

**Agenda for the
Regular Meeting of the
Englewood City Council
Monday, January 4, 2010
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 December 21, 2009.
6. Recognition of Scheduled Public Comment. (Please limit your presentation to ten minutes.)
 - a. Englewood resident Jackie Edwards will be present to speak regarding Medical Cannabis.
7. Recognition of Unscheduled Public Comment. (Please limit your presentation to five minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)
8. Communications, Proclamations, and Appointments.
 - a. Vincent Atencio will be sworn in as Municipal Judge for the City of Englewood by the Honorable Randall J. Davis.
9. Consent Agenda Items.
 - a. Approval of Ordinances on First Reading.

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| 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. |
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- b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 55, approving the Country Homes Metropolitan District Wastewater Connector's Agreement.
 - ii. Council Bill No. 56, approving an Intergovernmental Agreement with the Denver Regional Council of Government (DRCOG) for the 2009 Traffic Signal System Equipment Purchase program. This IGA will allow DRCOG to reimburse the City of Englewood for the cost of traffic signal system equipment (to be purchased by the City in 2010) in an amount up to \$17,000.
 - iii. Council Bill No. 57, approving a contract with the Colorado Department of Transportation (CDOT) for Traffic Control Devices Operation and Maintenance functions on state highways to be provided by the City of Englewood. The agreement will allow CDOT to reimburse the City for costs of these maintenance services in the amount of \$67,416.24 per year.
 - iv. Council Bill No. 58, authorizing an Intergovernmental Agreement between the City of Englewood and the Regional Transportation District for cost sharing for operation of the art shuttle for 2010.
- c. Resolutions and Motions.
 - i. Recommendation by the Department of Finance and Administrative Services and the City Clerk's Office to approve a resolution designating the bulletin board on the north side of the second floor of the Englewood Civic Center as the Official Posting Place for all Legal Notices of the City of Englewood for 2010. **STAFF SOURCES: Frank Gryglewicz, Director of Finance and Administrative Services and Loucrishia A. Ellis, City Clerk.**

10. Public Hearing Items (No Public Hearing Scheduled).

11. Ordinances, Resolutions and Motions

- a. Approval of Ordinances on First Reading.
- b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 59, approving an extension of the temporary moratorium on the establishment of new medical marijuana dispensing and growing uses.

- c. Resolutions and Motions.
 - i. Recommendation by the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Supervisory Committee to approve, by motion, a construction contract for the Solids Contact Tanks Air Pipe and Storm Water Projects at the L/E WWTP. Staff recommends awarding the bid to the lowest responsible bidder, Stanek Constructors, Inc. in the amount of \$964,000. **STAFF SOURCES: Stewart H. Fonda, Director of Utilities Department and Chong Woo, Project Engineer.**

12. General Discussion.
 - a. Mayor's Choice.
 - i. United States Postal Service Notice Regarding the Broadway Post Office.
 - b. Council Members' Choice.

13. City Manager's Report.
 - a. City's Water Plant

14. City Attorney's Report.

15. Adjournment

The following minutes were transmitted to City Council in December, 2009.

- Alliance for Commerce in Englewood Committee meeting of November 5, 2009.
- Cultural Arts Commission meeting of November 4, 2009.
- Englewood Housing Authority meetings of May 13, August 5, November 4, 2009.
- Liquor Licensing Authority meeting of December 2, 2009.
- Planning and Zoning Commission meeting of November 17, 2009.
- Transportation Advisory Committee meeting of November 12, 2009.

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2009

COUNCIL BILL NO. 55
 INTRODUCED BY COUNCIL
 MEMBER: WILSON

A BILL FOR

AN ORDINANCE AUTHORIZING A WASTEWATER CONNECTOR'S AGREEMENT
 BETWEEN COUNTRY HOMES METROPOLITAN DISTRICT AND THE CITY OF
 ENGLEWOOD, COLORADO.

WHEREAS, the City of Englewood owns and operates a sewage system, including a sewage treatment plant which is jointly owned and operated with the City of Littleton known as the L/E Wastewater Treatment Plant (WWTP); and

WHEREAS, the L/E WWTP provides sanitary sewer service to districts outside of the Englewood corporate boundaries through a standard connector's agreement; and

WHEREAS, the Country Homes Metropolitan District desires to utilize the L/E WWTP for treatment of the District's sewage; and

WHEREAS, the Country Homes Metropolitan District has 32 taps; and

WHEREAS, the L/E WWTP is situated physically as to be able to receive and treat the sewage from a designated area served by the Country Homes Metropolitan District and gathered by the District's sanitary sewage system; and

WHEREAS, Country Homes Metropolitan District will continue to own the lines and will be responsible for capital improvements and maintenance in its system; and

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended approval of the Country Homes Metropolitan District Wastewater Connector's Agreement at the November 10, 2009 meeting; and

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

Section 1. The Agreement between the City of Englewood and Country Homes Metropolitan District entitled "Wastewater Connector's Agreement" is hereby approved; a copy is attached hereto as Attachment 1.

Section 2. The Mayor is authorized to execute and City Clerk to attest and seal the "Wastewater Connector's Agreement", for and on behalf of the Englewood City Council.

Introduced, read in full, and passed on first reading on the 21st day of December, 2009.

Published as a Bill for an Ordinance in the City's official newspaper on the 25th day of December, 2009.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of December, 2009 for thirty (30) days.

Read by title and passed on final reading on the 4th day of January, 2010.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2009/2010, on the 8th day of January, 2010.

Published by title on the City's official website beginning on the 6th day of January, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2009/2010.

Loucrishia A. Ellis

WASTEWATER
CONNECTOR'S AGREEMENT
For Districts

Sewer Contract No. _____

THIS AGREEMENT, made and entered into this _____ day of _____, 20__ to be effective as of _____, 20__; by and between the CITY OF ENGLEWOOD, COLORADO, a municipal corporation, hereinafter referred to as "City," acting by and through its duly elected, qualified and authorized Mayor and City Clerk, and COUNTRY HOMES METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, hereinafter called "District," acting by and through its authorized Representative.

WITNESSETH

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

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

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

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

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

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

the City does not guarantee the accuracy or completeness of government regulations other than the City's own regulations.

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

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

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

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

7. Subject to the terms of the Taxpayer's Bill of Rights (TABOR), the term of this Agreement is for a period of three (3) years from the date of execution and automatically renewed for six (6) subsequent three (3) year periods unless either party gives a minimum of six (6) months written notice, during which time the District agrees that all effluent produced from taps within the District shall not be in violation of any federal, state or City laws, rules or regulations, or any other applicable governmental regulations or the permits under which the City operates its sewage treatment system. City agrees, during the term hereof, to treat said effluent and to maintain adequate facilities for treating the same.

8. The District agrees that it will maintain, at its own expense, all lines now owned and operated by the District, it being specifically agreed that City assumes no responsibility should any of the District's lines become clogged, damaged, or require maintenance. The District shall, if it deems necessary, notify its users of the District's procedure to remedy service disruption.
9. The City is providing only sewage treatment service and, pursuant thereto, permits incidental to the use of the City's sewage lines shall be governed only by this individual Contract with the District and the City does not, by this Contract, offer treatment service except in strict accordance with the terms hereof. This Contract does not offer, and shall not be construed as offering, sewage treatment service to the public generally or to any area outside the limits of the District's service area described in Exhibit A.
10. This Contract may not be assigned, sold or transferred by the District without the City's written consent.
11. Should any federal law, rule, permit or regulation or should a decree or order of a court render void or unenforceable any provision of this Contract, in whole or in part, the remainder shall remain in full force and effect.
12. The District shall enforce this Agreement and each of its terms and conditions within the area described in "Exhibit A." The District shall refuse to serve a user or potential user; disconnect the service of any user pursuant to appropriate law; or take other appropriate action in the event of:
 - a. Nonpayment of such user of any charge made by City for services;
 - b. Any violation or noncompliance by such user with the terms of this Agreement;
 - c. Violation or noncompliance by such user with the applicable laws, rules, permits or regulations of the City, the United States government, including the EPA, the State of Colorado, including the Department of Health, or other law, rule, permit or applicable regulation.
13. Continued breach of this Agreement by the District and/or its users shall be considered cause for the City to terminate this Agreement. Should the District fail to promptly rectify a breach of any provisions identified herein, after notice thereof, City may take such steps and do such work as it deems necessary to enforce this Agreement, including litigation and specifically a right to injunction or specific performance against the District or any of its users as is necessary to protect the City's system and operations. The prevailing party shall be entitled to expenses and costs of suit, including attorney fees.
14. Should more than one district be connected to a sewer line, all districts on the sewer line who are in breach of this Agreement shall be jointly and severally liable for any such breach of this Agreement and each such district shall immediately, after notice, rectify any problem or condition detrimental to the treatment process arising within its legal

boundaries. When more than one district is connected to a sewer line, and the City discovers any violation of the terms of this connector's agreement; the City shall not be required to prove which district is at fault but shall make available to all such affected districts all information developed or accumulated by City pertaining to such breach. Nothing contained herein shall preclude a claim for indemnity or contribution by any District against another District connected to a common sewer line. CRS-13-21-11.5 shall govern the percentage of liability of any district on a common sewer line in the event the City seeks to impose liability based upon negligence or fault.

15. This Contract shall not be used as a legal defense or prohibition to the mandatory consolidation of facilities by either party as may be required by the laws of the State of Colorado of all existing sewer collection systems and facilities to a governmental entity created to assume responsibility for sewer service in the area in which both City and State are a part under statutory or constitutional authority.

CITY OF ENGLEWOOD, COLORADO

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

COUNTRY HOMES METROPOLITAN DISTRICT

Michael A. Messina

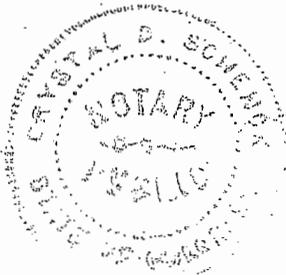
, Chairman

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 12th day of October, 2009, by Michael A. Messina, as Chairman of the Country Homes Metropolitan District.

Witness my hand and official seal.

