

**Agenda for the
Regular Meeting of the
Englewood City Council
Monday, April 6, 2015
7:30 pm**

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

1. Call to Order.
2. Invocation.
3. Pledge of Allegiance.
4. Roll Call.
5. Consideration of Minutes of Previous Session.
 - a. Minutes from the Regular City Council Meeting of March 16, 2015.
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. James Jordan, President of the Rocky Mountain Railroad Heritage Foundation will be present to discuss fee waivers for use of Hampden Hall and the Community Room or use of the Malley Center for a Symposium on May 2, 2015.
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.

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.

8. Communications, Proclamations, and Appointments.
 - a. A proclamation declaring April 17, 2015 as Arbor Day.

9. Consent Agenda Items
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 8 – Recommendation from the Parks and Recreation Department to adopt a bill for an ordinance approving an agreement with Broken T Partners, LLC to operate the Broken Tee Golf Course Indoor Training Center and golf lessons for all patrons. **Staff Source: Jerrell Black, Director of Parks and Recreation and Bob Spada, Golf Operations Manager.**
 - b. Approval of Ordinances on Second Reading.
 - c. Resolutions and Motions.
 - i. Recommendation from the Finance and Administrative Services Department to approve a resolution authorizing the appropriation of funds to hire an events coordinator for the 2015 Fourth of July Family Festival and Fireworks. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Services.**
 - ii. Recommendation from the Littleton/Englewood Wastewater Treatment Plan Supervisory Committee to approve, by motion, a support agreement for Instrumentation and Controls equipment that control and monitor plant processes and collect data. Staff recommends awarding the contract to Am West Controls in the amount of \$48,000. **Staff Sources: Stewart H. Fonda, Director of Utilities and Cindy Goodburn, L/E WWTP Business Services Manager.**
 - iii. Recommendation from the Littleton/Englewood Wastewater Treatment Plan Supervisory Committee to approve, by motion, a support agreement for routine, non-routine and emergency programming services to support the SCADA system Human Machine Interface software the controls, monitors plan processes and collects data. Staff recommends awarding the contract to Am West Controls in the amount of \$48,000. **Staff Sources: Stewart H. Fonda, Director of Utilities and Cindy Goodburn, L/E WWTP Business Services Manager.**
 - iv. Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to approve, by motion, an extension of a professional services agreement with Brown and Caldwell for engineering and environmental services in an amount not to exceed \$40,000. **Staff Sources: Stewart H. Fonda Director of Utilities and Chong Woo, Engineering and Maintenance Manager.**

10. Public Hearing Items. (None Scheduled)

11. Ordinances, Resolutions and Motions.

- a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 9 – Recommendation from the City Clerk’s Office and Election Commission to adopt a bill for an ordinance amending the Englewood Municipal Code relating to reapportionment of the City Council Districts within the City of Englewood. **Staff Sources: Frank Grylewicz, Director of Finance and Administrative Services and Loucrishia A. Ellis, City Clerk.**
 - ii. Council Bill No. 10 – Recommendation from the Parks and Recreation Department to adopt a bill for an ordinance authorizing an Intergovernmental Agreement with South Suburban Parks and Recreation District for an easement agreement at the #5 Big Dry Creek Trailhead. **Staff Sources: Jerrell Black, Director of Parks and Recreation and Dave Lee, Open Space Manager.**
- b. Approval of Ordinances on Second Reading.
- c. Resolutions and Motions.
 - i. Recommendation from the Finance and Administrative Services Department to approve, a resolution authorizing the purchase of physical storage for information technology infrastructure. Staff further recommends awarding the contract to Peak Industries in the amount of \$99,896.00. **Staff Source: Frank Grylewicz, Director of Finance and Administrative Services.**
 - ii. Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to approve, by motion, an Information Technology Network Infrastructure Upgrade Project for the replacement of network switches and related software and maintenance support. Staff recommends awarding the contract to 24/7 Networks in the amount of \$204,000 shared between the Cities of Littleton and Englewood. **Staff Sources: Frank Grylewicz, Director of Finance and Administrative Services and Kenny Hollis, Information Technology Manager.**
 - iii. Recommendation from the Public Works Department to approve, by motion, the purchase of a Sanitary Sewer Flusher Truck. Staff recommends awarding the bid to the lowest acceptable bidder, Faris Machinery Company, in the amount of \$182,650.00. **Staff Source: Pat White, Fleet Manager.**
 - iv. Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to approve, by motion, a construction contract for the Gate Replacement Project located at the Littleton/Englewood Wastewater Treatment Plant. Staff recommends awarding the contract to the lowest reliable and responsive bidder, RN Civil Constructors Inc., for a total cost of \$279,139.50. **Staff Sources: Stewart H. Fonda Director of Utilities and Chong Woo, Engineering and Maintenance Manager.**

12. General Discussion.
 - a. Mayor's Choice.
 - b. Council Members' Choice.
 - i. Continued from the March 16, 2015 City Council meeting: Discussion of Motion to approve waiving the fees for use of Hampden Hall and the Community Room by Rocky Mountain Railroad on May 2, 2015.
13. City Manager's Report.
14. City Attorney's Report.
15. Adjournment.

Rocky Mountain Railroad Heritage Society

Dedicated to Preserving of our Historic Legacy

6 a

PO Box 969
Englewood, CO 80151
303-269-9768

March 18th, 2015

The Honorable Randy Penn
Mayor of the City of Englewood
1000 Englewood Parkway
City Manager's Office
City Hall
Englewood, Colorado

Dear Mayor Penn;

My deep apologies for not speaking before the City Council this past Monday night, I had every intention of doing so, and would have, if I hadn't been in extreme pain from the neuropathy which I am suffering from.

In any case, as I have been asked to provide additional information, so that the council can study my request, I am submitting the following information to you. If you would be kind enough to see that it is delivered to the right parties, I would appreciate it greatly.

First, as I do not think that the council has the slightest idea of what the Rocky Mountain Railroad Heritage Society is, I shall endeavor to explain. We are a group of individuals and associations/societies that wish to see the history of railroading in the Rocky Mountain States saved and preserved. We have over 500 members (ours and the different associations we are partners with, ours alone has over 150) that reside in the states of Colorado, Wyoming, Kansas, Wisconsin, Montana, Washington State, Nebraska, and Montana. We come from all walks of life, Doctors, artists, railroad enthusiasts, retirees, farmers, politicians, wine growers, and many, many other persons from many different walks of life.

We are currently trying to save 12 depots and one railroad pump house in Colorado. In addition we have acquired a very historical train engine, which will be restored by December of 2016, and donated to a museum or non-profit society in Southwestern Colorado after restoration.

As you can see I have provided a copy of our Mission Statement that states what our mission goals are. In addition I have also enclosed a copy of our 501 status, a copy of our last couple of newsletters, and tentative agenda for the Symposium.

If at all possible we would like to request that we be allowed to occupy and use both the Hampden Hall and Community Room on the day of May2nd. This would be for our annual Symposium. It should bring at least 100 persons to Englewood, and a goodly portion of them come from outside the metro area. We are hoping for 150 persons but are using the figure of a 100 to facilitate projecting the income that would come from such a gathering.

We are desirous of putting on an art exhibit, by artists who paint and photograph trains. (We have borrowed the idea from the Cheyenne Depot, which holds a railroad artists exhibit and train show, each May and draws an average of 20,000 persons over a two day period. That is 20,000 persons who spend money in Cheyenne). In addition we will be holding a forum presentation in Hampden Hall that will discuss the endangered railroad structures we are trying to save. Plus there will be talks given on the unique history of railroading in Colorado.

Our key note speaker shall be Jennifer Orrigo Charles, who is the project Manager for Endangered Places, with Colorado Preservation, Inc.,

Plus there will be many other persons, including the deputy Director for the Cheyenne Depot, which was restored at a cost of \$12,000,000.00, and has since paid for itself by the number of visitors that have toured the museum and spent money in the gift store. The main group of persons who attend will be buying lunch, purchasing gas and spending money in Englewood, as they come from all over Colorado, New Mexico, Wyoming and some of the other surrounding states. These figures were from last year's Symposium here in Englewood.

The itinerary is as follows: Registration at 0800 Hours

First Talk will be given starting at 0830 hours

Lunch Break at 1200 Hours

Afternoon Secession will begin at 1300 Hours

Symposium ends at 1730 Hours

There will be a \$15.00 Admission fee for the Symposium and no fee for the art exhibit. Members of the Society will be admitted at half price.

In addition there will be a silent auction, and many different prizes **given** out during the day. The Grand prize will be Amtrak Tickets to the Wine Festival in Grand Junction in August, plus hotel accommodations and meals included.

As we expect 10 to 20 artists to be showing their art work, that is why we need to access either the Community Hall or the Malley Center. The Malley Center feels that they would like us to hold the event at that location, as it would show case the Malley Center via the media.

We have requested that KCNC Channel 4 be a sponsor as they were one last year and the ties between Colorado Preservation, Inc. are strong. We will be showing the "Most Endangered Places" video of the railroad station portion of the film during two of our speakers' presentations.

We have requested the following organizations/companies in Englewood to be sponsors.

The Englewood Chamber of Commerce

Café 180

The Outdoorsman's Attic

Access Printing

Farris Survival

Nixon's Coffee

King Soopers

We feel that this can only help Englewood by holding the Symposium here. This is the only event we hold in the same place each year. Our Board of Directors meetings are held in a different location each quarter, our "Annual Membership Meeting" is likewise held in a different location in Colorado.

I hope that this answers any and all questions about our organization, and the request for space for our Symposium. Please feel free to call me if you have any questions prior to the City Council Meeting on April 6th.

Thank you. /

Jim Jordan

President

Rocky Mountain Railroad Heritage Society

ROCKY MOUNTAIN
RAILROAD HERITAGE SOCIETY

presents a symposium on

Historic Railroading



Saturday & Sunday - April 12 & 13, 2014 - from 9am-3pm

Daily Admission \$20 or \$25 for both days

Hampden Hall - 1000 Englewood Parkway - Englewood, CO 80110

RMRHS - PO Box 969 - Englewood, CO 80151 - 303-269-9768 or 303-840-2150 for more information



Memorandum

City Manager's Office

TO: Mayor Penn and Members of City Council
THROUGH: Eric A. Keck, City Manager
FROM: Lindsay von Colditz, Executive Assistant
DATE: April 2, 2015
SUBJECT: Estimated In-Kind Costs – Rocky Mtn. Railroad Heritage Foundation

At the December 15, 2014 Regular meeting City Council approved a resolution authorizing an in-kind donation to the Rocky Mountain Railroad Heritage Foundation in the amount of \$675.

The president of the foundation, James Jordan, recently requested the use of the Community Room in addition to the use of Hampden Hall. The allocation of \$675 covers the cost of Hampden Hall for the tentative event scheduled on Saturday, May 2, 2015.

An estimate of 11.5 hours to accommodate set up and take down for this event in the Community Room would require an additional estimated waiver of a \$2,400 rental fee. At this time the Community Room is available for rent. Mr. Jordan had asked for use of the atrium for an exhibit during this event. This is not possible as the Museum of Outdoor Arts has an exhibit on display on the proposed date.

In the letter dated March 18, 2015 Mr. Jordan proposed use of the Malley Senior Center as an alternative to Hampden Hall and the Community Room. After conferring with Malley Center staff the facility is available for use on the proposed date at \$65 per hour at the resident, non-profit rate. Using the set-up and take down time in addition to the event itself, the estimated fee waiver would be \$750. The 2015 in-kind donation could be applied to the use of the Malley Center.

This matter was discussed at the March 16, 2015 Council meeting. I hope this information helps to clarify costs for this event.



PROCLAMATION

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

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

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

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

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

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

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

WHEREAS, the City of Englewood, Colorado has been recognized for 30 consecutive years as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting ways; and

WHEREAS, the State of Colorado will celebrate Arbor Day on April 17th, 2015;

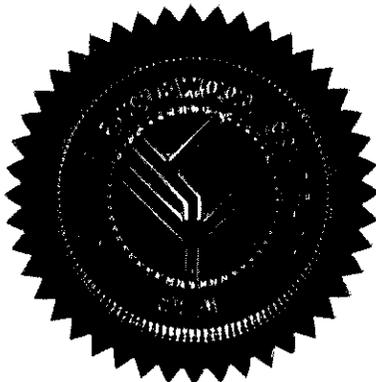
NOW THEREFORE, I, Randy P. Penn, Mayor of the City of Englewood, Colorado, hereby recognize

ARBOR DAY

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

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

GIVEN under my hand and seal this 6th day of April, 2015.



Randy P. Penn, Mayor

COUNCIL COMMUNICATION

Date April 6, 2015	Agenda Item 9 a i	Subject Broken Tee Golf Course Indoor Training Center
Initiated By Department of Parks and Recreation	Staff Source Bob Spada, Golf Operations Manager Jerrell Black, Director of Parks and Recreation	

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

2008 Approval of Learning Center contract - McGetrick Golf Academy
2010 Approval of Learning Center contract - Broken T Partners LLC

Staff discussed the proposed agreement with Broken T Partners LLC for operation of the Broken Tee Golf Course Indoor Training Center and golf lessons at the March 16, 2015 Study Session.

RECOMMENDED ACTION

Staff recommends that City Council adopt a bill for an ordinance approving an agreement with Broken T Partners LLC to operate the Broken Tee Golf Course Indoor Training Center and golf lessons for all patrons.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Broken Tee Golf Course indoor training center was part of the clubhouse expansion in 1995. Six hitting bays with two computer swing analyzers were put in place.

In December of 2007, McGetrick Golf Academy (MGA) and Ortega Golf both expressed an interest in offering lesson programs through the indoor teaching facility. Each group submitted a proposal and met with staff on numerous occasions. Interviews were conducted and MGA was selected. MGA was selected for the following reasons: higher revenue stream from lease payment, free instruction to our Hole-N-One junior golf program and discounted lessons to all Englewood residents.

McGetrick Golf Academy terminated their contract with the City effective November 30, 2009. Steve Buretz and Kevin Hollern, investors with MGA, approached staff and proposed a new agreement that included many of the same benefits plus new program ideas. These benefits include discounted lessons to Englewood residents, emphasis on junior golf, improvements to the facility which includes a golf simulator which allows for indoor play and lessons, and seeking and providing sponsorships for the Hole-N-One program. These partners changed the name to The Metagolf Golf Academy and doing business as Broken T Partners LLC. Steve Buretz is no longer involved; however, Kevin Hollern is handling all business operations.

The current lease payment is \$17,500 plus utilities of \$7,200 for a total of \$24,700 annually. The lease payment will be \$20,000 in the new contract and no utility fee. The financial reduction is \$4,700. Though this is a reduction in revenue, staff believes that Broken T Partners, LLC brings great value and is a strong asset to the golf course and the golfing public.

FINANCIAL IMPACT

The term of the agreement is for a one (1) year lease with one (1) year renewal options with the agreement by both parties. Broken Tee Golf Course will receive \$20,000 annually. Broken T Partners LLC, will no longer pay for utility usage. This reduces the total revenue received by \$4,700.

LIST OF ATTACHMENTS

Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2015

COUNCIL BILL NO. 8
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF ENGLEWOOD AND BROKEN T PARTNERS LLC FOR OPERATING THE BROKEN TEE GOLF COURSE INDOOR TRAINING CENTER.

