. Prepayment/Redemption and Re-Amortization.**

- a. On the Effective Date, the Borrower shall prepay the Loan in part, and cause partial redemption of the Bond, in the principal amount of \$[4,324,000.00].
- b. The City and the Lender each waive any prior notice of prepayment and redemption required of the Borrower under the Financing Agreement in connection with the \$[4,324,000.00] prepayment on the Effective Date.
- c. In conjunction with such prepayment and redemption, (i) Schedule I, Bond Payment Dates, attached to the Bond, will be revised and replaced with the amortization/payment schedule attached hereto as *Exhibit A-1* and (ii) the Lender shall execute the prepayment schedule attached hereto as *Exhibit A-2*, which will be attached to the Bond.
- d. For the sake of clarity, the Lender has agreed to re-amortize the Bond and the Loan pursuant to the terms, provisions, and conditions set forth in this First Supplement as a negotiated exception to the Financing Agreement and the Bond, which provide that partial prepayments the Loan and resulting redemptions of the Bond will not alter the amount of monthly payment installments. Unless the Lender otherwise agrees, subsequent prepayments of the Loan and resulting redemptions of the Bond after the Effective Date will not alter the amount of monthly payment installments.

**Section 4. Loan to Value.** From and after the Effective Date, the Borrower must maintain Loan to Value equal to or less than 75%. “*Loan to Value*” means the quotient, expressed as a percentage, equal to the outstanding principal balance of the Loan *divided by* the Appraised Value. “*Appraised Value*” means the Bank’s most recent appraised value of the land and the improvements encumbered by the deed of trust lien granted by the Borrower for the benefit of the Lender pursuant to the Deed of Trust (Jefferson County) (the “*Appraised Property*”). If at any time and for any reason, including a re-appraisal of the Appraised Property, the Loan to Value is greater than 75%, the Borrower shall prepay the Loan in an amount necessary to satisfy the Loan to Value covenant as set forth in this *Section 4*. The Lender shall notify the Borrower in writing of any failure to satisfy the Loan to Value covenant as set forth in this *Section 4* following the Lender’s receipt, review, and approval of any re-appraisal of the Appraised Property.

**Section 5. Conditions Precedent.** The obligation of the City and the Lender to execute and deliver this First Supplement, and the effectiveness of the amendments and modifications to be provided hereby, is subject to the satisfaction in full of all of the following conditions precedent, or waiver thereof by the City or the Lender, as appropriate:

- a. the City and the Lender will have received from the Borrower an executed original of this First Supplement;
- b. the City and the Lender will have received an opinion of nationally recognized bond counsel to the effect that the amendments and modifications provided by, and the transactions as contemplated by, this First Supplement will not of themselves (i) result in a sale or exchange (i.e., a reissuance) of the Bond for federal income tax purposes, (ii) adversely affect the exclusion from gross income of interest on the Bond for federal income tax purposes, or (iii) cause interest on the Bond to be treated as a matter of tax preference for purposes of the alternative minimum tax under Code Section 57(a)(5);
- c. the Lender will have received an appraisal of the Appraised Property sufficient to satisfy the Loan to Value covenant as set forth in *Section 4* of this Financing Agreement as of the Effective Date (and subsequent to the partial prepayment of the Loan, and the resulting partial redemption of the Bond, as contemplated by this First Supplement);
- d. the Borrower will have prepaid the Loan in part, and therefore caused a partial redemption of the Bond, in the principal amount of \$[4,324,000.00];
- e. the Borrower will have paid the Lender's amendment fee of \$2,500;
- f. no Event of Default will have occurred and be continuing, and no event or occurrence will have occurred and be continuing that with notice, the lapse of time, or both would result in an Event of Default;
- g. the Borrower will have paid or reimbursed the Lender for all reasonable fees, costs, and expenses incurred by the Lender through the Effective Date in the amendment, modification, and administration of the Financing Agreement and the Bond, including the fees, costs, and expenses of the Lender's outside legal counsel; and
- h. the Lender will have received such other documents, instruments, and items as the Lender may reasonably request.

**Section 6. Release of Deed of Trust (Elbert County).** On or promptly after the Effective Date, the Lender shall cause the Release of Deed of Trust attached hereto as *Exhibit B* to be filed with the Clerk and Recorder of Elbert County, Colorado, by which the Lender shall release the Deed of Trust (Elbert County). The Lender shall provide a stamped-filed copy of the Release of Deed of Trust to the Borrower. The parties have not endeavored to delete each reference to the Deed of Trust (Elbert County) in the Financing Agreement, the Promissory Note, and the other Borrower Documents, but each acknowledges that from and after the Effective Date the collateral encumbered by the Deed of Trust (Elbert County) will no longer secure payment and performance of the Secured Obligations (as such term is defined in the Deed of Trust (Elbert County)).

**Section 7. Certification; Representations and Warranties.**

- a. The Borrower certifies, as of the date hereof, that no Event of Default, or any event or occurrence that with notice, the lapse of time, or both would result in an Event of Default, has occurred and is continuing. If the Effective Date is other than the date hereof, the Borrower shall make the foregoing certificate to the City and the Lender in writing as of the Effective Date.
- b. The Borrower re-states, as of the date hereof, for the benefit of the City and the Lender, the Borrower's representations and warranties as set forth in Section 2.2(c) and (g) of the Financing Agreement. If the Effective Date is other than the date hereof, the Borrower shall make the foregoing certificate to the City and the Lender in writing as of the Effective Date.
- c. The Borrower has the full legal right, power, and authority to execute, deliver, and perform this First Supplement, and the Borrower has duly authorized its execution, delivery, and performance hereof. No consent or authorization of, filing with, or notice to any other person is a condition precedent to the Borrower's execution, delivery, and performance of this First Supplement except as have been obtained or made and remain in full force and effect. This First Supplement has been duly executed and delivered by the Borrower and constitutes the legal, valid, and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms except as enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws affecting or relating to the enforcement of creditor's rights generally or (ii) general principles of equity. The Borrower's execution, delivery, and performance of this First Supplement do not (A) violate or conflict with the Borrower's articles of incorporation, bylaws, or any other governance document with which the Borrower must comply, (B) violate any applicable law, regulation, or rule applicable to the Borrower or its property or assets, (C) violate or result in a breach or default under the terms, conditions, or provisions of any material agreement or instrument to which the Borrower is a party or by which the Borrower or its property or assets are bound, or (D) result in the creation or imposition of any lien, security interest, or other encumbrance upon its property or assets except as provided in the Borrower Documents.

**Section 8. Miscellaneous.**

- a. In consideration of the Lender's covenants and agreements as provided by this First Supplement, the Borrower waives and releases the City and the Lender from any and all claims and defenses, known or unknown, with respect to the Financing Agreement, the Promissory Note, and each of the other Borrower Documents and the transactions contemplated thereby.
- b. The Borrower ratifies and affirms its obligations under, and acknowledges, renews, and extends its continued liability under, the Financing Agreement, the Promissory Note, and each of the other Borrower Documents and agrees that the Financing Agreement, the Promissory Note, and each of the other Borrower Documents remain in full force and effect as they may be amended or modified hereby.
- c. The execution, delivery, and performance of this First Supplement by the Lender does not and will not operate as (i) a modification of, or waiver of any right, power, or remedy of the City or the Lender under, the Financing Agreement, the Promissory Note, or any

other Borrower Document, except as specifically set forth herein, or (ii) a waiver by the City or the Lender of any Event of Default or any event or occurrence that with notice, the lapse of time, or both would result in an Event of Default. The amendments and modifications set forth in this First Supplement are limited to the specifics hereof.

- d. This First Supplement is a Borrower Document.
- e. This First Amendment, as an amendment of the Financing Agreement, is subject to, and will be governed by, those terms and provisions as set forth in Article VIII of the Financing Agreement.

*{Signature Page Follows.}*

**Signature Page**  
**to First Supplement to Financing Agreement**

*Re: \$6,724,000 City of Englewood, Colorado  
Revenue Bond (Denver Area Council, Boy Scouts of America Project) Series 2008*

The City, the Lender, and the Borrower have each caused this First Supplement to be executed and delivered by an authorized officer or representative as of the date first set forth above.

**CITY:**

**CITY OF ENGLEWOOD, COLORADO**

By: \_\_\_\_\_  
Randy P. Penn  
Mayor

[SEAL]

Attest:

\_\_\_\_\_  
Loucrishia A. Ellis, City Clerk

**LENDER:**

**BOKF, NA**

By: \_\_\_\_\_  
Kristen M. Sundin  
Senior Vice President

**BORROWER:**

**DENVER AREA COUNCIL, BOY SCOUTS OF  
AMERICA**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A-1**  
**to First Supplement to Financing Agreement**

*Re: \$6,724,000 City of Englewood, Colorado  
Revenue Bond (Denver Area Council, Boy Scouts of America Project) Series 2008  
December 18, 2014*

*Revised Amortization/Payment Schedule*

**SCHEDULE I**

**BOND PAYMENT DATES**

(Revised December 18, 2014)

[TO BE PROVIDED. REVISED AMORTIZATION/PAYMENT SCHEDULE SHOULD SHOW PAYMENTS MADE THROUGH THE EFFECTIVE DATE AND THE REVISED AMORTIZATION/PAYMENT SCHEDULE FOR THE REMAINDER OF THE TERM.]

\*\*Revised as of December 18, 2014 in accordance with the terms, provisions, and conditions as set forth in that certain First Supplement to Financing Agreement, dated December 18, 2014, by and among the following parties: City of Englewood, Colorado, a municipal corporation and political subdivision duly organized as a home rule city under the provisions of Article XX of the Constitution, the laws of the State of Colorado, and its home rule Charter; BOKF, NA, a national banking association dba Colorado State Bank and Trust and successor in interest to Colorado State Bank and Trust, N.A.; and Denver Area Council, Boy Scouts of America, a Colorado nonprofit corporation.