My Commission expires: 9-5-2013

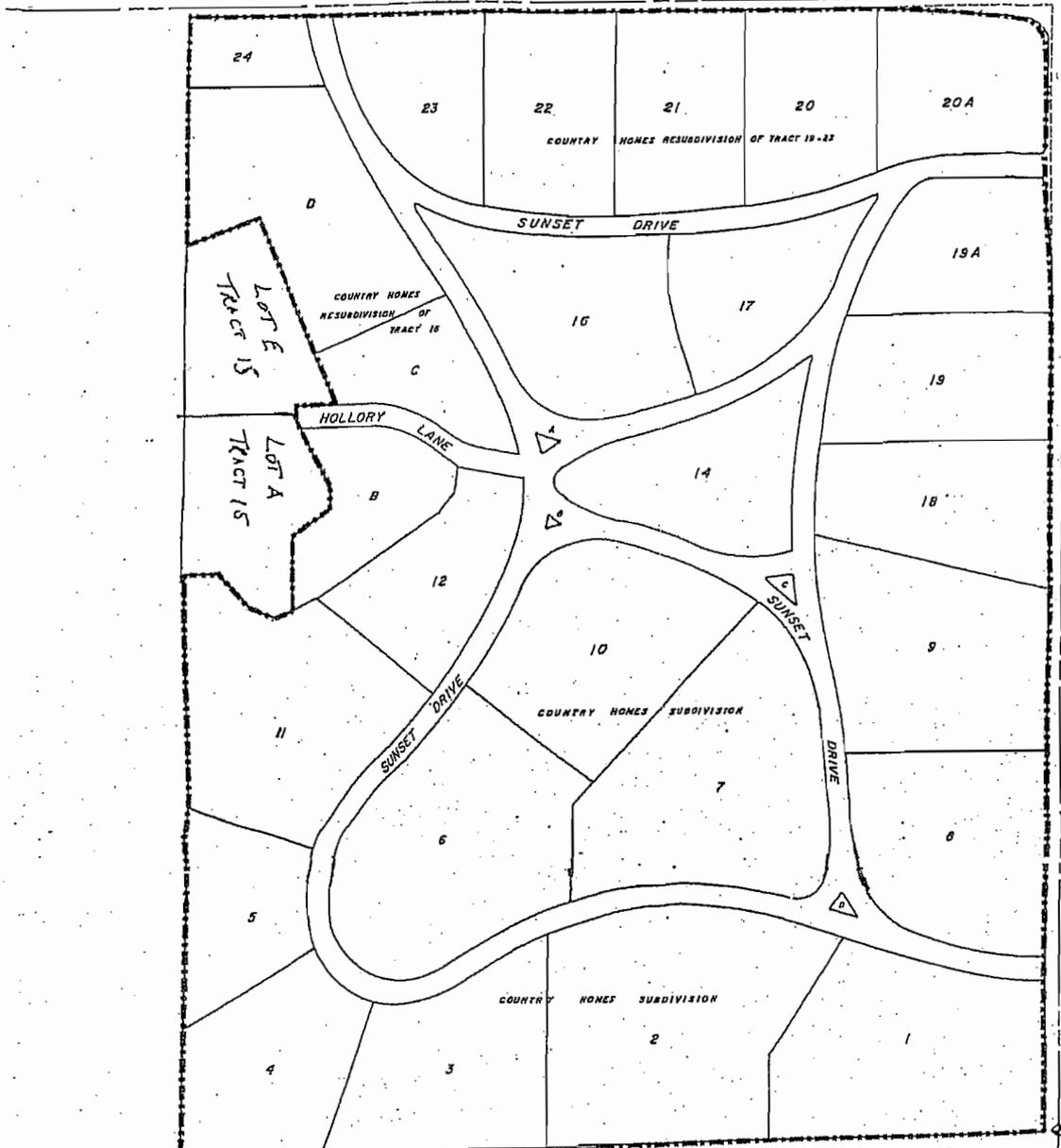


Crystal Schenck
NOTARY PUBLIC

EXHIBIT A

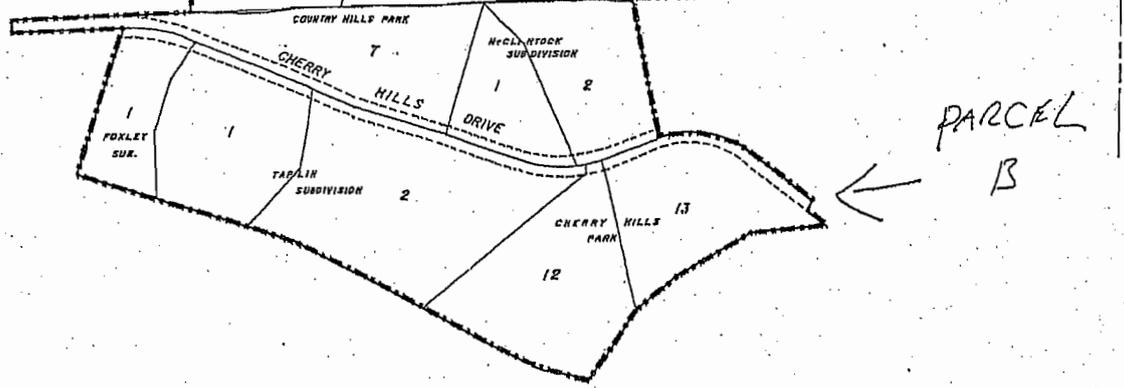
LEGAL DESCRIPTION
COUNTRY HOMES METROPOLITAN DISTRICT

Country Homes Metropolitan District consists of Parcel A and Parcel B. Parcel A consists of the Country Homes Subdivision, Lots 1 through 24 inclusive, except for Lots E and A which are a re-subdivision of Tract (Lot) 15 . Parcel B consists of those lots (eight in number) that are shown on the drawing attached hereto as page 2 of this Exhibit and incorporated herein by this reference.



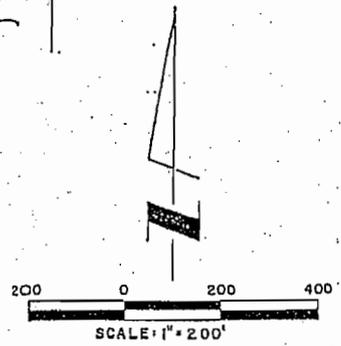
PARCEL A

S. UNIVERSITY BOULEVARD



PARCEL B

THIS EXHIBIT IS A GRAPHIC DEPICTION OF THE COUNTRY HOMES METROPOLITAN DISTRICT BOUNDARIES AS DESCRIBED IN THE DECREE RECORDED IN BOOK 3644, PAGE 375, ARAPAHOE COUNTY RECORDS. THIS EXHIBIT IS NOT INTENDED TO INCLUDE SURVEY PLAT REQUIREMENTS AS DEFINED IN CRS 38-51-102.



COUNTRY HOMES METROPOLITAN DISTRICT

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2009

COUNCIL BILL NO. 56
 INTRODUCED BY COUNCIL
 MEMBER: WILSON

A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) ENTITLED "CONTRACT BY AND BETWEEN THE DENVER REGIONAL COUNCIL OF GOVERNMENTS (DRCOG)" FOR REIMBURSEMENT TO THE CITY OF ENGLEWOOD, COLORADO FOR THE COSTS OF 2009 TRAFFIC SIGNAL SYSTEM EQUIPMENT PURCHASE.

WHEREAS, the Englewood City Council previously approved Ordinances to enter into agreements with Denver Regional Council of Governments (DRCOG) to allow DRCOG to reimburse the City of Englewood for 2004, 2005, 2007 and 2008 miscellaneous traffic signal equipment purchases; and

WHEREAS, DRCOG received U.S. Department of Transportation Congestion Mitigation/Air Quality (CM/AQ) funds through the Colorado Department of Transportation (CDOT) to carry out traffic signal system improvements and purchases in the Denver metropolitan region; and

WHEREAS, DRCOG desires to contract with the City for the purchase of miscellaneous traffic signal equipment consistent with the Traffic Signal System Improvement Program; and

WHEREAS, the City of Englewood submitted an application to DRCOG for the 2009 Traffic Signal System Equipment Purchase Program; and

WHEREAS, DRCOG is responsible for monitoring and administering this Federal program; and

WHEREAS, the passage of this Ordinance authorizes the intergovernmental agreement allowing DRCOG to reimburse the City of Englewood for the cost of traffic signal system equipment, which will be purchased by the City in 2010, for an amount up to \$17,000;

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

Section 1. The City Council of Englewood, Colorado, hereby authorizes an intergovernmental agreement (IGA) entitled "Contract by and Between the Denver Regional Council of Governments (DRCOG)" for reimbursement to the City of Englewood, Colorado for the cost of traffic signal system equipment, which will be purchased by the City in 2010, for an amount up to \$17,000, a copy of which is attached hereto as Exhibit 1.

Section 2. The Mayor is hereby authorized to sign and the City Clerk to attest said intergovernmental agreement (IGA) entitled "Contract by and Between the Denver Regional Council of Governments (DRCOG) and the City of Englewood" for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 21st day of December, 2009.

Published as a Bill for an Ordinance in the City's official newspaper on the 25th day of December, 2009.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of December, 2009 for thirty (30) days.

Read by title and passed on final reading on the 4th day of January, 2010.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2009/2010, on the 8th day of January, 2010.

Published by title on the City's official website beginning on the 6th day of January, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2009/2010.

Loucrishia A. Ellis

CONTRACT BY AND BETWEEN THE

DENVER REGIONAL COUNCIL OF GOVERNMENTS

1290 Broadway, Suite 700
Denver, CO 80203-5606
("DRCOG")

and

CITY OF ENGLEWOOD

1000 Englewood Parkway
Englewood, CO 80110-2373
("CONTRACTOR")

for

2009 TRAFFIC SIGNAL SYSTEM EQUIPMENT PURCHASE

Project Number: **543009**

Contract Number: **EX09073**

RECITALS:

A. DRCOG has received U.S. Department of Transportation Congestion Mitigation/Air Quality (CM/AQ) funds through the Colorado Department of Transportation (CDOT), to carry out traffic signal system improvements and purchases in the Denver metropolitan region.

B. Authority exists in the law and funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment.

C. DRCOG desires to engage the Contractor for the purchase of miscellaneous traffic signal equipment consistent with the adopted Traffic Signal System Improvement Program further described in this contract and Exhibit A.

D. The Contractor agrees to comply with all relevant provisions of the contract between DRCOG and CDOT, incorporated herein by reference and made a part of this contract, as if fully set forth, in the monitoring and administration of this contract.

NOW, THEREFORE, it is hereby agreed that:

1. PURCHASE OF THE EQUIPMENT

- a. General Requirements. The Contractor shall administer and purchase the equipment as depicted in attached Exhibit A, which is made a part of this contract, in accordance with Title 49, Parts 18 and 19, as appropriate, of the Code of Federal Regulations regarding uniform administrative requirements for state and local governments and other non-profit organizations.
- b. Submissions of Proceedings, Contract, and Other Documents. The Contractor shall submit to DRCOG all data, reports, records, contracts, and other documents collected and developed by the Contractor relating to the project as DRCOG may require. The Contractor shall retain intact, for three years following project closeout, all contract documents, financial records, and supporting documents.

- c. Award of Contract. This contract is awarded to the Contractor based upon the Contractor's project application, which provides that the Contractor be responsible for all expenses associated with acquiring, installing, operating and maintaining the equipment, excluding the actual purchase cost of the equipment. Contractor agrees that Contractor staff and subcontractors engaged in such will not be reimbursable as part of this agreement.
- d. No DRCOG Obligations to Third Parties. DRCOG shall not be subject to any obligations or liabilities to any person not a party to this contract in connection with the performance of this project pursuant to the provisions of this contract without its specific written consent. Neither the concurrence in, or approval of, the award of any contract or subcontract or the solicitation thereof nor any other act performed by DRCOG under this contract constitutes such consent.

2. ACCOUNTING RECORDS

- a. Accounts. The Contractor shall establish and maintain as a separate set of accounts, or as an integral part of its current accounting scheme, accounts for the equipment purchases to assure that funds are expended and accounted for in a manner consistent with this contract's agreements and objectives.
- b. Funds Received or Made Available. The Contractor shall appropriately record in the account all reimbursement payments received by it from DRCOG pursuant to this contract.
- c. Allowable Costs. Expenditures made by the Contractor shall be reimbursable as allowable costs to the extent they meet all of the requirements set forth below. Such expenditures must:
 - 1) Be made in conformance with the description, budget, and all other provisions of this contract.
 - 2) Be necessary for the accomplishment of this contract, and reasonable in the amount of goods and services provided.
 - 3) Be actual net costs to the Contractor (i.e., price paid minus any refunds, rebates, or other items of value received by Contractor that have the effect of reducing the cost actually incurred).
 - 4) Be incurred for equipment purchased only as described in Exhibit A, after the date of this contract.
 - 5) Be treated uniformly and consistently under generally accepted accounting principles.
 - 6) Be in conformance with the standards for allowability of costs set forth in Office of Management and Budget Circulars No. A-122 or A-87, as appropriate, regarding cost principles for nonprofit organizations and state and local governments.
- d. Documentation of Costs. Invoices, contracts, and/or vouchers detailing the nature of the charges shall support all equipment purchase costs charged to this contract.

- e. Checks, Orders, and Vouchers. Any check or order drawn up by the Contractor with respect to any item which is or will be chargeable against this contract will be drawn only in accordance with a properly signed voucher then on file in the office of the Contractor, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified, readily accessible, and, to the extent feasible, kept separate, and apart from all other such documents.
- f. Audits and Inspections. At any time during normal business hours and as often as DRCOG, CDOT and U.S. Department of Transportation (hereinafter, "USDOT"), and/or the Comptroller General of the United States may deem necessary, there shall be made available to DRCOG, CDOT, USDOT and/or representatives of the Comptroller General for examination, all records with respect to all matters covered by this contract and the Contractor will permit DRCOG, CDOT, USDOT, and/or representatives of the Comptroller General to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this contract.

3. TIME OF PERFORMANCE

This contract shall commence upon execution and shall expire December 31, 2010.

4. COST OF EQUIPMENT PURCHASES

The cost for equipment purchases in which federal funds are participating shall not exceed Seventeen Thousand Dollars (\$17,000) as described in the attached Scope of Services.

The Contractor agrees to provide all installation, operation and maintenance of the purchased equipment at its expense.

5. REQUEST FOR PAYMENT BY THE CONTRACTOR

- a. Award. DRCOG shall reimburse the Contractor up to Seventeen Thousand Dollars (\$17,000) for the purchase of traffic signal equipment as described in the attached Scope of Services.
- b. Payment. Payment shall be made on the following basis: After receipt of the equipment, the Contractor shall submit the invoice to the DRCOG Accounting Department for reimbursement. DRCOG will incorporate the invoice into its next bill to CDOT. Upon receipt of payment from CDOT by DRCOG and upon verification by DRCOG that the Contractor has installed the equipment and that the equipment is operating as intended, DRCOG will reimburse the Contractor for the amount of allowable costs of the Contractor's invoice. It is the Contractor's sole responsibility to install the equipment and contact DRCOG for field verification prior to receiving reimbursement.

6. MANAGEMENT

- a. DRCOG Representative. DRCOG has designated **Greg MacKinnon** as its representative who will coordinate reviews, approvals, and authorizations.
- b. Contractor's Representative. The Contractor has designated **Ladd Vostry** as its representative for this contract who shall be responsible for coordination and liaison with DRCOG on the equipment purchases associated with this contract. If at any time a contractor representative is not assigned for this contract, the Contractor shall immediately notify DRCOG and work shall be suspended until a representative has been assigned who is acceptable to DRCOG.
- c. By signing this agreement, the Contractor also represents that its organization and its principals are not suspended or debarred per Federal requirements.

7. PERSONNEL

The Contractor represents it will provide and secure the personnel required in installing, maintaining and operating the equipment listed in Exhibit A. All of the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services. Such personnel shall not be employees of or have any contractual relationship with DRCOG. Any subcontracts entered into by the Contractor associated with this Contract shall include a statement that the parties to the subcontract understand that DRCOG is not obligated or liable in any manner to the subcontractor or for the performance by the Contractor of its obligations under the subcontract.