WHEREAS, the Englewood Golf Course indoor training center was part of the clubhouse expansion in 1995, consisting of 6 hitting bays with two computer swing analyzers; and

WHEREAS, in 2007 McGetrick Golf Academy was selected to offer lessons, programs through the indoor teaching facility and discounted lessons to all Englewood residents; and

WHEREAS, the City Council of the City of Englewood approved the McGetrick Golf Academy Learning Center contract by the passage of Ordinance No. 28, Series of 2008; and

WHEREAS, the City Council of the City of Englewood approved the Broken Tee Golf Learning Center contract by the passage of Ordinance No. 9, Series of 2010; and

WHEREAS, McGetrick Golf Academy decided to terminate their contract effective November, 2009; and

WHEREAS, Steve Buretz and Kevin Hollern, investors with McGetrick Golf Academy approached the City with a new agreement which included many of the same benefits that were in place plus new program ideas; and

WHEREAS, these benefits include discounted lessons to Englewood residents, emphasis on junior golf, improvements to the facility including a golf simulator which allows for indoor play and lessons and providing sponsorships for the Hole-N-One program; and

WHEREAS, the passage of this Ordinance will approve the Agreement to lease and manage the Training Center located at the Broken Tee Englewood; and

WHEREAS, the current lease payment is \$17,500 plus utilities of \$7,200 for a total of \$24,700 annually. The lease payment will be \$20,000 in the new contract and no utility fee. The financial reduction is \$4,700. Though this is a reduction in revenue, staff believes that Broken T Partners, LLC brings great value and is a strong asset to the golf course and the golfing public.

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

Section 1. The City Council of the City of Englewood, Colorado, hereby authorizes and approves the Agreement for the lease and management of the Training Center located at the Broken Tee Englewood between the City and Broken T Partners LLC, attached hereto as Attachment 1.

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

Introduced, read in full, and passed on first reading on the 6th day of April, 2015.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of April, 2015.

Published as a Bill for an Ordinance on the City's official website beginning on the 8th day of April, 2015 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 6th day of April, 2015.

Loucrishia A. Ellis

AGREEMENT

THIS AGREEMENT, hereinafter called "Lease", made and entered into this ____ day of _____, 20____, by and between the CITY OF ENGLEWOOD, a Colorado municipal corporation, hereinafter referred to as "City", and BROKEN T PARTNERS LLC, hereinafter referred to as "Trainer";

WITNESSETH:

WHEREAS, the City owns certain real property which is known as the Broken Tee Englewood Municipal Golf Course Clubhouse And Training Center, hereinafter called "Training Center", and located in the City of Sheridan; and

WHEREAS, City and Trainer previously entered into a lease in February 2010; and

WHEREAS, City and Trainer desire to enter into another lease for the management of the Training Center located at the Broken Tee Englewood Municipal Golf Course;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter appearing and of the payment of the monies hereinafter set forth, the parties hereto agree as follows:

Section 1. STATEMENT OF INTENT.

The purpose of this Lease is to provide video golf training, instruction, club fitting and club sales. The Trainer will not have exclusive right to all club sales.

Section 2. GRANT.

The City hereby agrees to allow the Trainer to use the area described in "Exhibit A" of the Englewood Clubhouse Training Center plus use of the driving range including use of range balls at no cost and practice areas for instruction and other related activities. There will be space on the driving range and practicing area designated for the Trainer. The Trainer will be using an agreed upon area for their lessons/programs; however, it is generally understood that the Trainer will use the western most located spaces on the range.

Section 3. DEFINITION OF PREMISES.

The "Leased Premises" as referred to herein is defined to be the Golf Clubhouse Training Center, which is owned by the City of Englewood, Colorado. See Exhibit "A", and portion of range as referred to in Section 2.

Section 4. TERM OF AGREEMENT.

The City hereby grants to Trainer the right to hold the Leased Premises pursuant to the terms of this Lease for a one (1) year Lease with three (4) one (1) year renewals with the agreement of both parties. If the Trainer intends to renew the contract they must inform the Director of Parks and Recreation ninety (90) days prior to termination of the Lease. The City shall inform Trainer of its decision through the Director of Parks and Recreation.

Section 5. USE OF THE PREMISES.

Trainer shall have the right to possession of the Leased Premises for the purpose of providing video golf training, instruction, club fitting, club sales and club repair. However, nothing in this Lease shall be construed to authorize that which is prohibited under United States, State or local law, ordinance, code or regulation.

Section 6. SERVICES.

All services provided by the Trainer shall be reviewed and approved by the Director of Parks and Recreation. The Trainer will provide lessons and clinics for the City. The City will continue to offer the Hole-N-One Program, Par 3 League, golf team and some lessons. The Trainer will provide lesson discounts for Englewood residents and Parks and Recreation sponsored programs.

Section 7. HOURS OF OPERATION.

- a) From May 1st through September 30th of each year, the Trainer shall provide golf instruction six (6) days per week and during these months shall be open each day to the public from 9:00 AM and shall remain open until 5:00 PM.
- b) During the months of October 1st through April 30th of each year, the Trainer shall provide video golf analysis five (5) days per week and during these months shall be open each day to the public at 9:00 AM and shall remain open until 5:00 PM.
- c) Nothing herein shall be construed as prohibiting the Trainer from being open for other hours in addition to those stated in Paragraphs "a" and "b" above. Trainer may close on Christmas Day and Thanksgiving.
- d) Trainer agrees to cooperate with the Golf Course Manager in scheduling golf meetings and events. In the event of any disagreement, the matter shall be referred to the Director of Parks and Recreation and his/her decision is final.
- e) Any adjustments to the hours of operation must be approved by the Director of Parks and Recreation or his designee.
- f) Trainer and or the City may temporarily close the Training Center for cleaning, construction and maintenance under a mutually agreed upon schedule.

Section 8. MAINTENANCE, REPAIR AND REPLACEMENT.

- a) The Trainer shall be responsible for repairs and/or replacement of all equipment associated with the leased premise. This does not include driving range equipment owned by the City of Englewood.

Section 9. CLEANLINESS GUIDELINES.

- a) All rules, regulations and guidelines required by the City of Englewood must be adhered to.
- b) All applicable local, state and Federal Government Acts and Regulations must be adhered to.
- c) Any specific guidelines established by the Director of Parks and Recreation must be adhered to.

Section 10. RENT.

- a) Trainer shall pay rent to the City:
 - i. Commencing on April 1, 2015, the Trainer shall pay \$20,000 per year, in accordance with the following schedule:
 - April through November: \$2,500 per month.
 - Rent can be prepaid anytime .
 - ii. Trainer will provide reasonable efforts to attain sponsorships for the Hole-N-One Jr. Program.

The aforesaid fixed rent payments shall be paid, per schedule above on the first day of each month or on the first Monday of each month if the first day falls on Saturday or Sunday.

A penalty fee of \$10.00 per day or part thereof shall be charged for each day or part thereof that the rent is past due, until 12:00 midnight on the 14th day past due. If the rent payment is not received by midnight on the 14th day past due, the Trainer shall be in violation of the terms of this Agreement, and subject to termination.

Section 11. UTILITIES.

Utilities will be paid for by the City of Englewood.

Section 12. PARKING FACILITIES.

- a) The existing parking facility adjacent to the Golf Course Clubhouse (hereinafter called "parking facility") shall be open for use by Trainer and its customers; such right of use of the said parking facilities shall be non-exclusive right.
- b) City shall at its own expense maintain the parking facility, which shall include snow removal when necessary.

Section 13. SIGNS.

Any signage for the leased premise shall be the sole responsibility of the Trainer. All signage must be approved by the Director of Parks and Recreation or his designee.

Section 14. ADDITIONAL FACILITIES AND EQUIPMENT.

Trainer shall have the right to install additional facilities and equipment with the consent of the Director of Parks and Recreation or his designee. Permanently attached fixtures or equipment shall become property of the City upon termination of the lease. Permanently attached fixtures are considered to be any item that causes damage to the building upon removal. In no event will a golf simulator be considered a permanently attached fixture.

Section 15. SECURITY.

Trainer is responsible for the obtaining of theft insurance covering equipment, supplies and personal property of Trainer. Such policies shall contain no right of subrogation against the City. Trainer shall provide a copy of the policy to the Director of Parks and Recreation. Additional costs for security, as required by the Director of Parks and Recreation or his designee, shall be the responsibility of the Trainer.

Section 16. PERSONNEL.

- a) Trainer shall at its own expense employ such qualified personnel as may be necessary for the training operation and shall require all personnel to be clean, polite, and courteous in their transactions with the public.
- b) Trainer shall give personal supervision and direction to the operation of the Training Center and, when absent, keep competent personnel in charge.
- c) City shall not be responsible for the wages or salaries of any employee or representative of Trainer, nor for any debts, liabilities or other obligations of Trainer.
- d) Neither the Trainer nor the employees who perform services pursuant to the Agreement shall be considered employees, servants or agents of the City of Englewood as a result of the performance of services under the Agreement.
- e) Violence or acts prohibited by law committed by the Trainer and employees of Trainer shall cause immediate termination of the Lease, if not resolved to the satisfaction of the City, after notification.

Section 17. LICENSES AND PERMITS.

Trainer, at its own expense, shall secure any and all licenses and permits for services.

Section 18. INSURANCE/INDEMNIFICATION.

- a) Trainer agrees to furnish to City a performance bond or letter of credit in the amount of Ten Thousand Dollars (\$10,000.00) guaranteeing faithful performance by Trainer of all payment of rent, utility costs, etc., along with all terms, covenants, and conditions herein contained and compliance with applicable City ordinances. Said bond shall be furnished within 30 days of signed agreement and shall remain in effect for the term of the lease.
- b) Trainer shall at Trainer's own expense keep in full force and effect during the term of this Lease statutory Worker's Compensation coverage if required. A copy of the certificates of insurance shall be sent to the City in care of the Department of Risk.
- c) INDEMNIFICATION. Trainer agrees to indemnify and hold harmless the City of Englewood, its Council, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss or damage, of any kind whatsoever, which arise out of or are in any manner connected with Trainer, if such injury, loss, or damage is caused in whole or in part by the act, omission, or other fault of Trainer, or any officer or employee of Trainer. Trainer agrees to investigate, handle, respond to, and to provide defense for any such liability, claims, or demands at the sole expense of Trainer, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.
- d) INSURANCE.
 - i. Trainer is to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all obligations assumed by Trainer pursuant to this Lease.
 - ii. Trainer shall procure and continuously maintain the minimum insurance coverage's listed below, with the forms and insurers acceptable to the City of Englewood. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
 - (A) General liability and errors and omissions insurance with minimum limits of one million dollars (\$1,000,000) per each person and one million dollars (\$1,000,000) per each occurrence, plus an additional amount sufficient to pay related attorneys' fees and defense costs.
 - iii. Fire and Extended Coverage Insurance shall be provided by the City on the ClubHouse building, and extended buildings included in Leased Premises, only. Trainer shall be solely responsible for securing and paying for insurance coverage on those improvements and contents belonging to Trainer located in or on the Leased Premises. Trainer hereby expressly waives any cause of action or right of recovery, which Trainer may hereafter have against City for any loss or damage to Leased Premises or to any contents or improvements thereto belonging to either party, caused by fire, explosion, or theft.

- iv. The policies required above shall be endorsed to include the City of Englewood and the City of Englewood's Council and employees as additional insured. Every policy required above shall be primary insurance, and any insurance carried by the City of Englewood, its officers, or its employees, or carried by or provided through any self-insurance pool of the City of Englewood, shall be excess and not contributory insurance to that provided by Trainer.
- v. The certificate of insurance provided to the City of Englewood shall be completed by the Trainer's insurance agent as evidence that policies providing the required coverage's, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City of Englewood prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverage's afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to the City of Englewood. The completed certificate of insurance shall be sent to:

City Clerk
City of Englewood
1000 Englewood Parkway
Englewood, Colorado 80110

A certified copy of any policy shall be provided to the City of Englewood at its request. A copy of the certificates of insurance shall be sent to the City in care of the Department of Risk, 1000 Englewood Parkway, Englewood, Colorado 80110.

- vi. The parties hereto understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$1,000,000 per person and \$1,000,000 per occurrence) 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 the parties, their officers, or their employees.

A certificate evidencing said insurance policy shall be kept on file with the Department of Risk of the City and shall have a provision that the same shall not be altered, amended, or canceled without first giving written notification thereof to the City thirty days prior thereto. Trainer further agrees to indemnify the City for any claims brought against the City because or on account of Trainer's operation. A copy of the certificates of insurance shall be sent to the City in care of the Department of Risk.

Section 19. FIRE OR NATURAL DISASTERS.

In the event fire or natural disaster renders the Club House and its Training Center facilities inoperable, the Trainer shall be released from the terms of compensation to be paid the City until such time as the Club House and its Training Center facilities are declared open and operable by the City. If in the event such Training Center facilities are not open and operable within a period of thirty (30) days from the time of such disaster, Trainer has the right to terminate its contract and Lease with the City under Section 20, Termination of Lease, contained herein.

Section 20. TERMINATION OF LEASE.

- a) This Lease may, at any time, be terminated by either party upon ninety (90) days' written notice to the other without cause.
- b) The parties may terminate the Lease by giving thirty (30) days' written notice of a violation of paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, provided Trainer has been given notice of violation, Trainer has neglected to cure such violation.
- c) Violation of paragraph 19 shall be grounds for immediate termination of the Lease.

Section 21. DELIVERY AND REMOVAL UPON TERMINATION.

Trainer will deliver the premises at the termination of this Lease in as good condition and state of repair as when received, except for ordinary wear and tear or loss or damage caused by an act of God. Upon termination, Trainer shall have the right to remove any supplies or personal property belonging to or installed by the operator, subject, however, to any valid lien or claim, which City may have for unpaid fees. Provided also that if said removal causes any damage to the premises, said Trainer will repair the same in a proper and satisfactory manner at its own expense.

Section 22. This Agreement may not be assigned and a sublease shall not be allowed without the written consent of both parties. Independent contractors are separate from this Section.

Section 23. ATTORNEY FEES PREVAILING PARTY.

In the event that either party to this Agreement shall commence any action against the other party arising out of or in connection with this Agreement, or contesting the validity of this Agreement or any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and related costs, fees and expenses incurred by the prevailing party in connection with such action or proceeding.

Section 24. NOTICES.

All notices, demands and communications hereunder shall be personally served or given by certified or registered mail, and:

- a) If intended for City shall be addressed to City at:

City of Englewood
Attention: Director of Parks and Recreation
1000 Englewood parkway
Englewood, Colorado 80110

with a copy to:

City of Englewood
Attention: City Attorney
1000 Englewood Parkway
Englewood, Colorado 80110

- b) If intended for Trainer shall be addressed to Trainer at:

Broken T Partners LLC
Attention: Manager [Kevin Hollern]
2101 W. Oxford Avenue
Englewood, CO 80110

- c) Any notice given by mail shall be deemed delivered when deposited in a United States general or branch post office, addressed as above, with postage prepaid, or when served personally at the applicable address.

Section 25. ENTIRE AGREEMENT.

This Lease, together with the Exhibit A attached hereto:

- a) Contains the entire Lease between the parties; and
b) Shall be governed by the laws of the State of Colorado.

Section 26. SEVERABILITY.

If any clause of provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 27. CAPTIONS.

The caption of each Section is added as a matter of convenience only and shall not be considered in the construction of any provision or provisions of this Lease.

Section 28. BINDING EFFECT.

All terms, conditions and covenants to be observed and performed by the parties hereto shall be applicable to and binding upon their respective heirs, administrators, executors, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

CITY OF ENGLEWOOD, COLORADO
"City"

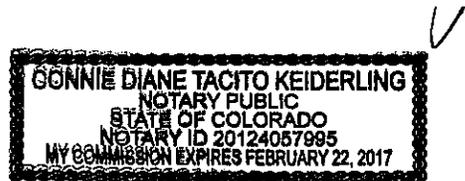
By: _____
Jerrell Black, Director of Parks & Recreation

BROKEN T PARTNERS LLC
"Trainer" / /

By _____
STATE OF Colorado,
COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2015,
by Kevin M. Hollern as _____ of Broken T Partners LLC.

