



1000 Englewood Pkwy – Community Room
Englewood, CO 80110

AGENDA

City Council Study Session
Tuesday, Feb. 16, 2016 ♦ 6:00 p.m.

City Council Dinner Available at 5:30 p.m.

- I. EMRF/Shea Properties Discussion 6:00- 7:00 p.m.**
- II. 4th of July Festival Discussion 7:00 – 7:30 p.m.**



Englewood McLellan Reservoir Foundation

To: Mayor Jefferson and City Council Members

Through: Eric Keck, City Manager

From: Michael Flaherty, Deputy City Manager, on behalf of the Englewood McLellan Reservoir Foundation (EMRF)

Date: February 11, 2016

Subject: EMRF Lease and Exchange Agreements with Shea Properties

At the City Council Study Session on February 16, the Board of Directors of the Englewood McLellan Reservoir Foundation (EMRF) will discuss the terms of two agreements for Council's upcoming consideration. Representatives of Shea Properties (Shea) will also be present to provide additional information and respond to questions.

With the first agreement, EMRF seeks City Council support for the exchange of 12.3 acres of EMRF property in Highlands Ranch Planning Area 81 (PA 81) and 12.3 acres of adjacent Shea property, which was authorized by the passage of Ballot Question 2E in the November 2014 election.

The second agreement is the lease, with an option to purchase after 20 years, PA 81 in total by Shea. The passage of Ballot Question 2K in November of 2015 authorized the sale of EMRF property, subject to approval of City Council. The attached aerial map of EMRF properties shows PA81 and the properties to be exchanged.

Background

In 1999, through Ordinance 41, City Council authorized the transfer of certain parcels of property in Douglas County near McLellan Reservoir to EMRF for the purpose of facilitating the development of those properties. Since that time, EMRF has managed and maintained the property, has made improvements, including over-lot grading, storm water management, and water quality facilities, and has platted most of the individual parcels.

On December 17, 2007, Council supported EMRF in the sale of 10.87 acres of PA85 to RTD. On December 1, 2008, City Council supported EMRF in leasing 12.79 acres in PA84 to TT Denver, d.b.a. Mike Ward Infiniti. On December 6, 2010, Council approved a resolution of support for a lease agreement for approximately 10.14 acres in PA 85 with Benjamin Franklin Charter School. On October 17, 2011 City

Council adopted a resolution of support for a lease agreement for 7.3 acres in PA 84 with Miller Family Real Estate, LLC, d.b.a. Larry Miller Nissan. On March 4, 2013, Council adopted a resolution of support for completion of lease negotiations with MKS, LLC for lease of 9.89 acres in PA85. A final lease agreement with MKS is pending.

On July 6, 2015, City Council approved Resolution 85 that supported EMRF in its negotiations with Shea for the lease of PA 81 and the exchange of properties, as authorized by Ballot Question 2E in the 2014 election. In 2014, the EMRF board of directors and Shea entered into discussion on the opportunities available to both parties by the lease of PA 81. Shea owns 60 acres immediately to the east and south of PA 81. A total development of nearly 100 acres, the last large track of undeveloped property in Highland Ranch. In July 2015, City Council authorized placing a ballot question on the November 2015 election that would allow the sale of EMRF property after a lease term of at least 20 years. Englewood voters approved Ballot Question 2K on November 3, 2015.

After the passage of Ballot Question 2K, Shea has sought initial entitlements from Douglas County, including determination of County requirements for roadway and park dedication. The land necessary for the required roadways to serve the development of PA 81 and for dedication of a three acre park to be allocated between Shea and EMRF. Shea has also worked with Douglas County on a Plan Amendment for Shea's 60 acres to allow additional uses, primarily housing, which would be developed by Shea, and to eliminate some currently allowed uses, primarily industrial and auto related. While the amendment affects only the Shea property, the zoning will have a positive impact on the adjacent EMRF property. Shea has also initiated a preliminary platting of the entire 100 acres, which would become effective only upon execution of the lease with EMRF.

Shea has secured a tenant of an institutional nature and has reached a tentative agreement for use of a significant portion of PA 81, based on the terms of the proposed lease with EMRF. The institutional use is subject to the approval of the option to purchase the property in the future, as provided by the approval of 2015 ballot question. The nature of the institutional use is one of such permanence that a future purchase is a requirement of its agreement with Shea.

Shea has provided a site plan of the entire 100 development along with a site plan and rendering of the required park, copies of which are attached and which will be discussed by the Shea representatives during their presentation to City Council.

Shea Lease and Exchange Agreement Summary

The basic terms of the property exchange and lease agreements are summarized as follows:

Exchange Agreement

1. Exchange of 12.3 acres of Shea property for 12.3 acres of EMRF property in PA 81 (see the attached aerial map), as provided by Ballot Question 2E of 2014.
2. Replatting of EMRF exchange property with adjacent Shea property, which becomes effective with the lease by EMRF of its PA 81 property to Shea.
3. Cooperation by EMRF with Shea in the rezoning of the exchanged properties.