8. TERMINATION

- a. Funds not Available. The parties expressly recognize that the Contractor is to be paid, reimbursed or otherwise compensated with federal and/or State funds which are available to DRCOG for the project. In the event that CM/AQ funds are not made available to DRCOG per Recital A, this Agreement shall terminate immediately. Contractor expressly understands and agrees that all of its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to DRCOG.
- b. Termination for Mutual Convenience. The parties may, with the concurrence of CDOT, terminate this agreement if both parties agree that the equipment purchases specified in Exhibit A would not produce beneficial results.
- c. Termination of Contract for Cause. If through any cause, excluding force majeure, the Contractor shall fail to fulfill in timely and proper manner its obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, and has not corrected such breach within ten days of being given notice by DRCOG, DRCOG shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination for cause, which shall be effective upon receipt of the written notice.

In that event, DRCOG shall not be required to reimburse the Contractor for any equipment purchases not yet billed to CDOT, and Contractor shall be obligated to return any payments previously received under the provisions of this contract. Notwithstanding the above, the Contractor shall not be relieved of liability to DRCOG for any damages sustained by DRCOG by virtue of any breach of the contract by the Contractor.

- d. Termination for the Convenience of DRCOG. DRCOG may terminate this contract at any time by giving written notice to the Contractor of such termination, which shall be effective upon receipt of the written notice. If the contract is terminated by DRCOG as provided herein, the Contractor shall be entitled to receive compensation for any equipment purchases made prior to the effective date of such termination, subject to field verifications being completed to the satisfaction of DRCOG.

9. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Contractor agrees to comply with all federal and state laws, rule, regulations, and orders regarding equal employment opportunity, including Executive Order 11256, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

10. DISADVANTAGED BUSINESS ENTERPRISE

- a. Policy. DRCOG is committed to and has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. It is the policy of DRCOG to ensure that DBEs, as defined in Part 26, have an equal opportunity to participate in the performance of contracts and subcontracts receiving DOT funding assistance. Consequently, the DBE requirements of 49 CFR, Part 26 apply to this agreement.
- b. DBE Obligation. The Contractor and its subcontractors agree to ensure that DBEs as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts receiving DOT funding assistance provided under this agreement. In this regard, the Contractor and subcontractors shall take all necessary and reasonable steps in accordance with this policy to ensure that DBEs have the maximum opportunity to compete for and perform contracts. The Contractor and their subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts and subcontracts receiving DOT funding assistance.

11. PROHIBITION AGAINST HIRING ILLEGAL ALIENS [NOT APPLICABLE TO INTERGOVERNMENTAL AGREEMENTS].

The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

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 the public contract for services. 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.

If Contractor obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien, Contractor shall:

- a. Notify the subcontractor and DRCOG within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract with the subcontractor if within three days of receiving the 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 an illegal alien.

Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

If Contractor violates a provision of this Contract required pursuant to C.R.S. § 8-17.5-102, DRCOG may terminate the contract for breach of contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to DRCOG.

12. INTEREST OF MEMBERS OF DRCOG AND OTHERS

No officer, member, or employee of DRCOG and no members of its governing body, and no other public official of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or have any personal or pecuniary interest, direct or indirect, in this contract or the proceeds thereof.

13. INTEREST OF THE CONTRACTOR

No officer, member, employee or agent of the Contractor or any other person who is authorized to exercise any functions or responsibilities in connection with the negotiating, review or approval of the undertaking or carrying out of any segment of the program contemplated by this contract shall have any financial or other personal interest, direct or indirect, in this contract or any subcontract thereunder, or in any real or personal property acquired therefore. Any person who shall involuntarily acquire any such incompatible or conflicting personal interest shall immediately disclose his/her interest to DRCOG in writing. Thereafter (s)he shall not participate in any action affecting the program under this contract unless DRCOG shall have determined that, in light of the personal interest disclosed, the participation in such action would not be contrary to the public interest.

14. INDEMNIFICATION

The Contractor is an independent contractor and not an employee of DRCOG. As an independent contractor, the Contractor is not entitled to workers' compensation benefits except as may be provided by the Contractor nor to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity. The Contractor is obligated to pay all applicable federal and state income tax on any moneys earned or paid pursuant to this contract relationship. The parties agree that the Contractor is free from the direction and control of DRCOG except such control as may be required by any state or federal statute or regulation, and that DRCOG does not require the Contractor to work exclusively for DRCOG; does not establish a quality standard for the Contractor; does not provide training, or does not provide tools or benefits of performance by the Contractor except through a completion schedule.

To the extent allowable by law, the Contractor shall indemnify, save and hold harmless DRCOG, its officers, employees and agents, against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney fees incurred as a result of any negligent act or omission of the Contractor, or its employees, agents, subcontractors or assignees related to this contract. The Contractor shall include language similar to the foregoing in any subcontract associated with this Contract, stating that the subcontractor agrees to indemnify, save and hold harmless DRCOG for negligent acts or omissions of the subcontractor, its employees, agents, subcontractors, and assignees.

15. FEDERAL REQUIREMENTS

The Contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this contract. The Contractor shall also require compliance with these statutes and regulations in subcontract agreements associated with this Contract.

The Contractor agrees to abide by and follow all applicable federal and state guidelines when expending any funds resulting from this contract. This includes, but is not limited to, the Procurement Standards set forth in Subpart C of OMB Circular A-110 and the applicable provisions of the Federal Acquisition Regulation ("FAR"), together with any additions or supplements thereto promulgated by the Funding Agency. Current regulations can be found at <http://www.arnet.gov/far/>.

In addition, Contractor shall comply with the following federal laws and regulations as may be applicable to the project:

- a. The Copeland "Anti-Kickback" Act (18 U.S. C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3)(all contracts and subgrants for construction or repair).
- b. The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

This Act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

- a. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).
- b. Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

TO THE EXTENT ALLOWABLE BY LAW, the Contractor agrees to indemnify, save and hold harmless, DRCOG, its officers, employees, agents, subcontractors, and assignees should any applicable regulations not be followed.

16. CHANGES

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

17. GENERAL

By signing this agreement, the Contractor represents that its organization and its principals are not suspended or debarred per Federal requirements.

This contract represents the entire agreement between the Contractor and DRCOG, replacing and superseding any previous contract, oral or written, which may have existed between the parties relating to the matters set forth herein.

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by DRCOG as provided herein in the event of such failure to perform or comply by Contractor.

18. CERTIFICATION FOR FEDERAL-AID CONTRACTS

For contracts that exceed \$100,000, Contractor, by signing this contract, certifies to the best of its knowledge and belief:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor also agrees that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the _____ day of _____, 20__.

**DENVER REGIONAL COUNCIL
OF GOVERNMENTS**

CITY OF ENGLEWOOD

By: _____
Jennifer Schaufele
Executive Director

By: _____
James K. Woodward, Mayor

ATTEST:

ATTEST:

By: _____
Roxie Ronsen
Administrative Officer

By: _____
Loucrishia A. Ellis
City Clerk

Exhibit A

DRCOG SIGNAL EQUIPMENT PURCHASE

SCOPE OF SERVICES

The City of Englewood will purchase traffic signal communications equipment for its traffic signal system on Broadway. The equipment to be purchased and the locations for deployment consist of:

| Location | Equipment | Estimated Cost |
|--|---|----------------|
| Broadway from Oxford Avenue to Chenango Avenue | Fiber optic cable and Ethernet fiber optic transceivers | |
| Broadway from Yale Avenue to Girard Avenue | Ethernet fiber optic transceivers | |
| Total Estimated Cost | | \$17,000 |

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2009

COUNCIL BILL NO. 57
 INTRODUCED BY COUNCIL
 MEMBER: WILSON

A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) REGARDING STATE SENATE BILL 8, TRAFFIC CONTROL DEVICES MAINTENANCE CONTRACT, ALLOWING THE COLORADO DEPARTMENT OF TRANSPORTATION TO REIMBURSE THE CITY FOR COSTS OF TRAFFIC CONTROL DEVICES, OPERATIONS AND MAINTENANCE.

WHEREAS, the Englewood City Council previously approved several ordinances entering into agreements with the Colorado Department of Transportation (CDOT) allowing CDOT to reimburse Englewood for costs associated with highway maintenance services on state highways within Englewood city limits; and

WHEREAS, by the adoption of Colorado State Senate Bill No. 8 of 1974, CDOT assumes responsibility for all traffic control devices in the state highway system within local jurisdictions, including the costs associated with the above mentioned functions; and

WHEREAS, since CDOT does not have the necessary personnel and equipment levels to accomplish these obligations, the City has entered into numerous contracts with CDOT for reimbursement of costs linked with the City's operation and maintenance services of traffic control devices on state highways; and

WHEREAS, State highways within the City of Englewood for which we provide these services include Belleview Avenue and Highway 285; and

WHEREAS, CDOT recently requested that the Senate Bill 8 contract currently in place with the City be renegotiated; and

WHEREAS, the passage of this Ordinance approves the renegotiated reimbursement rate for a period of five (5) years;

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

Section 1. The City Council of Englewood, Colorado, hereby authorizes an intergovernmental agreement (IGA) between the Colorado Department of Transportation and the City of Englewood, Colorado for CDOT to reimburse the City of Englewood for costs associated with highway maintenance services on state highways within Englewood City limits in the amount of \$67,416.24 per year for a five year period, a copy of which is attached hereto as Exhibit 1.

Section 2. The Mayor is hereby authorized to sign and the City Clerk to attest said IGA between CDOT for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 21st day of December, 2009.

Published as a Bill for an Ordinance in the City's official newspaper on the 25th day of December, 2009.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of December, 2009 for thirty (30) days.

Read by title and passed on final reading on the 4th day of January, 2010.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2009/2010, on the 8th day of January, 2010.

Published by title on the City's official website beginning on the 6th day of January, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2009/2010.

Loucrishia A. Ellis

(State \$Signal Mtce)
City of Englewood

10 HA6 03848
ID 271001034

CONTRACT

THIS CONTRACT made this ___ day of _____ 20___, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and CITY OF ENGLEWOOD, 1000 Englewood Parkway, Englewood, Colorado 80110-2373, CDOT Vendor #: 2000021, hereinafter referred to as the "Local Agency" (or "Contractor" in the Special Provisions).

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function 2300, GL Acct. 4541000010, Cost Center R6S58300, (Contract Encumbrance Amount: \$67,416.24).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Section 43-2-135(1)(i) C.R.S., as amended, requires the State to install, operate, maintain and control, at State expense, all traffic control devices on the state highway system within cities and incorporated towns; and;
4. The parties desire to enter this Contract for the Contractor to provide some or all of the certain maintenance services on state highways that are the responsibility of the State under applicable law, and for the State to pay the Contractor a reasonable negotiated fixed rate for such services;
5. The parties also intend that the Contractor shall remain responsible to perform any services and duties on state highways that are the responsibility of the Contractor under applicable law, at its own cost;
6. The State and the Contractor have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144 C.R.S., as amended, and in applicable ordinance or resolution duly passed and adopted by the Contractor, to enter into contract with the Contractor for the purpose of maintenance of traffic control devices on the state highway system as hereinafter set forth; and
7. The Contractor has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

All of the specific location(s) and type(s) of traffic control device(s) to be operated and maintained by the Contractor pursuant to this contract are described in **Exhibit A**, attached hereto and incorporated herein. Such services and highways are further detailed in Section 5.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 22 of this contract
2. This contract
3. Exhibit A (Scope of Work)
4. Exhibits C and D (Contract Modification Tools)
5. Other Exhibits in descending order of their attachment.

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall be for **a term of FIVE (5) years**. Provided, however, that the State's financial obligation for each subsequent, consecutive fiscal year of that term after the first fiscal year shall be subject to and contingent upon funds for each subsequent year being appropriated, budgeted, and otherwise made available therefore.

Section 4. Project Funding and Payment Provisions

A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

B. Subject to the terms of this Contract, for the satisfactory performance of the maintenance services on the Highways, as described in Section 5, the State shall pay the Contractor on a lump sum basis, payable in monthly installments, upon receipt of the Contractor's statements, as provided herein.

1. The State shall pay the Contractor for the satisfactory operation and maintenance of traffic control devices under this contract at the rates described in **Exhibit C**, which is attached hereto and made a part hereof. Provided, however, that the total charges to be paid by the State during each fiscal year beginning July 1 and ending June 30 of the following year shall not exceed an annual maximum amount of **\$67,416.24** without the benefit of a supplemental agreement executed prior to any such excess charges being incurred. Contractor billings and State payments for each of the traffic control devices listed in **Exhibit A** shall be on a "lump sum" basis, in accordance with the rates described in **Exhibit C**, subject to the maximum amount described above. The Contractor will bill the State monthly and the State will pay such bills within 60 days.

2. The statements submitted by the Contractor for which payment is requested shall contain an adequate description of the type(s) and the quantity(ies) of the maintenance services performed, the date(s) of that performance, and on which specific sections of the Highways such services were performed, in accord with standard Contractor billing standards.

3. If the Contractor fails to satisfactorily perform the maintenance for a segment of the Highways (or portion thereof), or if the statement submitted by the Contractor does not adequately document the payment requested, after notice thereof from the State, the State may deduct and retain a proportionate amount from the monthly payment, based on the above rate, for that segment or portion.

Section 5. State and Local Agency Commitments

A. The Contractor shall perform the "highway maintenance services" for the certain State Highway System segments described herein. Such services and highways are detailed in Section 1 (or **Exhibit A**).

B. The Contractor shall operate and maintain the specific traffic control devices, and at the particular locations, all as listed on **Exhibit A** ("the Work"), in a manner that is consistent with current public safety standards on state highways within its jurisdictional limits, and in conformance with applicable portions of the "Manual on Uniform Traffic Control Devices" and the "Colorado Supplement" thereto, which are referred to collectively as the "Manual" and which are incorporated herein by reference as terms and conditions of this Contract. The Contractor shall provide all personnel, equipment, and other services necessary to satisfactorily perform such operation and maintenance.