**Exhibit B**  
***to First Supplement to Financing Agreement***

*Re: \$6,724,000 City of Englewood, Colorado  
Revenue Bond (Denver Area Council, Boy Scouts of America Project) Series 2008  
December 18, 2014*

*Form of Release of Deed of Trust*

See next page.

Original Note and Deed of Trust Returned to:	Original Note retained by Beneficiary (not paid in full). Original Deed of Trust to be returned to Grantor/Borrower.
WHEN RECORDED RETURN TO:	Current Holder
Prepared/Received by:	Dinsmore & Shohl LLP, 1801 Broadway, Suite 1700, Denver, Colorado 80202, Attn: Erich T. Kennedy

REQUEST FOR FULL  / PARTIAL

**RELEASE OF DEED OF TRUST AND RELEASE BY HOLDER OF THE EVIDENCE OF DEBT WITH PRODUCTION OF EVIDENCE OF DEBT PURSUANT TO § 38-39-102 (1) (a), COLORADO REVISED STATUTES**

December 18, 2014	Date
Denver Area Council, Boy Scouts of America	Original Grantor (Borrower)
10455 West 6th Avenue	Current Address of Original Grantor,
Denver, Colorado 80215	Assuming Party, or Current Owner
<input type="checkbox"/> Check here if current address is unknown	
Colorado State Bank and Trust, N.A.	Original Beneficiary (Lender)
October 9, 2008	Date of Deed of Trust
October 15, 2008	Date of Recording and/or Re-Recording of Deed of Trust
497680	Recording Information
County Rept. No. and/or Film No. and/or Book/Page No. and/or Torrens Reg. No.	

TO THE PUBLIC TRUSTEE OF Elbert COUNTY (The County of the Public Trustee who is the appropriate grantee to whom the above Deed of Trust should grant an interest in the property described in the Deed of Trust.)

PLEASE EXECUTE AND RECORD A RELEASE OF THE DEED OF TRUST DESCRIBED ABOVE. The indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied in regard to the property encumbered by the Deed of Trust as described therein as to a full release or, in the event of a partial release, only that portion of the real property described as: **(IF NO LEGAL DESCRIPTION IS LISTED THIS WILL BE DEEMED A FULL RELEASE)**

**BOKF, NA, a national banking association dba Colorado State Bank and Trust and successor in interest to Colorado State Bank and Trust, N.A., 1600 Broadway, 4th Floor, Denver, Colorado 80202**  
Name and Address of Current Holder of the Evidence of Debt Secured by Deed of Trust (Lender)

**Kristen M. Sundin, Senior Vice President, BOKF, NA, a national banking association dba Colorado State Bank and Trust, 1600 Broadway, 4th Floor, Denver, Colorado 80202**  
Name, Title and Address of Officer, Agent, or Attorney of Current Holder

Signature _____	Signature _____
State of <u>Colorado</u> , County of <u>Denver</u>	
The foregoing Request for Release was acknowledged before me on <u>December 18, 2014</u> (date) by* _____	(Notary seal)
_____ Date Commission Expires	_____ Notary Public
<small>*If applicable, insert title of officer and name of current holder</small>	_____ Witness my hand and official seal

**RELEASE OF DEED OF TRUST**

WHEREAS, the Grantor(s) named above, by Deed of Trust, granted certain real property described in the Deed of Trust to the Public Trustee of the County referenced above, in the State of Colorado, to be held in trust to secure the payment of the indebtedness referred to therein; and

WHEREAS, the indebtedness secured by the Deed of Trust has been fully or partially paid and/or the purpose of the Deed of Trust has been fully or partially satisfied according to the written request of the current holder of the evidence of debt;

NOW THEREFORE, in consideration of the premises and the payment of the statutory sum, receipt of which is hereby acknowledged, I, as the Public Trustee in the County named above, do hereby fully and absolutely release, cancel and forever discharge the Deed of Trust or that portion of the real property described above in the Deed of Trust, together with all privileges and appurtenances thereto belonging.

(Public Trustee use only, use appropriate label)	(Public Trustee's Seal)	Public Trustee _____	Date _____
		Deputy Public Trustee _____	Date _____
			(If applicable: Notary Seal)

(If applicable, Name and Address of Person Creating New Legal Description as Required by § 38-35-106.5, Colorado Revised Statutes.)

## COUNCIL COMMUNICATION

<b>Date:</b> November 17, 2014	<b>Agenda Item:</b> 11 c i	<b>Subject:</b> Approval of Coplogic Contracts
<b>Initiated By:</b> Police Department	<b>Staff Source:</b> Deputy Chief Jeff Sanchez	

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

N/A

### RECOMMENDED ACTION

The Police Department is recommending that City Council approving, by motion, the license and maintenance agreement for the Coplogic DeskOfficer Online Reporting System.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Coplogic allows citizens to submit reports online, thereby giving them a convenient way to file a report without having to do it either in person or over the phone. They will now be able to get a copy of their report without having to come down to the Police Department. Citizens can choose up to six different languages in which to read instructions. Coplogic also provides a crime tip feature.

Coplogic is the only online reporting system that currently interfaces with our LogiSYS records management system.

Coplogic currently has about 400 agencies that are customers, including the Arapahoe County Sheriff's Office, Aurora P.D., Denver P.D., Douglas County Sheriff's Office, Jefferson County Sheriff's Office and Parker P.D. The Arapahoe County Sheriff's Office and Parker P.D. have documented time and cost savings by using the Coplogic system.

### FINANCIAL IMPACT

The initial cost to purchase Coplogic would be \$15,190 for set-up and implementation and \$5,810 in annual support and maintenance. The total first year costs would be \$21,000, which would be paid for out of pre-approved forfeiture funds.

Thereafter, annual support and maintenance will be budgeted and paid for out of the Police Department budget.

### LIST OF ATTACHMENTS

DeskOfficer Online Reporting System Setup and Subscription License Agreement  
DeskOfficer Online Reporting System Support and Maintenance Agreement

**DESKOFFICER ONLINE REPORTING SYSTEM  
SETUP AND SUBSCRIPTION LICENSE AGREEMENT**

THIS SETUP AND SUBSCRIPTION LICENSE AGREEMENT (“Agreement”) is made on this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Englewood, a municipal corporation, located at 1000 Englewood Parkway, Edgewood, CO 80110-2373, under the laws of the State of Colorado and hereafter referred to as “Licensee” and Coplogic Inc., an existing California corporation with whose address is 231 Market Place, Suite #520, San Ramon, CA 94583 and hereafter referred to as “Licensor”.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1. DEFINITIONS**

- (a) “**Documentation**” means technical manuals, training manuals, user guides, and workbooks, as updated and amended from time to time, provided by Licensor to assist Licensee with the use of Software.
- (b) “**Software**” means all or any portion of the global version of the binary computer software programs and updates and enhancements thereto, and Documentation hosted by Licensor on behalf of Licensee or delivered by Licensor to Licensee. Software includes any third-party software delivered by Licensor and modifications made to the Software. Software does not include source code to third party software. Unless specifically stated otherwise, all Software is delivered to Customer only if and when generally commercially available.
- (c) “**Install**” means placing the Software on a computer's hard disk.
- (d) “**Use**” means (i) executing or loading the Software into computer RAM or other primary memory, and (ii) copying the Software for archival or emergency restart purposes.

**2. GRANT OF RIGHTS AND SCOPE OF SERVICES**

Licensor hereby grants to Licensee a nonexclusive, nontransferable license to use the Software on Licensor’s servers for the term of this Agreement. Licensor also agrees to provide the services listed in the Scope of Services attached hereto as Exhibit “A” and made a part hereof. All requests by the Licensee for additional features or functionality that fall outside of Exhibit “A” Scope of Services shall be addressed following the “go-live” date of the Software and shall be quoted separately.

**3. LICENSE TERM**

This Agreement is effective when the Agreement is executed by both parties and the license granted to the Software remains in force until terminated in accordance with this Agreement.

Subject to the provisions of Section 5 (Termination) the parties acknowledge that any provision of this Agreement or its attachments which impose upon Licensee, directly or indirectly, any financial obligation whatsoever to be performed or that may be performed in the fiscal year of execution; is expressly made contingent and subject to funds for such financial obligation being appropriated, , budgeted or otherwise made available pursuant to Article X, Section 20 of the Colorado Constitution.

**4. COST AND FEES**

Licensee agrees to pay Licensor the following one time setup and implementation fee of USD\$15,190, plus license and maintenance fees for the first year of USD\$5,810, as outlined in the Support and Maintenance Agreement, for a total of USD\$21,000 upon execution of this agreement.

The Support and Maintenance period shall commence at the earlier of 1) the “go-live” date of the Software or 2) December 1, 2014. All payments shall be made within thirty (30) days from the date of invoice by electronic funds transfer to the Licensor’s account specified in writing, or by check made payable to “Coplogic, Inc.” and delivered to 231 Market Place, Suite #520, San Ramon, CA 94583.

- 4.1. **Taxes.** In addition to other amounts payable under this Agreement, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Licensee's use of the Software or the payment of the License Fee to Licensor, other than taxes assessed against Licensor's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Agreement, Licensee shall promptly reimburse Licensor any such amounts.

## 5. **TERMINATION**

Licensee may terminate this Agreement at any time on thirty (30) days written notice to Licensor. Licensor shall have the right to terminate this Agreement on thirty (30) days written notice to Licensee if Licensee fails to pay any amount due to Licensor under this Agreement or the Support and Maintenance Agreement, or if Licensee fails to perform any obligation required of Licensee under this Agreement or if Licensee becomes bankrupt or insolvent.

On termination, Licensee will promptly return all copies of the Software to Licensor or destroy all of Licensee's copies of the Software and so certify to Licensor in writing within fourteen (14) days of termination.