My Commission expires: 2/22/17



COUNCIL COMMUNICATION

Date: April 6, 2015	Agenda Item: 9 c i	Subject: Resolution for Supplemental Appropriation to Fund the Hiring of an Events Coordinator for the Fourth of July Family Festival and Fireworks
Initiated By: Finance and Administrative Services Department		Staff Source: Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council discussed the Fourth of July Festival and Firework Event at the March 16, 2015 Study Session. City staff requested Council consider hiring an events coordinator to ensure this event is planned and coordinated in 2015 in light of the recent retirement of the staff coordinator who coordinated efforts in the past. The pending contract with Denver Fire limits internal options to staff the coordination position.

RECOMMENDED ACTION

Staff recommends City Council approve the attached Resolution appropriating funds to hire an events coordinator for the 2015 Fourth of July Family Festival and Fireworks.

SOURCES AND USES OF FUNDS:

GENERAL FUND:

SOURCE OF FUNDS:

Unassigned Fund Balance \$10,000

USE OF FUNDS:

City Manager's Office: Professional Services \$10,000

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Council discussed and determined that due to the retirement of the past coordinator of this event and the pending contract for fire protection services, the City needs to hire someone to coordinate the numerous duties involved with this event.

FINANCIAL IMPACT

The Unassigned Fund Balance in the General Fund will be reduced \$10,000.

LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. _____
SERIES OF 2015

A RESOLUTION APPROVING A SUPPLEMENTAL APPROPRIATION TO THE 2015 BUDGET TO FUND THE HIRING OF AN EVENTS COORDINATOR FOR THE FOURTH OF JULY FAMILY FESTIVAL AND FIREWORKS.

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

WHEREAS, the 2015 Budget was submitted and approved by the Englewood City Council on November 3, 2014; and

WHEREAS, the Englewood City Council discussed the Fourth of July Festival and Firework Event at the March 16, 2015 Study Session; and

WHEREAS, with the recent retirement of the employee who coordinated efforts in the past as well as the pending contract for fire protection services with Denver Fire Department, Englewood is hiring an events coordinator; and

WHEREAS, the passage of this resolution will appropriate the funds necessary for the hiring of an events coordinator for the Fourth of July Family Festival and Fireworks.

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

Section 1. The Budget for the General Fund of the City of Englewood, Colorado, is hereby amended for the year 2015, as follows:

GENERAL FUND:

SOURCE OF FUNDS:

Unassigned Fund Balance	\$10,000
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USE OF FUNDS:

City Manager's Office: Professional Services	\$10,000
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Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2015 Budget for the City of Englewood.

ADOPTED AND APPROVED this 6th day of April, 2015.

ATTEST:

Randy P. Penn, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2015.

Loucrishia A. Ellis, City Clerk

COUNCIL COMMUNICATION

Date April 6, 2015	Agenda Item 9 c ii	Subject L/E WWTP Support Agreement with AmWest Controls for Programming Services for SCADA System Support
INITIATED BY Littleton/Englewood WWTP Supervisory Committee		STAFF SOURCE Cindy Goodburn, L/E WWTP Business Services Manager Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved the 2015 Littleton/Englewood Wastewater Treatment Plant budget.

RECOMMENDED ACTION

The Littleton/Englewood Wastewater Treatment Plant Supervisory Committee recommended on January 15, 2015, Council approve, by Motion, the Support Agreement with Am West Controls in the amount of \$48,000. This Support Agreement is for the routine, non-routine and emergency programming services to support the Supervisory Control and Data Acquisition (SCADA) system Human Machine Interface (HMI) software that controls, monitors plant processes and collects data.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Process Control System (PCS) is a collection of instrumentation, control hardware, networks, software, interface devices, and development tools that work together to control plant processes and present information to plant staff to aide in plant operation, maintenance and management. This system includes 7 different industrial networks that control instrumentation, Programmable Logic Controllers (PLCs) and devices that control operational equipment and extract data. Additionally, the system includes an HMI that controls the field networks and collects and reports the data.

This support agreement with AmWest Controls is for services and on-going responsibility for the support of PLC programming, HMI programming, instrumentation, electrical systems, automation safety standards and other SCADA-related tasks. Intimate knowledge of the plant processes and the original development/implementation and standards of the programming code allow AmWest staff to perform troubleshooting, modifications and repair activities in an efficient, effective, safe manner. The scope of work covered under this support agreement is time and materials for routine maintenance and repairs and includes the following:

- Repair and Maintenance Service
- On Call Service 24x7
- Training of L/E WWTP SCADA Personnel
- Periodic and Preventive Maintenance Program Review and Development

- Maintenance and Updating of Drawings
- Quarterly Review Meetings

FINANCIAL IMPACT

Funds for this Support Agreement are included in the 2015 L/E WWTP budget and as Professional Services, the cost of which will be shared 50/50 by the Cities of Englewood and Littleton.

LIST OF ATTACHMENTS

Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT
Contract Number PSA/15-15

This Professional Services Agreement (the "Agreement") is made as of this 17th day of March, 2015, (the "Effective Date") by and between AmWest Control, Inc., a Colorado 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.

SCHEDULE A

OUTLINE OF STATEMENT OF WORK (Provide the requested below information)

1. GENERAL

[Identification of parties and date of execution]

[Reference to Professional Services Agreement by date]

2. NAMES OF PROJECT COORDINATORS

3. SUMMARY OF PURPOSE FOR STATEMENT OF WORK

[General description of work or services]

4. EQUIPMENT AND PROGRAMMING TO BE PROVIDED BY CITY (IF ANY)

5. OTHER CONSULTANT RESOURCES

[If desired, provide for the Consultant's commitment of its own staff, facilities, and other resources by nature or item]

6. DESCRIPTION OF WORK PRODUCT AND DELIVERABLES

[Include functional and technical specifications of Work Product and Documentation, and refer to any specific enhancements that may be sought.]

[Describe prototype or components to be delivered.]

[Include as Deliverables copies of the reports of all project reviews, inspections, and tests conducted during the course of performance.]

7. SPECIAL TERMS, IF ANY

8. MODE OF PAYMENT

9. PAYMENT SCHEDULE

City will pay Consultant for the work in accordance with the following payment schedule. All payments to Consultant are contingent on Consultant's satisfying the Deliverables/Milestones set forth in the Payment Schedule. Payments shall be made upon City's written confirmation to Consultant that the Deliverables-Milestones have been satisfied.

[Insert payment schedule]

10. SCHEDULE AND PERFORMANCE MILESTONES

This schedule sets for the target dates and performance milestones for the preparation and delivery of the Deliverables by Consultant.

Performance
Milestone

Responsible
Party

Target
Date

11. ACCEPTANCE AND TESTING PROCEDURES

12. LOCATION OF WORK FACILITIES

Substantially all of the work will be conducted by Consultant at its regular office located in _____.

City will provide the City office space and support as it agrees may be appropriate, at its _____ facility.

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

CITY OF ENGLEWOOD, COLORADO

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____

Consultant Name

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____



To: Cindy Goodburn
City of Englewood

Subject: Proposal for Electrical and Control System Support for the
Littleton/Englewood Wastewater Treatment Plant

From: Adam Petramala
AmWest Control

Date: October 7, 2014

The purpose of this proposal is to define the scope of work and pricing for SCADA system programming and associated electrical system services for the Littleton/Englewood Wastewater treatment plant (referenced as L/E WWP in the remainder of this proposal). The purpose of these support services is to provide assistance with the existing Programmable Logic Controllers (PLC) programming, instrumentation, electrical systems and other SCADA-related tasks. PLC's that control plant processes, the SCADA and Human Machine Interface (HMI) systems, and other electrical issues related to the SCADA system.

The scope of work will include the following general scope items. Each scope item will be further defined in following sections.

1. On Call Service
2. Remote Support
3. Training of I&C Personnel
4. Consulting Services
5. Quarterly Review Meetings

1. On Call Service

On Call Service will be provided on an "as needed" and "as available" basis during normal working hours and will be invoiced as used. Invoices will include travel time to and from the job-site. The intent of On Call Service is to provide service as a back-up to L/E personnel in an emergency where redundancy is either not provided or not currently functioning and the operations of the plant are in jeopardy.

Due to the complex nature of the systems at L/E, the AmWest Engineer/Programmer may not have in depth knowledge of all aspects of the plant and all of the related subsystems involved with a given service issue. Additional support may be required via phone with other AmWest support personnel as well as vendor support lines.

It is anticipated that on-call service will be utilized infrequently and can be provided without the addition of AmWest service personnel. In the event that on-call service is utilized often, the AmWest ability to support this option may need to be re-visited.

2. Remote Support

Due to the nature of the services provided many times support can be provided without visiting the facility. Remote support via VPN will be provided on an "as available" basis during normal working hours and will be invoiced as used. No travel time will be associated with the type of support.

3. Training of L/E I&C Personnel

AmWest Engineering/Programming personnel will work with L/E Service personnel to train them on troubleshooting, program/SCADA modification, and maintenance tasks. This training will include "on the job" training as well as training classes.

For on the job training, L/E personnel may either observe the tasks performed by AmWest or perform the tasks themselves with AmWest personnel observing or verifying the task after it is completed.

Training classes will be developed as needed for specific service duties. Training classes and on-the-job training will be identified with L/E management and will be scheduled in advance based on L/E needs and AmWest availability. Classes will be documented and will be developed to include L/E specific needs and procedures with the intent that L/E personnel use them at a later date.

4. Consulting Services

AmWest will provide electrical and control system consulting services on an "as needed" basis to aid in future projects or modification of the current electrical and control system.

5. Quarterly Meetings

The AmWest Service Manager will meet on a regular basis (at least once per quarter) to review customer satisfaction and evaluate any contract changes that need to be considered either immediately or in the next service contract.

Service Contract Tiered Pricing

Scheduled	Units	Rate
Engineer/Programmer 1	Hours	\$135/hour
Engineer/Programmer 2	Hours	\$165/hour
Engineer/Programmer 3	Hours	\$190/hour

Engineer/Programmer - Emergency Callout	Hours	\$275/hour (not currently part of this proposal)
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Estimated "not to exceed" annual service cost= \$48,000.00. If it appears that this \$48,000 will be exceeded either through planned or Emergency work, AmWest will notify L/E WWTP Business Services Administrator in writing prior to commencing the work. Approval to commence work will be in writing.

This estimate is based on the following:

- Average of 8 scheduled programming hours per week for 25 weeks
- Average of 4 each, 8-hour programming calls per year during normal working hours
- Average of 2 hours remote programming sessions per week for 25 weeks

Schedule note:

Due to the training focus of the anticipated services the schedule of hours becomes more critical. AmWest services should be scheduled at least two weeks in advance with the AmWest Service Manager and will be subject to the availability of programming personnel with the correct skill set. Effort will need to be made by both parties to schedule this work in blocks of time to assure continuity of efforts.

Please review the summary above and let AmWest know how you would like to proceed.

Sincerely,

Adam Petramala
Service Manager
AmWest Control Inc.

COUNCIL COMMUNICATION

Date April 6, 2015	Agenda Item 9 c iii	Subject L/E WWTP Support Agreement with AmWest Controls for Hardware, Instrumentation and Controls System Support
INITIATED BY Littleton/Englewood WWTP Supervisory Committee		STAFF SOURCE Cindy Goodburn, L/E WWTP Business Services Manager Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved the 2015 Littleton/Englewood Wastewater Treatment Plant budget.

RECOMMENDED ACTION

The Littleton/Englewood Wastewater Treatment Plant Supervisory Committee recommended on January 15, 2015, Council approve, by Motion, the Support Agreement with AmWest Controls in the amount of \$48,000. This Support Agreement provides configuration, repair and maintenance of physical hardware and networks that control and monitor plant processes, collect data and maintain plant permit compliance.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

AmWest Controls is the Automation, Controls and Supervisory Control and Data Acquisition (SCADA) System integrator for Littleton/Englewood WWTP. This company was selected to install and implement the Process Control System (PCS) as part of the competitive bid process for the Phase 2 project. Two companies bid on the project and were able to demonstrate capability to provide services and skill sets required for the implementation and integration of the Rockwell/Allen Bradley solution that was selected for the Process Control System as part of the Phase 2 project.

AmWest Controls was selected based on their excellent demonstrated performance and on their ability to provide on-going service, support and training locally on both routine and 24-hour emergency basis. Further, AmWest is a Rockwell Certified Business Partner and is the only local integrator authorized to do start-up and installation on Rockwell/Allen Bradley products and offer the extended warranty.

Support under this agreement includes configuration and troubleshooting of hardware and physical media using specialized network scanning and diagnostic tools. The hardware components include the physical hardware, network connectivity, electrical components, configuration and maintenance of instruments and motor starters, variable frequency drives, network enabled instruments and other electronic components.

Since 2008, the L/E WWTP has maintained an instrumentation and controls support agreement with AmWest for the hardware and devices associated with the instrumentation and control system installed by AmWest during the Phase 2 project. The agreement is for preventive maintenance and repair service and emergency 24 hr. on-call service and is renewed annually. The scope of work is proposed as time and

materials, and not to exceed \$48,000. The scope of work is for routine maintenance and repairs and includes:

- Troubleshoot and diagnose physical hardware electronic components
- Configuration and maintenance of instruments, motor starters, variable frequency drives and other electronic components
- 24x7 Repair and Maintenance Service
- 24x7 On Call Service
- Training of L/E WWTP Instrumentation & Control Personnel
- Periodic and Preventative Maintenance Program Review and Development
- Maintenance and Updating of Drawings
- Quarterly Review Meetings

FINANCIAL IMPACT

Funds for this Support Agreement are included in the 2015 L/E WWTP budget and as Professional Services, the cost of which will be shared 50/50 by the Cities of Englewood and Littleton.

LIST OF ATTACHMENTS

Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT
Contract Number PSA/15-14

This Professional Services Agreement (the "Agreement") is made as of this 17th day of March, 2015, (the "Effective Date") by and between AmWest Control, Inc., a Colorado 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.

SCHEDULE A

OUTLINE OF STATEMENT OF WORK (Provide the requested below information)

1. GENERAL

[Identification of parties and date of execution]

[Reference to Professional Services Agreement by date]

2. NAMES OF PROJECT COORDINATORS

3. SUMMARY OF PURPOSE FOR STATEMENT OF WORK

[General description of work or services]

4. EQUIPMENT AND PROGRAMMING TO BE PROVIDED BY CITY (IF ANY)

5. OTHER CONSULTANT RESOURCES

[If desired, provide for the Consultant's commitment of its own staff, facilities, and other resources by nature or item]

6. DESCRIPTION OF WORK PRODUCT AND DELIVERABLES

[Include functional and technical specifications of Work Product and Documentation, and refer to any specific enhancements that may be sought.]

[Describe prototype or components to be delivered.]

[Include as Deliverables copies of the reports of all project reviews, inspections, and tests conducted during the course of performance.]

7. SPECIAL TERMS, IF ANY

8. MODE OF PAYMENT

9. PAYMENT SCHEDULE

City will pay Consultant for the work in accordance with the following payment schedule. All payments to Consultant are contingent on Consultant's satisfying the Deliverables/Milestones set forth in the Payment Schedule. Payments shall be made upon City's written confirmation to Consultant that the Deliverables-Milestones have been satisfied.

[Insert payment schedule]

10. SCHEDULE AND PERFORMANCE MILESTONES

This schedule sets for the target dates and performance milestones for the preparation and delivery of the Deliverables by Consultant.

Performance
Milestone

Responsible
Party

Target
Date

11. ACCEPTANCE AND TESTING PROCEDURES

12. LOCATION OF WORK FACILITIES

Substantially all of the work will be conducted by Consultant at its regular office located in _____.

City will provide the City office space and support as it agrees may be appropriate, at its _____ facility.