C. The State shall have the option to add or delete, at any time during the term of this Contract, one or more specific traffic control devices from those listed in **Exhibit A**, and therefore amend the Work to be performed by the Contractor under this Contract. The State may amend **Exhibit A** by written notice to the Contractor using an Option Letter substantially equivalent to **Exhibit D**.

D. The Contractor may propose, in writing, other potential specific traffic control devices to be operated and maintained by the Contractor during the term of this contract, based on the same rates that had been initially agreed to by the Contractor in **Exhibit C**. If the State determines in writing that operation and maintenance of those other devices by the Contractor is appropriate, and is desirable to the State, and if the State agrees to add such devices to this contract, then the State shall, by written Option Letter issued to the Contractor in a form substantially equivalent to **Exhibit D**, add such devices to this contract.

E. The Contractor shall perform all maintenance services on an annual basis. The Contractor's performance of such services shall comply with the same standards that are currently used by the State for the State's performance of such services, for similar type highways with similar use, in that year, as determined by the State. The State's Regional Transportation Director, or his representative, shall determine the then current applicable maintenance standards for the maintenance services. Any standards/directions provided by the State's representative to the Contractor concerning the maintenance services shall be in writing. The Contractor shall contact the State Region office and obtain those standards before the Contractor performs such

services.

F. The Contractor shall perform the maintenance services in a satisfactory manner and in accordance with the terms of this Contract. The State reserves the right to determine the proper quantity and quality of the maintenance services performed by the Contractor, as well as the adequacy of such services, under this Contract. The State may withhold payment, if necessary, until Contractor performs the maintenance services to the State's satisfaction. The State will notify the Contractor in writing of any deficiency in the maintenance services. The Contractor shall commence corrective action within 24 hours of receiving actual or constructive notice of such deficiency: a) from the State; b) from its own observation; or c) by any other means. In the event the Contractor, for any reason, does not commence or indicates within 24 hours they cannot correct the deficiency, the State reserves the right to correct the deficiency and to deduct the actual cost of such work from the subsequent payments to the Contractor, or to bill the Contractor for such work

G. Performance Measures shall be accounted for within the duration of this contract and will be associated with signal/electrical maintenance. These Measures shall be addressed biannually and for every six month period of the contract. Performance records shall be kept by the Contractor and a copy sent to the CDOT Project Manager listed in this contract. The Contractor shall submit performance documentation to the CDOT Project Manager semi-annually along with the payment requests every April and October. Performance measures shall be conducted on all devices listed in **Exhibit A**.

Section 6. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and FHWA to inspect the project and to inspect, review and audit the project records.

Section 7. Termination Provisions

This contract may be terminated as follows:

This Contract may be terminated by either party, but only at the end of the State fiscal year (June 30), and only upon written notice thereof sent by registered, prepaid mail and received by the non-terminating party not later than 30 calendar days before the end of that fiscal year. In that event, the State shall be responsible to pay the Contractor only for that portion of the traffic control device maintenance services actually and satisfactorily performed up to the effective date of that termination, and the Contractor shall be responsible to provide such services up to that date, and the parties shall have no other obligations or liabilities resulting from that termination.

Section 8. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the

Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 9. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 6, 2000 South Holly, Denver, CO 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 6 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:
Alazar Tesfaye
CDOT Region 6 Traffic
2000 South Holly Street
Denver, Colorado 80222
(303) 757-9511

If to the Local Agency:
Ladd Vostry
Traffic Engineer
City of Englewood – Public Works
1000 Englewood Parkway
Englewood, Colorado 80110
(303) 762-2500

Section 10. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 12. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 13. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for

any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 14. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 15. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 16. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 17. Modification and Amendment

A. This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

B. Either party may suggest renegotiation of the terms of this Contract, provided that the Contract shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this Contract, the renegotiated terms shall not be effective until this Contract is amended/modified accordingly in writing. Provided, however, that the rates will be modified only if the party requesting the rate change documents, in accord with then applicable cost accounting principles and standards (including sections 24-107-101, et seq., C.R.S. and implementing regulations), that the requested increase/decrease is based on and results from (and is proportionate to) an increase/decrease in the "allowable costs" of performing the Work.

Section 18. Option Letters

Option Letters may be used to extend Agreement term, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. **These options are limited to the specific scenarios listed below.** The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

Option 1 – Level of service change within current term due to unexpected overmatch in an overbid situation only. In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding.

The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (**Exhibit D**), which will bring the maximum amount payable under this contract to the amount indicated in Exhibit C-1 attached to the executed Option Letter (future changes to Exhibit C shall be labeled as C-2, C-3, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

Option 2 – Option to add overlapping phase without increasing contract dollars. The State may require the contractor to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

Option 3 - To update funding (increases and/or decreases) with a new Exhibit C. This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc).

The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in Exhibit C- 1, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

Section 19. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for

the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 20. Does not supercede other agreements

This Contract is not intended to supercede or affect in any way any other agreement (if any) that is currently in effect between the State and the Contractor for other "maintenance services" on State Highway rights-of-way within the jurisdiction of the Contractor. Also, the Contractor shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Contractor is required by applicable law to perform.

Section 21. Subcontractors

The Contractor may subcontract for any part of the performance required under this Contract, subject to the Contractor first obtaining approval from the State for any particular subcontractor. The State understands that the Contractor may intend to perform some or all of the services required under this Contract through a subcontractor. The Contractor agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

Section 22. Special Provisions

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the

performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:
BILL RITTER, JR., GOVERNOR

City of Englewood, Colorado
Legal Name of Contracting Entity

By _____
Executive Director
Department of Transportation

2000021
CDOT Vendor Number

Signature of Authorized Officer

LEGAL REVIEW:
JOHN W. SUTHERS
ATTORNEY GENERAL

Print Name & Title of Authorized Officer

By _____

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
DAVID J. MCDERMOTT, CPA

By _____

Date _____

Exhibit A – Scope of Work

Exhibit A

State Highway Traffic Signal Listing

- The City shall maintain the traffic signals and associated stop bars and crosswalks at the locations listed below.
- Any reconstruction, modification, or improvement initiated by the City or performed as a result of a City project shall be included in the maintenance provided by the City.
- Any reconstruction, modification, or improvement initiated by the State or performed as a result of a State project shall be paid for separately by the State.
- The City shall perform inspections of each location, in all directions, and submit documentation to CDOT by April 10th and October 10th for each year of this contract. Inspection shall include, but not limited to:
 - Each signal lens is operating and visible
 - Signal Timing is operating as programmed
 - Controller and Cabinet are clean and in good repair
 - Communication to signal is connected and operating
 - Vehicle detection is operating properly
 - All luminaries attached to the signal are operating
- Any defects found during inspections listed above at these intersections shall be remedied within reasonable timeframe per standard industry practice. Defects and remediation shall be documented and kept on file at the City and available for CDOT upon request. Any defects not remedied shall incur a price reduction to the next month's compensation of \$340.00 per signal.
- The City shall perform an annual inspection which shall include: the visual inspection of signal caissons, bolts, bolt tightening, steel, welds, attachment hardware, back-up power testing and signal conflict monitor testing. Documentation on this inspection shall be submitted to CDOT by October 10th of each year of this contract. Any deficiencies found in bolt tightening and attachment hardware shall be corrected by the City immediately. Structural defects requiring pole or mast arm replacement shall be the responsibility of CDOT. Any deficiencies of this nature shall be documented and brought to the attention of the CDOT project manager for correction by CDOT. Other minor structural defects shall be the responsibility of the City.

TRAFFIC SIGNALS MAINTAINED BY THE CITY OF ENGLEWOOD

1. SH 285 and Inca St.
2. SH 285 and Galapago St.
3. SH 285 and Elati St.
4. SH 285 and Cherokee St.
5. SH 285 and Broadway (north)
6. SH 285 and Broadway (south)
7. SH 285 and Sherman St.
8. SH 285 and Logan St.
9. SH 285 and Clarkson St.
10. SH 285 and Downing St.
11. SH 285 and Gilpin St.
12. SH 88 (Bellevue) and Clarkson St.
13. SH 88 (Bellevue) and Logan St.
14. SH 88 (Bellevue) and Broadway
15. SH 88 (Bellevue) and Pirates Cove (1250W.)

State Highway Signs and Markings

- The City shall maintain signs and markings at the locations listed below.
- The City shall maintain all roadway markings.
- The City shall maintain all regulatory and warning signs that can be mounted on Unistrut, Telespar posts, all delineator posts, and all guide signs installed and owned by the City.
- The State shall maintain all regulatory and warning signs too large to be mounted on Unistrut posts, all guide signs not installed and owned by the City, and all other signs not maintained by the City.
- Intersection right-of-way control signs at City roadways intersecting State highways shall be maintained by the agency maintaining the intersected State highway.
- Intersection right-of-way control signs at State highway exit ramps intersecting City roadways shall be maintained by the City.
- Either agency making changes to signs or markings at the locations listed below shall provide notification of the changes to the other agency. Notification of changes to regulatory signing shall be made in writing.
- The City shall perform yearly pavement marking inspections and sign inspections, and submit documentation to CDOT by October 10th. Pavement marking inspection shall include, but not limited to:
 - Physical appearance
 - Percent of marking in place
- Sign Inspections shall include:
 - Physical condition of the signs using the night time inspections
 - Condition of post (damaged, plumb)
 - Fastening hardware checked for tightness
- Any signs failing the visual inspections shall be listed as defective and shall be replaced within one month of discovery with associated documentation to CDOT. Any defective signs not remedied shall incur a price reduction to the next month's compensation.
 - Class I Signs - \$100.00 per sign deduction
 - Class II Signs - \$200.00 per sign deduction
 - Class III Signs - \$500.00 per sign deduction

| <u>State Hwy</u> | <u>Street Name</u> | <u>From</u> | <u>To</u> | <u>Length (miles)</u> |
|------------------|--------------------|-------------|--------------------|-----------------------|
| 285 | Hampden/Jefferson | Jason | Gilpin | 1.84 |
| | | | | |
| | | | | |
| | | | | |
| | | | Total miles | 1.84 |

Exhibit B – Resolution

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION**

Exhibit C – Rate Schedule

EXHIBIT C
Traffic Control Device Rate Schedule

| | |
|---|--------------------|
| 1.84 Miles of signs and markings at \$281.53 per mile per month | \$ 518.02 |
| 15 Signals at \$340/month | <u>\$ 5,100.00</u> |
| Maximum monthly billing | \$ 5,618.02 |
| Total Maximum Annual Cost | \$67,416.24 |

Exhibit D – Option Letter

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below
AND cannot be used in place of exercising a formal amendment.

| | | | |
|-------|--------------------|-------------------|----------------|
| Date: | State Fiscal Year: | Option Letter No. | CLIN Routing # |
|-------|--------------------|-------------------|----------------|

Vendor name: _____

A. SUBJECT: (Choose applicable options listed below AND in section B and delete the rest)

1. Option to renew (for an additional term) applies to Highway and Signal maintenance contracts ONLY; this renewal cannot be used to make any change to the original scope of work;
2. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
3. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
4. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

B. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

(Insert the following language for use with Options #1):

In accordance with Paragraph(s) _____ of contract routing number (insert FY, Agency code, & CLIN routing #), between the State of Colorado, Department of Transportation, and (insert contractor's name) the state hereby exercises the option for an additional term of (insert performance period here) at a cost/price specified in Paragraph/Section/Provision _____ of the original contract, AND/OR an increase in the amount of goods/services at the same rate(s) as specified in Paragraph _____ of the original contract.

(Insert the following language for use with Option #2):

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The contract is now increased by (indicate additional dollars here) specified in Paragraph/Section/Provision _____ of the original contract.

(Insert the following language for use with Option #3):

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises the option to add an overlapping phase in (indicate Fiscal Year here) that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous). Total funds for this contract remain the same (indicate total dollars here) as referenced in Paragraph/Section/Provision/Exhibit _____ of the original contract.

(Insert the following language for use with Option #4):

In accordance with the terms of the original contract (insert FY, Agency code & CLIN routing #) between the State of Colorado, Department of Transportation and (insert contractor's name here), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local

agency overmatch funds. The contract is now (select one: increased and/or decreased) by (insert dollars here) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original contract. A new Exhibit C-1 is made part of the original contract and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

(The following language must be included on all options):

The amount of the current Fiscal Year contract value is (increased/decreased) by (\$ amount of change) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (indicate Fiscal Year). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ _____).