## 6. **RIGHTS UPON TERMINATION**

Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software or Documentation. Upon termination of this License, all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use and reproduction of the Software and Documentation, and Licensee shall return to Licensor or destroy the original and all copies of the Software and Documentation including partial copies and modifications.

Sections 9, 10, 11, 12, and 13 will survive termination or expiration of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

## 7. **TITLE TO SOFTWARE**

Licensor retains title to and ownership of the Software and Documentation and all enhancements, modifications and updates of the Software or Documentation. Licensee shall not distribute the Software to any persons or entities other than Licensee's employees as designated solely by Licensee. Licensee may not sell the Software to any person or make any other commercial use of the software. Licensee shall retain all copyright and trademark notices on the Software and Documentation and shall take other necessary steps to protect Licensor's intellectual property rights.

## 8. **MODIFICATION AND ENHANCEMENTS**

Licensee will make no efforts to reverse engineer the Software, or make any modifications or enhancements or derivative works based on the Software without Licensor's express written consent.

## 9. **WARRANTY**

Licensor warrants that from the date of this License, the Software will function given the original

configuration is not replaced or changed by Licensee. Licensor warrants that to the best of its knowledge, information, and belief, the Software does not contain any known viruses, back-doors or time bombs, (or similar malicious code), or undocumented security codes that could prevent Licensee's use of the Software.

**THE WARRANTY GRANTED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

Licensor's entire liability and Licensee's sole and exclusive remedy for breach of the foregoing warranty shall be, at Licensor's option, to:

- Return to Licensee the maintenance fee for the period in which the Software did not perform according to this warranty, or
- Repair the defects or
- Replace the Software.

**10. INTENTIONALLY DELETED.**

**11. LIMITATION OF LIABILITY**

To the extent permitted by law, Licensor's total aggregate liability in connection with any cause of action, costs or damages relating to this Agreement shall not exceed the annual fee received by Licensor from Licensee in the twelve (12) months period preceding the event giving rise to the claim.

**12. ATTORNEY FEES**

If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which it may be entitled.

**13. CONFIDENTIAL INFORMATION**

- (a) The term "Confidential Information" shall mean any and all information, which is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form, which either is identified or should be reasonably understood to be confidential or proprietary. Confidential Information includes, but is not limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Licensor's business, as Licensor has conducted it or as it may conduct itself in the future, confidential information concerning any of Licensor's past, current, or possible future products or manufacturing or operational methods, including information about Licensor's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing, and any software (including third party software) provided by Licensor. Licensor's Confidential Information shall be treated as strictly confidential by Licensee and shall not be disclosed by Licensee except to those third parties with a need to know and that are operating under a confidentiality agreement with non-disclosure provisions no less restrictive than those set forth herein. This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (i) was in the possession of, or was rightfully known by the Licensor without an obligation to maintain its confidentiality prior to receipt from other party; (ii) is or becomes generally known to the public without violation of this Agreement; (iii) is obtained by Licensee in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by Licensee without the participation of individuals who have had access to the Confidential Information or (v) is required to be disclosed by court order or applicable law, provided that Licensee promptly notifies Licensor in order for the disclosing party to have an

opportunity to seek an appropriate protective order. The Licensee shall not obtain, by virtue of this Agreement, any rights title or interest in any Confidential Information of the Licensor. Within fourteen (14) days after termination of this Agreement, each party shall certify in writing to Licensor that all copies of Licensor's Confidential Information in any form, including partial copies, have been destroyed or returned to Licensor.

- (b) Licensor acknowledges that the Licensee is a governmental agency and pursuant to open records requests, may be required to disclose certain information according to provisions of the Colorado Open Records Act. Licensee shall give notice to Licensor of any request for the disclosure of any Confidential Information of Licensor. Licensor shall then have five (5) days from the date it receives such notice from Licensee to enter into an agreement with Licensee providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney's fees) incurred by Licensee in any legal action to compel the disclosure of such information under the Public Records Act. Licensor shall have the sole responsibility for the defense of the actual proprietary or trade secret designation of such information. The parties understand and agree that any failure by Licensor to respond to the notice provided by Licensee and/or to enter into an agreement with Licensee, as set forth above, shall constitute a complete waiver by Licensor of any nondisclosure or confidentiality rights hereunder with respect to such information, and such information shall be disclosed by Licensee pursuant to applicable procedures required by the Public Records Act.
- (c) Licensee shall protect the deliverables resulting from Services with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Licensee utilizes for Licensee's Confidential Information.
- (d) The terms of this Section shall survive termination of this Agreement. Licensor and Licensee acknowledge that any breach of this Section by Licensee will irreparably harm Licensor. Accordingly, in the event of a breach, Licensor is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.

#### **14. RELATIONSHIP BETWEEN THE PARTIES**

Licensor is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or sub consultants, including any negligent acts or omissions. Licensor is not Licensee's agent, and shall have no authority to act on behalf of the Licensee, or to bind the Licensee to any obligation whatsoever, unless the Licensee provides prior written authorization to Licensor. Licensor is not an officer or employee of Licensee and Licensor shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

#### **15. CONFLICTS OF INTEREST PROHIBITED**

Licensor (including its employees, agents, and sub Licensors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement.

#### **16. COMPLIANCE WITH LAW AND STANDARD OF CARE**

Licensor shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Licensor shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Licensor, performing under circumstances similar to those required by this Agreement. Licensor certifies that its employees have the training and experience to perform and complete all services mentioned herein and outlined in Exhibit A.

## **17. INSURANCE**

Licensors shall, throughout the duration of this Agreement, maintain insurance to cover Licensor (including its agents, representatives, sub-consultants, and employees) in connection with the performance of services under this Agreement. This Agreement identifies the minimum insurance levels with which Licensor shall comply; however, the minimum insurance levels shall not relieve Licensor of any other performance responsibilities under this Agreement (including the indemnity requirements), and Licensor may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Licensor, and prior to the commencement of any services, the Licensor shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the Licensee. Licensor shall provide substitute written proof of insurance no later than thirty (30) days prior to the expiration date of any insurance policy required by this Agreement.

**17.1. Minimum Insurance Levels.** Licensor shall maintain insurance at the following minimum levels:

- (a) Commercial General Liability coverage in an amount not less than USD\$1,000,000 general aggregate and USD\$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- (b) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (c) Errors and Omissions Liability Insurance appropriate to the Licensor's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

**17.2 Endorsements.** The insurance policies shall be endorsed as follows:

- (a) For the commercial general liability insurance, the Licensee (including its elected officials, employees, and agents) shall be named as additional insured.
- (b) Licensor's insurance is primary to any other insurance available to the Licensee with respect to any claim arising out of this Agreement. Any insurance maintained by the Licensee shall be excess of the Licensor's insurance and shall not contribute with it.

**17.3 Qualifications of Insurers.** All insurance companies providing coverage to Licensor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VII."

## **18. REPORTING DAMAGES**

If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Licensor shall immediately notify the Licensee Risk Manager's office and Licensor shall promptly submit to the Licensee's Risk Manager and the Licensee's Authorized Representative, a written report (in a form acceptable to the Licensee) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Licensor's insurance company, and (d) a detailed description of the damage and whether any Licensee property was involved.

## **19. GENERAL PROVISIONS**

- (a) **Complete Agreement.** This Agreement together with Exhibit "A", which is incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter, except for the concurrently executed Software Support and Maintenance Agreement.

- (b) **Modifications to License.** Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.
- (c) **Applicable Law.** This Agreement will be governed by the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Contra Costa.
- (d) **Notices.** All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:
- When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement;
  - Three (3) days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this License; or
  - When sent by fax or telex to the last fax, telex number or E-Mail address of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail or the recipient delivers a written confirmation of receipt.

Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.

- (e) **No Agency.** Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- (f) **Assignment.** A party may not assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, Licensor may assign its rights and obligations hereunder to a subsidiary, affiliate of Licensor, or to a successor who acquires the business and assets of Licensor.
- (g) **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- (h) **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- (i) **Headings.** The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- (j) **Severability.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

## **20. SIGNATURES**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Licensor and the Licensee. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages,

any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photocopy of an executed original will be admissible in evidence for all purposes in any proceeding as between the parties

IN WITNESS WHEREOF, the Licensee and Licensor do hereby agree to the full performance of the terms set forth herein.

**Coplogic, Inc.**  
**(LICENSOR)**

**City of Englewood, CO**  
**a Municipal Corporation (LICENSEE)**

~~\_\_\_\_\_  
(Signature)~~  
**William S. Madison**  
*Executive Vice President*  
\_\_\_\_\_  
(Typed or Printed Name and Title)

\_\_\_\_\_  
(Signature)  
**Eric A. Keck, City Manager**  
\_\_\_\_\_  
(Typed or Printed Name and Title)

*10/27/2014*  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)



## Exhibit A

### DESKOFFICER ONLINE REPORTING SYSTEM

Licensors has designed and built an Online Reporting System for Police Departments that provides data to a specified database structure. The Online Reporting System uses the J2EE standard. The system is designed to gather information on crimes from a member of the general public (user) via an SSL connection. The application will issue a temporary report number to the user and place the temporary report into an administrative holding area for review and modification by appropriate administrator. An email is generated to the user that the report has been submitted. The administrator logs in via an SSL connection and approves, rejects, edits or prints reports as appropriate. Rejecting a report deletes it from the system and sends an appropriate email to the user. Approving the report issues a number, places it in a queue to be exported, and sends an appropriate email to the user. The administrator can download the approved report or print the report out.

#### A. SETUP AND CUSTOMIZATION

##### **Licensee Responsibilities:**

1. Coordinate with Licensor to establish schedule for deployment.
2. Provide website header image and one small image for temporary citizen report and one small image for final printed PDF report, which is automatically emailed to citizen after report approval.
3. Load provided HTML pages onto City server which links to Licensor's servers for the application.
4. Provide Licensor with the schema for the desired file format and/or Database schema and account with read /write access and test environment with current configuration.
5. Provide Licensor with VPN access to the exporter and RMS application(s).
6. Provide timely responses to Licensor's questions, which may arise during the setup and customization process.