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

CITY OF ENGLEWOOD, COLORADO

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____

Consultant Name

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____



To: Cindy Goodburn
City of Englewood

Subject: Proposal for Instrumentation and Control Service for the
Littleton/Englewood Wastewater Treatment Plant

From: Adam Petramala
AmWest Control

Date: October 7, 2014

The purpose of this proposal is to define the scope of work and pricing for an Instrument and Controls Service Proposal for the Littleton/Englewood Wastewater treatment plant (referenced as L/E WWP in the remainder of this proposal). The purpose of these support services is to provide assistance with instrumentation and control hardware

The scope of work will include the following general scope items. Each scope item will be further defined in following sections.

1. On Call Service
2. Training of I&C Personnel
3. Periodic and Preventative Maintenance Program Development
4. Maintenance and Updating of Drawings
5. Quarterly Review Meetings

1. On Call Service

On Call Service will be provided on an “as needed” and “as available” basis during normal working hours and will be invoiced as used. Invoices will include travel time to and from the job-site. The intent of On Call Service is to provide service as a back-up to L/E personnel in an emergency where redundancy is either not provided or not currently functioning and the operations of the plant are in jeopardy.

Due to the complex nature of the systems at L/E, the AmWest service representative may not have in depth knowledge of all aspects of the plant and all of the related subsystems involved with a given service issue. Additional support may be required via phone with other AmWest support personnel as well as vendor support lines.

It is anticipated that on-call service will be utilized infrequently and can be provided without the addition of AmWest service personnel. In the event that on-call service is utilized often, the AmWest ability to support this option may need to be re-visited.

2. Training of L/E I&C Personnel

AmWest Service personnel will work with L/E Service personnel to train them on troubleshooting and maintenance tasks. This training will include “on the job” training as well as training classes.

For on the job training, L/E personnel may either observe the tasks performed by AmWest or perform the tasks themselves with AmWest personnel observing or verifying the task after it is completed.

Training classes will be developed as needed for specific service duties. Training classes and on-the-job training will be identified with L/E management and will be scheduled in advance based on L/E needs and AmWest availability. Classes will be documented and will be developed to include L/E specific needs and procedures with the intent that L/E personnel use them at a later date.

3. Periodic and Preventative Maintenance Program Development

AmWest will work with L/E to develop a periodic and preventative maintenance procedures. AmWest will work with L/E personnel to develop an outline of the procedures and L/E personnel will incorporate the procedures into the L/E DataStream 7i maintenance system.

Procedures will be developed for the following equipment:

- A. Motor Control Hardware to include
 - i. MCCs
 - ii. Variable Frequency Drives
 - iii. Reduced Voltage Soft Starts

- B. Instrumentation
 - i. Calibration including maintenance of records
 - ii. AmWest will work with L/E to determine if the maintenance records can be integrated into the DataStream Calibration Module.

- C. Control Panels
 - i. Physical Panel maintenance (including inventory of batteries and spare parts)
 - ii. Panel Cleaning Schedule including cabin filter cleaning/replacement
 - iii. UPS maintenance

4. Maintenance and Updating of Drawings

Drawings will be updated on a time and materials basis. L/E personnel and AmWest Service personnel will identify changes that need to be made and redline the drawings. The AmWest Engineering and Drafting department will maintain drawings using AutoCAD software and will deliver hardcopy as well as electronic files for the drawings.

5. Quarterly Meetings

The AmWest Service Manager will meet on a regular basis (at least once per quarter) to review customer satisfaction and evaluate any contract changes that need to be considered either immediately or in the next service contract.

Service Contract Tiered Pricing

Scheduled	Units	Rate
Service Technician 1	Hours	\$105/hour
Service Technician 2	Hours	\$125/hour
Service Technician 3	Hours	\$155/hour
Drawing Revisions-CAD	Hours	\$75/hour

Service Technician -Emergency-Callout	Hours	\$225/hour (not currently part of this proposal)
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Estimated "not to exceed" annual service cost= \$48,000.00. If it appears that this \$48,000 will be exceeded either through planned or Emergency work, AmWest will notify L/E WWTP Business Services Administrator in writing prior to commencing the work. Approval to commence work will be in writing.

This estimate is based on the following:

- Average of 8 scheduled hours per week for 35 weeks
- Average of 4 each 8-hour service call per year during normal working hours
- Average of 2 basic drawing changes per month

Schedule note:

Due to the training focus of the anticipated services the schedule of hours becomes more critical. AmWest services should be scheduled at least two weeks in advance with the AmWest Service Manager and will be subject to the availability of service personnel with the correct skill set. Effort will need to be made by both parties to schedule this work in blocks of time to assure continuity of efforts.

Please review the summary above and let AmWest know how you would like to proceed.

Sincerely,

Adam Petramala
Service Manager
AmWest Control Inc.

COUNCIL COMMUNICATION

Date April 6, 2015	Agenda Item 9 c iv	Subject Engineering and Environmental – Professional Services Agreement
INITIATED BY Littleton/Englewood Wastewater Treatment Plant Supervisory Committee		STAFF SOURCE Chong Woo, Engineering/Maintenance Manager Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approval of the 2015 Littleton/Englewood Wastewater Treatment Plant Budget.

RECOMMENDED ACTION

The Littleton/Englewood Wastewater Treatment Plant Supervisory Committee recommended on January 15, 2015, Council approve, by Motion, an extension of a professional services agreement with an updated scope of work for 2015 with Brown and Caldwell in the amount not to exceed \$40,000 for engineering and environmental services for the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP).

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

To maintain and help support the day-to-day operation and maintenance of the L/E WWTP, staff on occasion will require consultant support in the areas of engineering and environmental services. Services generally consist of design review, specification support, record drawing support, troubleshooting and investigation support during process and equipment failures, regulatory assistance, and permitting support. Specific past examples of services have included:

- Test and balance of HVAC associated with foul air treatment and scrubbing systems
- Concrete structural inspection and evaluation of the raw wastewater influent channels
- Developing options to improve raw wastewater screenings collection and conveyance
- Designing options to modify electrical switchgear associated with the emergency generator to improve staff safety
- Modeling and developing recommendations to improve raw influent pumping efficiency
- Reviewing Xcel Energy's recommendation to replace the fuses to our two primary electrical feeders
- Reviewing and designing recommendations to update area classifications to newer and more stringent electrical codes
- Concrete dome inspections in our digester complex
- Concrete structural inspection and recommendation report regarding our primary clarifier tanks
- Regulatory assistance working with the State regarding the new Nutrient regulations
- Regulatory assistance in negotiating new limitations regarding the L/E WWTP discharge permit

The L/E WWTP currently does not possess the staff capacity to perform the above tasks; seeking outside consultant services has proven to be the most cost effective and time beneficial to meet our requirements.

Staff is recommending Brown and Caldwell to perform the engineering and environmental services. The Brown and Caldwell staff has relevant experience with wastewater treatment systems; technical expertise in the areas of process equipment, structural analysis, and engineering design and specifications; and has access to a wide network of resources to provide effective services. Additionally, Brown and Caldwell is equipped with the past history, knowledge, and understanding of our specific wastewater treatment process to provide efficient and cost benefit services.

FINANCIAL IMPACT

Funds for this agreement are included in the 2015 L/E WWTP budget and as Professional Services, the cost of which will be shared 50/50 by the Cities of Littleton and Englewood.

LIST OF ATTACHMENTS

Professional Services Agreement - May 25, 2011
Statement of Work - 2015

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this 25 day of May, 2011, (the "Effective Date") by and between Brown + Caldwell, a California 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 degree of professionalism, and to utilize its expertise and creative talents consistent with generally accepted industry standards and practices 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) **Payment Default.** If City defaults in the payment of any amount due under any Statement of Work and does not cure the default within fifteen (15) days after receiving written notice of such default, then Consultant may terminate the affected Statement of Work by providing fifteen (15) days prior written notice of termination to City.

(d) **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.

(e) **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.

(f) **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.

(g) **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 contractor 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 contractor 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 contractors. 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 subcontractors shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner in accordance with the usual thoroughness and competence of the engineering profession.

(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, and successors 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 subconsultants; 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) **Statutory Worker's Compensation,** including occupational disease, in accordance with law.

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

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

(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. 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 contractor 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. Subcontractors. 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 subcontractor 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)
Dennis W. Stowe
(Print Name)

Title: Manager

Date: May 24 2011

Brown + Caldwell
(Consultant Name)
1697 Cole Blvd Suite 200
Address
Golden CO 80401
City, State, Zip Code

By: _____
(Signature)
Dirk Apologate
(Print Name)

Title: Vice President

Date: 5/24/2011

SCHEDULE A
Task Order 18.ENG.2015- Engineering and Environmental Support Services for 2015
Littleton/Englewood WWTP

STATEMENT OF WORK

1. GENERAL

The Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) staff operates and maintains an industrial plant valued at over \$350 million. Highly sophisticated mechanical and electrical, instrumentation, and controls equipment are used to treat up to 100 million gallons of wastewater per day. Treatment processes and effluent water quality are regulated by the Colorado Department of Public Health and Environment (CDPHE) through their Colorado Discharge Permit System (CDPS). The L/E staff must comply with this permit and the ever-changing regulatory requirements from both the State and the United States Environmental Protection Agency (USEPA). Engineering and Environmental engineering support is needed for on-call services to assist the plant staff throughout the year regarding design, maintenance of operations, permitting, modeling, evaluations, assessments, and other specific expertise. The L/E staff has requested Brown and Caldwell (Consultant) provide environmental engineering support services on an as-needed basis.

Upon execution of this Task Order, and effective as of January 1, 2015, the parties agree that Brown and Caldwell shall perform the following services listed below.

Brown and Caldwell's services shall be governed by the Professional Service Agreement (PSA) dated May 25, 2011, together with this Task Order and any Exhibits attached hereto.

2. NAME OF PROJECT COORDINATORS

Brown and Caldwell's team will be led by Sarah Reeves. Sarah Reeves is the Project Manager. There may be isolated needs to engage other engineers and staff to complete work associated with this agreement. Chong Woo, Mary Gardner and Dennis Stowe will be the managing staff for L/E and this Task Order.

3. PURPOSE FOR STATEMENT OF WORK

Brown and Caldwell shall provide as-needed support for design and environmental engineering assistance. Services to be provided shall be verbally authorized by Chong Woo, Mary Gardner or Dennis Stowe, and Consultant will follow up with a confirming fax or email describing the services requested for that assignment pursuant to, and referencing, this Agreement.

4. DESCRIPTION OF WORK PRODUCT AND DELIVERABLES

Environmental engineering assistance will be provided on an as-needed basis. Work products and deliverables will be discussed and provided as requested by L/E WWTP staff. Larger tasks and efforts typically greater than \$10,000 may be contracted separately under the same PSA.

5. SPECIAL TERMS

Consultant's work product, which is prepared solely for the purposes of this agreement including, but not limited to, drawings, test results, recommendations, and technical specifications, whether in hard copy or electronic form, shall become the property of Client when Consultant has been fully compensated as set forth herein. Design calculations and/or model runs developed for the work product shall be transmitted to the Client. Only final calculations, portable document format (PDF) images, or

spreadsheet results shall be transmitted to Client for the work product requiring the use of proprietary models. Consultant may keep copies of all work products for its records.

6. **MODE OF PAYMENT/COMPENSATION**

All work shall be performed on a time and expenses basis in accordance with the PSA dated May 25, 2011. Time related charges are hourly billing rates and shall be the total hours worked on a task by each employee multiplied by the employees' hourly billing rate. Overhead and profit are included in each hourly rate. Total cost for this Task Order shall not exceed \$40,000 without additional written authorization. Rates for professional services shall be in accordance with Exhibit A – Project Rate Schedule. The current rate table is in effect until December 2015. At that time, Brown and Caldwell will propose an update, if appropriate.

7. **PAYMENT SCHEDULE**

City will pay Brown and Caldwell for this work upon deliverables as agreed by Owner and Consultant for the as-needed tasks. Monthly invoicing will note tasks that were requested by the L/E staff.

8. **SCHEDULE**

The work under this Task Order shall be performed at various times as directed by L/E staff. This Scope of Work includes as-needed Environmental Engineering Services requested by the Owner for the time period of January 1, 2015 thru December 31, 2015.

9. **LOCATION OF WORK FACILITIES**

Substantially all of the work will be conducted by Consultant at its regular office located at: 1527 Cole Boulevard, Suite 300
Lakewood, CO 80401

Or the City will provide City office space and support, as appropriate, at the L/E WWTP.

IN WITNESS WHEREOF, pursuant and in accordance with the Professional Services Agreement between the parties hereto dated May 25, 2011, the parties have executed this Statement of Work as of this _____ day of _____.

CITY OF ENGLEWOOD, COLORADO

BROWN and CALDWELL

By: _____
(Signature)

(Print Name)

By: _____
(Signature)
Sarah Reeves
(Print Name)

Title: _____

Title: Vice President

Date: _____

Date: 24 March 2015

Littleton/Englewood Fee Schedule

Level	Engineering	Technical/Scientific	Administrative	Hourly Rate
A			Office/Support Services I	\$73
B	Drafter Trainee	Field Service Technician	Word Processor I Office/Support Services II	\$73
C	Assistant Drafter	Field Service Technician II	Word Processor II Office/Support Services III	\$73
D	Drafter Engineering Aide Inspection Aide	Field Service Technician III	Accountant I Word Processor III Office/Support Services IV	\$83
E	Engineer I Senior Drafter Senior Illustrator Inspector I	Geologist/Hydrogeologist I Scientist I Senior Field Service Technician	Accountant II Word Processor IV	\$92
F	Engineer II Inspector II Lead Drafter Lead Illustrator	Geologist/Hydrogeologist II Scientist II	Accountant III Area Business Operations Mgr Technical Writer Word Processing Supervisor	\$110
G	Engineer III Inspector III Senior Designer Supervising Drafter Supervising Illustrator Senior Engineer	Geologist/Hydrogeologist III Scientist III	Accountant IV Administrative Manager	\$129
H	Principal Designer Senior Construction Engineer Senior Engineer Principal Engineer	Senior Geologist/Hydrogeologist Senior Scientist	Senior Technical Writer	\$148
I	Principal Construction Engineer Supervising Designer Supervising Engineer	Principal Geologist/Hydrogeologist Principal Scientist	Corp. Contract Administrator	\$168
J	Supervising Constr. Engineer Supervising Engineer	Supervising Scientist Supervising Geologist/ Hydrogeologist	Assistant Controller	\$178
K	Managing Engineer	Managing Geologist/Hydrogeologist Managing Scientist	Area Bus Ops Mgr IV	\$195
L	Chief Engineer Executive Engineer	Chief Scientist Chief Geologist/Hydrogeologist	Corp Marketing Comm. Mgr.	\$212
M	Vice President			\$212
N	Senior Vice President			\$220
O	President/Executive Vice President			\$220
P	Chief Executive Officer			\$220

Notes: Standard Billing Rates will be revised annually on a calendar-year basis.

Billing Rates will be used according to the Classification Level.

An Associated Project Cost (APC) of \$5.00 is included per direct labor hour to cover the cost of in-house reproduction services including graphics and photocopying, color printing, long-distance telephone calls including cell phone charges, facsimile, postage, overnight and courier services, and CAD/computer usage.

Other direct costs shall be billed at actual cost plus a service charge, if applicable. Direct charges are all charges other than time-related charges, incurred directly for the project.

Mileage reimbursement rate is equal to the IRS Standard Mileage Rate (\$0.575/mile).

COUNCIL COMMUNICATION

Date April 6, 2015	Agenda Item 11 a i	Subject Redistricting
INITIATED BY City Clerk's Office/Election Commission	STAFF SOURCE Frank Gryglewicz, Director of Finance and Administrative Services Loucrishia A. Ellis, City Clerk/Election Commission Member	

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Ordinance No. 1, Series of 2011, adopted by City Council on January 18, 2011, established the current City Council District boundaries.

At their January 20, 2015 Study Session City Council reviewed the three redistricting options and, specifically, Option 3, which the Election Commission recommended. Council directed staff to revisit the options in an effort to keep the West Hampden Avenue business corridor intact within District 1.