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

APPROVALS:

For the Contractor:

Legal Name of Contractor

By: _____
Print Name of Authorized Individual

Signature: _____

Date: _____

Title: Official Title of Authorized Individual

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____

Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

State Controller
David J. McDermott, CPA

By: _____

Date: _____

Updated: June 12, 2008

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2009

COUNCIL BILL NO. 58
INTRODUCED BY COUNCIL
MEMBER: WILSON

A BILL FOR

AN ORDINANCE AUTHORIZING THE INTERGOVERNMENTAL AGREEMENT ENTITLED "AGREEMENT RTD & CITY OF ENGLEWOOD COST SHARING FOR THE ART" BETWEEN THE REGIONAL TRANSPORTATION DISTRICT (RTD) AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the Englewood City Council approved an Intergovernmental Agreement between RTD and the City of Englewood for funding of the Englewood Circulator Shuttle for 2004 – 2007 by the passage of Ordinance No. 50, Series of 2004; and

WHEREAS, the Englewood City Council approved an Intergovernmental Agreement between RTD and the City of Englewood for funding of the Englewood Circulator Shuttle for September 10, 2007 through December 31, 2007 by the passage of Ordinance No. 66, Series of 2007; and

WHEREAS, the Englewood City Council approved an Intergovernmental Agreement between RTD and the City of Englewood for funding of the Englewood Circulator Shuttle for January 1, 2008 through December 31, 2008 by the passage of Ordinance No. 10, Series of 2008; and

WHEREAS, the City of Englewood designed the Englewood Shuttle to provide circulator shuttle service in the general area of the CityCenter Englewood, downtown Englewood and the Swedish/Craig Medical Center; and

WHEREAS, this service provides mobility and access to the commercial areas in and around the vicinity of the CityCenter Englewood light rail station, downtown Englewood and the Swedish/Craig Medical Center; and

WHEREAS, RTD provides bus service to and through the CityCenter Englewood area and the area in and around downtown Englewood and the Swedish/Craig Medical Center; and

WHEREAS, RTD and the City of Englewood agree that these services will complement each other and provide attractive and effective transit service for people working and shopping in the area surrounding the CityCenter Englewood; and

WHEREAS, the City Council of the City of Englewood, Colorado approved application to the Denver Regional Council of Governments (DRCOG) Congestion Mitigation Air Quality Funds for operation of a Circulator Shuttle in November 2002; and

WHEREAS, the passage of this proposed Ordinance will provide the same level of service for the calendar year 2010;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the IGA entitled "Agreement RTD & City of Englewood Cost Sharing For The Art" between the Regional Transportation District (RTD) and the City of Englewood, Colorado, as attached hereto as Exhibit 1.

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

Introduced, read in full, and passed on first reading on the 21st day of December, 2009.

Published as a Bill for an Ordinance in the City's official newspaper on the 25th day of December, 2009.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of December, 2009 for thirty (30) days.

Read by title and passed on final reading on the 4th day of January, 2010.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2009/2010, on the 8th day of January, 2010.

Published by title on the City's official website beginning on the 6th day of January, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2009/2010.

Loucrishia A. Ellis

**AGREEMENT
RTD & CITY OF ENGLEWOOD COST SHARING FOR THE ART**

This Agreement is made this _____ day of _____, 2010, between the Regional Transportation District, a political subdivision of the state of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. § 32-9-101, et seq., (hereafter "RTD"), and the City of Englewood, Colorado, a Colorado home rule city (hereafter "the City"). RTD and the City may also be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

1. The City has funded and operated route circulator bus service within the Englewood area (the "art") since September 2004. This service provides mobility and access from the Englewood Civic Center to Swedish Medical Center and Craig Hospital along Englewood Parkway and Old Hampden Avenue.
2. RTD also provides light rail and bus service in and around the City.
3. RTD and the City agree that these services are complementary to providing attractive and effective transit service for people working and living in the area in and around Englewood.
4. Although RTD does not provide circulator bus service in Englewood and the City does not provide such service as a private contractor for RTD, RTD wishes to financially contribute to the continued provision of circulator bus service in Englewood.

AGREEMENT

Now, therefore, in consideration of the promises and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **ART CIRCULATOR BUS SERVICE.** The City shall continue to manage and operate, either directly or through its designated agent(s), the art route circulator bus service in the City. The City and/or its designated agent(s) shall be solely responsible for all art operations, management, marketing, administration, and services delivery functions, including provision of vehicles, vehicle maintenance, insurance and accounting. As part of its operations of the art service, the City and/or its designated agent(s) shall provide fuel for the vehicle(s), the cost of which shall be reimbursed as an operating expense as provided in this Agreement. Except as specifically provided herein, RTD shall have no responsibility for the operations and management of the art. RTD shall have no responsibility for, nor authority or control with respect to, the supervision and management of any employees or contractors who work in connection with the art. Notwithstanding RTD's right to stop funding as provided herein, RTD has no obligation, nor right pursuant to this Agreement, to otherwise continue the services provided by the City, if the City ceases to provide these services.
2. **COOPERATION.** The Parties agree to cooperate and share information about transit issues in Englewood, as provided in this Paragraph 2.

A. The City and RTD shall each designate a representative responsible for the implementation of this Agreement.

B. City and RTD staff will confer on marketing and service development issues and regularly exchange relevant information in order to report progress to the respective organizations.

3. **ART SERVICE.** The art route, service hours and frequency of service shall be as shown on Exhibit A, which is attached and hereby fully incorporated by reference. The Parties hereafter may, upon mutual agreement in writing by both Parties, modify Exhibit A as necessary to effect this Agreement. RTD reserves the right to withdraw funding, as provided in this Agreement, if the City implements any major changes to these services.
4. **MARKETING AND PROMOTIONAL MATERIALS.** The City and its designated agent(s) shall develop and implement art marketing and promotional materials and activities at their sole cost. RTD staff reserve the right to review and comment upon proposed marketing strategies and materials. RTD shall include current art brochures, maps and other informational and promotional materials supplied by the City or its designated agent(s) at all of its information/customer service centers. Specifications for such materials shall be approved by the RTD to ensure compatibility with RTD display capability. The RTD customer service telephone information center will provide up-to-date art service and schedule information. The City shall allow RTD to display an appropriate RTD logo (stating that the service is in partnership with the RTD) on all vehicles used to furnish the art service and financially supported in part by RTD through this Agreement. Notwithstanding the foregoing, the art shall not be designated, marketed or promoted as an RTD-branded service.
5. **TERM AND RENEWAL.** The term of this Agreement shall be deemed to have begun on January 1, 2010 and shall expire on December 31, 2010. Thereafter, the Parties may, by written agreement, renew the Agreement for successive periods of one year each under the same terms and conditions, although any renewal of this Agreement will contain specific funding levels for the renewal year(s). Nothing herein obligates RTD to make funds available for the art or to renew this Agreement in any future fiscal year. Even if this Agreement is renewed in subsequent years, nothing herein shall imply funding will be renewed at the same or any level
6. **SIGNAGE.** The City shall maintain all art signs and sign posts and shall be solely responsible for all signage related to the art.
7. **RTD FUNDING.** To support the City's art service, RTD shall reimburse the City one hundred percent (100%) of the Net Cost of operating the art service.

A. Net Cost shall be defined as all operating costs for the art, including fuel, less Estimated Farebox Revenue, based upon the regularly scheduled service hours and cost breakdown as provided in Exhibit B, which is attached hereto and fully incorporated by reference herein. Operating costs, as referenced herein, shall not include any administrative costs for the City. The City is solely responsible for any additional operating costs relating to service hours that exceed those regularly scheduled service hours as shown in Exhibits A or B, including any special events and holidays.

B. Estimated Farebox Revenue for the 2010 year of operation shall be \$84,107, as provided in Exhibit B. Since the City offers the art as a fare-free service, Estimated Farebox Revenue is based upon a survey performed in October 2009 by RTD that determined the average fare that would have been collected had the City charged RTD's local fare for the art service.

C. Nothing in this Agreement shall prevent the City from collecting contributions or fees from other entities to help defray the unreimbursed costs of providing the art service. RTD shall not be a party to any such arrangement and shall not receive any direct allocation of or credit for such contributions or fees.

8. INVOICING AND PAYMENT.

A. The City shall submit an invoice to RTD on a monthly basis for payment of the Net Cost pursuant to Paragraph 7 herein. The invoice shall include an itemized list of reimbursable operating expenses, including fuel, and shall deduct \$7,008.92 as monthly Estimated Farebox Revenue. In addition, the invoice shall include a summary, as agreed, of service hours, mileage, the number of passenger boardings generated as a result of providing art service, and any other information that RTD requests.

B. RTD shall pay all approved invoices within thirty (30) days of receipt. If RTD does not approve an invoice from the City or its designated agent(s), a written explanation of of disputed items will be sent within ten (10) days of RTD's receipt of the invoice.

9. **RECORDS.** The City and/or its designated agent(s) will maintain full and complete financial records for the operation of the art, including but not limited to information on the number of passenger boardings on the art, any farebox revenue collected as a result of the operation of art service, if any, and any other information that RTD requests. The City and/or its designated agent(s) shall make these records available to RTD for audit for three (3) years. National Transit Database (NTD) data shall be kept in accordance with Federal Transit Administration ("FTA") requirements and shall be reported as part of RTD's NTD submission.

10. **ART PERFORMANCE ASSESSMENT.** The art service performance will be assessed by RTD, in its sole discretion, to determine if performance expectations have been met and to determine if the funding provided by RTD is warranted. If RTD chooses not to renew this Agreement, RTD shall notify the City by April 1, 2010. If this Agreement is terminated due to lack of funding by either Party in the next year's budget cycle it shall notify the other party on or before December 1 and service will be terminated effective January 1. Nothing herein obligates the RTD to renew or extend this Agreement at any time.

11. **DRUG AND ALCOHOL TESTING PROGRAM.** The City shall require the contractor providing the art service to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 40 and Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Colorado, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review the testing process. The City agrees further to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February 15th of every year to the Substance Abuse Testing Department, Regional Transportation District, 1600 Blake Street, Denver, CO 80202. To certify compliance, the City shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

12. LIABILITY AND IMMUNITY.

A.The Parties agree that RTD shall have no liability to third parties arising out of the operations or management of the art service and the City shall have no liability to third parties arising out of the operations or management of any RTD services.

B.To the extent that there is or may in the future be insurance coverage for the operations of the art, the City and its designated agent (s) shall cause RTD and its officers and employees to be named as additional insured on all insurance policies for any operations of the art.

C.Without waiving the privileges and immunities conferred by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., each Party shall be responsible for any claims, demands or suits arising out of its own negligence. It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver by RTD of its governmental immunity including limitations of amounts or types of liability or the governmental acceptance by RTD of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

13.NO LIMITATION ON RTD RIGHTS OR AUTHORITY. Nothing in this Agreement shall be construed to limit RTD's right to establish routes or services or perform any functions authorized by C.R.S. § 32-9-101, et seq.

14.NO THIRD-PARTY BENEFICIARIES. The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements, including but not limited to subcontractors, subconsultants, and suppliers. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15.FINANCIAL OBLIGATIONS SUBJECT TO APPROPRIATION. This Agreement does not contain any multiple-fiscal year financial obligations by either party that extend beyond its current fiscal year. The financial obligations of each Party under this Agreement shall be subject to and limited by the appropriation of sufficient funds therefore by its governing body. Funds for this agreement have been budgeted, authorized and appropriated by the RTD Board of Directors for the 2010 fiscal year. Nothing herein obligates RTD to budget, authorize or appropriate funds for any future fiscal year. To the extent permitted by law, all of the operating costs of the art and revenues, if applicable, of the art shall be treated by RTD as its "operating costs" and its "revenues collected" for purposes of compliance with C.R.S. § 32-9-119.7.

16.STATUS OF PARTIES.

A.The City, or its designated agent, shall be solely responsible for hiring, supervising and discharging the employees or contractors who operate the art service. The RTD shall have no responsibility for, nor authority or control with respect to, the supervision and management of the drivers and other employees or contractors who work in connection with the service.

B.The Parties agree that the status of each Party shall be that of an independent contractor to the other, and it is not intended, nor shall it be construed, that one Party or any officer, employee, agent or contractor of such Party is an employee, officer, agent, or representative of the other Party. Nothing contained in the Agreement or documents incorporated by reference herein or otherwise creates any partnership, joint venture, or other association or relationship between RTD and the City. Any approval, review, inspection, direction or instruction by RTD or any party on behalf of RTD shall in no way affect either Party's independent contractor status or obligation to

perform in accordance with this Agreement. Neither Party has authorization, express or implied, to bind the other to any agreements, liability, or understanding except as expressly set forth in this Agreement.

C. The City and/or its designated agent(s) shall be responsible for all federal and state taxes and contributions for Social Security, unemployment insurance, income withholding tax, and other taxes measured by wages paid to employees, as well as any subcontractor or vendor. The City acknowledges that it, its designated agent(s) and/or its or its designated agent(s) employees are not entitled to workers' compensation benefits or unemployment insurance benefits from RTD, unless the City or a third party provides such coverage, and that RTD does not pay for or otherwise provide such coverage. The City shall be solely responsible for its own actions, its employees and agents.

17. LEGAL AUTHORITY. The City and RTD represent or warrant to each other that they have all necessary authority to enter into this Agreement and to perform their obligations hereunder and that this Agreement does not conflict with any other agreement that each Party is subject or to which it may be bound. The person signing and executing this Agreement on behalf of either Party represents that he/she has been fully authorized to execute this Agreement and to validly and legally bind a Party to all the terms, performances and provisions herein set forth. The Parties shall have the right, at their option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the other Party or the person signing the Agreement to enter into this Agreement. Neither Party shall be obligated to perform any of the provisions of this Agreement after it has suspended or terminated this Agreement as provided in this Paragraph.

18. NO ASSIGNMENT. Except as otherwise provided in the Agreement, neither party may assign the Agreement and/or any of its rights and obligations hereunder without the written consent of the other Party.