##### **Licensor's Responsibilities:**

1. Coordinate with Licensee to establish schedule for deployment.
2. Load provided images onto the Licensor's secure, redundant network and register Licensee within the network.
3. Provide Licensee with Administrator password and credentials for the program.
4. Provide sample operational directives, deployment strategies and sample press release.
  - a. Licensor will provide contact personnel at other cities currently using the system as well as provide suggestions for the deployment of the system.
  - b. Licensor will provide instructions on the easy setup of a kiosk for City Police Department Headquarters lobby, etc.

##### **Completion Criteria:**

This task is considered complete after Licensor has delivered listed materials and the software is active and accessible on the Licensee's website.

#### B. SOFTWARE CONFIGURATION

##### **Licensee's Responsibilities:**

1. Coordinate with Licensor for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
2. Using the administrator account, login in and configure the code tables, crime types, user account, and dynamic content for Licensee.
3. Test the optional interface with the RMS application.
4. Review resulting files with Licensor, document any problems, and collaborate with Licensor on a plan for corrective action(s).

**Licensor's Responsibilities:**

1. Coordinate with Licensee for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
2. Configure export routine for the optional RMS Interface.
3. Review resulting files with Licensee, document any problems, and collaborate with Licensee on a plan for corrective action(s).

**Completion Criteria:**

This task is considered complete when the DeskOfficer Online Reporting System is accessible on the web server, reports can be filed and interfaced into the RMS.

**C. CONTINUING MAINTENANCE.**

**Licensee's Responsibilities:**

During the term of this Agreement and subject to approval by Licensee, Licensee agrees to serve as a reference for the Software. Such references may include activities such as (i) reference calls with mutually acceptable prospects; (ii) a published "success story" describing the partnership with Licensor; (iii) the use of Licensee's name in Licensor marketing activities; or (iv) a favorable reference of Licensor to an industry analyst or at an industry conference.

(Should Licensee Elect to Self-Host Software) Provide Licensor with VPN access or a comparable remote access method (e.g. LogMeIn, TeamViewer) to upgrade the Software.

**Licensor's Responsibilities:**

Licensor will provide remote application support and updates in accordance with the Support and Maintenance Agreement.

## **DESKOFFICER ONLINE REPORTING SYSTEM SUPPORT AND MAINTENANCE AGREEMENT**

THIS SUPPORT AND MAINTENANCE AGREEMENT (“**Support and Maintenance Agreement**”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Englewood, a municipal corporation, located at 1000 Englewood Parkway, Englewood, CO 80110-2373, under the laws of the State of Colorado (“**Licensee**”) and Coplogic, Inc., an existing California corporation, whose address is 231 Market Place #520 San Ramon, CA 94583 (“**Licensor**”).

### **RECITALS**

Licensee has obtained a subscription license to use the DeskOfficer Online Reporting System (“**Software**”) for the term of that agreement, more particularly described in the Setup and Subscription License Agreement of the same date. As a part of this Support and Maintenance Agreement, Licensor shall provide support and maintenance services for the Software.

### **SUPPORT AND MAINTENANCE SERVICES**

1. Generally. During the duration of this Support and Maintenance Agreement, Licensor shall provide to the Licensee a subscription license, as well as support and maintenance for the Software purchased in accordance with the terms of this Support and Maintenance Agreement and the response time described in Schedule A, attached hereto. Support includes an annual review of current outstanding questions and usage issues at Licensee request; the provision of new and upcoming releases of updates; and enhancements made to the Software that the Licensee is licensed to use that are generally made available without additional charge to other users of the Software with similar support and maintenance contracts. The parties shall amend Schedule B from time-to-time in the event that the Licensee requests customizations to the Software.
2. Hours of Support. Licensor will provide the support services during the hours as described in Schedule A attached hereto.
3. New Releases. Licensor will, from time-to-time issue new releases of the software (Schedule B), and when it does, it will provide a copy of the release documentation, and/or updated user or system documentation. If any part of the Licensee’s custom code is not part of the general release delivered by Licensor, then Licensor will assist and provide guidance for integrating the custom code into the new release. Any time taken to modify or repair unauthorized changes that may require Licensor assistance to modify may be billed at Licensor’s then current pricing schedule.
4. Exceptions. Corrections for difficulties or defects traceable to the Licensee's errors or unauthorized changes, Licensee's hardware, or conflicts with other software not identified by Licensor as compatible or part of the recommended operating environment may be subject to billing at Licensor’s current standard time and material charges.
5. Exceptions (Should Licensee Elect to Self-Host Software). Licensor is not responsible for maintaining unauthorized Licensee modified portions of the Software, Licensee data files or for maintaining portions of the Software affected by unauthorized Licensee modified

portions of the Software. The Licensee agrees that the equipment on which the Software operates will be operating properly at all times and must have been and continue to be properly maintained by the manufacturer of the equipment or a properly qualified service organization.

The Licensee will be responsible for properly testing and applying routine virus updates and security patches without the need for additional Licensor's notification. Licensor will be responsible for testing Licensor's software updates prior to making them available to the Licensee. The Licensee acknowledges responsibility for testing Licensor's software updates before applying them to the Licensee's production systems. For servers running Licensor's software, the Licensee acknowledges responsibility for communicating with Licensor prior to installation of non- Licensor's software service packs, implementation of new releases or versions of non- Licensor's software, or installation of new non- Licensor's software products.

Except for emergency replacement of a failing server, the Licensee acknowledges responsibility for communicating with Licensor prior to replacing a server on which Licensor's software is being used. Licensor is not responsible for changes if related to or caused by software not provided by Licensor. For workstations running Licensor's software, the Licensee acknowledges responsibility to test new workstation configurations, software service packs, new releases or versions of software, and new software products prior to implementation.

The Licensee must upgrade the Software in its entirety to the most recent version within seven business days of the release of any updates or modifications of the Software unless otherwise mutually agreed. Licensee must provide Licensor with VPN access or a comparable remote access method (eg. LogMeIn, TeamViewer) to upgrade the Software. Licensor will not be obligated to provide support for release versions that are more than two release versions older than the current version unless specified in this Support and Maintenance agreement.

The Licensee agrees that, subject to and in accordance with the Licensee's internal policies and guidelines, it will upgrade the computer operating software, hardware and underlying database engines of the Software as necessary to meet the changing requirements of the Software as specified by Licensor as part of a current release of the Software, or as the parties mutually agree. The Licensee agrees that, subject to and in accordance with the Licensee's internal policies and guidelines, it will maintain appropriate licenses for the computer operating software and underlying database engines required of the Software as necessary.

6. **Limitations.** Licensor may, in its sole discretion, limit or suspend Licensee's access to support, pursuant to this Support and Maintenance Agreement, where (1) Licensee is in material default under the terms of this Support and Maintenance Agreement (non-payment is deemed to be a material default), or (2) Licensee fails to provide adequately trained staff to administer the Software. Prior to limiting or suspending support, Licensor will give the Licensee thirty (30) days written notice of its intention to do so and actively participate with the Licensee to remedy any such default or failure.

7. **Term.** This Support and Maintenance Agreement commences at the earlier of 1) the “go-live” date of the Software or 2) December 1, 2014, and expires one year after its commencement date. Within thirty (30) days prior to its expiration, Licensor shall send to the Licensee an invoice for an annual license, support and maintenance fee (“Annual Fee”). The sending of any such invoice will constitute an irrevocable offer to extend this Support and Maintenance Agreement for the period and fees set forth in the invoice, which may be accepted by the Licensee in its sole discretion as hereinafter set forth. Termination of this Support and Maintenance Agreement prior to its expiration shall not result in the refund of partial service fees.

The Licensee’s payment of an Annual Fee in response to an invoice prior to the expiration date of this Support and Maintenance and Agreement, or within thirty (30) days after the date of Licensor’s invoice, whichever is later, will extend the Support and Maintenance Period for the period of one (1) year from its previous expiration date, or for the period set forth in the invoice if different.

8. **Adjustments to Terms and Conditions.** Licensor may change the Annual Fee and the terms and conditions of this Support and Maintenance Agreement provided that written notice is given to the Licensee thirty (30) days prior to the expiration of the current term.

## **COST**

9. **Annual Fee.** The Licensee shall pay Licensor an Annual Fee for which the Software license and support is being provided (see Schedule B for base Annual Fee). The Annual Fee for the first (1st) year is due upon execution of this agreement and will then reoccur on the anniversary date of the execution of this agreement for each year thereafter. For a period of three (3) years following execution of this Support and Maintenance Agreement, the Annual Fee shall not increase by more than 5% of the previous year’s Annual Fee. All requests by the Licensee for additional features or functionality that fall outside of Licensor’s ongoing policy of upgrading the Software will be quoted separately.

**Late Payments.** All invoices will be sent at least thirty (30) days prior to their due date. Payments received forty-five (45) days after their due date will be assessed a 10% late fee.

10. **Taxes.** In addition to other amounts payable under this Support and Maintenance Agreement, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Licensee's use of the Software or the payment of the Annual Fee to Licensor, other than taxes assessed against Licensor's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Support and Maintenance Agreement, Licensee shall promptly reimburse Licensor any such amounts.
11. **On Site Support.** The Licensee shall reimburse Licensor at the rate of USD\$2,500.00 per day for each Licensor employee or contractor required for any On-Site support incurred at the Licensee's direct written request and authorization. This rate shall be paid for each day that Licensor personnel are required to be on the Licensee’s site. Licensee will not pay for

Licensors personnel travel time or travel expenses. In response to written Licensee requests for Licensor to provide on-site routine non-emergency support, Licensor shall produce a written estimate of the time required to provide the requested support and state any requirements, such as the presence of Licensee staff or other resources or materials. Any On-Site Support provided by Licensor shall only be invoiced by Licensor or paid by Licensee if the problem arose due to something other than a defect in the Software.