Community Development Planner II John Voboril prepared an Option 4 based on Council's direction. City Council reviewed Option 4 at their February 17, 2015 Study Session.

RECOMMENDED ACTION

Staff recommends Council adopt a bill for an ordinance authorizing the proposed redistricting.

BACKGROUND, ANALYSIS AND ALTERNATIVES IDENTIFIED

The Englewood City Charter requires that the number of registered voters be reviewed every four years in an effort to equalize the Council Districts.

The Englewood City Charter (Article III, Section 20) requires that the number of registered voters should vary no more than 15% between the highest and lowest Council Districts. We use the number of registered voters, as determined by the number registered to vote at the preceding General Municipal Election, which was November 5, 2013.

The Constitution of the State of Colorado (Article V, Section 46) has a population provision which case law supports, even though the provision is not specifically applicable to municipalities. The provision stipulates that the population of the districts reflect no more than a 5% differential between the most and the least populated districts.

Option 4:

District	Population (2010 Census)	Registered Voters (November 5, 2013)
1	7,446	4,789
2	7,527	5,315
3	7,521	5,359
4	7,761	5,235

Population % difference between highest and lowest figure = 4.2%

Registration % difference between highest and lowest figure = 11.9%

The proposed redistricting meets both the population and registered voter criteria.

The Charter requires that redistricting be completed at least six months before the General Municipal Election at which it is to become effective.

FINANCIAL IMPACT

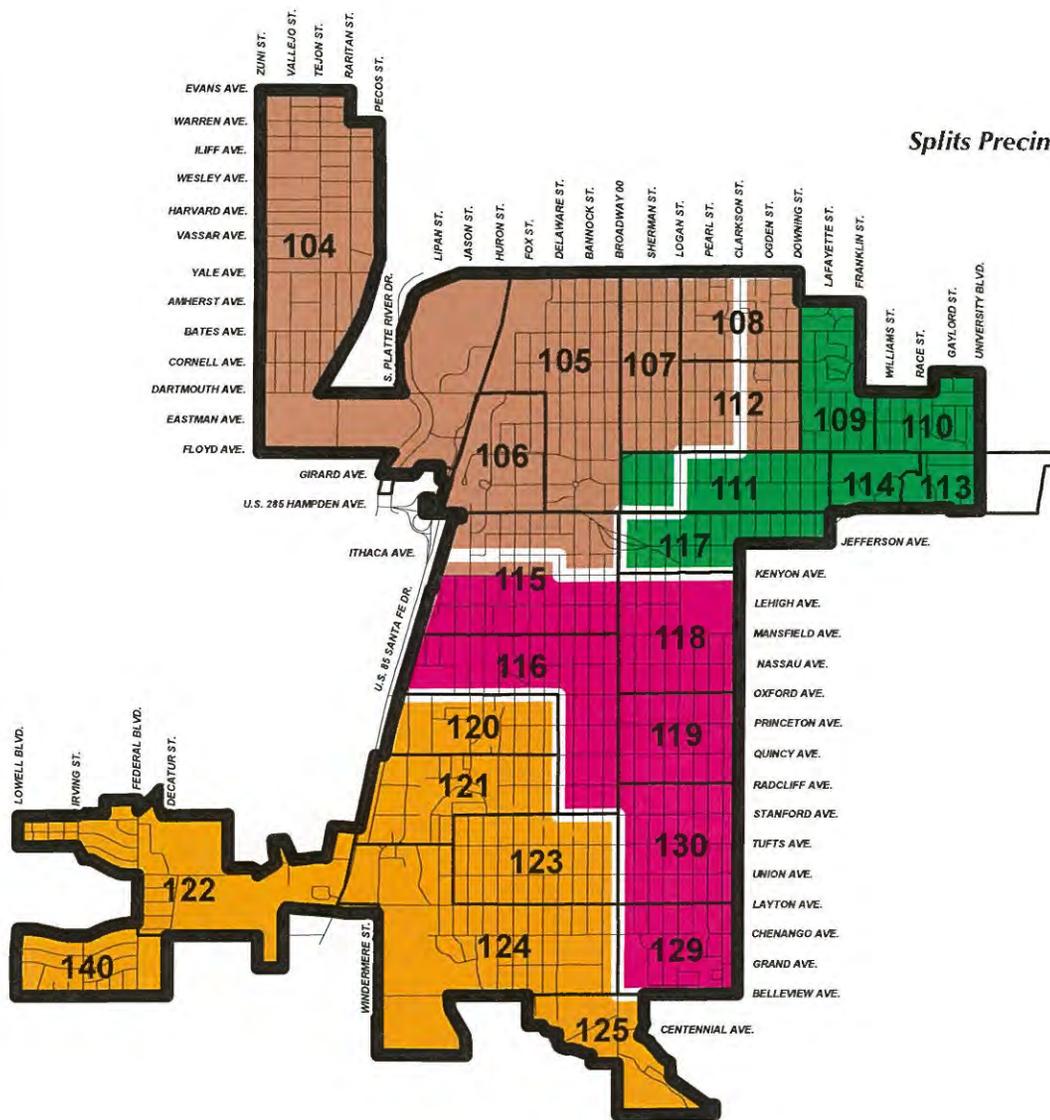
Minimal [cost of printing maps]

LIST OF ATTACHMENTS

City Council District Map: Option 4
Proposed Bill for an Ordinance

City Council District Analysis for the 2015 Election Cycle

Option 4:
 Splits Precinct 115 along Jefferson Avenue, Delaware Street, and Kenyon Avenue
 Splits Precinct 111 along Logan Street
 Splits Precinct 112 along Clarkson Street
 Splits Precinct 108 along Clarkson Street



LEGEND

- Street Network
- ArapCo Voting Precincts
- ▭ City Boundaries
- - - Option 4 City Council Boundary Lines

Current City Council Districts

- District I
- District II
- District III
- District IV



Jan. 2015



District	Option 4 Population	Registered Voters
I	7,446	4789
II	7,527	5315
III	7,521	5359
IV	7,761	5235
	30,255	20,698

Red indicates highest and lowest figures.

Population % Difference between highest and lowest figure = 4.2%
 Registration % Difference between highest and lowest figure = 11.9%

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2015 _____

COUNCIL BILL NO. 9
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AMENDING TITLE 1, CHAPTER 5, SECTION 1, OF THE ENGLEWOOD MUNICIPAL CODE 2000, RELATING TO REDISTRICTING OF CITY COUNCIL DISTRICTS WITHIN THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the Englewood City Council established the current Council District boundaries by the passage of Ordinance No. 1, Series of 2011; and

WHEREAS, pursuant to Article III, Section 20, of the Englewood Home Rule Charter, the four Council Districts shall be contiguous and compact and have approximately the same number of registered voters, and every four years Council shall make such divisions, changes, and consolidations necessary to carry out the intent of Article III, Section 20, of the Home Rule Charter; and

WHEREAS, the Englewood City Charter requires that the number of registered voters should vary no more than 15% between the highest and lowest Council Districts; and

WHEREAS, the Article V, Section 46 of the Constitution of the State of Colorado has a population provision that case law supports, even though the provision is not made specifically applicable to municipalities; and

WHEREAS, the Constitution of the State of Colorado provision stipulates that the population of the districts reflect no more than a 5% differential between the most and the least populated district; and

WHEREAS, the proposed redistricting meets both the population and registered voter criteria; and

WHEREAS, the proposed redistricting meets the registered voter criteria of the Englewood Home Rule Charter with a 11.9% differential; and

WHEREAS, pursuant to population requirements established by the Constitution of the State of Colorado, Article V, Section 46, the proposed redistricting meets the population criteria with a 4.2% differential; and

WHEREAS, the Englewood Home Rule Charter requires that any redistricting be completed at least six months prior to the General Municipal Election November 3, 2015 at which it is to become effective.

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

Section 1. The City Council of the City of Englewood, Colorado, hereby amends Title 1, Chapter 5, Section 1, of the Englewood Municipal Code 2000, to read as follows:

1-5-1: Council Districts.

A. Districts Described.

Each district is located in the State of Colorado and the County of Arapahoe.

Council District No. 1: Council District No. 1 shall include and be comprised of all that portion of the City lying northerly and westerly of the following described line: Beginning at the intersection of the easterly prolongation of the centerline of West ~~Kenyon Avenue~~ Jefferson Avenue and the westerly City Limit line of Englewood; thence easterly along said centerline of West ~~Kenyon~~ Jefferson Avenue to the intersection at South ~~Broadway~~ Delaware Street; thence ~~northerly~~ southerly along the centerline of South ~~Broadway~~ Delaware Street to the intersection at ~~East Floyd~~ West Kenyon Avenue; thence easterly along ~~the said~~ centerline of ~~East Floyd~~ West Kenyon Avenue to the intersection at South ~~Downing Street~~ Broadway; thence northerly along the centerline of South ~~Downing Street~~ Broadway to its the intersection at East Hampden Avenue; thence easterly along the centerline of East Hampden Avenue to the intersection at South Logan Street; thence northerly along the centerline of South Logan Street to the intersection at East Floyd Avenue; thence easterly along the centerline of East Floyd Avenue to the intersection at South Clarkson Street; thence northerly along the centerline of South Clarkson Street to its intersection with the northerly City Limit line.

Council District No. 2: Council District No. 2 shall include and be comprised of all that portion of the City lying northerly and easterly of the following described line: Beginning at the intersection of the easterly prolongation of the centerline of East Kenyon Avenue and the easterly City Limit line of Englewood; thence westerly along said centerline of East Kenyon Avenue to the intersection at South Broadway; thence northerly along the centerline of South Broadway to the intersection at ~~East Floyd~~ Hampden Avenue; thence easterly along the centerline of East Hampden Avenue to the intersection at South Logan Street; thence ~~easterly~~ northerly along the centerline of ~~East Floyd Avenue~~ South Logan Street to the intersection at ~~South Downing Street~~ East Floyd Avenue; thence ~~northerly~~ easterly along the centerline of ~~South Downing Street~~ East Floyd Avenue to its the intersection at South Clarkson Street; thence northerly along the centerline of South Clarkson Street to its intersection with the northerly City Limit line.

Council District No. 3: Council District No. 3 shall include and be comprised of all that portion of the City bounded by the following described line: Beginning at the intersection of the easterly prolongation of the centerline of East Kenyon Avenue and the easterly City Limit line of Englewood; thence westerly along said centerline of East Kenyon Avenue to the intersection at South Broadway; thence continuing westerly along the centerline of West Kenyon Avenue to the intersection at South Delaware Street; thence northerly along the centerline of South Delaware Street to the intersection at West Jefferson Avenue; thence westerly along the centerline of West Jefferson Avenue and along the prolongation of the centerline of West Jefferson Avenue to the westerly City Limit line of Englewood; its intersection with thence southwesterly along said ~~the~~ westerly City Limit line to its intersection with the centerline at West Oxford Avenue; thence easterly along said centerline of West Oxford Avenue to the intersection at South Delaware Street; thence southerly along the centerline of South Delaware Street to the intersection at West Stanford Avenue; thence easterly along the centerline of West Stanford Avenue to the intersection at South Broadway; thence southerly along the centerline of South Broadway to the intersection at East Belleview Avenue; thence easterly along the centerline of East Belleview Avenue to its intersection with the City Limit line; thence continuing easterly and along said City Limit line to the easterly City Limit line at South Clarkson Street; thence northerly along said City Limit line to the intersection with the prolongation of the centerline of East Kenyon Avenue, said point also being the Point of Beginning.

Council District No. 4: Council District No. 4 shall include and be comprised of all that portion of the City lying southerly and westerly of the following described line: Beginning at the intersection of the centerline of West Oxford Avenue and the westerly City Limit line of Englewood; thence easterly along said centerline of West Oxford Avenue to the intersection at South Delaware Street; thence southerly along the centerline of South Delaware Street to the intersection at West Stanford Avenue; thence easterly along the centerline of West Stanford Avenue to the intersection at South Broadway; thence southerly along the centerline of South Broadway to the intersection at East Belleview Avenue; thence easterly along the centerline of East Belleview Avenue to its intersection with the City Limit line.

- B. *Equivalent Size.* The City Council finds, determines and declares that the four (4) districts, as hereinabove established, contain an approximately similar number of citizens as determined by the ~~2000~~ 2010 Census figures. The districts contain a similar number of registered voters as determined by the number of registered voters as of November ~~3, 2009~~ 5, 2013, and the variance between the district with the highest number of registered voters and the district with the lowest number of registered voters is not in excess of fifteen percent (15%).
- C. *Annexations.* All territory annexed to the City shall be and becomes a part of the Council district to which the said district is contiguous, until such time as the Council shall redistrict the City.

Section 2. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Introduced, read in full, and passed on first reading on the 6th day of April, 2015.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of April, 2015.

Published as a Bill for an Ordinance on the City's official website beginning on the 8th day of April, 2015 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 6th day of April, 2015.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: April 6, 2015	Agenda Item: 11 a ii	Subject: Easement Agreement for #5 Big Dry Creek Trailhead
Initiated By: Department of Parks and Recreation		Staff Source: Dave Lee, Open Space Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Vision: To promote and ensure a high quality of life, economic vitality, and a uniquely desirable community identity through the delivery of reliable, affordable, and flexible services and by proactively collaborating with our citizens and businesses to develop an environment to fosters safety and opportunity.

City Council was given a tour of the River Run and Orphan Property locations on Monday, June 23, 2014.

Staff attended the Study Session on November 17, 2014 to discuss the easement on the east side bike path at Union Avenue - Parcel B, the easement on the east side bike path north side of Oxford Avenue - Parcel A and the #5 Big Dry Creek Trailhead Easement.

RECOMMENDED ACTION

Staff recommends that City Council adopt a bill for an ordinance approving an Intergovernmental Agreement with South Suburban Parks and Recreation District for an Easement Agreement on #5 Big Dry Creek Trailhead.

BACKGROUND, ANALYSIS AND ALTERNATIVES IDENTIFIED

This easement is located at 4747 S. Wyandot Street next to the Orphan Property Trailhead. South Suburban Parks and Recreation District reconstructed this section of the trail in order to accommodate the construction of the new east side trail. There was an existing easement in place with the Fire Training Academy and South Suburban Parks and Recreation District which was granted when the Big Dry Creek Trail was built through Belleview Park and extended west to the Platte River. Since then, the City of Englewood has taken ownership of the Fire Training Academy property, located north of the Big Dry Creek, now called the Orphan Property, resulting in the need for a new easement agreement. The easement will cover the new trail alignment at the circular connection point which connects the Orphan Property Trailhead with the new east side trail.

The City of Englewood's Community Development Department has agreed that the trail complements the current City Bicycle Plan and would be of a benefit to our residents.

The Parks and Recreation Commission at their September 11, 2014 meeting made a recommendation to City Council to approve the trail connection.