19. WRITTEN AMENDMENTS. This Agreement may be modified or amended only by a written document duly executed by both parties.

20. NOTICES. Correspondence regarding this Agreement shall be sent to:

For the City:
City of Englewood
Community Development Department
1000 Englewood Parkway
Englewood, Colorado 80110
Attn: Harold Stitt
303.762.2341

For the RTD
Regional Transportation District
1600 Blake Street
Denver, Colorado 80202
Attn: Bruce Abel
303.299.2839

The addresses or contacts may be changed by the Parties by written notice.

21. ENTIRE AGREEMENT. The terms and provisions of this Agreement, including but not limited to the Recitals above and the Exhibit(s) or Attachments incorporated by reference herein, represent the entire understanding of the parties with respect to the subject matter of this Agreement, and merge,

incorporate and supersede all prior communications between the City and RTD concerning that subject. No representations or warranties are made by the City or RTD except as herein set forth.

22.WAIVER AND BREACH. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon a subsequent breach.

23.GOVERNING LAW; VENUE. Each and every term, provision, condition, of this Agreement is subject to the provisions of Colorado law. This Agreement is subject to such modifications as may be required by changes in Colorado or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Venue for any action arising hereunder shall be in the District Courts for the State of Colorado.

24.SEVERABILITY. The Parties expressly agree that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

25.COUNTERPARTS. This Agreement shall be executed in two counterparts each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

WHEREFORE, the Parties have entered into this Agreement as of the date first set forth above.

REGIONAL TRANSPORTATION DISTRICT

CITY OF ENGLEWOOD

By: _____

By: _____

Phillip A. Washington
Interim General Manager
Regional Transportation District

James K. Woodward
Mayor
City of Englewood

ATTEST:

Loucrishia A. Ellis
City Clerk

Approved as to legal form:
Regional Transportation District

Jenifer Ross-Amato
Associate General Counsel

Exhibit A

art Service Description

Span of Service:

| | |
|-----------|---------------------|
| Weekday- | 6:30 AM- 6:30 PM |
| Saturday- | No service provided |
| Sunday- | No service provided |
| Holidays- | No service provided |

Service Frequency:

| | |
|-----------|------------------|
| Weekday | every 15 minutes |
| Saturday- | Not Applicable |
| Sunday- | Not Applicable |
| Holidays- | Not Applicable |

Annual Revenue Hours:

| | |
|-----------|-----------------------|
| Weekday- | 6,168 |
| Saturday- | Not Applicable |
| Sunday- | Not Applicable |
| Holidays- | <u>Not Applicable</u> |

| | |
|-------|-------|
| Total | 6,168 |
|-------|-------|

Exhibit B

Summary of Anticipated Operating Costs and Revenues

Expense- January 2010 – December 31, 2010

| | |
|---|------------------|
| art operating hours expense-6168 hours @ 43.07 per hour | \$ 265,656 |
| art fuel expenses | <u>\$ 33,964</u> |
| Expense | \$ 299,620 |

Estimated Farebox Revenue- January 2009 – December 2009

| | |
|--|------------------|
| Passenger fares based on October 2009 survey | <u>\$ 84,107</u> |
| Total Revenue | \$ 84,107 |

COUNCIL COMMUNICATION

| | | |
|---|------------------------------|--|
| Date: January 4, 2010 | Agenda Item: 9 c i | Subject: Designation of the Bulletin Board on the north side of second floor of the Englewood Civic Center as the Official Posting Place for all Legal Notices of the City of Englewood for 2010 |
| Initiated By: Finance and Administrative Services Department City Clerk's Office | | Staff Source: Frank Gryglewicz, Director of Finance and Administrative Services Loucrishia A. Ellis, City Clerk |

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

On January 5, 2009 City Council designated the bulletin board on the north side of the second floor of Englewood Civic Center as the Official Posting Place for all Legal Notices of the City of Englewood for 2009.

RECOMMENDED ACTION

Staff recommends Council approve a resolution designating the bulletin board on the north side of second floor of the Englewood Civic Center as the Official Posting Place for all Legal Notices of the City of Englewood for 2010.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The OPEN MEETINGS LAW, State Statute § 24-6-402 (2) (c) states that "a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year."

FINANCIAL IMPACT

None

LIST OF ATTACHMENTS

Resolution

RESOLUTION NO. _____
SERIES OF 2010

A RESOLUTION DESIGNATING THE BULLETIN BOARD ON THE NORTH SIDE OF THE SECOND FLOOR OF THE ENGLEWOOD CIVIC CENTER AS THE OFFICIAL POSTING PLACE FOR ALL LEGAL NOTICES OF THE CITY OF ENGLEWOOD FOR 2010.

WHEREAS, the "Open Meetings Law", State Statute §24-6-402(2)(c) requires that the public place or places for posting legal notices shall be designated annually at the local public body's first regular meeting of each calendar year;

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

Section 1. The official posting place for all legal notices of the City of Englewood for the year 2010, shall be the Bulletin Board on the north side of the second floor of the Englewood Civic Center and such notices shall be posted under the heading "OFFICIAL CITY NOTICES." This Resolution does not in any way of itself create a requirement for notice.

ADOPTED AND APPROVED this 4th day of January, 2010.

ATTEST:

James K. Woodward, 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 2010.

Loucrishia A. Ellis, City Clerk

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2009

COUNCIL BILL NO. 59
 INTRODUCED BY COUNCIL
 MEMBER: PENN

A BILL FOR

AN ORDINANCE EXTENDING A TEMPORARY SUSPENSION OR MORATORIUM ON THE ESTABLISHMENT OF NEW MEDICAL MARIJUANA DISPENSING AND GROWING USES FOR A PERIOD OF FOUR MONTHS, UNTIL JUNE 17, 2010.

WHEREAS, it has been brought to Council's attention that the current Unified Development Code does not adequately define or limit medical marijuana dispensing and growing uses; and

WHEREAS, City Council directed staff to review, create and revise, if necessary, provisions concerning medical marijuana dispensing and growing; and

WHEREAS, staff has reviewed and coordinated the provisions relating to Medical Marijuana dispensing and growing in the Code; and

WHEREAS, City Council deems it necessary to coordinate the review of the Unified Development Code and finds it appropriate to prohibit the establishment of new medical marijuana dispensing and growing in the City until the review by the staff and City Council; and

WHEREAS, the moratorium would temporarily stop additional businesses; and

WHEREAS, those uses already in business would not be affected; and

WHEREAS, in order for the City to comply with equal protection issues, the moratorium or temporary suspension must apply to all zone districts unless specific exemptions can be legitimately set forth due to a finding that a particular zone district should be excluded; and

WHEREAS, the revisions to the Unified Development Code and the updating of the uses allowed in all zone districts will help protect the public health, safety and welfare by preserving a safe, healthy, and sound environment within the City; and

WHEREAS, the citizens of Englewood and the City Council have determined that further revisions to the Unified Development Code are necessary to promote, coordinate, and implement a high quality plan to produce well balanced zoning in the City; and

WHEREAS, the current listing of uses is not meeting the above criteria; and

WHEREAS, the Planning and Zoning Commission has considered and made recommendations to Council; and

WHEREAS, the City Council wishes to further review and study the Ordinance received from the Planning and Zoning Commission; and

WHEREAS, the Colorado legislature appears poised to create and clarify the State's rules regarding Medical Marijuana licensing and enforcement; and

WHEREAS, the City Council finds that an additional four month extension of the current moratorium or temporary suspension of the establishment of all new medical marijuana dispensing and growing uses is necessary to implement the revisions to the Unified Development Code;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT THE MORATORIUM OR TEMPORARY SUSPENSION OF ALL NEW MEDICAL MARIJUANA DISPENSING AND GROWING USES IS EXTENDED TO JUNE 17, 2010.

Section 1. Said moratorium or temporary suspension shall be for any medical marijuana dispensing and growing uses within the City of Englewood not in operation by August 17, 2009.

Section 2. The City Council will review the Commission's recommendations, to be consistent with this Ordinance and to provide for an updating of the Unified Development Code relating to medical marijuana dispensing and growing uses.

Section 3.- The City Council finds the provisions of this Ordinance are temporary in nature and are intended to be replaced by subsequent legislative enactment so that the moratorium or temporary suspension as specified in this Ordinance shall terminate on June 17, 2010.

Introduced, read in full, and passed on first reading as an Ordinance on the 21st day of December, 2009.

Published as a Bill for an Ordinance in the City's official newspaper on the 25th day of December, 2009.

Published as an Ordinance on the City's official website beginning on the 23rd day of December, 2009 for thirty (30) days.

Read by title and passed on final reading on the 4th day of January, 2010.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2009/2010, on the 8th day of January, 2010.

Published by title on the City's official website beginning on the 6th day of January, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 2009/2010.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

| | | |
|--|-------------------------------|---|
| Date: January 4, 2010 | Agenda Item: 11 c i | Subject: Solids Contact Tanks Air Pipe and Storm Water Projects Construction Contract |
| Initiated By: Littleton/Englewood WWTP Supervisory Committee | | Staff Source: Stewart H. Fonda, Director of Utilities Chong Woo, Project Engineer |

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approval of the Capital Infrastructure Projects in the Littleton/Englewood WWTP 2010 Budget.

RECOMMENDED ACTION

The Supervisory Committee recommends that Council approve, by motion, a construction contract for the Solids Contact Tanks (SCT) Air Pipe and Storm Water Projects at the Littleton/Englewood Wastewater Treatment Plant. Staff recommends awarding the contract to the lowest responsible bidder, Stanek Constructors, Inc., in the amount of \$964,000.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The SCT Air Pipe and Storm Water Projects are the result of major infrastructure improvements needed that were discovered during the recent completion of the Phase 2 Expansion Project. At the time, it was recommended to perform these improvements by means of our infrastructure stabilization program, in lieu of a change order to the Phase 2 contract.

The project design has been completed by Brown and Caldwell. The components of the SCT Air Pipe and Storm Water Projects include:

- SCT Air Pipe Addition and Modification -
The existing 42-inch air piping has been structurally compromised due to corrosion and deterioration. This piping conveys air produced by large aeration blowers which provide oxygen to the secondary biological treatment processes. This air and piping is critical to the processes and directly affects the plant operation and its ability to meet requirements. Sections of the piping will be replaced, and the layout modified to accommodate construction activities.
- Digester Tank Roof Repair -
The interior cover lining of one of the Digester Tanks has been determined to be damaged (leaking) and must be repaired. A digester tank is a fully enclosed structure and must be leak tight to prevent wastewater spills and releases of methane gases which can be highly flammable.

- Installation of Groundwater Dewatering Wells -
During the Phase 2 Project two additional secondary clarifier tanks were installed, which are significantly deeper and below the normal groundwater table. During instances of maintenance whereby the clarifier tanks need to be fully dewatered, pumping from the dewatering wells must be utilized to prevent groundwater from infiltrating the tank areas.
- Installation of a Storm Water Inlet and Outfall Piping -
As a result of the Phase 2 Project, the conditions of the existing northeast section of the L/E WWTP property and an adjacent property have been modified which prevent the natural drainage of surface runoff from storm events. This condition could not have been foreseen during the original design of the Phase 2 Project. An additional storm water inlet and new outfall piping to the South Platte River is necessary to mitigate the drainage issues.

A total of seven (7) bids were received from local construction contractors. Bids were opened on December 3, 2009, with the following base bid results:

| | |
|--|--------------|
| Stanek Constructors Inc., Golden, CO | \$ 964,000 |
| Paramount Construction Inc., Denver, CO | \$ 1,094,198 |
| Glacier Construction Inc., Englewood, CO | \$ 1,119,900 |
| RN Civil Construction, Centennial, CO | \$ 1,156,000 |
| Clemons Construction Corp, Littleton, CO | \$ 1,174,230 |
| Aslan Construction, Berthoud, CO | \$ 1,176,793 |
| W.M. Brown Const, Westminster, CO | \$ 1,213,044 |

The engineering estimate for this project was \$1,180,000. This estimate was based on conservative pricing and information gathered from varying sources. The range of bids does indicate very good interest in this project and that thorough consideration of the project was given by the contractors (i.e., no significant misunderstanding of the bidding documents). The range also appears to indicate a competitive market trend in the construction contractor industry. The average of all bids was approximately \$1,130,000, which is 4% lower than the engineer's estimate.

Brown and Caldwell has reviewed the bids and determined that the bids are acceptable and complete. Stanek Constructors, Inc. is identified as the lowest responsible bidder. Stanek is a Colorado based corporation, with its headquarters located in Golden, Colorado. Stanek has extensive history and experience in the Water/Wastewater industry and has completed projects ranging from \$20,000 to \$25,000,000. References have been verified with positive feedback received.

The project is expected to begin in February 2010 and be complete by October 2010.

FINANCIAL IMPACT

The bid amount is included in the 2010 capital budget and will be shared 50/50 by the Cities of Englewood and Littleton.

LIST OF ATTACHMENTS

Bid Tabulation Sheet.