## **LICENSEE'S OBLIGATION**

12. The Licensee Agrees to:

- (a) Furnish descriptions of problem(s) in the form reasonably requested by Licensor Support representatives;
- (b) Assist Licensor's efforts to reproduce the problem(s) in the applicable operating environment, and
- (c) Make available qualified, trained staff on-site to carry out Licensor's instructions and/or provide remote access to system(s) as requested by Licensor.

13. The Licensee shall designate a sole Support Contact to provide routine end user support for the Licensor personnel concerning the Product.

14. The Licensee shall take appropriate steps to educate its end users about the need to contact the Support Contact (rather than Licensor directly) when support is needed. The Licensee shall appropriately publicize the name, telephone number, and/or fax number and/or electronic mail address if applicable, of the Support Contact.

15. Access to Data and System. The Licensee agrees to provide Licensor with data dumps, as requested, remote access to the Software system, and with sufficient test time on the Licensee's computer system to duplicate the problem, to certify that the problem is with the Software, and to certify that the problem has been corrected.

16. The Licensee shall install and maintain for the term of this Support and Maintenance Agreement, a reasonable and satisfactory method of direct remote computer access to the Software. The Licensee shall pay for the installation and maintenance of such access. Licensor shall use this access service in connection with error correction, software updating and user support only, and only upon prior written or email notice to the Licensee, and Licensee's acknowledgment of that notice.

17. Licensor agrees that all release versions will be tested for installation in a computer environment substantially similar to the Licensee's and that all releases will be free of material defects that would affect the orderly continuation of Licensee's use of the Product.

18. The parties agree that Licensor is not obligated to ensure that its new release of the Software is compatible with outdated (exceeding 4 years from date of initial release) hardware, computer operating software or database engines).

## **CONFIDENTIALITY**

19. Confidential Information.

- (a) The term "Confidential Information" shall mean any and all information, which is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form, which either is identified or should be reasonably understood to be confidential or proprietary. Confidential Information includes, but is not limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Licensor's business, as Licensor has conducted it or as it may conduct itself in the future, confidential information concerning any of Licensor's past, current, or possible future products or manufacturing or operational methods, including information about Licensor's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing, and any software (including third party software) provided by Licensor. Licensor's Confidential Information shall be treated as strictly confidential by Licensee and shall not be disclosed by Licensee except to those third parties with a need to know and that are operating under a confidentiality agreement with non-disclosure provisions no less restrictive than those set forth herein. This Support and Maintenance Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (i) was in the possession of, or was rightfully known by the Licensor without an obligation to maintain its confidentiality prior to receipt from other party; (ii) is or becomes generally known to the public without violation of this Support and Maintenance Agreement; (iii) is obtained by Licensee in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by Licensee without the participation of individuals who have had access to the Confidential Information or (v) is required to be disclosed by court order or applicable law, provided that Licensee promptly notifies Licensor in order for the disclosing party to have an opportunity to seek an appropriate protective order. The Licensee shall not obtain, by virtue of this Support and Maintenance Agreement, any rights title or interest in any Confidential Information of the Licensor. Within fourteen (14) days after termination of this Support and Maintenance Agreement, each party shall certify in writing to Licensor that all copies of Licensor's Confidential Information in any form, including partial copies, have been destroyed or returned to Licensor.
- (b) Licensor acknowledges that the Licensee is a governmental agency and may be required to disclose certain information under requests made according to provisions of the Public Records Act. Licensee shall give notice to Licensor of any request for the disclosure of any information set apart and marked "confidential," "proprietary" or "trade secret" by Licensor. Licensor shall then have five (5) days from the date it receives such notice to enter into an agreement with Licensee providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney's fees) incurred by Licensee in any legal action to compel the disclosure of such information under the Public Records Act. Licensor shall have the sole responsibility for the defense of the actual proprietary or trade secret designation of such information. The parties understand and agree that any failure by Licensor to respond to the notice provided by Licensee and/or to enter into an agreement with Licensee, as set forth above, shall constitute a complete waiver by Licensor of any nondisclosure or confidentiality rights hereunder with respect to such information, and such information shall be disclosed by Licensee pursuant to applicable procedures required by the Public Records Act.

- (c) Licensee shall protect the deliverables resulting from Services with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Licensee utilizes for Licensee's Confidential Information.
- (d) The terms of this Section shall survive termination of this Support and Maintenance Agreement. Licensor and Licensee acknowledge that any breach of this Section by Licensee will irreparably harm Licensor. Accordingly, in the event of a breach, Licensor is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.

## **TERMINATION**

- 20. The Licensee may terminate this Support and Maintenance Agreement at any time and for any reason upon thirty (30) days prior notice to Licensor.

In the event of a material default by the Licensee under this Support and Maintenance Agreement, Licensor may terminate this Support and Maintenance Agreement upon thirty (30) days prior notice to Licensee, provided that Licensee has been given thirty (30) days notice to cure the default.

## **INDEMNITY. INTENTIONALLY DELETED.**

## **LIMITATION OF LIABILITY**

- 21. To the extent permitted by law, Licensor's total aggregate liability in connection with any cause of action, costs or damages relating to this Support and Maintenance Agreement shall not exceed the annual fees received by Licensor from Licensee in the twelve (12) month period preceding the event giving rise to the claim.

## **GENERAL**

A party may not assign its rights or obligations under this Support and Maintenance Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, Licensor may assign its rights and obligations hereunder to a subsidiary, affiliate of Licensor, or to a successor who acquires the business and assets of Licensor.

- 22. This Support and Maintenance Agreement, together with Schedule A and Schedule B, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Support and Maintenance Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter, except for the concurrently executed Setup and License Agreement. No modification or amendment of this Support and Maintenance Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound.
- 23. Each party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform,

such party must act diligently to remedy the cause or effect of such delay or failure to the extent the party is able. In the event of such delays, the timetables shall be extended by as many calendar days as the delay caused by forces outside the reasonable control of the parties.

24. This Support and Maintenance Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages, any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photocopy of an executed original will be admissible in evidence for all purposes in any proceeding as between the parties.
25. Any provision of this Support and Maintenance Agreement or part thereof found to be illegal or unenforceable shall be deemed severed, and the balance of the Agreement shall remain in full force and effect.
26. This Support and Maintenance Agreement shall be governed and construed in accordance with the laws of the State of California. Venue of any action brought with regard to this Support and Maintenance Agreement shall be in Contra Costa County, California.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Support and Maintenance Agreement and to bind their respective party thereto.

**Coplogic, Inc.**  
**(LICENSOR)**

**City of Englewood, CO,**  
**a Municipal Corporation (LICENSEE)**

(Signature)

*William S. Madison*

Executive Vice President

(Typed or Printed Name and Title)

(Signature)

Eric A. Keck, City Manager

(Typed or Printed Name and Title)

11/06/2014  
(Date)

(Date)

**SCHEDULE A**

Licensor Hours of Support and Maintenance Service are as follows:

Regular Hours of Service (Pacific Time):  
 0900 to 1700 hours, Monday to Friday  
 (excluding Holidays observed by the U.S.  
 Federal Govt.)

After Hours Service (Pacific Time):  
 1701 to 0859 hours, Monday to Friday  
 Saturdays & Sundays  
 Holidays

E-mail received by:  
 Licensor staff at [support@coplogic.com](mailto:support@coplogic.com)

E-mail received by:  
 Licensor staff at [support@coplogic.com](mailto:support@coplogic.com)

**Incident/Request for Service Priority.** All support and maintenance incidents/ requests for service will be prioritized on the following basis:

Priority	Definition
A	Work is stopped to the point that critical business activities cannot continue. e.g. Loss of use of major features, file system corruption, data loss, security issue, system outage.
B	Issues or features of the product are preventing normal operations.
C	Non-critical features, for which a convenient or reasonable work around exists, or a feature which functions unexpectedly.  Slight inconvenience.

**Response Time.** The following table outlines the response times for each priority:

Priority	Response Time During Regular Hours of Service	Response Time During After Hours of Service
A	2 hours	6 hours from time of notifying the vendor contact(s) through voice mail or e-mail
B	(2) business days of Licensor receipt of verbal, written or electronic notice thereof and to correct the Priority B Issue by the Licensee’s reasonably requested date. If the Priority B Issue is not corrected within 2 business days of the original notification Licensor will provide the Licensee with reports of its efforts to correct the Priority B Issue as requested by Licensee.	Not available
C	As time permits basis or inclusion in the next scheduled update to the Licensed Product.	Not available

**1. Incident/Request for Service Reporting Procedure**

All problems, queries or requests for assistance must be made to Licensor at support@coplogic.com, during regular business hours of service.

Licensee must be prepared to leave a contact name, phone number, workstations affected, screenshots, a description of the problem/service and the impact.

Licensor's resources will work with the Licensee to diagnose the problem. After investigating the issue, Licensor and the Licensee will jointly categorize the problem into:

<b>Type of Problem</b>	<b>Ownership</b>
Licensee Server Hardware Problem	Licensee
Desktop Hardware Problem	Licensee
Licensee Network Communication	Licensee
Isolated Workstation Issue	Licensee
Licensee Database Performance/storage	Licensee
Application or software related	Licensor

Licensor will deal with problem/incident according to the priority assigned. In the case that a problem cannot be readily resolved, Licensor will attempt to identify a work around.

As soon as Licensor corrects an Issue, Licensor shall notify the Licensee that the Issue has been corrected by sending an electronic mail.