FINANCIAL IMPACT

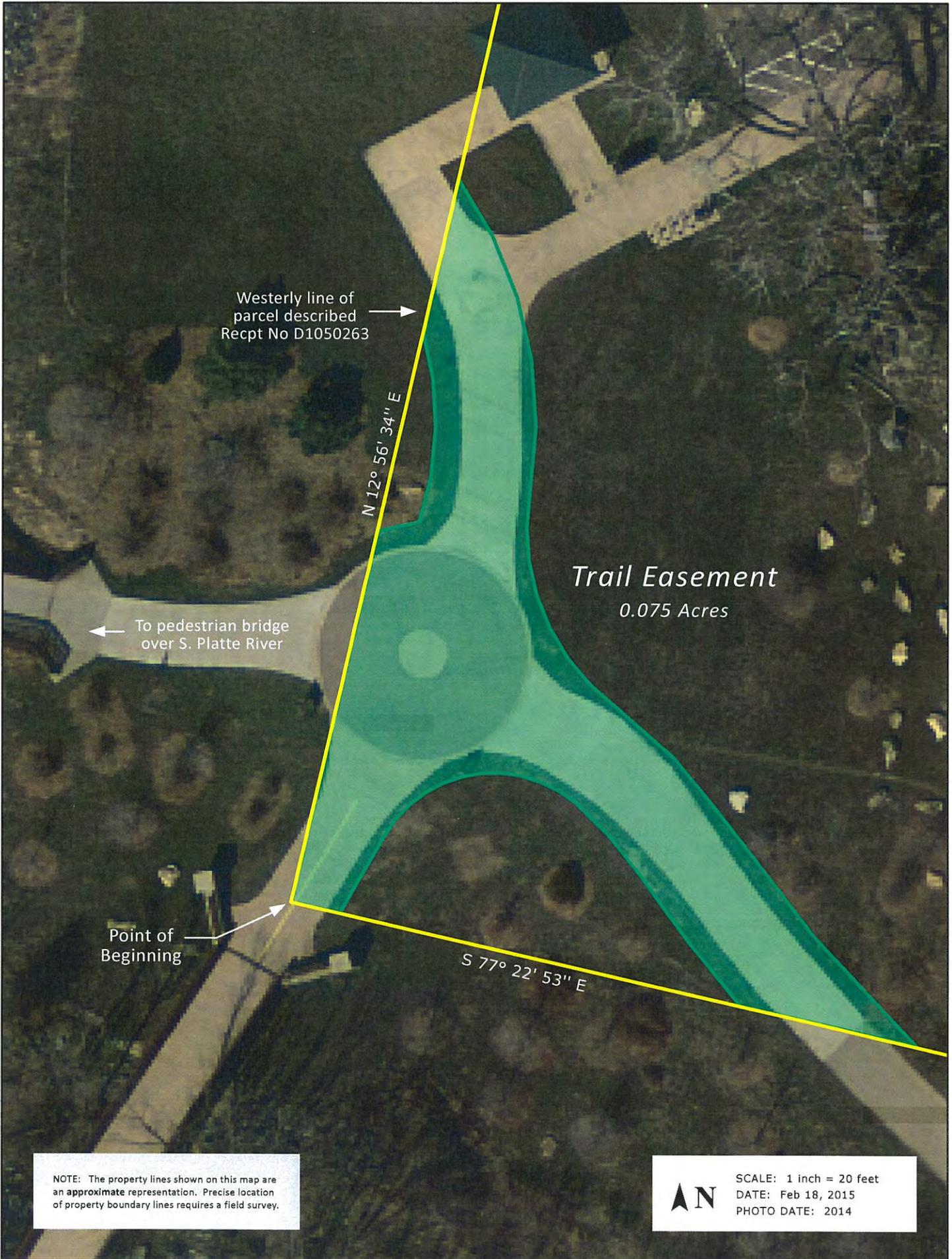
South Suburban Parks and Recreation District will maintain the trail. There is no financial impact to the City of Englewood.

LIST OF ATTACHMENTS

Trail Alignment Drawing

Memo from Parks and Recreation Commission - Recommendation to City Council

Bill for an Ordinance



Westerly line of parcel described Recpt No D1050263

N 12° 56' 34" E

Trail Easement
0.075 Acres

To pedestrian bridge over S. Platte River

Point of Beginning

S 77° 22' 53" E

NOTE: The property lines shown on this map are an **approximate** representation. Precise location of property boundary lines requires a field survey.

SCALE: 1 inch = 20 feet
DATE: Feb 18, 2015
PHOTO DATE: 2014



Memorandum

TO: Eric Keck, City Manager

THROUGH: Jerrell Black, Director of Parks and Recreation

FROM: Debby Severa, Recording Secretary ✓
Parks and Recreation Commission

DATE: September 17, 2014

RE: Recommendation Bike Path Easements and Intergovernmental Agreements

At the September 11, 2014, Parks and Recreation Commission meeting, Brett Collins with South Suburban Park and Recreation District, Bob Searns with The Greenway Team and Bill Neuman with DHM Design were present to discuss with the Board the five bike path easements and Intergovernmental Agreements in the City of Englewood. The five Easements/IGA's include #1) East Side Bike Path at Union Avenue – Parcel B, #2) East Side Bike Path North Side of Oxford Avenue – Parcel A, #3) Big Dry Creek Trail Connection at Belleview Park, #4) Big Dry Creek Crossing of City Ditch and #5) Big Dry Creek Trailhead Easement.

Following discussion,

A motion was made by Commission Member Woodward and seconded by Commission Member Miller recommending to City Council to approve the five bike path easements and agreements.

Ayes: Garrett, Husbands, Howard, Miller, Woodward, Glover, Mansbacher

Nays: None

Motion Passed.

ds/JB

H:\2014 PRC\Recommendation Bike Path Easements.docx

cc: Mike Flaherty
Dan Brotzman
Stu Fonda
Rick Kahn
Dave Lee
Parks and Recreation Commission

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2015

COUNCIL BILL NO. 10
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ENGLEWOOD, AND SOUTH SUBURBAN PARK AND RECREATION DISTRICT APPROVING AN EASEMENT ACROSS CITY PROPERTY FOR A SEGMENT OF THE BIKE PATHWAY.

WHEREAS, the City of Englewood is the owner of the property known as the “Orphan Property”; and

WHEREAS, the City granted an easement across this property to the South Suburban Park and Recreation District for a bike path as a part of the South Suburban Bike Path System by Ordinance 24, series of 2011; and

WHEREAS, at no cost to the City the South Suburban Park and Recreation District constructed a bike path across this property; and

WHEREAS, the bike path, as built, was a different configuration from that of the easement previously granted; and

WHEREAS, the parties wish to amend the legal description of the easement to match the actual path.

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

Section 1. The City Council of the City of Englewood, Colorado hereby approves this amendment to the Intergovernmental Agreement for an easement on the “Orphan Property” as described in Attachment I, attached hereto, for a segment of the bike path.

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

Introduced, read in full, and passed on first reading on the 6th day of April, 2015.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 9th day of April, 2015.

Published as a Bill for an Ordinance on the City's official website beginning on the 8th day of April, 2015,

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 6th day of April, 2015.

Loucrishia A. Ellis

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AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT ENTITLED "AGREEMENT REGARDING GRANT OF RECREATIONAL TRAIL EASEMENT"

Amendment to an Intergovernmental Agreement entitled "Agreement regarding Grant of Recreational Trail Easement between the CITY OF ENGLEWOOD, Grantor and SOUTH SUBURBAN PARK AND RECREATION DISTRICT, Grantee and dated May 6, 2011.

WHEREAS, this Agreement, authorized by Ordinance No. 24, Series of 2011, granted an easement for a segment of a bike pathway across a parcel of City owned property known as the "Orphan Property" located at 4747 South Wyandot Street; and

WHEREAS, that Agreement was recorded at reception No. D1096537 dated October 6, 2011; and

WHEREAS, that Agreement provided a legal description for the easement consisting of a twelve foot (12') wide easement of 1,175 square feet; and

WHEREAS, the Pathway, as constructed, lies outside of the legal description for the Easement; and

WHEREAS, the parties wish to amend the Easement to accurately reflect the actual location of the Pathway as constructed.

THEREFORE, The parties wish to emend the "Agreement Regarding Grant of Recreational Trial Easement" dated May 6, 2011, to change the legal description of the easement to clarify the correct location of the Bike Path and Easement as shown on the attached Exhibit A. All other terms of the Easement shall remain the same.

CITY OF ENGLEWOOD, COLORADO
a municipal corporation

Randy P. Penn, Mayor

SIGNED this _____ day of _____, 2015.

ATTEST:

Loucrishia A. Ellis, City Clerk

~~SOUTH SUBURBAN PARK AND RECREATION DISTRICT~~

~~John K. Ostermiller, Chairman~~
SIGNED this 11th day of March, 2015.

_____, Secretary

EXHIBIT "A"

LEGAL DESCRIPTION

A TRAIL EASEMENT OVER AND ACROSS THAT PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NUMBER D1050263 IN THE RECORDS OF THE ARAPAHOE COUNTY CLERK AND RECORDER; SITUATED IN THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN; COUNTY OF ARAPAHOE, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 9, MONUMENTED AS SHOWN HEREON AND HAVING AN ASSUMED BEARING OF NORTH 00°03'44" EAST.

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NUMBER D1050263, WHENCE THE WEST QUARTER CORNER OF SAID SECTION 9 BEARS NORTH 62°07'39" WEST, A DISTANCE OF 607.26 FEET;

THENCE NORTH 12°56'34" EAST, ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 60.51 FEET;

THENCE NORTH 77°39'44" EAST, A DISTANCE OF 6.81 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 50.04 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 71°24'44" WEST;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°56'09", AN ARC LENGTH OF 30.51 FEET TO A POINT ON SAID WEST LINE;

THENCE NORTH 12°56'34" EAST, ALONG SAID WEST LINE, A DISTANCE OF 25.08 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 66.04 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 54°18'28" WEST;

THENCE THE FOLLOWING FOUR (4) COURSES;

1. SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°29'14", AN ARC LENGTH OF 52.43 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE EASTERLY HAVING A RADIUS OF 35.00 FEET;
2. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 63°25'46", AN ARC LENGTH OF 38.75 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 72.12 FEET;
3. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19°07'51", AN ARC LENGTH OF 24.08 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 229.55 FEET;
4. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°59'27", AN ARC LENGTH OF 48.04 FEET TO A POINT ON THE SOUTH LINE OF SAID PARCEL;

THENCE NORTH 77°22'53" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 28.75 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 245.55 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 49°16'19" EAST;

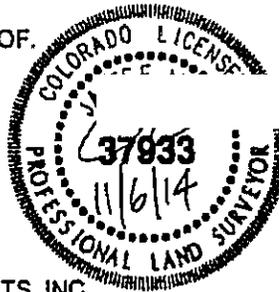
THENCE THE FOLLOWING FOUR (4) COURSES;

1. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°13'28", AN ARC LENGTH OF 26.68 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 56.12 FEET;
2. THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°25'13". AN ARC LENGTH OF 15.11 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 20.00 FEET;
3. THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 100°13'01", AN ARC LENGTH OF 34.98 FEET;
4. SOUTH 29°51'32" WEST, A DISTANCE OF 14.18 FEET TO A POINT ON SAID SOUTH LINE;

THENCE NORTH 77°03'26" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 7.88 FEET TO THE POINT OF BEGINNING.

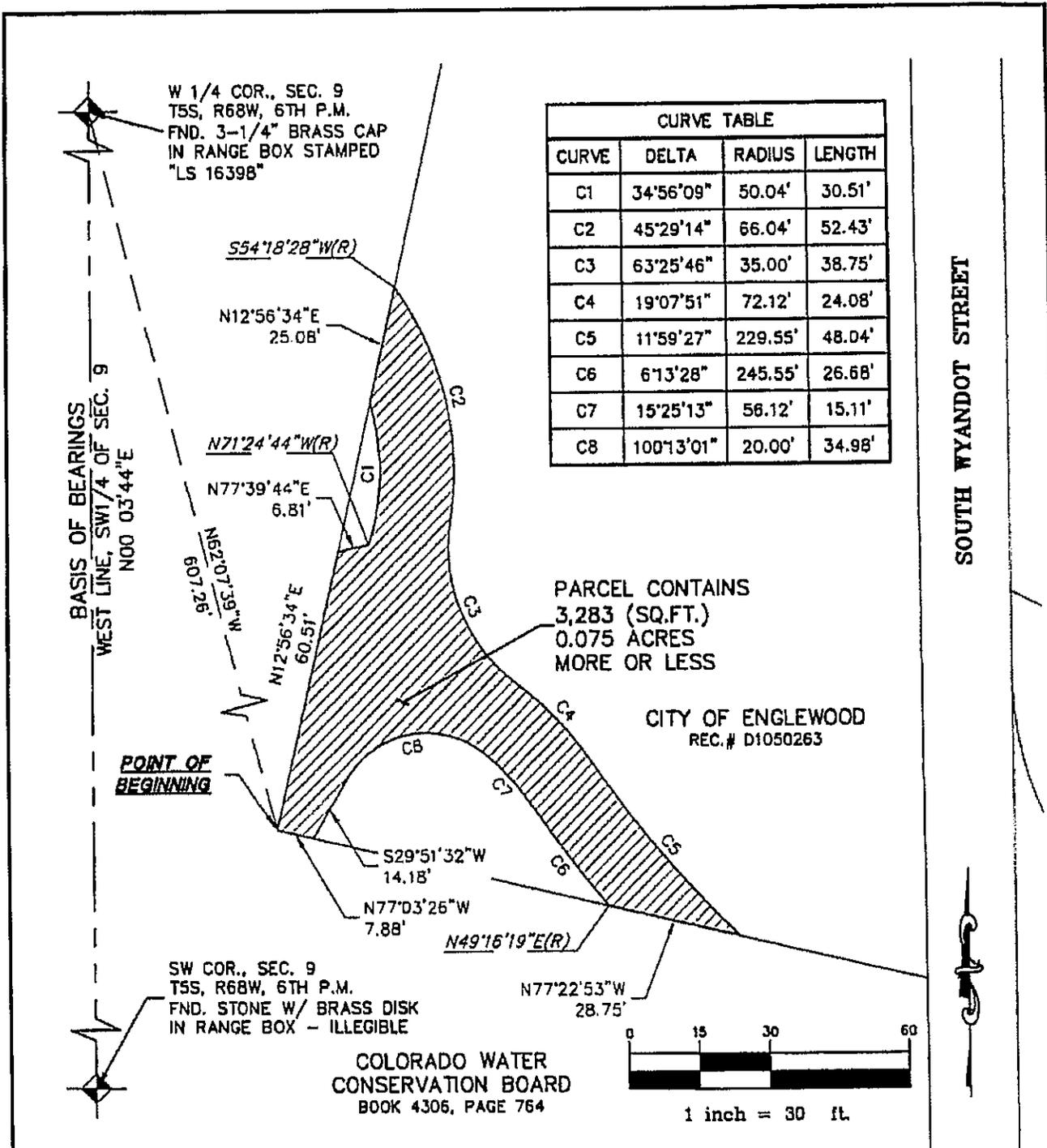
CONTAINING AN AREA OF 0.075 ACRES, (3,283 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



JAMES E. LYNCH, PLS NO. 37933
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A FIELD MONUMENTED SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: 1\76614-07 - By City Ord. And Commission
DWC NAME: 76614-07 Trail Easement.DWG
DWC: JEL Doc: JRW
DATE: 10/27/14
SCALE: 1"=30'



300 East Mineral Ave.
Suite 1
Littleton, Colorado 80122
Phone: (303) 713-1898
Fax: (303) 713-1897
www.aztecconsultants.com

EASEMENT EXHIBIT
SW 1/4, SEC. 9, T5S, 568W, 6TH P.M.
COUNTY OF ARAPAHOE, COLORADO
JOB NUMBER 76614-07 3 OF 3 SHEETS

COUNCIL COMMUNICATION

Date: April 6, 2015	Agenda Item: 11 c i	Subject: Resolution for the Purchase of Critical Physical Storage Upgrades from Peak Technologies
Initiated By: Finance and Administrative Services Department		Staff Source: Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The City Council discussed the Information Technology requests for capital improvements as part of 2015 budget discussions in 2014.

RECOMMENDED ACTION

Staff recommends City Council approve a resolution authorizing the purchase of critical physical storage upgrades from Peak Resources in the amount of \$99,896.00.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Council discussed and determined that the City's information technology infrastructure is critical to the overall effectiveness and efficiency management and workflow of the City. This Motion approves the purchase of critical physical storage. This will most likely be the last investment in *physical* storage the City of Englewood will make as more storage is sent to the "Cloud."