Lease Agreement

1. An initial lease term of 20 years, with extension options up to 65 years.

2. A net annual rental rate based on a \$/sq. ft. value with a capitalization rate of 4.5%, or approximately \$9.5 million over the initial 20 year term of the lease.
3. An annual inflation rate increase of 2% the initial 20 year term with an adjustment after year 20, based on actual inflationary factors
4. A purchase option at the expiration of the initial lease term, based on a fair market value determined by appraisal of the land in an unimproved, vacant condition.
5. The exchange agreement between Shea and EMRF will take place concurrently with the closing of the lease, and is subject to execution of the lease.

Conclusion

The proposed agreements with Shea are the most logical means of providing for the development of PA 81. With our prior leases, public infrastructure in the form of utilities and roadways to serve those leased parcels was in place and the subdivision of property into leasable parcels was relatively uncomplicated due to the location of roadways and utilities. The development of PA 81 requires significant grading due to the current topography, particularly on the north side of the property, and requires construction of roadways to serve the interior of the property. The cost of the infrastructure improvements is in excess of \$5 million, which is far beyond the financial capability of EMRF and poses risks that are well beyond justification for a public entity to undertake.

Shea, as a private development company, has the experience and financial necessary capability to take on the risks incumbent with this project and as owner of adjacent property has the incentive to assume these risks.

The EMRF Board of Directors plans to bring a resolution and a bill for an ordinance forward for Council's consideration at the regular City Council meeting on February 29. The resolution would approve the exchange of properties with Shea; the bill for an ordinance would approve an agreement with Shea for the lease with option to sell of EMRF PA 81. Copies of both documents will be completed and included with Council materials for that meeting.

Attachments: EMRF Properties Map
Proposed Shea Site Plans/Renderings

Proposed Shea Properties Master Site Plan



Proposed Park Site Plan



Artist's Park Rendering





STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, DONETTA DAVIDSON, SECRETARY OF STATE OF THE STATE OF
COLORADO HEREBY CERTIFY THAT

ACCORDING TO THE RECORDS OF THIS OFFICE

ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION
(COLORADO NONPROFIT CORPORATION)

FILE # 19991103327 WAS FILED IN THIS OFFICE ON June 01, 1999
AND HAS COMPLIED WITH THE APPLICABLE PROVISIONS OF THE
LAWS OF THE STATE OF COLORADO AND ON THIS DATE IS IN GOOD
STANDING AND AUTHORIZED AND COMPETENT TO TRANSACT BUSINESS
OR TO CONDUCT ITS AFFAIRS WITHIN THIS STATE.

Dated: December 21, 1999

SECRETARY OF STATE

ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF

19991238969 C
\$ 40.00
SECRETARY OF STATE
12-21-1999 10:00:03

ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION

Pursuant to the provisions of the Colorado Revised Nonprofit Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is Englewood/McLellan Reservoir Foundation.

SECOND: The text of the amendment adopted was as follows:

(I) Article VIII is hereby amended in its entirety to read as follows:

ARTICLE VIII

BYLAWS

The initial Bylaws of the Corporation shall be adopted by the Board of Directors. Such Board shall have the power to alter, amend or repeal the Bylaws. Such Bylaws may contain any provisions for the regulation or management of the affairs of the Corporation which are not inconsistent with the law or these Articles of Incorporation, as the same may from time to time be amended. However, no Bylaw at any time in effect, and no amendment to the Bylaws, shall have the effect of giving any director or officer of this Corporation any proprietary interest in its property or assets whether during the term of its existence or as an incident to its dissolution. Further, the Bylaws may not, except with the consent of the City Council of the City of Englewood, Colorado, be altered, amended or repealed in a manner which would impair or defeat, either directly or indirectly, the

purpose for which the Corporation was formed or the transfer to the City of Englewood, Colorado of the assets of the Foundation upon dissolution of the Corporation, nor may any transfer of assets, loan, encumbrance or other corporate action be taken which would have such effect.

(II) Article XI is hereby amended in its entirety to read as follows:

ARTICLE XI

AMENDMENT

The Board of Directors reserves the right from time to time to amend, alter, change or repeal these Articles of Incorporation by the affirmative vote of a majority of the directors in office. However, these Articles of Incorporation may not, except with the consent of the City Council of the City of Englewood, Colorado, be altered, amended or repealed in a manner which would impair or defeat, either directly or indirectly, the purpose for which the Corporation was formed or the transfer to the City of Englewood, Colorado of the assets of the Foundation upon dissolution of the Corporation, nor may any transfer of assets, loan, encumbrance or other corporate action be taken which would have such effect.

THIRD: The foregoing amendment to the Articles of Incorporation was adopted by the board of directors without member action on the 9 day of November, 1999. Member action was not required.

Englewood/McLellan Reservoir Foundation

By:
Stewart H. Fonda, President

BYLAWS
OF
ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION
("the Corporation")

1. OFFICES. The principal office of the Corporation in the State of Colorado is at 3400 S. Elati Street, Englewood, Colorado 80110. Other offices and places of business may be established from time to time by resolution of the Corporation's Board of Directors.

2. SEAL. The seal of the Corporation shall have inscribed thereon the name of the Corporation, and the words, "Colorado" and "Seal", and shall be in such form as may be approved by the Corporation's Board of Directors. The Corporation's Board of Directors shall have the power to alter the seal of the Corporation at its pleasure.