City of Englewood Bid Tabulation Sheet

Bid Opening: December 3, 2009 2:00 P.M. MST

Apparent Low Bidder

ITEM: ITB-09-118 SCT Air Pipe & Storm Water Projects

| Contractor | Total Bid Lump Sum | Bid Bond Y/N | Receipt of Addendums 1 - 4 | Exceptions: |
|--------------------------------------|--------------------|--------------|----------------------------|-------------|
| W. M. Brown Construction Corp | | | | |
| 3440 W 71st Pl | | | | |
| Westminster, CO 80030 | | | | |
| 303-430-8935 | | | | |
| 303-430-8940 fax | 1,213,044.00\$ | Y | Y | |
| Glacier Construction | | | | |
| 7670 S Chester St Ste 210 | | | | |
| Englewood, CO 80112 | | | | |
| 303-221-5383 | | | | |
| 303-221-5385 fax | 1,119,900.00\$ | Y | Y | |
| Paramount Construction Inc | | | | |
| 4701 Jackson St | | | | |
| Denver, CO 80216 | | | | |
| 303-377-1885 | | | | |
| 303-377-1801 | 1,094,198.00\$ | Y | Y | |
| Clemons Construction Corp | | | | |
| 12299 Mead Way Unit A | | | | |
| Littleton, CO 80125 | | | | |
| 303-346-7354 | | | | |
| 303-346-9530 fax | 1,174,230.00\$ | Y | Y | |
| RN Civil Construction | | | | |
| 5975 S Quebec St Ste 140 | | | | |
| Centennial, CO 80111 | | | | |
| 303-480-3059 | | | | |
| 303-480-3058 | 1,156,000.00\$ | Y | Y | |
| Aslan Construction | | | | |
| 120 Bunyan Ave Ste 200 | | | | |
| Berthoud, CO 80513 | | | | |
| 970-344-1040 | | | | |
| 970-344-1045 fax | 1,176,793.00\$ | Y | Y | |
| Stanek Constructors, Inc | | | | |
| 651 Corporate Cir Ste 200 | | | | |
| Golden, CO 80401 | | | | |
| 303-980-8233 X464 | | | | |
| 303-279-4487 fax | 964,000.00\$ | Y | Y | |



Memorandum

City Manager's Office

TO: Mayor Woodward and Members of City Council
THROUGH: Gary Sears, City Manager
FROM: Michael Flaherty, Deputy City Manager 
DATE: December 30, 2009
SUBJECT: Broadway Post Office Sale/Consolidation

In a letter to Mayor Woodward, dated December 23, 2009, and in a Public Notification distributed to Englewood postal customers, the Postal Service announced that the Post Office at 3330 South Broadway has been selected to be put on the market for future sale- copies attached. In the event of such sale, services would be consolidated at the Lehigh Post Office.

Earlier this year, the USPS initiated a review of its operations in order to address a \$3.8 billion fiscal year 2009 loss –see attached USPS news releases. About 3300 postal stations and branches were initially examined, focusing on facilities in relatively close proximity to one another. On December 14, 2009, the list of potential consolidations was established with less than 170 stations listed – copy attached. The Englewood Broadway branch is not listed among these 170 stations; however, this list is not final and is subject to change.

Also attached is a copy of Federal regulations regarding discontinuation of post offices, which outlines the required public process for closure or consolidation of a post office.

Given that the Englewood Broadway Post Office branch is not listed among the 170 stations currently proposed for consolidation and that the Federal regulations include extensive procedural requirements, closure is not likely to occur anytime soon.



December 23, 2009

Mr. Jim Woodward
Mayor, Englewood, Colorado
3943 S Pearl Street
Englewood CO 80113

Re: Englewood, CO Downtown Station
Notification of U.S. Postal Service Pursuing Its Future Possible Sale and/or Re-Development

Dear Mayor Woodward,

The non-tax supported U.S. Postal Service (USPS), like many other businesses in today's tough economy, is experiencing major financial and operating budget challenges. USPS is looking at potential sources for new revenue and savings on operational costs.

In that regard, the USPS is identifying certain Post Office building sites and properties nationwide it will place on the market for potential sale/re-development, with USPS still maintaining a high level of customer retail mail service and operations in the community.

The Englewood Downtown Station, located at 3330 S. Broadway, has been selected to be put on the market for possible future sale. The newer and larger Englewood Main Post Office at 915 Lehigh Avenue will remain in full operation.

Any future sale of the Englewood Downtown Station Post Office site will involve USPS relocating its customer retail services/operations (including customer P.O. Boxes) and moving them to the existing Englewood Main Post Office facility at 915 S. Lehigh, located only .9 of a mile away.

Englewood community officials and downtown station postal customers will be kept fully informed if this for sale process develops.

Please be advised, that if USPS definitely does decide to pursue any sale of the Englewood Downtown postal property site, and if USPS would relocate its customer retail service operation to the Main Post Office, the community contact informational process would be initiated. This process would include a public information meeting with an opportunity for community input.

If you have any comments regarding this action, please contact the USPS Consumer Affairs Office by January 15, 2010. Please address your comments to Alex.M.Turner@usps.gov, or:

Alex Turner, Consumer Affairs Manager
Colorado/Wyoming USPS District
7500 E. 53rd Place, Room 2214
Denver, CO 80266-9631

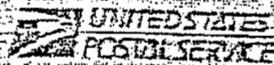
Sincerely,

A handwritten signature in black ink, appearing to read "Alex Turner", written over a horizontal line.

Alex Turner, Acting CO/WY USPS Consumer Affairs Manager

Cc: District Manager, District Finance Manager

DEC 2009



PUBLIC NOTIFICATION

ENGLEWOOD, CO DOWNTOWN STATION

The Postal Service is in the process of reviewing its national portfolio of existing postal facilities and properties, based on its current and projected space needs. During this process, the Englewood, CO Downtown Station located at 3330 S. Broadway was identified as a potential sale and consolidation opportunity.

Please be advised, if this property sells, it is the intention of the Postal Service to utilize existing vacant retail space in the Englewood, CO Main Post Office located at 915 W. Lehigh Ave. which is located just 9 of a mile from the current downtown Englewood Station.

Please be advised, only if the downtown Englewood postal property site were proposed to be sold, and if the Postal Service would then plan to relocate its retail customer service to the Englewood Main Post Office, the community contact process will be initiated. This process includes a public informational meeting with an opportunity for community input. The community will be informed if this process develops.

If you have any immediate comments regarding this action, please contact the USPS Consumer Affairs Office below by **January 15, 2010**.

Please address any comments to:

Alex.M.Turner@usps.gov

- or -

ALEX TURNER
CONSUMER AFFAIRS MANAGER
USPS COLORADO/WYOMING DISTRICT
7500 E 53RD PLACE
DENVER CO 80266-9611



POSTAL NEWS

FOR IMMEDIATE RELEASE
Sept. 2, 2009

Media Contact: Greg Frey
202-268-2168
greg.a.frey@usps.gov

usps.com/news
Release No. 09-074

Fewer Retail Offices Remain Under Review for Consolidation *USPS Moves to Remove Cost and Maintain Customer Access*

WASHINGTON—The Postal Service announced today that 413 retail stations and branches remain under consideration for possible consolidation. Today's announcement updates a study begun earlier this summer that examined a wide range of stations and branches in urban and suburban areas across the country, focusing on offices in close proximity to determine where consolidations might be feasible, while maintaining customer access to postal services.

With nearly 37,000 Post Offices, stations, branches, contract and community post offices, the U.S. Postal Service has the largest retail network in the United States. In addition, about 56,000 other locations such as supermarkets, drug stores, and other retailers sell postage and selected postal services. Nearly 18,000 automated teller machines (ATMs) also dispense sheets of stamps. And, postage can be purchased and printed on personal computers at usps.com.

The only provider of mail service to every home and business address in the country, the Postal Service is committed to providing reliable, secure, affordable postal services with convenient access. Unlike most federal agencies, America's national mail system receives no tax subsidy for operating expenses and relies on the sale of postage, products and services to fund its operations.

The current deep national recession has exacerbated erosion in First-Class Mail volumes due to a change in consumer preferences to electronic systems for instant messaging, invoicing and bill payment. Mail volume in 2009 is projected to be as much as 20 billion fewer pieces than in 2008. Still, mail volume in 2009 will be in the neighborhood of 170 billion pieces of mail.

To offset the current extremely difficult financial position, the Postal Service has successfully removed more than \$6 billion in cost in 2009, including:

- Cutting more than 100 million work hours, the equivalent of 57,000 positions;
- Closing six district administrative offices;
- Adjusting carrier routes to reflect diminished volume and eliminating nearly 12,000 carrier routes;
- Instituting a nationwide hiring freeze;
- Reducing authorized staffing levels at national and regional offices by 15 percent;
- Selling unused and under-utilized postal facilities;
- Adjusting Post Office hours to better reflect customer use;
- Consolidating mail processing operations;
- Halting construction of new postal facilities; and
- Freezing salaries of all Postal Service officers and executives.

Additional efficiency initiatives are continuing. Reducing over-capacity in retail and delivery operations is a good business move. Every effort will be made to maintain and improve customer access to postal services.

Today's announcement is part of the Station and Branch Optimization and Consolidation initiative that is currently being reviewed by the Postal Regulatory Commission (PRC). As part of this proceeding, the Postal Service is required to file with the PRC the names of facilities under review.

The filing does not represent a final decision on consolidation. No final actions will be taken regarding consolidation as a result of this initiative until after Oct. 2, 2009.

[Click here for the list of stations and branches currently being reviewed.](#)

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**POSTAL NEWS**FOR IMMEDIATE RELEASE
November 20, 2009Media Contact: Greg Frey
202-268-2168usps.com/news
Release No. 09-100

Postal Service Updates Station and Branch Consolidation Initiative

Additional offices dropped from consideration

WASHINGTON—The U.S. Postal Service today updated the list of retail stations and branches that remain under review for possible consolidation, with only 241 offices still under review.

Unlike most federal agencies, America's national mail system receives no tax subsidy for operating expenses and relies on the sale of postage, products and services to fund its operations. The Postal Service reported a loss of \$3.8 billion at the end of its 2009 fiscal year in October.

"To shore up its finances, the Postal Service is looking at every aspect of its business to economize. Reducing over-capacity in retail and delivery operations is a smart business move. Every effort is being made to maintain and improve customer access to postal services," said Steven J. Forte, senior vice president, Operations.

Today's announcement updates a review process begun earlier this summer that initially examined about 3,300 stations and branches in urban and suburban areas across the country, focusing on facilities in relatively close proximity to one another. The process is to determine where consolidations might be feasible without compromising customer access to postal services.

With over 36,000 Post Offices, stations, branches, contract and community post offices, the Postal Service has the largest retail network in the United States. An additional 56,000 locations such as supermarkets, drug stores, and other retailers sell postage and selected postal services. Nearly 18,000 ATMs dispense sheets of stamps. But customers do not have to visit a physical building to purchase products and services; postage can be bought at usps.com and printed on personal computers.

As part of this process, the Postal Service has filed periodic updates with the Postal Regulatory Commission, identifying the retail stations and branches that remain under consideration. The filing does not represent a final decision on consolidation. To date, no facility-specific final decisions have been made as a result of this initiative.

New initiatives also are being undertaken to build revenue, including Flat Rate Priority Mail pricing. If it fits in the box, it ships for one low price regardless of U.S. destination or weight. Another recent revenue building initiative introduced greeting cards to 500 select Post Offices.

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Click here for the list <http://www.usps.com/communications/newsroom/stationbranchop.pdf>

Please Note: For broadcast quality video and audio, photo stills and other media resources, visit the USPS Newsroom at www.usps.com/communications/newsroom/welcome.htm.

A self-supporting government enterprise, the U.S. Postal Service is the only delivery service that reaches every address in the nation, 150 million residences, businesses and Post Office Boxes. The Postal Service receives no tax dollars. With 36,000 retail locations and the most frequently visited website in the federal government, the Postal Service relies on the sale of postage, products and services to pay for operating expenses. Named the Most Trusted Government Agency five consecutive years and the sixth Most Trusted Business in the nation by the Ponemon Institute, the Postal Service has annual revenue of more than \$68 billion and delivers nearly half the world's mail. If it were a private sector company, the U.S. Postal Service would rank 26th in the 2008 Fortune 500.

**POSTAL NEWS**FOR IMMEDIATE RELEASE
Dec. 14, 2009Media Contact: Greg Frey
202-268-2168usps.com/news
Release No. 09-111

Fewer Than 170 Offices Remain Candidates for Consolidation *U.S. Postal Service Updates Station and Branch Consolidations*

WASHINGTON—Fewer than 170 offices remain under review for possible consolidation under the U.S. Postal Service station and branch consolidation initiative.

Today's announcement updates a review process begun earlier this summer that initially examined about 3,300 stations and branches in urban and suburban areas across the country, focusing on facilities in relatively close proximity to one another. The initiative looks to determine where consolidations might be feasible without compromising customer access to postal services.

The Postal Service receives no tax subsidy to operate the nation's mail service. Revenues from the sale of postage, products and services fund its operations. At the conclusion of its 2009 fiscal year in October, the Postal Service reported a loss of \$3.8 billion.

"To shore up its finances, the Postal Service is looking at every aspect of its business to economize. Reducing over-capacity in retail and delivery operations is a smart business move. Every effort is being made to maintain and improve customer access to postal services," said Steven J. Forte, senior vice president, Operations.

With over 36,000 Post Offices, stations, branches, contract and community post offices, the Postal Service has the largest retail network in the United States. An additional 56,000 locations such as supermarkets, drug stores, and other retailers sell postage and selected postal services. Nearly 18,000 ATMs dispense sheets of stamps. In addition postage can be purchased online at usps.com and printed on personal computers.