The City did not go to bid on this purchase because existing equipment was close to failing and had to be replaced immediately to avoid a failure. Since this the purchase was deemed an emergency, Information Technology personnel obtained a variety of bids from vendors to expedite the purchase. The bid by PeakResources was not the lowest bidder but they provide a better warranty, a better technologic fit (matches Police and Wastewater architecture), have a local presence, and have a faster response (service) time.

FINANCIAL IMPACT

Funds for this project are budgeted in the 2015 Capital Projects Fund.

LIST OF ATTACHMENTS

Pricing Information
Proposed Resolution



Quote Issued to:
 City of Englewood
 1000 Englewood Parkway
 Englewood, CO 80110

Account Executive:
 Mat Brown
 Office: 303-934-1200
 mbrown@peakresources.com

PEAK Resources, Inc., Headquarters
 2750 West 5th Avenue
 Denver, CO 80204
 Phone: 303-934-1200
 Toll Free: 1-800-925-PEAK
 Fax: 303-934-1250

Project: FAS2554
 Date: 3/24/2015
 Quote Valid Until: 4/23/2015
 Quote ID: 03242015LK01
 Config ID: 12442227

Line Number	Product Number	Description	Quantity	Unit Price	Extended Price
	FAS2554-EXP-R8				
1	X5526A-R8	Rackmount Kit,4-Post,Universal,R8	1	\$59.00	\$59.00
2	X6581-R8	Cable,Ethernet,2m RJ45 CAT6	2	\$5.00	\$10.00
3	X6582-R8	Cable,Ethernet,5m RJ45 CAT6	1	\$8.00	\$8.00
4	X6558-R8	Cable,SAS Cntrl-Shelf/Shelf-Shelf/HA,2m	4	\$88.00	\$352.00
5	DS2246-21.6TB-1P-SK-R5	DSK SHLF,24x900GB,IOM6,1P,SK	1	\$11,299.00	\$11,299.00
6	OS-ONTAP-CAP2-1P-P	OS Enable,Per-0.1TB,ONTAP,Perf-Stor,1P,-P	216	\$23.00	\$4,968.00
7	X800E-R8	Power Cable North America,R8	2	\$0.00	\$0.00
	FAS2554-R8				
8	FAS2554A-001-R8	FAS2554 High Availability System	2	\$2,145.00	\$4,290.00
9	SW-2-2554A-PREMBNDL-C	SW-2,Premium BNDL,2554A,-C	2	\$5,424.00	\$10,848.00
10	DOC-2554-C	Documents,2554,-C	1	\$0.00	\$0.00
11	X5526A-R8-C	Rackmount Kit,4-Post,Universal,-C,R8	1	\$0.00	\$0.00
12	OS-ONTAP-CAP1-1P-C	OS Enable,Per-0.1TB,ONTAP,Cap-Stor,1P,-C	480	\$8.00	\$3,840.00
13	FAS2554-309-R8-C	FAS2554,12x4TB,7.2K,-C	1	\$7,493.00	\$7,493.00
14	X800E-R8-C	Power Cable North America,-C,R8	4	\$0.00	\$0.00
15	CS-A2-4R	SupportEdge Standard Part Replace 4hr	1	\$8,783.00	\$8,783.00
16	SW-2-CL-BASE	SW-2,Base,CL,Node	1	\$0.00	\$0.00
	FAS2554-R8				
17	FAS2554A-001-R8	FAS2554 High Availability System	2	\$2,145.00	\$4,290.00
18	SW-2-2554A-PREMBNDL-C	SW-2,Premium BNDL,2554A,-C	2	\$5,424.00	\$10,848.00
19	DOC-2554-C	Documents,2554,-C	1	\$0.00	\$0.00

Miscellaneous expenses are not included (e.g. taxes, shipping charges, freight insurance, etc.) Information contained herein is Confidential. Software is non-returnable after order submission.

20	X5526A-R6-C	Rackmount Kit,4-Post,Universal,-C,R6	1	\$0.00	\$0.00
21	X800-42U-R6-C	Power Cable,In-Cabinet,C13-C14,-C	4	\$0.00	\$0.00
22	OS-ONTAP-CAP1-1P-C	OS Enable,Per-0.1TB,ONTAP,Cap-Stor,1P,-C	480	\$8.00	\$3,840.00
23	FAS2554-309-R6-C	FAS2554,12x4TB,7.2K,-C	1	\$7,493.00	\$7,493.00
24	CS-A2-4R	SupportEdge Standard Part Replace 4hr	1	\$6,783.00	\$6,783.00
25	SW-2-CL-BASE	SW-2,Base,CL,Node	1	\$0.00	\$0.00
	FAS2554-EXP-R6				
26	X5526A-R6	Rackmount Kit,4-Post,Universal,R6	1	\$59.00	\$59.00
27	X8581-R6	Cable,Ethernet,2m RJ45 CAT6	2	\$5.00	\$10.00
28	X8582-R6	Cable,Ethernet,5m RJ45 CAT6	1	\$8.00	\$8.00
29	X8558-R6	Cable,SAS Cntrl-Shelf/Shelf-Shelf/HA,2m	4	\$88.00	\$352.00
30	DS2246-21.6TB-1P-SK-R5	DSK SHLF,24x900GB,IOM6,1P,SK	1	\$11,295.00	\$11,295.00
31	X800-42U-R6	Power Cable,In-Cabinet,C13-C14	2	\$0.00	\$0.00
32	OS-ONTAP-CAP2-1P-P	OS Enable,Per-0.1TB,ONTAP,Perf-Stor,1P,-P	216	\$23.00	\$4,968.00
33	PEAKPS	PEAK Professional Services (2 Days)	1	\$0.00	\$0.00

Grand Total \$99,896.00

All Applicable Discounts, Promotions and Rebates, Solutions Assurance, Pre-Delivery Integration Charges Have Been Reflected
Miscellaneous expenses are not included (e.g. taxes, shipping charges, freight insurance, etc.) Information contained herein is Confidential.



Specialty
Power Systems Elite
System Storage Elite
System x Elite

Authorized
Software Value Plus
Security
Tivoli

Authorized PureSystems
PureFlex System



Miscellaneous expenses are not included (e.g. taxes, shipping charges, freight insurance, etc.) Information contained herein is Confidential. Software is non-returnable after order submission.

RESOLUTION NO. _____
SERIES OF 2015

A RESOLUTION AUTHORIZING A CONTRACT FOR THE PURCHASE OF CRITICAL PHYSICAL STORAGE UPGRADES UNDER SECTION 116 (b) OF THE HOME RULE CHARTER.

WHEREAS, the City's information technology infrastructure is critical to the overall effectiveness and efficiency management and workflow of the City; and

WHEREAS, this will most likely be the last investment in physical storage the City will make as more storage is sent to the "Cloud"; and

WHEREAS, due to the imminent failure of this equipment IT staff obtained bids for purchase of critical physical storage upgrades from a variety of vendors; and

WHEREAS, the bid by Peak Resources of \$99,896.00 was not the lowest bidder but they provide a better warranty, a better technical fit (matches Police and Wastewater architecture), have a local presence; and

WHEREAS, the Englewood City Council approved the 2014 Budget which this project but completed in 2015; and

WHEREAS, under Section 116 (b) of the Englewood Home Rule Charter Council shall have final approval of the lowest and best bid or all bids must be rejected. When no satisfactory bids are received or for other reasons deemed expedient to Council, contracts for public works or improvements may be negotiated, provided that contracts for which no competitive bids have been requested shall be invalid unless accepted by resolution which shall declare the reason for exception to the competitive bidding requirement.

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes a Contract with Peak Technologies for the purchase critical physical storage upgrades, as allowed by Section 116 (b) of the Englewood Home Rule Charter.

ADOPTED AND APPROVED this 6th day of April, 2015.

ATTEST:

Randy P. Penn, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2015.

Loucrishia A. Ellis, City Clerk

COUNCIL COMMUNICATION

Date April 6, 2015	Agenda Item 11 c ii	Subject L/E WWTP Network Infrastructure Project
INITIATED BY Littleton/Englewood WWTP Supervisory Committee		STAFF SOURCE Frank Gryglewicz, Director Finance, Administrative Support, IT and HR Kenny Hollis, Information Technology Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approval of IT Network Infrastructure Upgrade - October 21, 2013
 Council approval of the 2014 Littleton/Englewood WWTP Capital Infrastructure Budget.
 Council approval of the L/E WWTP Network Infrastructure Project – Switch Replacement – April 21, 2014.
 Council approval of the L/E WWTP Network Infrastructure Project – NetApp Replacement– July 7, 2014.

RECOMMENDED ACTION

The Littleton/Englewood Wastewater Treatment Plant Supervisory Committee recommended on March 17, 2015, Council approve an Information Technology Network Infrastructure Upgrade Project for replacement of Network Switches and related software and maintenance support at the Littleton/Englewood WWTP. Staff recommends Council approve a resolution awarding the contract to 24/7 Networks in the amount of \$204,000 (per the 50/50 agreement the Englewood share will be \$102,000). 24/7 was selected as a sole source provider to protect environment security and standardization among existing hardware infrastructure components.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The L/E WWTP IT infrastructure is simultaneously, with the City IT infrastructure, undergoing a significant hardware overhaul due primarily to end-of-life and out of service hardware, upgrades in operating systems, cabling and cable management. This will allow L/E WWTP to take advantage of the 10Gb infrastructure, allow future network expansion and improve network performance.

This solution will align with the City IT Department specifications for enterprise hardware and will provide L/E WWTP IT staff with redundancy for network support from City staff, should a failure occur when L/E staff is unavailable. The project will also provide future opportunity for improved disaster recovery between the two facilities. State of Colorado contract pricing will be used for project purchases.

This project will include upgrades for the Storage Area Network, 10gb Data Link Upgrade, Cabling, Access Layer Switches to facilitate environment stability and future growth. The total Project cost for FY 2015 will be \$204,000 with a recurring human capital cost of ~\$96,000 annually for FY2016. Funding for this project is contained in the 2015 Business Services budget. Based on the best available information at the time, a total of \$91,000 was budgeted for hardware and professional services for this project.

Cost Breakdown:

• Cabling -	\$27,000
• Switches -	\$ 34,000
• Desktop/Server Operating Systems -	\$ 14,000
• Network Resource -	\$ 96,000
• Cisco Annual Maintenance -	\$ 3,000
• 15% Cost Contingency -	<u>\$ 30,000</u>
• Project Total -	\$204,000

This project was approved by the L/E WWTP Supervisory Committee at the March 19, 2015 meeting.

FINANCIAL IMPACT

Funds for this project are included in the 2015 L/E WWTP budget and as a Capital Infrastructure Project and will be shared 50/50 by the Cities of Englewood and Littleton.

LIST OF ATTACHMENTS

Resolution

RESOLUTION NO. _____
SERIES OF 2015

**A RESOLUTION FOR AN INFORMATION TECHNOLOGY NETWORK
INFRASTRUCTURE UPGRADE BY SOLE SOURCE FOR THE LITTLETON/ENGLEWOOD
WASTEWATER TREATMENT PLANT (L/E WWTP).**

WHEREAS, Section 116(b) of the Englewood Home Rule Charter and Section 4-1-3-1 of the Englewood Municipal Code 2000, allow contracts for public works or improvements to be negotiated, provided that contracts for which no competitive bids have been requested to be approved by resolution declaring the reason for the exception to the competitive bidding requirement; and

WHEREAS, the L/E WWTP It infrastructure is simultaneously, with the City IT infrastructure, undergoing a significant hardware overhaul due primarily to end-of-life and out of service hardware, upgrades in operating systems, cabling and cable management; and

WHEREAS, this will allow L/E WWTP to take advantage of the infrastructure, allow future network expansion and improve network performance; and

WHEREAS, this solution will align with the City IT Department specifications for enterprise hardware and will provide L/E WWTP IT staff with redundancy for network support from City staff, should a failure occur when L/E staff is unavailable; and

WHEREAS, the project will also provide future opportunity form improved disaster recovery between the two facilities; and

WHEREAS, this project will include upgrades for the Storage Area Network, Data Link Upgrade, Cabling, Access Layer Switches to facilitate environment stability and future growth, the total Project cost for Fiscal Year 2015 will be \$204,000 with a recurring human capital cost of \$96,000 annually for Fiscal Year 2016; and

WHEREAS, 24/7 Networks was selected as a sole source provider to protect environment security and standardization among existing hardware infrastructure components; and

WHEREAS, funding for this project is contained in the 2015 Business Services budget, based on the best available information at the time, a total of \$91,000 was budgeted for hardware and professional services for this project; and

WHEREAS, the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Supervisory Committee recommended on March 17, 2015, an Information Technology Network Infrastructure Upgrade Project using the State of Colorado Contract pricing, for the replacement of Network Switches and related software and maintenance support; and

WHEREAS, Staff recommends proceeding with the Information Technology Network Infrastructure Upgrade Project in the amount of \$204,000 (per the 50/50 agreement Englewood's share will be \$102,000).

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

Section 1. The Englewood City Council hereby authorizes proceeding with the Information Technology Network Infrastructure Upgrade Project in the amount of \$204,000 (per the 50/50 agreement Englewood's share will be \$102,000).

ADOPTED AND APPROVED this 6th day of April, 2015.

ATTEST:

Randy P. Penn, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2015.

Loucrishia A. Ellis, City Clerk

COUNCIL COMMUNICATION

Date April 6, 2015	Agenda Item 11 c iii	Subject Purchase of Flusher Truck
INITIATED BY Public Works Department		STAFF SOURCE Pat White, Fleet Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

On May 16, 2005 Council approved, by motion the purchase of a new sanitary sewer flusher truck from Williams Equipment in the amount of \$115,875.00.

RECOMMENDED ACTION

Staff recommends Council approve, by motion, of the purchase of one new Sanitary Sewer Flusher Truck from the lowest acceptable bidder, Faris Machinery Company in the amount of \$182,650.00.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The proposed sewer flusher truck is used for removing accumulated solids and debris in the wastewater collection mains. All sanitary sewer mains are on a maintenance schedule to be flushed at least once a year. The truck will also be used on a contract basis for line maintenance for South Englewood Sanitation District. The purchase is being recommended to replace the existing 10-year old Unit #1416, a 2006 Vac Con flusher unit on a Freightliner Chassis. This unit has met the replacement requirements of years of service, hours of use and maintenance dollars expended.

Bids were received from six vendors:

Global Machinery	\$239,230.00
McDonald Equipment	\$217,990.00
Neverest Equipment Co.	\$217,558.00
Dawson Infrastructure Solutions, LLC	\$197,523.00
Williams Equipment	\$183,855.00
Faris Machinery Co.	\$182,650.00

FINANCIAL IMPACT

Faris Machinery Company is the lowest acceptable bidder at \$182,650.00. The entire amount will be funded by the CERF Fund.

LIST OF ATTACHMENTS

Summary Specification Sheet
Bid Proposal Tabulation

SERVICENTER GARAGE

**SUMMARY SPECIFICATION SHEET
FOR
NEW VEHICLES**

STATE AWARD # _____

ENGLEWOOD BID# IFB-14-029

MANUFACTURER OF VEHICLE Pipehunter flusher unit on Freightliner Chassis

MODEL OF VEHICLE 16H34 TM-3000psi @ 45 gpm

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

DEPARTMENT VEHICLE ASSIGNED TO 411605 Utilities

COMMENTS: This unit will replace Unit 1416, a 2006 Vac Con flusher unit on a Freightliner Chassis. This unit has met the replacement requirements of years of service, hours of use, and maintenance dollars expended. The bid award is to the lowest bidder, Farris Machinery Company, in the amount of \$182,650.00. Funds are available in the CERF fund.