3. MEMBERS. The Corporation shall have neither voting nor nonvoting members.

4. DIRECTORS.

4-A. Board of Directors. The affairs of the Corporation shall be managed solely by a Board of five persons who shall be natural persons at least eighteen years of age or older appointed by the City Council of the City of Englewood, Colorado (the "City"). Unless otherwise designated by the City, the five persons shall be those individuals holding the positions with the City of Englewood, Colorado, of Director of Utilities, Assistant City Manager, Finance Director, Manager of Engineering Services, and Director of Neighborhood and Business Development.

4-B. Regular Meeting. Regular meetings of the Corporation's Board of Directors shall be held on a periodic basis as decided by the Corporation's Board of Directors pursuant to notice as provided by Paragraph 4-D.

4-C. Special Meetings. Special meetings of the Corporation's Board of Directors may be called at any time by the by the President or by any two of the directors then in office, and may be held at such time and place as the notice or waiver thereof may specify.

4-D. Notice. Regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting. Notice of the date, time and place of any special meeting shall be given to each director at least two days prior to the meeting by written notice either personally delivered or mailed to each director at the director's business address, or by notice transmitted by private courier, telegraph, telex, electronically transmitted facsimile or other form of wire or wireless communication. The notice need not describe the purpose of the special meeting unless otherwise required by articles 121 to 137 of title 7, Colorado Revised Statutes, or by these bylaws. If mailed, such notice shall be deemed to be given and to be effective on the earlier of: (i) five days after such notice is deposited in the United States mail, properly addressed, with first class postage prepaid; or (ii) the date shown on the return receipt, if mailed by registered or certified mail return receipt requested, provided that the return receipt is signed by the director to whom the notice is addressed. If notice is given by telex, electronically transmitted facsimile, Email or other similar form of wire or wireless communication, such notice shall be deemed to be given and to be effective when sent, and with respect to a telegram, such notice shall be deemed to be given and effective when the telegram is delivered to the telegraph company. If a director has designated in writing one or more reasonable addresses or facsimile numbers for delivery of notice, notice sent by mail, telegraph, telex, Email or electronically transmitted facsimile or other form of wire or wireless communication shall not be deemed to have been given or to be effective unless sent to such addresses or facsimile numbers as the case may be.

4-E. Waiver of Notice. A director may waive notice of a meeting before or after the time and date of the meeting by a writing signed by the director. Such waiver shall be delivered to the corporate secretary for filing with the corporate records, but such delivery and filing shall not be conditions to the effectiveness of the waiver. Further, a director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless at the beginning of the meeting, or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

4-F. Quorum. A quorum at all meetings of the Corporation's Board of Directors shall consist of a majority of the directors, but a smaller number may adjourn from time to time without further notice, until a quorum is secured. The act of the majority of the directors then present at a meeting at which a quorum is present shall be the act of the Corporation's Board of Directors except as otherwise provided in the Articles of Incorporation or in these bylaws.

4-G. Vacancy. Any vacancy occurring in the Corporation's Board of Directors shall be filled by the City Council of the City of Englewood. Should a vacancy exist in any Board position by reason of a vacancy in the position with the City of Director of Utilities, Assistant City Manager, Finance Director, Manager of Engineering Services, or Director of Neighborhood and Business Development, any individual named by the City to serve in such position on an interim basis shall serve as a director until such position is filled on a permanent basis. If no individual is named to serve in such position on an interim basis, the City Manager shall serve as a director until such position is filled by the City of Englewood.

4-H. Removal From Office. The Board of Directors, or any member thereof, may be removed from office, with or without cause, by the City Council of the City of Englewood, Colorado.

4-I. Telephonic Meetings. The board of directors may permit any director (or any member of any committee designated by the board) to participate in a regular or special meeting of the board of directors or a committee thereof through the use of any means of communication by which all directors participating in the meeting can hear each other during the meeting. A director participating in a meeting in this manner is deemed to be present in person at the meeting.

4-J. Action Without A Meeting. Any action required or permitted to be taken at a meeting of the Corporation's Board of Directors may be taken without a meeting, if each and every member of the board in writing either votes for such action; or votes against such action or abstains from voting; or waives the right to demand that action not be taken without a meeting. Such action is taken only if the affirmative vote for such action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted. The action shall only be effective if there are writings which describe the action, signed by all directors, received by the corporation and filed with the minutes. Any such writings may be received by electronically transmitted facsimile or other form of wire or wireless communication providing the corporation with a complete copy of the document including a copy of the signature. Actions taken shall be effective when the last writing necessary to effect the action is received by the corporation unless the writings set forth a different date. Any director who has signed a writing may revoke it by a writing signed, dated and stating the prior vote is revoked. However, such writing must be received by the corporation before the last writing necessary to effect the action is received. All such actions shall have the same effect as action taken at a meeting.

4-K. Compensation and Expense Reimbursement. A director may be reimbursed for actual expenses incurred to carry out his or her duties as a director. A director of the Corporation may also receive reasonable compensation for services rendered as a director. However, any such compensation shall be limited so as to avoid any transaction that would constitute an “excess benefit transaction” if the Corporation was an “applicable tax-exempt organization” and the director a “disqualified person”, all as defined in Section 4958 of the Internal Revenue Code of 1986. If it is concluded by the City of Englewood that any payment to a director would have constituted an "excess benefit transaction" had Code section 4958 been applicable to the Corporation, the director will immediately repay to the Corporation the amount of any excess benefit which the director has received.