## **SCHEDULE B**

Coplogic DeskOfficer Online Reporting System  
Base Annual Fee: USD\$5,810 (Year 1 License/Support)

On-site Support: USD\$2,500 per day per Licensor personnel (includes travel time and expenses)

## COUNCIL COMMUNICATION

<b>Date</b> November 17, 2014	<b>Agenda Item</b> 11 c ii	<b>Subject</b> Purchase & Installation of ICP/Mass Spectrometer
<b>INITIATED BY</b> Littleton/Englewood WWTP Supervisory Committee		<b>STAFF SOURCE</b> Stewart H. Fonda, Director Philip A. Russell, Environmental Services Manager

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approval for purchase of Inductively Coupled Plasma Mass Spectrometer (ICP/MS) in November 1998.

Council approval of the 2014 Laboratory budget containing replacement of ICP/MS

### RECOMMENDED ACTION

The Littleton/Englewood WWTP Supervisory Committee met on October 16, 2014 and approved the purchase of an ICP/MS metals analysis system for the L/E WWTP Laboratory from Thermo Scientific in the amount of \$135,936.07. The Supervisory Committee recommends Council approve by motion the purchase of the ICP/MS from the lowest acceptable bidder, Thermo Scientific.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In early 2013 a plan was initiated to replace an aging analytical system and upgrade metals analysis capabilities in the L/E WWTP Laboratory. The system was 15 years old at the time and the manufacturer indicated support would be ending in the relatively near future. Permit requirements were also changing, mandating lower detection limits than the existing unit could measure. The plan was reviewed by the L/E WWTP Supervisory Committee during the budget review process in 2013 and approved for implementation in 2014.

In May, 2014, bids were requested from Perkin Elmer, Thermo Scientific, and Agilent corporations. The review process included bid reviews, existing equipment trade-in, warranty, manufacturer demonstrations (electronic), live instrument demonstrations, and user reference reviews. After a lengthy evaluation, all three instruments were determined to be acceptable. Thermo Scientific is the lowest bidder, including equipment trade-in value:

#### ICP-MS Bid Summary\*, November 3, 2014

Item	Perkin Elmer 350X	Agilent 7900	Thermo Scientific iCAP	Comments
Cost	\$207,564	\$217,148	\$137,308	
Trade In	\$(78,876)	\$(82,261)	\$(1,372)	
Warranty	\$12,696	\$15,480	\$0	Second year Warranty cost
<b>Final Cost</b>	<b>\$141,384</b>	<b>\$150,367</b>	<b>\$135,936</b>	

\*all costs taken from bid documents

The low bid of \$135,936 is below the budgeted amount of \$200,000 resulting in a net savings of \$64,064.

## **FINANCIAL IMPACT**

Purchase of the ICP/MS was included in the 2014 budget in the amount of \$200,000. As a capital purchase, the cost of this expenditure will be shared 50/50 by the Cities of Englewood and Littleton.

## **LIST OF ATTACHMENTS**

Specifications and Bid Analysis for an ICP-MS System  
Sales Quotation - Thermo Electron North America LLC  
Signed Contract from Thermo Scientific

## **ICPMS Selection – Evaluation**

### **General Information and Minimum Specifications:**

The Littleton/Englewood Wastewater Treatment Plant Laboratory will replace a Perkin-Elmer Elan 6000 ICP-MS system with a new ICP-MS system in 2014. The ICP-MS will be primarily used to analyze effluent wastewater, environmental water, and process control samples. Expected functional lifetime of the instrument will be >10 years. The proposed cost for full implementation of this system should be under \$200,000. The installed system will meet or exceed all specifications in the Bid.

The Inductively Coupled Plasma/Mass Spectrometer (ICP-MS) system shall consist of an inductively coupled plasma ion source, ion lenses, a quadrupole mass analyzer, ion detection system, collision/reactor cell, chilled water recirculator, automated sample handling system, and computer system. The ICP-MS will be provided as a completely operational unit including all necessary operational/analytical software. The instrument will be capable of performing automated, unattended multi-element, multi-method analysis with automatic, unattended safe shutdown after a sample run. The ICP/MS system will include safety interlocks throughout the system to insure safe shutdown automatically in case of loss of power, gas supply, or other system malfunctions. The vacuum system will be automatically isolated when the system shuts down.

The instrument manuals for operation and maintenance will be provided prior to installation as well as any and all tools required for daily operation and routine maintenance. The ICP-MS will be under full warranty for parts, labor and travel for at least one year starting on the date of final acceptance of the instrument.

The bidder shall address all specifications in the Bid and state whether the condition is met, or not met, with description and data provided where appropriate. If the vendor feels their product is different from, but superior to, the specifications listed, they are encouraged to comment on their rationale. The LEWWTP reserves the sole right to accept or reject the bid on the instrument.

**General Comments:**

	<b>Perkin Elmer 350X</b>	<b>Agilent 7900</b>	<b>Thermo Scientific iCAP</b>	<b>Comments</b>
Cost	\$207,564	\$217,148	\$137,308	
Trade In	\$(78,876)	\$(82,261)	\$(1,372)	Includes one year free warranty
Warranty	\$12,696	\$15,480	\$0	Second year warranty cost
Final Cost	\$141,384	\$150,367	\$135,936	
System Completeness	Y	Y	Y	
Manuals	Y	Y	Y	
Tools	Y	Y	Y	
Warranty	1 Yr	1 Yr	1 Yr; 2 Yrs with Trade In.	
Vendor Comments	You had one for 15+ years and loved it. Great Service.	Can handle really dirty samples. Requires minimal Sample handling.	Most flexible software. Requires least sample handling.	
Staff Comments	Hardware and Software not changed much in 16 years. Probaly most cumbersome to use of new instruments.	Nice instrument. Best presentation.	Preferred. Least chance of physical mis-adjustment. Best software. Easiest transfer. Three software Licenses.	
Bid Response Quality	Good	Left some things out. 10 Yr minimum not met.	Best Bid. Answered Question Most directly.	
References	Ourselves	Liked by lots of users. One PE user got rid of it after 3 yrs experience.	Like the instrument. Service just fine (when needed).	Newer instruments have not been in use long; therefore depend on some old user comments.

**Overall Evaluation:**

	Perkin Elmer	Agilent	Thermo	Weight	Comments
Hardware	4.5	4.8	5.0	15	
Our Samples	4.8	4.9	5.0	5	
Functionality	4.5	4.8	5.0	10	
Service	5.0	4.9	4.8	5	
Software	4.5	4.9	5.0	25	
Specifications	5.0	5.0	5.0	5	
Training	5.0	5.0	5.0	3	
References	5.0	4.8	4.8	5	
Delivery	5.0	5.0	5.0	2	
Warranty	5.0	5.0	5.0	5	
Support	5.0	4.8	4.9	5	
Staff Choice	4.0	4.5	5.0	15	Overwhelming preference was for the Thermo Scientific
Acceptable	Y	Y	Y		
Cost	128,688	134,887	125,465		
<b>Summary Score</b>	<b>4.59</b>	<b>4.82</b>	<b>4.98</b>		

**Comments and Final Selection:**

Of the three acceptable instruments, the Thermo Scientific instrument is considered the best fit for our Laboratory and is the choice of the Staff who will be using the instrument and that selection is supported by the Chief Chemist and Environmental Services Manager.

Over a two year span the Thermo Scientific instrument is also the least expensive choice.

# Sales Quotation

Thermo Electron North America LLC

Quote No.	Create Date	Exp. Delivery Time	Page
20474565	06/17/2014	* 6-8 wks ARO	1 / 7
Contact Info	Phone No.	Payment Terms	Valid To
Gregory Riegel	303-495-8404	NET 30 DAYS UPON INVOICE DATE	09/30/2014
Inco 1	Inco 2	Shipping Method	
DEST. PREPAY & ADD	PREPAY AND ADD	Exped Consol Def5Day	

1400 Northpoint Pkwy Ste 50,  
West Palm Beach, FL 33407-1976

Submitted To: 1032914

ENGLEWOOD CITY OF  
ALICIA STUTZ  
303-762-2412  
1000 ENGLEWOOD PARKWAY  
ENGLEWOOD CO 80110

Blu-ray DVD writer and 23" LCD 1080p HD monitor will be included

This quote valid with the trade-in of the PE Elan system

### To place an order

Contact Info Kenneth Schuldt  
Call: 608-276-5670  
Fax: 412-200-6542  
eMail:

This order is subject to instructions and Thermo Fisher's terms & conditions on the last page

Item	Material No.	Description	Qty	Unit Price	Total Price
10	0731220	iCAP Qc ICP-MS incl. Qtegra SW and CCT iCAP Qc Quadrupole ICP-MS Spectrometer	1 EA	149,400.00	149,400.00 USD

- Complete ICP-MS analysis system to include:
- Digital, solid state RF-generator with dynamic frequency impedance matching to the plasma at ~27MHz. Full PC control giving continuously variable power from 500W to 1600W.
  - Mass flow controllers (MFCs) for all plasma gases with the ability to add a maximum of two additional MFC's to the system.
  - Bench height, open architecture sample introduction system consisting of:
    - PFA concentric nebulizer with 400µL/min aspiration rate
    - Software controlled Peltier cooling (-10°C to +20°C) of the quartz cyclonic spray chamber for optimum stability during the analysis of aqueous and organic sample types
    - Close-coupled, compact, low pulsation, 12 roller, 4 channel mini-pump with metal free rollers and bubble sensor to protect from unnecessary loss of sample
    - Push-in, unshielded, single piece quartz torch with automatic gas connectivity. Supplied with high purity 2.5mm ID quartz self-aligning injector as standard. Compatible with a range of application specific injectors (different materials, internal diameters).
  - Computer controlled plasma positioning in all three dimensions, x, y and z.
  - Plasma TV- for simplified plasma optimization
  - Unique, front opening spectrometer interface cassette for easy access to all user maintainable components. Houses the sample and skimmer cones plus the extraction lens.
  - Ni sample and skimmer cones
  - Featuring proprietary "insert technology" on the skimmer cone for low backgrounds, high matrix tolerance and high ion transmission.
  - Fixed voltage, 3D focusing, maintenance free RAPID lens deflects ions by 90°, removing neutrals from the ion beam while maintained high ion transmission.
  - Proprietary QCell with Flatapole technology to ensure high ion transmission and low backgrounds to deliver enhanced analytical performance.
  - Collision cell technology (CCT) with ONE CCT gas MFC. Optimized interference reduction using He as collision gas ensures efficient interference removal. Unique design transmits light mass elements such as Li, Be & B allowing for full mass range He KED measurements. Compatible with additional CCT gases, e.g. O2 and 7% H2/He for