City of Englewood Bid Tabulation Sheet

Bid Opening Date: January 13, 2014

Apparent Low Bidder

ITEM BID: IFB-14-029 Sanitary Sewer Flusher Truck

Vendor	Sanitary Sewer Flusher Truck	Manufacturer	Exceptions:
Macdonald Equipment 7333 Hwy 85 Commerce City, CO 80022 Bill Phelps - General Manager 303-287-7401	\$ 217,990.00	Hi-Vac	Hi-Vac offers a continuous flow reciprocating water pump; creates smooth flow and pressure for safe and complete wateline cleaning. Accumulator not required.
Neverest Equipment Company 6681 Colorado Blvd Unit 5 Commerce City, CO 80022 Brian Balchumas - Owner 303-898-9475	\$ 217,558.00	GPM Tank and Truck	None Taken
Dawson Infrastructure Solutions, LLC 11780 Fairplay Street Brighton, CO 80603 Kelly Dawson - President 303-632-8236	\$ 197,523.00	Sewer Equipment Co.	None
Global Machinery 705 W 62nd Ave Denver, CO 80216 Randy Ostermiller - Sales 303-570-5235	\$ 239,230.00	GapVax	None
Faris Machinery Company 5770 E 77th Ave Commerce City, CO 80022 Larry Johnson - Div manager-Environ. 303-289-5743	\$ 182,650.00	PipeHunter Inc.	Attached to the bid is literature for the Fleet manager to read

Williams Equipment, LLC			
9670 Dallas St Unit J			
Henderson, CO 80640			
Mike Williams - Owner			
303-573-0149	\$ 183,855.00	Van Con, Inc.	None

COUNCIL COMMUNICATION

Date April 6, 2015	Agenda Item 11 c iv	Subject Gate Replacements 2015 Project - Award of Construction Contract
INITIATED BY Littleton/Englewood Wastewater Treatment Plant Supervisory Committee		STAFF SOURCE Chong Woo, Engineering/Maintenance Manager Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved the 2015 Littleton/Englewood Wastewater Treatment Plant budget.

RECOMMENDED ACTION

The Littleton/Englewood Wastewater Treatment Plant Supervisory Committee recommended on March 17, 2015, Council approve, by Motion, a construction contract for the Gate Replacements 2015 Project located at the Littleton/Englewood (L/E) WWTP. Staff recommends awarding the contract to the lowest reliable and responsive bidder, RN Civil Constructors Inc., in the amount of \$279,000, with a 5% contingency (Total = \$279,139.50).

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Littleton/Englewood Wastewater Treatment includes a number of process areas which include tanks, channels, and a complex network of underground piping systems. Gates and valves are utilized to control wastewater flow through the process areas and to provide isolation for treatment control and to conduct maintenance activities. Proper functioning is necessary to maintain plant operations.

In 2014 staff conducted a detailed condition assessment of the gates located at the Headworks Building. Based on the assessment, six (6) gates were identified as damaged beyond repair and in need of replacement. The project will also include channel reconditioning and shafts replacement. The gates vary in age from 30-40 years and the sizes range from 30-84 inches.

The Project was advertised on the Rocky Mountain E-Purchasing System (Bidnet). Bid Opening was conducted on February 19, 2015. Two (2) Bids were received, with the following base bid results.

RN Civil Constructors Inc., Centennial, CO	\$279,000
Velocity Constructors Inc., Denver, CO	\$530,985

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

FINANCIAL IMPACT

The Bid amount (\$279,000) and with contingency, is available in the 2015 Budget and will be shared 50/50 by the Cities of Englewood and Littleton.

LIST OF ATTACHMENTS

Bid Tabulation Sheet
Contract for Construction

City of Englewood Bid Tabulation Sheet

Bid Opening Date: February 19, 2015 2:00 P.M. MST

ITEM BID: ITB-15-001 Gates Replacement 2015 Project

Apparent Low Bidder

Vendor	Bid Bond Y/N?	Receipt of Addendums 1 & 2 Y/N?	SOQ Y/N?	Replace Barscreen 1 w/ self-contained, manually operated, stainless steel gate	Replace Barscreen 2 w/ self-contained, manually operated, stainless steel gate	Replace Raw Sewage Gate 1 w/ manually operated, stainless steel gate	Replace Raw Sewage Gate 2 w/ manually operated, stainless steel gate	Replace Raw Sewage Gate 3 w/ manually operated, stainless steel gate	Replace Raw Sewage Gate 3 w/ manually operated, stainless steel gate	Replace Raw Sewage Gate 3 w/ manually operated, stainless steel gate	Replace Raw Sewage Gate 3 w/ manually operated, stainless steel gate	Total Bid
Velocity Constructors, Inc.				Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	
1330 S Cherokee St.				\$ 2,920.00	\$ 2,920.00	\$ 2,920.00	\$ 2,920.00	\$ 2,920.00	\$ 2,920.00	\$ 2,920.00	\$ 2,920.00	
Denver, CO 80223												
303-984-7800 Ext. 102				Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	
Bob Rogstad, VP	Y	Y	Y	\$ 98,244.00	\$ 87,752.00	\$ 85,444.00	\$ 65,081.00	\$ 65,580.00	\$ 120,364.00	\$ 530,985.00	\$ 530,985.00	\$539,985.00
RN Civil Construction				Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	Lump Sum Design	
5975 S Quebec St. #140				\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	\$ 500.00	
Centennial, CO 80111												
303-482-3059 Ext. 1				Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	Lump Sum Const.	
Daniel Niehus - Owner	Y	Y	Y	\$ 48,500.00	\$ 48,500.00	\$ 45,000.00	\$ 45,000.00	\$ 45,000.00	\$ 44,000.00	\$ 279,000.00	\$ 279,000.00	\$279,000.00
												\$ 251,985.00

	BS1	BS2	RSP1	RSP2	RSP3	CO	
VCI	\$ 101,164	\$ 90,672	\$ 88,364	\$ 68,001	\$ 68,500	\$ 123,284	\$ 539,985.00
RNC	\$ 49,000	\$ 49,000	\$ 45,500	\$ 45,500	\$ 45,500	\$ 44,500	\$ 279,000.00

CONTRACT FOR CONSTRUCTION #CFC/15-17

CITY OF ENGLEWOOD, COLORADO

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

PROJECT: Gate Replacements 2015 Project

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

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

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

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

- Invitation to Bid
- Contract (this instrument)
- Insurance
- Performance Payment Maintenance Bond
- Gates Replacement Project Manual
- Technical Specifications
- Drawings sheets
- Spill Control, Management and Clean Up Document

- B. Scope of Work: The Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all the work described, drawn, set forth, shown and included in said Contract Documents.

- C. Terms of Performance: The Contractor agrees to undertake the performance of the work under this Contract within ten (10) days from being notified to commence work by the Director of Utilities and agrees to fully complete said work by December 31st, 2015, plus such extension or extensions of time as may be granted by the Director of Utilities in accordance with the provisions of the Contract Documents and Specifications.

- D. Indemnification: The City cannot and by this Agreement/Contract does not agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity, for any purpose. The Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature including Worker's Compensation claims, in any way resulting from or arising out of this Agreement/Contract: provided, however, that the Contractor need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and Employees.
- E. Accidental Spills and/or Releases of Chemicals, Process Wastewater or Other Unpermitted Substances to the Site If a release of chemicals, process wastewater or other unpermitted substance is spilled, leaked, or otherwise released to the environment or Site, by CONTRACTOR, subcontractors, suppliers, or anyone else for whom CONTRACTOR is responsible, CONTRACTOR will take immediate steps to secure or otherwise isolate such condition, immediately notify the Littleton/Englewood Wastewater Treatment Plant staff and contain and clean up any such substance or spill. CONTRACTOR is responsible for making all notifications and complying with all regulatory requirements related to such an incident. Any waste generated as a result of a spill, leak, or other release to the environment or Site by CONTRACTOR, subcontractors, suppliers, or anyone else for whom CONTRACTOR is responsible shall become the property of CONTRACTOR and shall be disposed of in accordance with all applicable requirements. In addition to cleanup and disposal costs, CONTRACTOR is responsible for all costs associated with demobilization, remobilization, medical examinations, and all other costs, claims, losses, and damages, including but not limited to attorney fees and litigation costs as well as fines and penalties, incurred by Littleton/Englewood Wastewater Treatment Plan as a result of any substance or material that is spilled, leaked, or otherwise released to the environment or Site by CONTRACTOR, subcontractors, suppliers, or anyone else for whom CONTRACTOR is responsible.
- F. Termination of Award for Convenience: The City may terminate the award at any time by giving written notice to the Contractor of such termination and specifying the effective date of such termination, at least thirty (30) days before the effective date of such termination. In that event all finished or unfinished service, reports, material (s) prepared or furnished by the Contractor after the award shall, at the option of the City, become its property. If the award is terminated by the City as provided herein, the Contractor will be paid that amount which bears the same ratio to the total compensation as the services actually performed or material furnished bear to the total services/materials the successful firm agreed to perform under this award, less payments of compensation previously made. If the award is terminated due to the fault of the Contractor the clause relating to termination of the award for cause shall apply.
- G. Termination of Award for Cause: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations or if the Contractor shall violate any of the covenants, agreements or stipulations of the award, the City shall have the right to terminate the award by giving written notice to the Contractor of such termination and specifying the effective date of termination. In that event, all furnished or unfinished services, at the option of the City, become its property, and the Contractor shall be entitled to receive just, equitable compensation for any satisfactory work documents, prepared completed or materials as furnished.

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

- H. Terms of Payment: The City agrees to pay the Contractor for the performance of all the work required under this contract, and the Contractor agrees to accept as his full and only compensation therefore, such sum or sums of money as may be proper in accordance with the price or prices set forth in the Contractor's proposal attached and made a part hereof, the total estimated cost thereof being two hundred seventy nine thousand dollars (\$279,000.00). A 5% retainage of the awarded project amount will be withheld until final inspection and acceptance by the Project Manager.
- I. Appropriation of Funds: At present, \$279,000.00 has been appropriated for the project. Notwithstanding anything contained in this Agreement to the contrary, the parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement/Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated. The City shall immediately notify the Contractor or its assignee of such occurrence in the event of such termination.
- J. Liquidated Damages: The City and Contractor recognize that time is of the essence in this Agreement because of the public interest in health and safety, and that the City will suffer financial loss, and inconvenience, if the Work is not complete within the time specified in the bid documents, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by the City if the Work is not complete on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay, but not as a penalty, Contractor shall pay the City **\$0 (zero)** for each day that expires after the time specified for substantial completion until the Work is complete, and **\$0 (zero)** for each day that expires after the time specified for final completion until the Work is finally complete.
- K. Assignment: Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the City specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the Assignor from any duty or responsibility under the Contract Documents.
- L. Colorado Labor Law: If this project is for a public works project or public project, as defined in Section 8-49-102(2) C.R.S. the contractor shall comply with 8-17-101 C.R.S. which requires the contractor to use at least eighty percent (80%) Colorado labor for any public works project financed in a whole or in part by State, counties, school districts, or municipal monies.
- M. Contract Binding: It is agreed that this Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns, and successors.

- N. **Contractors Guarantee:** The Contractor shall guarantee that work and associated incidentals shall remain in good order and repair for a period of one (1) year from all causes arising from defective workmanship and materials, and to make all repairs arising from said causes during such period without further compensation. The determination of the necessity for the repair or replacement of said project, and associated incidentals or any portion thereof, shall rest entirely with the Director of Utilities whose decision upon the matter shall be final and obligatory upon the Contractor.

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

- (a) **Employees, Contractors and Subcontractors:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]
- (b) **Verification:** Contractor will participate in either the E-Verify program or the Department program, as defined in C.R.S. 8-17.5-101 (3.3) and 8-17.5-101 (3.7) respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract. Contractor is prohibited from using the E-Verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.
- (c) **Duty to Terminate a Subcontract:** If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall:
- (1) notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - (2) terminate the sub-contract with the subcontractor if, within three days of receiving notice required pursuant to this paragraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with the illegal alien.
- (d) **Duty to Comply with State Investigation:** Contractor shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation by that the Department is undertaking pursuant to C.R.S. 8-17.5-102 (5).
- (e) **Damages for Breach of Contract:** The City may terminate this contract for a breach of contract, in whole or in part, due to Contractor's breach of any section of this paragraph or provisions required pursuant to C.R.S. 8-17.5-102. Contractor shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract under this Paragraph.

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

CITY OF ENGLEWOOD

By: _____
Randy P. Penn, Mayor

Date: _____

ATTEST: _____
City Clerk - Loucrishia A. Ellis

RN Civil Construction

B. _____ Date: 3/13/15
(Signature)
Daniel P. Niehus - owner-managing partner
(Print name and Title)

STATE OF Colorado
COUNTY OF Arapahoe ss.

On this 13th day of March, 2015, before me personally appeared Daniel P. Niehus, known to me to be the owner-managing partner of RN Civil Construction, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

My commission expires: _____



NOTARY _____

PERFORMANCE, PAYMENT AND MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS That we RN Civil Construction, LLC hereinafter called the Principal, and Western Surety Company hereinafter called the Surety, are jointly and severally held and firmly bound unto THE CITY OF ENGLEWOOD, County of ARAPAHOE, State of COLORADO, hereinafter called the Owner, in the sum of Two Hundred Seventy Nine* (\$ 279,000.00), lawful money of the United States of America, to be paid to the Owner for the payment whereof the Principal and Surety hold themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly bound by these presents.

*Thousand and No/100---

WHEREAS, the Principal has, by means of a written agreement dated _____ entered into a Contract with the Owner for the construction of Gate Replacements 2015 Project which Contract is by reference made a part hereof the same as though fully set forth herein;

NOW, THEREFORE, the conditions of this obligation are as follows:

FIRST, The Principal shall: (1) faithfully perform said Contract on Principal's part and satisfy all claims and demands incurred for the same; (2) fully indemnify and save harmless the Owner from all costs and damages which said Owner may incur in making good any default.

SECOND, To the extent permissible by law, the Principal shall protect, defend, indemnify and save harmless the Owner, the Architect-Engineer, and their officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including in part attorney fees, incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person, or damage to property, including in part the loss of use, resulting therefrom, based upon or allegedly based upon any act, omission or occurrence of the Principal, or his employees, servants, agents, subcontractors or suppliers, or anyone else under the Principal's direction and control (regardless of whether or not cause in part by a party indemnified hereunder), and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any work or services called for by the Contract, or from conditions created by the performance or non-performance of said work or services.

THIRD. The Principal shall pay all persons, firms and corporations, all just claims due them for the payment of all laborers and mechanics for labor performed, for all materials and equipment used or rented in the performance of Principal's Contract.

Contractor's Guarantee. The Contractor shall guarantee that work and associated incidentals shall remain in good order and repair for a period of one (1) year from all causes arising from defective workmanship and materials, and to make all repairs arising from said causes during such period without further compensation, and shall keep the same in said work and repair without further compensation for a period of one (1) year from and after completion and acceptance thereof by the City. The determination of the necessity for the repair or replacement of said project, and associated incidentals or any portion thereof, shall rest entirely with the Director of Utilities, whose decision upon the matter shall be final and obligatory upon the Contractor.

Every Surety on this bond shall be deemed and held, any Contract to the Contrary notwithstanding, to consent without notice:

1. To any extension of time to the Contractor in which to perform the Contract.
2. To any change in the Plans, Drawings, Specifications, Contract or other Contract Documents, when such change does not involve an increase of more than twenty percent (20%) of the total contract price, and shall then be released only as to such excess increase.

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Evan E Moody, Karen A Feggestad, Tina Marie Post, Justin Tomlin, Bradley J Moody, Individually

of Denver, CO, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 28th day of January, 2015.

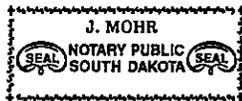
WESTERN SURETY COMPANY



State of South Dakota }
County of Minnehaha } ss

On this 28th day of January, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
June 23, 2015



CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 13th day of March, 2015.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.