4-L. Loans. No loans shall be made by the Corporation to its directors.

5. OFFICERS.

5-A. Election. The Director of Utilities of the City of Englewood shall be the president, the Finance Director of the City of Englewood shall be the vice-president and treasurer, and the Director of Neighborhood and Business Development shall be the secretary of the Corporation.

5-B. Officers. The officers of the Corporation shall exercise and perform the respective powers, duties and functions as are stated below, and as may be assigned by the Corporation's Board of Directors.

5-B-1. The President shall preside at all meetings of the Board. The President shall be the Chief Executive Officer of the Corporation and shall, subject to the general direction and control of the Board of Directors, have the general supervision, direction, and control over the business and affairs of the Corporation and its officers, agents, and employees. The President may sign, with the Secretary or any Assistant Secretary or any other proper officer of the Corporation designated by the Board of Directors, any deeds, leases, mortgages, deeds of trust, or other documents of conveyance or encumbrance of any real property owned by the Corporation. He shall also perform all duties incident to the office of President and such other duties as may be assigned by the Board of Directors from time to time.

5-B-2. The Vice-president shall assist the president and shall perform such duties as may be assigned to him by the President or by the board of directors. In the absence of the president, the Vice-president shall have the powers to and perform the duties of the President.

5-B-3. The Secretary shall keep accurate minutes of the proceedings of the Board of Directors and of any committees of the Board of Directors; shall ensure that all notices are duly given in accordance with the provisions of these Bylaws; shall be custodian of the records and of the seal of the Corporation and shall attest the affixing of the seal of the Corporation when authorized by the Board of Directors; and shall perform such additional duties as are incident to such office and as may be assigned to such person by the Board of Directors or the President. Assistant Secretaries, if any, shall have the same duties and powers subject to the supervision of the Secretary.

5-B-4. The Treasurer shall be the principal financial officer of the Corporation; shall have the charge and custody of and be responsible for all funds and securities of the Corporation; shall deposit such funds in the name of the Corporation in such depositories as shall be designated by the Board of Directors; shall keep accurate books of account and records of financial transactions and the condition of the Corporation and shall submit such reports thereof as the Board of Directors may from time to time require; and in general, perform all duties incident to such office and such other duties as may from time to time be assigned to such person by the President or by the Board of Directors. Assistant treasurers, if any, shall have the same duties and powers subject to the supervision of the Treasurer.

5-C. Compensation and Expense Reimbursement. An officer may be reimbursed for actual expenses incurred to carry out his or her duties as an officer. An officer of the Corporation may receive reasonable compensation for services rendered as an officer. However, any such compensation shall be limited so as to avoid any transaction that would constitute an “excess benefit transaction” if the Corporation was an “applicable tax-exempt organization” and the officer a “disqualified person”, all as defined in Section 4958 of the Internal Revenue Code of 1986. If it is concluded by the City of Englewood that any payment to an officer would have constituted an "excess benefit transaction" had Code section 4958 been applicable to the Corporation, the officer will immediately repay to the Corporation the amount of any excess benefit which the officer has received.

5-D. Disability. In the event of absence or inability of any officer to act, the Corporation's Board of Directors may delegate the powers or duties of such officer to any other officer whom it may select.

5-E. Vacancy. Should a vacancy exist in the Position of Director of Utilities, Finance Director or Director of Neighborhood and Business Development, the City Manager shall serve in such position on an interim basis until such position is filled on a permanent basis by the City Council of the City of Englewood.

5-F. Loans. No loans shall be made by the Corporation to its officers.

6. FINANCE AND CONTRIBUTIONS.

6-A. Banking. The monies of the Corporation shall be deposited in the name of the Corporation in such bank or banks or trust company or trust companies, as the Corporation's Board of Directors shall designate, and may be drawn out only on checks signed in the name of the Corporation by such person or persons as the Corporation's Board of Directors by appropriate resolution may direct. Notes and commercial paper, when authorized by the Corporation's Board of Directors, shall be signed in the name of the Corporation by such officer or officers or agent or agents as shall thereunto be authorized from time to time.

6-B. Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Corporation's Board of Directors.

7. INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS.

7-A. Definitions. For purposes of this Article, the following terms shall have the meanings set forth below:

7-A-1. "Corporation" means the Corporation and, in addition to the resulting or surviving corporation, any domestic or foreign entity that is a predecessor of a corporation by reason of a merger, consolidation or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

7-A-2. "Director" means an individual who is or was a director of the Corporation, and an individual who, while such a director of the Corporation, is or was serving at the Corporation's request as a director, officer, partner, trustee, employee, fiduciary or agent of any other foreign or domestic corporation or other entity or employee benefit plan. A director shall be considered to be serving an employee benefit plan at the Corporation's request if his or her duties to the Corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context otherwise requires, the estate or personal representative of a director.

7-A-3. "Expenses" means the actual and reasonable expenses, including counsel's fees, incurred by a party in connection with a proceeding.

7-A-4. "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to a private foundation or an employee benefit plan) or reasonable expenses.