**Sales Quotation**

**Thermo Electron North America LLC**

<b>Quote No.</b>	<b>Create Date</b>	<b>Exp. Delivery Time</b>	<b>Page</b>
20474565	06/17/2014	* 6-8 wks ARO	2 / 7
<b>Contact Info</b>		<b>Phone No.</b>	<b>Payment Terms</b>
Gregory Riegel		303-495-8404	NET 30 DAYS UPON INVOICE DATE
<b>Inco 1</b>		<b>Inco 2</b>	<b>Shipping Method</b>
DEST. PREPAY & ADD		PREPAY AND ADD	Exped Consol Def5Day

1400 Northpoint Pkwy Ste 50,  
West Palm Beach, FL 33407-1976

To place an order  
 Contact Info Kenneth Schuldt  
 Call: 608-276-5670  
 Fax: 412-200-6542  
 eMail:

Item	Material No.	Description	Qty	Unit Price	Total Price
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analytical flexibility.

- High performance, full size, quadrupole mass analyzer, covering the mass range 4-290amu. Design delivers low abundance sensitivity and ultra-fast scanning.
- "Plug & Play" user replaceable, discrete dynode electron multiplier detector providing greater than 9 orders of dynamic range via simultaneous analogue/pulse counting detection.
- Windows 7 PC with at least the following specifications:  
 Intel i3 Quad-Core 3.1GHz Processor  
 Minitower Casing  
 4096 MB 800 MHz DDR2 RAM  
 2TB SATA-II Hard disk (RAID 1)  
 DVD-RW Drive  
 DVI-Add in card  
 10/100 LAN card  
 2 PCI and 1 PCI-Express expansion slots  
 1 parallel port  
 2 serial ports  
 12 USB 2.0 ports  
 On-board graphics card, up to 128 MB RAM  
 On-board (10/100/1000) LAN card  
 Black US English keyboard  
 Black Dell 6-Button USB Optical Mouse  
 English Windows 7 Professional (32Bit OS) Recovery DVD.  
 MS Office 2010 Professional (English)  
 English Documentation  
 Mouse and Keyboard Software in English  
 3-Year on-site guarantee  
 Norton Antivirus 2011 in English (15 Month Subscription)
- 22" TFT LCD Monitor
- Qtegra Control software platform.
- Full remote access to the software and instrument for remote monitoring of the system.

Promotion % ~~32,868.00~~ - USD  
 Net Value For Item 116,532.00 USD

20	4202467	KIT AUTOSAMPLER 50/60CETAC ASX520 CETAC ASX520 Autosampler - 50/60Hz	1 EA	6,330.00	6,330.00 USD
30	M3813-580-S	3813-580 REGULATOR WITH FITTING Modified 3813-580	1 EA	1,214.00	1,214.00 USD

# Sales Quotation

Thermo Electron North America LLC

<b>Quote No.</b>	<b>Create Date</b>	<b>Exp. Delivery Time</b>	<b>Page</b>
20474565	06/17/2014	* 6-8 wks ARO	3 / 7
<b>Contact Info</b>	<b>Phone No.</b>	<b>Payment Terms</b>	<b>Valid To</b>
Gregory Riegel	303-495-8404	NET 30 DAYS UPON INVOICE DATE	09/30/2014
<b>Inco 1</b>	<b>Inco 2</b>	<b>Shipping Method</b>	
DEST. PREPAY & ADD	PREPAY AND ADD	Exped Consol Def5Day	

1400 Northpoint Pkwy Ste 50,  
West Palm Beach, FL 33407-1976

To place an order  
 Contact Info Kenneth Schuldt  
 Call: 608-276-5670  
 Fax: 412-200-6542  
 eMail:

Item	Material No.	Description	Qty	Unit Price	Total Price
40	121123010000009	TF25 B A 208/60 T1 IPR 35micron SPCLFTG Water recirculator TF25 B A 208/60 T1 IPR 35micron SPCLFTG Power: 208-230V/60Hz. Uses air to cool the recirculator.	1 EA	5,350.00	5,350.00 USD
50	702-027400	<del>3-day ICP-MS training course at cust site</del> Training expires 12 months from purchase.  3-day ICP-MS training course at customer site	1 EA	6,000.00	6,000.00 USD
				Promotion ABS Net Value For Item	5,999.99 - USD 0.01 USD
60	701-845500	<del>UNITY PROMO EXT WARR ICAP Q</del> Unity Promotion Extended Warranty iCAP-Q	1 EA	7,000.00	7,000.00 USD
				Promotion ABS Net Value For Item	6,999.99 - USD 0.01 USD
70	3600812	SAMPLE CONE 4450 Ni Sample cone. 1.1mm diameter orifice for minimal deposition when analyzing high matrix samples. Solid Ni construction.	1 EA	392.00	392.00 USD
				SalesMgr Discount% Net Value For Item	58.80 - USD 333.20 USD
80	1311870	Skimmer iCAP Q NI for Insert Ni Skimmer Cone. 0.5mm orifice for high ion transmission and protection of the subsequent lens stack. Compatible with all available cone inserts.	1 EA	561.00	561.00 USD
				SalesMgr Discount% Net Value For Item	84.15 - USD 476.85 USD
90	702-027300	<del>2-day ICP-MS training course at cust site</del> Training expires 12 months from purchase.  2-day ICP-MS training course at customer site	1 EA	4,500.00	4,500.00 USD
				Promotion % Net Value For Item	900.00 - USD 3,600.00 USD

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100	SHIPPING/HANDLING	Shipping And Handling	1 EA	2,100.00	2,100.00 USD
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Total 135,938.07 USD

**CUSTOMER SUPPORT SERVICES INCLUDED WITH ICAP Q SYSTEM:**

- Installation by Thermo Fisher Service Engineers.
- "800" toll free access with the Thermo Fisher Technical Support Center for consultation with hardware and software applications.

**STANDARD INSTRUMENT WARRANTY**

iCAP Q System - One Year, parts, labor & travel

**THERMO ELECTRON NORTH AMERICA LLC TERMS AND CONDITIONS OF SALE**  
**UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

1. **GENERAL.** THERMO ELECTRON NORTH AMERICA LLC ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in this Agreement differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's document. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.
2. **PRICE.** All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.
3. **TAXES AND OTHER CHARGES.** Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.
4. **TERMS OF PAYMENT.** Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.
5. **DELIVERY; CANCELLATION OR CHANGES BY BUYER.** The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's shipping point. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller.
6. **TITLE AND RISK OF LOSS.** Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier, provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.
7. **WARRANTY.** Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment and ninety (90) days for all other products (the "Warranty Period"). Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale. Consumables are expressly excluded from this warranty.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

**8. INDEMNIFICATION.**

8.1 By Seller. Seller agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

## THERMO ELECTRON NORTH AMERICA LLC TERMS AND CONDITIONS OF SALE

8.2 By Buyer. Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.

9. SOFTWARE. With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 7 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

11. EXPORT RESTRICTIONS Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency: (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer shall, if requested by Seller, provide information on the end user and end use of any Item exported or to be exported by Buyer. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, or agents.

12. MISCELLANEOUS. (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Seller's manufacturing location, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the county and state of Seller's manufacturing location, in any action arising out of or relating to this Agreement and waives any other venue to which it may be entitled by domicile or otherwise. (c) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (d) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (e) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (f) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (g) Unless otherwise expressly stated on the Product or in the documentation accompanying the Product, the Product is intended for research only and is not to be used for any other purpose, including without limitation, unauthorized commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals. (h) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (i) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.

To place your order and expedite shipment, please 1) sign and date this quotation below; and 2) fax or e-mail it along with your Purchase Order to one of the addresses below.

Please note-all Purchase Orders must show the vendor name of Thermo Electron North America LLC:

Thermo Electron North America LLC  
5225 Verona Road  
Madison, WI 53711

Thermo Electron North America LLC  
1400 Northpoint Parkway, Ste 10  
West Palm Beach, FL 33407

Complete System Orders:

Fax: 412-200-6542

e-mail:

or

Parts or Service Orders:

Fax: 877-680-2565

e-mail:

Notes:

- A.) Items marked with an asterisk (\*) on the face of the quotation are non-Thermo Electron North America LLC products.
- B.) Prices, warranty, installation and service on the items quoted herein are available only in the United States and may not be otherwise assigned.
- C.) Tax exemption certificates or direct pay permits must be provided with the order documents, if applicable. If tax exemption documentation is not provided, buyer shall pay federal, state & local taxes in addition to the price stated on this quotation.
- D.) Buyer shall not export or re-export technical data or products supplied by Thermo Electron North America LLC in violation of applicable export regulation. Buyer who exports from the U.S. products purchased hereunder assumes all responsibility for obtaining required export documentation, authorization, and payment of all applicable fees.

As an authorized representative of the Buyer, your signature below creates an agreement to buy the products and services listed herein and your acceptance of the Seller's Standard Terms and Conditions of Sale included herein as the sole and exclusive terms for your purchase.

\_\_\_\_\_  
Buyer Signature

\_\_\_\_\_  
Date

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this 23 day of October, 2014, (the "Effective Date") by and between Thermo Electron North America LLC corporation ("Consultant"), and The City of Englewood, Colorado, a municipal corporation organized under the laws of the State of Colorado ("City").