7-A-5. "Official capacity", when used with respect to a director of the Corporation, means the office of director in the Corporation and, when used with respect to a person in a capacity other than as a director (even if such person is also a director), means the office in the Corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the employee, fiduciary, or agent on behalf of the Corporation in the performance of his or her duties in his or her capacity as such officer, employee, fiduciary, or agent. "Official capacity" does not include service for any other foreign or domestic corporation or for any other entity or employee benefit plan when acting directly on behalf of such other corporation, entity or employee benefit plan as a director, officer, employee, fiduciary or agent thereof.

7-A-6. "Party" means any person who was, is, or is threatened to be made, a named defendant or respondent in a proceeding by reason of the fact that such person is or was a director, officer, employee or fiduciary of the Corporation, and any person who, while a director, officer, employee or fiduciary of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, fiduciary or agent of any other foreign or domestic corporation or of any other entity or employee benefit plan. A party shall be considered to be serving an employee benefit plan at the Corporation's request if such party's duties to the Corporation also impose duties on or otherwise involve services by such party to the plan or to participants in or beneficiaries of the plan. "Party" includes, unless the context otherwise requires, the estate or personal representative of such party.

7-A-7. "Proceeding" means any threatened, pending or completed action, suit or proceeding, or any appeal therein, whether civil, criminal, administrative, arbitrative or investigative (including an action by or in the right of the Corporation) and whether formal or informal.

7-B. Right to Indemnification.

7-B-1. Standards of Conduct. Except as provided in Paragraph 7-B-4 below, the Corporation shall indemnify any party to a proceeding against liability incurred in or as a result of the proceeding if (a) such party conducted himself or herself in good faith, (b) such party reasonably believed (i) in the case of a director acting in his or her official capacity, that his or her conduct was in the Corporation's best interests, or (ii) in all other cases, that such party's conduct was at least not opposed to the Corporation's best interests, and (c) in the case of any criminal proceeding, such party had no reasonable cause to believe his or her conduct was unlawful. For purposes of determining the applicable standard of conduct under this Paragraph 7-B, any party acting in his or her official capacity who is also a director of the Corporation shall be held to the standard of conduct set forth in Paragraph 7-B-1(b)(i), even if such party is sued solely in a capacity other than as such director.

7-B-2. Employee Benefit Plan. A party's conduct with respect to an employee benefit plan for a purpose such party reasonably believed to be in the interests of the participants in or beneficiaries of the plan is conduct that satisfies the requirement of Paragraph 7-B-1(b)(ii). A party's conduct with respect to an employee benefit plan for a purpose that such party did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of Paragraph 7-B-1(a).

7-B-3. Settlement. The termination of any proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the party did not meet the applicable standard of conduct set forth in Paragraph 7-B-1.

7-B-4. Indemnification Prohibited. Except as hereinafter set forth in Paragraph 7-B-5, the Corporation may not indemnify a party under this Paragraph 7-B either in connection with (a) any proceeding by or in the right of the Corporation in which the party is or has been adjudged liable to the Corporation, or (b) any proceeding charging that the party derived an improper personal benefit, whether or not involving action in the party's official capacity, in which proceeding the party is adjudged liable on the basis that he or she derived an improper personal benefit (even if the Corporation was not thereby damaged).

7-B-5. Court-Ordered Indemnification. Notwithstanding the foregoing, the Corporation shall indemnify any party if and to the extent required by the court conducting the proceeding, or any other court of competent jurisdiction to which the party has applied, if it is determined by such court, upon application by the party, that despite the adjudication of liability in the circumstances described in clauses (a) and (b) of Paragraph 7-B-4 or whether or not the party met the applicable standard of conduct set forth in Paragraph 7-B-1, and in view of all relevant circumstances, the party is fairly and reasonably entitled to indemnification for such expenses as the court deems proper in accordance with the Colorado Nonprofit Corporation Act.

7-B-6. Claims by or in the Right of Corporation. Indemnification permitted under this Paragraph 7-B in connection with a proceeding by or in the right of the Corporation shall be limited to reasonable expenses incurred in connection with the proceeding. If the corporation indemnifies or advances expenses to a party under this Article in connection with a proceeding by or in the right of the Corporation, the Corporation shall give written notice of such indemnification or advance to the voting members, if any, with or before the notice of the next members' meeting. If the next member action is taken without a meeting at the instigation of the Board of Directors, such notice shall be given to the voting members at or before the time the first member signs a writing consenting to such action.

7-B-7. Combined Proceedings. If any claim made by or in the right of the Corporation against a party is joined with any other claim against such party in a

single proceeding, the claim by or in the right of the Corporation (and all expenses related thereto) shall nevertheless be deemed the subject of a separate and distinct proceeding for purposes of this Article.

7-C. Prior Authorization Required. Any indemnification under Paragraph 7-B (unless ordered by a court) shall be made by the Corporation only if authorized in the specific case after a determination has been made that the party is eligible for indemnification in the circumstances because the party has met the applicable standard of conduct set forth in Paragraph 7-B-1 and after an evaluation has been made as to the reasonableness of the expenses. Any such determination, evaluation and authorization shall be made by the Board of Directors by a majority vote of a quorum of such Board, which quorum shall consist of all directors not parties to the subject proceeding, or by such other person or body as permitted by law.

7-D. Success on Merits or Otherwise. Notwithstanding any other provision of this Article, the Corporation shall indemnify a party to the extent such party has been wholly successful, on the merits or otherwise, including without limitation, dismissal without prejudice or settlement without admission of liability, in defense of any proceeding, against reasonable expenses incurred by such party in connection therewith.

7-E. Advancement of Expenses. The Corporation shall pay for or reimburse the reasonable expenses, or a portion thereof, incurred by a party in advance of the final disposition of the proceeding if: (1) the party furnishes the Corporation a written affirmation of such party's good-faith belief that he or she has met the standard of conduct described in Paragraph 7-B-1; (2) the party furnishes the Corporation a written undertaking, executed personally or on behalf of such party, to repay the advance if it is ultimately determined that the party did not meet such standard of conduct; and (3) authorization of a payment and a determination that the facts then known to those making the determination would not preclude indemnification under this Article have been made in the manner provided in Paragraph 7-C. The undertaking required by clause (2) must be an unlimited general obligation of the party, but need not be secured and may be accepted without reference to financial ability to make repayment.

7-F. Payment Procedures. The Corporation shall promptly act upon any request for indemnification, which request must be in writing and accompanied by the order of court or other reasonably satisfactory evidence documenting disposition of the proceeding in the case of indemnification under Paragraph 7-D and by the written affirmation and undertaking to repay as required by Paragraph 7-E in the case of indemnification under such section. If no disposition of such claim is made within ninety (90) days after written request for indemnification is made, the claimant may apply by

way of civil action in any court of competent jurisdiction for an adjudication as to the validity and extent of the claim. A party's expenses incurred in connection with successfully establishing such party's right to indemnification, in whole or in part, in any such proceeding shall also be paid by the Corporation.

7-G. Insurance. By action of the Board of Directors, notwithstanding any interest of the directors in such action, the Corporation may purchase and maintain insurance in such amounts as the Board of Directors deems appropriate to protect itself and any person who is or was a director, officer, employee, fiduciary or agent of the Corporation, or who, while a director, officer, employee, fiduciary or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, fiduciary or agent of any other foreign or domestic corporation or of any other entity or employee benefit plan against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under applicable provisions of law or this Article. Any such insurance may be procured from any insurance company designated by the Board of Directors, whether such insurance company is formed under the laws of Colorado or any other jurisdiction, including any insurance company in which the Corporation has an equity or any other interest, through stock ownership or otherwise. The Corporation may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such sums as may become necessary to effect indemnification as provided herein.

7-H. Right to Impose Conditions to Indemnification. The Corporation shall have the right to impose, as conditions to any indemnification provided or permitted in this Article, such reasonable requirements and conditions as may appear appropriate to the Board of Directors in each specific case and circumstances, including but not limited to any one or more of the following: (1) that any counsel representing the party to be indemnified in connection with the defense or settlement of any proceeding shall be counsel mutually agreeable to the party and to the Corporation; (2) that the Corporation shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the party to be indemnified; and (3) that the Corporation shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified party's right of recovery, and that the party to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Corporation.

7-I. Other Rights and Remedies. The indemnification provided by this Article shall be in addition to other rights to indemnification which a party may have or hereafter acquire by virtue of applicable statute.

7-J. Applicability; Effect. The indemnification provided in this Article shall be applicable to acts or omissions that occurred prior to the adoption of this Article, shall continue as to any party entitled to indemnification under this Article who has ceased to be a director, officer, employee, fiduciary or agent of the Corporation or, at the request of the Corporation, was serving as and has since ceased to be a director, officer, partner, trustee, employee, fiduciary or agent of any other domestic or foreign corporation, or of any other entity or employee benefit plan, and shall inure to the benefit of the estate and personal representatives of each such person. The repeal or amendment of this Article or of any section or provision hereof that would have the effect of limiting, qualifying or restricting any of the powers or rights of indemnification provided or permitted in this Article shall not, solely by reason of such repeal or amendment, eliminate, restrict or otherwise affect the right or power of the Corporation to indemnify any person, or affect any right of indemnification of such person, with respect to any acts or omissions that occurred prior to such repeal or amendment. All rights to indemnification under this Article shall be deemed to be provided by a contract between the Corporation and each party covered hereby.

7-K. Indemnification of Agents. The Corporation shall have the right, but shall not be obligated, to indemnify any agent of the Corporation who is not otherwise covered by this Article to the fullest extent permissible by the laws of Colorado. Unless otherwise provided in any separate indemnification arrangement, any such indemnification shall be made only as authorized in the specific case in the manner provided in Paragraph 7-C.

7-L. Savings Clause; Limitation. If this Article or any paragraph or provision hereof shall be invalidated by any court on any ground, then the Corporation shall nevertheless indemnify each party otherwise entitled to indemnification hereunder to the fullest extent permitted by law or any applicable provision of this Article that shall not have been invalidated.

8. AMENDMENTS. These Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Board of Directors of the Corporation solely by a vote of a majority of the directors of the Corporation then in office and not otherwise, provided that notice of the proposed amendment, alternation, or repeal shall have been delivered to each director of the Corporation with the notice of the meeting at which the proposed amendment, alteration, or repeal will be presented to the Board for action.

AS APPROVED BY THE BOARD OF
DIRECTORS OF ENGLEWOOD/MCLELLAN
RESERVOIR FOUNDATION, effective
_____ 6/1 _____, 19 99.