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

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

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

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

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

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

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

**3. Performance of Services.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**(e) TABOR.** The parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period ending upon the next

succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

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

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

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

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

#### **11. Confidential Information.**

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

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

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

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

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

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

### **13. Warranties.**

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

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

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

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

### **(d) Compensation and Benefits.**

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

### **14. Indemnification.**

#### **(a) Consultant Indemnification.**

Consultant shall indemnify, defend and hold harmless City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the "City Indemnitees") from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable fees and disbursements of legal counsel and accountants), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature, suffered or incurred by a City Indemnitee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by Consultant or its representatives in the performance of Consultant's obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of Consultant contained in this Agreement.

(b) **Infringement.** Consultant will indemnify, defend, and hold City harmless from all Indemnifiable Losses arising from any third party claims that any Work Product or methodology supplied by Consultant infringes or misappropriates any Intellectual Property

rights of any third party; provided, however, that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on: (1) use of the Work Product in combination with products or services not provided by Consultant to the extent that such infringement or misappropriation would have been avoided if such other products or services had not been used; (2) any modification or enhancement to the Work Product made by City or anyone other than Consultant or its sub-consultants; or (3) use of the Work Product other than as permitted under this Agreement.

**(c) Indemnification Procedures.**

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

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

**15. Insurance.**

**(a) Requirements.** Consultant agrees to keep in full force and effect and maintain at

its sole cost and expense the following policies of insurance during the term of this Agreement:

(1) The Consultant shall comply with the Workers' Compensation Act of Colorado and shall provide compensation insurance to protect the City from and against any and all Workers' Compensation claims arising from performance of the work under this contract. Workers' Compensation insurance must cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, as well as the Employers' Liability within the minimum statutory limits.

(2) Commercial General Liability Insurance and auto liability insurance (including contractual liability insurance) providing coverage for bodily injury and property damage with a combined single limit of not less than three million dollars (\$3,000,000) per occurrence.

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

(4) Employee Dishonesty and Computer Fraud Insurance covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Consultant personnel, acting alone or with others, in an amount not less than one million dollars (\$1,000,000) per occurrence.

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

**(c) Certificates.** Consultant shall provide City with certificates of insurance evidencing compliance with this Section 15 (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Certificates of

insurance will list the City of Englewood as an additional insured. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially change the insurance afforded under the above policies unless thirty (30) days' notice of such cancellation, reduction or material change has been provided to City.

**16. Rights in Work Product.**

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

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

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

**18. Complete Agreement.** This Agreement contains the entire agreement

between the parties hereto with respect to the matters covered herein.

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

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

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

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

**23. Notices.** Any notice provided pursuant to this Agreement shall be in writing to the parties at the addresses set forth below and shall be deemed given (1) if by hand delivery, upon receipt thereof, (2) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested or (3) one (1) day after deposit with a nationally-recognized overnight courier, specifying overnight priority delivery. Either party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other party hereto.

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

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

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

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

**28. Force Majeure.** If performance by Consultant of any service or obligation under this Agreement is prevented, restricted,

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

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

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

**31. Media Releases.** Except for any announcement intended solely for internal distribution by Consultant or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Consultant, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Consultant or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of City, shall

be coordinated with and approved in writing by City prior to the release thereof. Consultant shall not represent directly or indirectly that any Services provided by Consultant to City has been approved or endorsed by City or include the name, trade mark, or symbol of City on a list of Consultant's customers without City's express written consent.

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

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

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

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

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

program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

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

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

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

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

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

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

CITY OF ENGLEWOOD, COLORADO

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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

Thermo Electron North America LLC

\_\_\_\_\_  
(Consultant Name)

1400 Northpoint Parkway, Suite 10

\_\_\_\_\_  
Address

West Palm Beach, FL 33407

\_\_\_\_\_  
City. State. Zip Code

By: \_\_\_\_\_  
(Signature)

Thomas Norman

\_\_\_\_\_  
(Print Name)

Title: Contracts Manager

Date: 10/23/2014

Per attached addendum to Professional Service Agreement.

**ADDENDUM TO  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN**

**Thermo Electron North America LLC,  
a part of Thermo Fisher Scientific (Seller)  
AND  
The City of Englewood, Colorado (Buyer)**

Notwithstanding anything contained in the above-referenced Agreement for Services to the contrary, including without limitation any terms and conditions contained in, attached to or referenced in Buyer's purchase order (the "Agreement"), this Addendum shall govern the rights and obligations of the parties hereto and shall prevail in the event of a conflict between this Addendum and the Agreement.

1. Unless otherwise set forth in Seller's quotation for the Services, (i) shipping terms applicable to parts used for provision of Services are FOB Origin, with shipping charges prepaid and added to the invoice and title and risk of loss of such parts transferring to Buyer when the parts are handed over to the carrier at Seller's facility; (ii) pricing excludes all applicable taxes, duties, shipping and handling; (iii) payment terms are Net 30; (iv) the order may not be changed or cancelled without Seller's prior consent; and (v) no acceptance, inspection, right of rejection or right of return terms shall apply.
2. In Section 3(a) the word "manufacturer's" is inserted after the words "consistent with the" in the first sentence.
3. Section 13(b) is deleted in its entirety and replaced with Seller's Standard Warranty language as follows:

Seller will maintain and/or repair those instruments covered under this Service Agreement to ensure they operate within manufacturer's standard product specifications as determined by Seller within the 48 contiguous United States and the District of Columbia, Monday through Friday (excluding Seller holidays) during the hours of 8:00 a.m. to 5:00 p.m. local standard time ("Normal Hours") during the term of this Agreement. The instruments must be operated according to the manufacturer's supplied Operator's Manual(s), and any malfunction must be immediately reported to Seller. Service calls requested outside of Normal Hours and service of any items not identified in Seller's quotation will be billed at Seller's standard rates for service, travel or move, labor and parts in effect at the time of request. Seller may provide various levels of Service at the Buyer's site(s), which shall be provided in accordance with the details contained in the Seller's quotation.

Seller's sole obligation under this Agreement is to provide Service as described above. SELLER MAKES NO, AND DISCLAIMS ALL, WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO ANY PRODUCTS, GOODS OR SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AND NONINFRINGEMENT.

4. ~~Subject to the limitations set forth in the State of Colorado Statutes relating to governmental agencies,~~ Seller agrees to indemnify, defend and save Buyer, its officers, directors, employees, agents and representatives harmless from all third-party losses, expenses, demands and claims made against Buyer, its officers, directors, employees, agents or representatives because of any bodily injury, death or tangible property damage to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives in connection with the performance of Seller's obligations under this Agreement.

Further, in the event of any action (and all prior related claims) brought against Buyer based on a claim that any Products provided by Seller to Buyer under this Agreement infringe any valid U.S. patent, copyright or trade secret, Seller shall defend such action at Seller's expense and pay all costs and damages finally awarded in such action or settlement which are attributable to such claim. Notwithstanding anything to the contrary contained herein, Seller shall not have any liability to Customer to the extent that any infringement or claim thereof is based upon (i) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (ii) compliance with Buyer's designs, specifications or instructions, (iii) use of the Product in an application or environment for which it was not designed or (iv) modifications of the Product by anyone other than Seller without Seller's prior written approval. Notwithstanding the above, Seller may, at its discretion and at its own expense, (a) procure for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY AND BUYER'S SOLE REMEDY WITH RESPECT TO INFRINGEMENT OR ALLEGED

**INFRINGEMENT BY THE PRODUCTS AND WORK OF PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF THIRD PARTIES.**

With respect to the claims described above for which Seller has agreed to indemnify, defend and hold harmless Buyer (the "Claim(s)"), (i) Buyer shall immediately notify Seller of such Claims; (ii) Seller shall have the option to assume sole control of the defense of any such Claims and all negotiations for their settlement or compromise; and (iii) Buyer shall cooperate fully with Seller in the defense, settlement or compromise of any such Claims.

5. THE TOTAL LIABILITY OF SELLER UNDER THIS AGREEMENT SHALL NOT EXCEED THE PURCHASE PRICE PAID BY BUYER TO SELLER FOR THE PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY. SELLER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF GOODWILL), REGARDLESS WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

6. Section 15 is deleted in its entirety and replaced with Seller's Standard Insurance language as follows: "Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth below with insurance companies rated A or better by "A.M. BEST" rating services. Insurance includes (a) Commercial General Liability (CGL) insurance for a limit of \$2,000,000 (two million) for each occurrence and \$4,000,000 (four million) in the aggregate, (b) Statutory workers' compensation and employer's liability insurance for a limit of \$1,000,000 (one million), (c) Automobile liability of \$2,000,000 (two million) and (d) Excess/Umbrella \$5,000,000 (five million). Seller's CGL and Automobile Liability policies will name the Buyer as an additional insured to the extent of Seller's negligence. No policy will include a waiver of subrogation. Insurance coverage shall not be materially changed without thirty-(30) day advance notification to Buyer from carrier and if requested by Buyer, certificates of insurance shall be furnished from its carrier evidencing the foregoing coverage. Such evidence of insurance shall be provided by using the standard ACORD form."

7. Seller retains all rights in, title to and ownership of (i) any and all software provided to Buyer under this Agreement, which is licensed, not sold, to Buyer, solely for the purposes of Buyer's use and operation of the Products; and (ii) all services deliverables provided by Seller under this Agreement, whether related to Products or otherwise.

8. Seller may assign this Agreement at any time to an affiliate or pursuant to a merger, acquisition or sale of its business or assets.

**The City of Englewood, Colorado**

**Thermo Electron North America LLC, a part of  
Thermo Fisher Scientific**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

Thomas Norman  
\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

10/23/2014  
\_\_\_\_\_  
Date