By:

Robert Simpson, Secretary _____

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8/16/99 12:45:44
PG: 0001-017
85.00 DOC FEE:
TRACY K. BAKER
ARAPAHOE COUNTY

0.00

BY AUTHORITY

COUNCIL BILL NO. 45
INTRODUCED BY COUNCIL
MEMBER BRADSHAW

ORDINANCE NO. 41
SERIES OF 1999

AN ORDINANCE AUTHORIZING THE TRANSFER OF PROPERTY FROM THE CITY OF ENGLEWOOD, COLORADO TO THE ENGLEWOOD McLELLAN RESERVOIR FOUNDATION.

WHEREAS, on May 3, 1999, the Englewood City Council authorized the creation of the Englewood McLellan Reservoir Foundation as a nonprofit development corporation to further the redevelopment of the McLellan Reservoir site; and

WHEREAS, the Englewood City Council established goals for the Foundation at the Budget Retreat; and

WHEREAS, in overseeing the development of the Property by the Foundation, the Foundation shall use its best efforts to do so in a manner which protects the quality of the City's stored water at the Reservoir; and

WHEREAS, in overseeing the development of the Property by the Foundation, the Foundation shall use its best efforts to do so in a manner which protects the ecosystem that has developed since access to the Reservoir has been restricted; and

WHEREAS, in overseeing the development of the Property by the Foundation, the Foundation shall use its best efforts to do so in a manner which establishes and maximizes a future long-term income stream for the benefit of the City; and

WHEREAS, in overseeing the development of the Property by the Foundation, the Foundation shall use its best efforts to do so in a manner which maintains the quality of the Highline Canal recreational facilities and the wetlands that exist between County Line Road and C-470; and

WHEREAS, in overseeing the development of the Property by the Foundation, the Foundation shall use its best efforts to do so in a manner which minimizes the impact on the Reservoir; and

WHEREAS, in overseeing the development of the Property by the Foundation, the Foundation shall use its best efforts to do so in a manner which enhances the quality of the neighborhood of which it is a part; and

WHEREAS, in overseeing the development of the Property by the Foundation, the Foundation shall use its best efforts to do so in a manner which develops the quality of life of an gives priority to residents of the City; and

WHEREAS, plans for future development of the McLellan Reservoir site have progressed to the point that it is now necessary to transfer the property to the Englewood McLellan Reservoir Foundation; and

WHEREAS, this final transfer will consolidate the property under the protective umbrella of the Foundation and continue the progress toward development of the site; and

WHEREAS, the City Manager recommends that City Council approve the proposed Ordinance transferring a portion of City-controlled McLellan Reservoir property to the Englewood McLellan Reservoir Foundation;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the transfer of property as described in the attachments hereto as Parcel 1, Parcel 2, Parcel 3, Parcel 4, and Parcel 5, to the Englewood McLellan Reservoir Foundation for the development of the property.

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

Introduced, read in full, and passed on first reading on the 6th day of July, 1999.

Published as a Bill for an Ordinance on the 9th day of July, 1999.

Read by title and passed on final reading on the 19th day of July, 1999.

Published by title as Ordinance No. 44 Series of 1999, on the 23rd day of July, 1999.

Thomas J. Burns, Mayor

(ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. 44 Series of 1999.

Loucrishia A. Ellis



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, VICTORIA BUCKLEY, SECRETARY OF STATE OF THE STATE OF
COLORADO HEREBY CERTIFY THAT

ACCORDING TO THE RECORDS OF THIS OFFICE

ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION
(COLORADO NONPROFIT CORPORATION)

FILE # 19991103327 WAS FILED IN THIS OFFICE ON June 01, 1999
AND HAS COMPLIED WITH THE APPLICABLE PROVISIONS OF THE
LAWS OF THE STATE OF COLORADO AND ON THIS DATE IS IN GOOD
STANDING AND AUTHORIZED AND COMPETENT TO TRANSACT BUSINESS
OR TO CONDUCT ITS AFFAIRS WITHIN THIS STATE.

Dated: June 01, 1999

SECRETARY OF STATE

ARTICLES OF INCORPORATION

OF

ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION

FILED - CUSTOMER COPY
VICTORIA BUCKLEY
Secretary of State

The undersigned incorporator, being a natural person at least 18 years of age or older, hereby establishes a nonprofit corporation pursuant to the Colorado Revised Nonprofit Corporation Act and adopts the following Articles of Incorporation:

ARTICLE I

19991103327 C
\$ 65.00
SECRETARY OF STATE
06-01-1999 12:26:08

NAME

The name of the Corporation is:

ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION

ARTICLE II

DURATION

The Corporation shall exist in perpetuity, from the date of filing of these Articles of Incorporation with the Secretary of State for the State of Colorado, unless dissolved according to law.

ARTICLE III

PURPOSES AND POWERS

1. Purposes. The Corporation is formed exclusively to lessen the burdens of government of the City of Englewood, Colorado (the "City"). The Corporation shall be permitted to perform every act necessary or incidental to or connected with the furtherance of its exempt purposes, including, but not limited to, taking title to certain land located in the Counties of Arapahoe and Douglas, State of Colorado, which was acquired by the City as a part of the acquisition of the McLellan Reservoir, and overseeing the development of such property in a manner which protects the water supply of the City of Englewood, Colorado.

2. Powers. In furtherance of the foregoing purposes and objects (but not otherwise) and subject to the restrictions in Section 3 of this Article, the Corporation shall have and may exercise all such powers as are expressly or indirectly conferred upon nonprofit corporations organized under the laws of the State of Colorado, except as limited by the Articles of Incorporation and including, without limiting the generality of the foregoing, receiving, maintaining and dealing with, in any manner whatsoever, real or personal property, and using and applying the whole or any part thereof, including income therefrom; provided, however, that such use be exclusively and irrevocably applied to the exempt purposes of the Corporation; and the power to borrow money and become indebted and to execute and deliver bonds, notes, debentures, certificates of participation in lease or other revenues, or other securities, instruments or obligations, for the purposes of acquiring real or personal property, constructing, installing and acquiring improvements, and for such other purpose or purposes as may be necessary or desirable to accomplish the objectives of the Corporation. Such indebtedness may be unsecured or may be secured by any mortgage, trust deed or other lien upon the property to be acquired or any other right or interests of the Corporation.

3. Restrictions Upon the Powers of Directors and Others.

A. No part of the net earnings of the Corporation shall inure to the benefit of any director or officer of the Corporation or any other private individual (except that reasonable payments may be paid for expenses incurred on behalf of the Corporation affecting one or more of its purposes), and no director or officer of the Corporation, or any other private individual shall be entitled to share in any distribution of any of the corporate assets on dissolution of the Corporation or otherwise. Any and all property, both real and personal, which may be owned by this Corporation at any time, is and shall always be exclusively and irrevocably dedicated to the exempt purposes of this Corporation. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation. The Corporation shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

B. No part of the assets of the Corporation shall be contributed to any organization whose net earnings or any part thereof inure to the benefit of any private individual or any substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation, if such contribution would not be permitted to be made by a governmental unit described in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended (“Code”) (or the corresponding provisions of any future United States Internal Revenue law).

C. Notwithstanding any other provisions of these Articles, the Corporation shall not carry on any activities not permitted to be carried on by a governmental unit described in Sections 170(c)(1) of the Code (or the corresponding provisions of any future United States Internal Revenue law).

D. Upon dissolution of the Corporation, after the liabilities of the Corporation have been discharged or provided for, the Corporation's remaining assets shall be transferred to the City of Englewood, Colorado.

ARTICLE IV

BOARD OF DIRECTORS

The control and management of the affairs of the Corporation and of the disposition of its funds and property shall be vested solely in a Board of Directors. The number of directors, their terms of office and the manner of their selection and election shall be determined according to the Bylaws of the Corporation from time to time in force. The names and addresses of the persons who shall serve as the initial directors of the Corporation are as follows:

Stewart H. Fonda
Director of Utilities
City of Englewood
3400 S. Elati Street
Englewood, Colorado 80110

Michael Flaherty
Assistant City Manager
City of Englewood
3400 S. Elati Street
Englewood, Colorado 80110

Frank Gryglewicz
Director of Financial Services
City of Englewood
3400 S. Elati Street
Englewood, Colorado 80110

Rick Kahm
Manager of Engineering Services
City of Englewood
3400 S. Elati Street
Englewood, Colorado 80110

Robert Simpson
Director of Neighborhood and Business
Development
City of Englewood
3400 S. Elati Street
Englewood, Colorado 80110

ARTICLE V

PRINCIPAL OFFICE, REGISTERED OFFICE AND REGISTERED AGENT

The initial principal office for the transaction of the business of the Corporation shall be located at 3400 S. Elati Street, Englewood, Colorado 80110. The address of the initial registered office of the Corporation is 650 S. Cherry Street, Suite 1000, Denver, Colorado 80222. The name of the initial registered agent at such address is Stephen P. Rickles, Esq.

ARTICLE VI

MEMBERS AND VOTING

The Corporation shall have no voting members. The entire voting power for all purposes shall rest in the Board of Directors, each member of which shall be entitled to one vote on each matter submitted to a vote.

ARTICLE VII

STOCKHOLDERS

The Corporation shall have no capital stock or stockholders.

ARTICLE VIII

BYLAWS

The initial Bylaws of the Corporation shall be adopted by the Board of Directors. Such Board shall have the power to alter, amend or repeal the Bylaws. Such Bylaws may contain any provisions for the regulation or management of the affairs of the Corporation which are not inconsistent with the law or these Articles of Incorporation, as the same may from time to time be amended. However, no bylaw at any time in effect, and no amendment to the Articles, shall have the effect of giving any director or officer of this Corporation any proprietary interest in its property or assets whether during the term of its existence or as an incident to its dissolution.

ARTICLE IX

LIMITATION ON DIRECTOR LIABILITY FOR MONETARY DAMAGES

No director shall be personally liable to the Corporation for monetary damages for any breach of fiduciary duty as a director, except that no director's liability to the Corporation for monetary damages shall be eliminated or limited on account of any of the following:

1. Any breach of the director's duty of loyalty to the Corporation;
2. Any acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
3. Acts specified in Colorado Revised Statutes § 7-128-403 or 7-128-501(2);
4. Any transaction in which the director directly or indirectly derived an improper personal benefit.