As part of the consolidation process, the Postal Service has filed periodic updates with the Postal Regulatory Commission identifying the retail stations and branches that remain under consideration. The filing does not represent a final decision on consolidation. At this point no facility-specific final decisions have been made as a result of this initiative.

New initiatives also are being undertaken to build revenue, including Flat Rate Priority Mail pricing and the introduction of greeting cards to 500 select Post Offices.

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Click here for the list <http://www.usps.com/communications/newsroom/stationbranchop.pdf>

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**Station/Branch Optimization/Consolidation (SBOC) Initiative
Current List of Stations/Branches Under Review as of December 14, 2009**

| State | City | Station/Branch Name | Street Address | ZIP Code |
|--------------|----------------|------------------------------------|---------------------------------|-----------------|
| AL | Montgomery | MGY-Boylston | 501 Johnson Ave | 36110-9998 |
| AL | Montgomery | MGY-Capitol Heights STA | 2260 Mt. Meigs Rd | 36107-9998 |
| AL | Tuscaloosa | TCL-Eastside STA | 955 26th Ave E | 35404-9998 |
| AR | Little Rock | Aerospace | 3301 E Roosevelt Rd Ste 2 | 72206-6729 |
| AR | Fort Smith | Ft Smith Rogers Avenue Station | 3400 Rogers Ave | 72906-9998 |
| AR | Little Rock | Pleasant Ridge Station | 11619 Pleasant Ridge Dr | 72212-9998 |
| AR | Fort Smith | South Ft Smith Station | 5200 S 32nd St | 72906-9998 |
| AZ | Tucson | Tucson Midtown | 5401 E 5th St | 85712-9998 |
| CA | Hayward | Bradford | 822 C Street | 94541-9991 |
| CA | Oakland | Kaiser Center | 300 Lakeside Dr | 94612-9994 |
| CA | Berkeley | Landscape | 1831 Solano Ave | 94707-9991 |
| CA | Oakland | Mills College | 5000 Macarthur Blvd | 94613-1301 |
| CA | Fremont | Niles | 160 J Street | 94536-9991 |
| CA | Oakland | Oakland Station B | 1446 Franklin St | 94612-9992 |
| CA | Berkeley | Park Station | 2900 Sacramento St | 94702-9991 |
| CA | Richmond | Richmond Station A | 200 Broadway | 94808-9991 |
| CA | Los Angeles | Federal Finance Station | 300 N Los Angeles | 90012-9998 |
| CA | Redondo Beach | Galleria Station | 1815 Hawthorne Blvd Ste 377 | 90278-9997 |
| CA | Los Angeles | Hollywood Pavilion Store | 6801 Hollywood Blvd Ste 167 | 90028-6101 |
| CA | Fresno | Fresno Barton | 4475 E Tulare | 93702-9998 |
| CA | Fresno | Fresno Calwa | 4026 E Jensen Ave | 93725-9998 |
| CA | Modesto | Modesto El Viejo | 1125 I Street | 95354-9998 |
| CA | Stockton | Stockton Tuxedo Park | 2616 Pacific Avenue | 95204-9998 |
| CA | Riverside | Riv--La Sierra | 11134 Pierce Place | 92505-9997 |
| CA | San Diego | George Washington | 2692 C Street | 92102-9998 |
| CA | Moreno Valley | Moreno Station | 28981 Alessandro Blvd | 92555-6907 |
| CA | San Diego | Naval Amphibious Base | 3420 Guadacanal Rd Bldg 16 | 92155-9998 |
| CA | San Diego | North Park Retail | 3791 Grim Ave | 92104-9998 |
| CA | Chula Vista | Rancho Del Rey | 340 Oxford | 91911-9998 |
| CA | San Bernardino | San Bernardino Finance | 455 Orange Show Lane | 92412-9998 |
| CA | Irvine | IRV-East Irvine STA | 14982 Sand Canyon Ave | 92650-9998 |
| CA | Pomona | Pomona - Yorba STA | 2138 N Garey Ave | 91767-9998 |
| CA | Laguna Beach | LAG-South Laguna STA | 31677 Virginia Way | 92652-9998 |
| CT | East Haven | New Haven-Trolley Square | 175 Main Street | 06512-3099 |
| DC | Washington | Navy Annex | 2 Navy Annex USPS Room G073 | 20370-0002 |
| FL | Jacksonville | JAX-Airport Station | 14350 Pecan Park Rd | 32229-9998 |
| FL | Jacksonville | JAX-Cecil Field FSTA | 13618 Lake Fretwell St | 32221-8130 |
| FL | Panama City | PFN-Eastside STA | 5310 E Highway 98 | 32404-7261 |
| FL | Pensacola | PNS-Downtown STA | 101 Palafox Pl | 32502-5629 |
| FL | Miami | MIA- International Airport Finance | 1 Terminal B Fl 4 | 33299-9998 |
| FL | Miami | MIA-Edison Center FSTA | 760 NW 62 St | 33151-9998 |
| FL | Ft Myers | FMY-Miracle Mile STA | 3954 Broadway St | 33901-8121 |
| FL | Kissimmee | KIS-Good Samaritan BR | 4191 S Orange Blossom Tr | 34746-7265 |
| FL | Naples | NPS-Golden Gate Finance | 11665 Collier Blvd | 34116-6530 |
| FL | Naples | NPS-Vanderbilt Beach | 851 Vanderbilt Beach Road | 34108-8709 |
| FL | Orlando | ORL-Lee Vista Station | 6301 Hazeltine Nat'l Dr Ste 120 | 32822-9998 |

**Station/Branch Optimization/Consolidation (SBOC) Initiative
Current List of Stations/Branches Under Review as of December 14, 2009**

| | | | | |
|----|------------------|--|---|------------|
| FL | Saint Petersburg | SPT-Central STA | 4001 35th St N | 33714-9998 |
| FL | Saint Petersburg | SPT-Pass A Grille | 103 8th Avenue | 33706-4334 |
| FL | Tampa | TPA-Port Tampa | 6801 S Westshore Blvd | 33616-9998 |
| FL | Tampa | TPA-Seminole Heights STA | 5206 N Florida Ave | 33603-9998 |
| GA | Atlanta | ATL-Cnn Postal Store | 190 Marietta St Nw Ste 280 | 30303-2766 |
| GA | Atlanta | ATL-Gate City Station | 486 Decatur St SE | 30312-9998 |
| GA | Atlanta | ATL-Hartsfield Airport P/Store | 6000 S Terminal | 30320-7400 |
| GA | Macon | MAC-Macon Mall | 3661 Eisenhower Pkwy | 31206-3669 |
| GA | Port Wentworth | Port Wentworth | 300 Cantyre St | 31407-9998 |
| IA | Des Moines | East 14th Retail- Des Moines | 1354 E Ovid Ave | 50316-1200 |
| IA | Des Moines | East Des Moines | 321 E Walnut Ste 120 | 50309-2000 |
| IL | Chicago | Chicago-Finance Station N-FND STA | 2148 E 71st St | 60649-9997 |
| IN | Evansville | Evansville North Park Finance | 4490 First Avenue | 47710-9998 |
| IN | Gary | Gary-Brunswick-STA | 5325 W 5th Ave | 46406-9998 |
| IN | Indianapolis | Indianapolis-Bridgeport-FIN BR | 8804 W Washington St. | 46231-9998 |
| IN | Indianapolis | Indianapolis-West Indianapolis FIN-FIN STA | 1144 S Belmont St. | 46221-9998 |
| KS | Kansas City | KCK-Fairfax | 3210 Fiberglass Road | 66115-9998 |
| KS | Kansas City | KCK-Packer | 628 Kansas Avenue | 66119-9998 |
| KY | Louisville | Louisville Beechmont Finance | 307 West Woodlawn | 40214-9997 |
| KY | Louisville | Louisville Buechel Finance | 2259 Hikes Lane | 40218-9998 |
| KY | Louisville | Louisville Plainview Finance | 9858 Linn Station Road | 40224-9998 |
| LA | Baton Rouge | Gateway Finance Unit (Move To Old Hammond Station) | 1843 W Muriel Dr | 70816-8355 |
| LA | Baton Rouge | University Station (LSU) | 110 LSU Student Union Bldg | 70803-0001 |
| MA | Springfield | Springfield-Colonial | 1149 Main St | 01103-9998 |
| MA | Boston | Boston Univ. | 775 Commonwealth Ave | 02215-9998 |
| MA | Boston | Faneuil Hall | 1 Faneuil Hall Sq Ste 1 | 02109-9998 |
| MA | East Boston | Logan Airport | 235 East Prescott Street | 02228-9742 |
| ME | Portland | Portland Station A | 622 Congress Street | 04101-3359 |
| MI | Dearborn | Dearborn-Teleford STA-STA | 23823 Ford Rd | 48128-9998 |
| MI | Detroit | Detroit-Fisher Bldg Finance-FIN STA | 3011 W. Grand Blvd. Ste C30 Fisher Bldg Concourse | 48202-9998 |
| MI | Detroit | Detroit-Linwood STA-FIN STA | 2701 Joy Rd | 48206-9998 |
| MI | Detroit | Detroit-Penobscot Postal Store-FIN STA | 645 Griswold | 48226-9998 |
| MI | Westland | Wayne-Westland-Westland Mall-FIN STA | 35000 Warren Rd Ste 81 | 48186-6217 |
| MI | Selfridge ANGB | Mount Clemens-Selfridge ANGB FIN STA | 44580 N Jefferson Ave | 48045-9998 |
| MO | Kansas City | KCM-Metro Mall | 400 NW Barry Rd Ste 167a | 64155-9998 |
| MO | Kansas City | KCM-Southeast STA | 7640 Prospect Ave | 64132-9998 |
| MO | Kansas City | KCM-William Chick | 2657 Independence Ave | 64124-9998 |
| NC | Greensboro | Greensboro Plaza Station | 1852 Banking St | 27408-7238 |
| NC | High Point | High Point Furnitureland | 913 W Fairfield Road | 27263-9998 |
| NC | Raleigh | Raleigh State University | 10 Horne Street | 27650-9998 |

**Station/Branch Optimization/Consolidation (SBOC) Initiative
Current List of Stations/Branches Under Review as of December 14, 2009**

| | | | | |
|----|------------------|------------------------------|--------------------------|------------|
| NC | Charlotte | CLT-Arrowood | 11333 Granite St | 28241-9998 |
| NC | Charlotte | CLT-Eastway Finance | 3040 B Eastway Dr | 28218-9998 |
| ND | Fargo | University Station | 1231 N University Dr | 58107-4014 |
| NE | Lincoln | LNK-Woods Park STA | 110 N 35th St | 68503-9998 |
| NE | Omaha | OMA-Station A | 2221 N 24th Street | 68110-9998 |
| NE | Omaha | OMA-Station B | 3021 Leavenworth Street | 68105-9998 |
| NE | Omaha | OMA-Station C | 1618 Vinton Street | 68108-9998 |
| NJ | Camden | S Camden (F) | 1400 South Broadway | 08104-9998 |
| NJ | Trenton | Trenton Chambersburg (F) | 852 So Broad St | 08611-9998 |
| NJ | Trenton | Trenton-Yardville (F) | 9 Sunnybrae Blvd | 08620-9998 |
| NJ | Paterson | Hillcrest | 374 Union Ave | 07502-9998 |
| NJ | Paterson | River Street | 82 East 15th Street | 07524-9998 |
| NJ | Newark | Riverfront | 1037 Raymond Blvd Ste 10 | 07102-5424 |
| NJ | Newark | Washington Park | 6 Atlantic Street | 07102-9992 |
| NV | Las Vegas | Las Strip Station | 3100 S Industrial Rd | 89114-9998 |
| NY | Bronx | Crotona Park | 1682 Boston Road | 10460-9998 |
| NY | Bronx | Oak Point | 839 East 149 Street | 10455-9998 |
| NY | New York | Tudor City | 5 Tudor City Pl Frnt 4 | 10017-9991 |
| NY | Bronx | Van Nest | 715 Morris Park Avenue | 10462-9998 |
| NY | Flushing | Laguardia | 1 Main Terminal | 11371-9998 |
| NY | Long Island City | LIC Pp Annex | 4310 10th St | 11101-9997 |
| NY | Albany | ALB-Delaware | 332 Delaware Avenue | 12209-9998 |
| NY | Albany | ALB-Patroun | 1226 Broadway | 12204-9998 |
| NY | Albany | ALB-Pine | 5 So Allen Street | 12203-9998 |
| NY | Syracuse | SYR-Elmwood | 1225 South Avenue | 13207-9998 |
| NY | Syracuse | SYR-North Syracuse | 201 South Main | 13212-9998 |
| OH | Dayton | Centerville Finance | 99 Maple Ave | 45459-9998 |
| OH | Cincinnati | Cumminsville | 4122 Hamilton Ave | 45223-9998 |
| OH | Cincinnati | East End | 3923 Eastern Ave | 45226-9998 |
| OH | Hamilton | Lindenwald | 640 Hoover Ave | 45015-9998 |
| OH | Cincinnati | Madisonville Station | 5912 Madison Rd | 45227-9998 |
| OH | Cincinnati | Newtown Branch | 7040 Main St | 45244-9998 |
| OH | Cincinnati | Reed Hartman Finance | 10945 Reed Hartman | 45242-9998 |
| OH | Dayton | Station B | 10 N Williams St | 45402-9998 |
| OH | Cincinnati | Stock Yards | 2951 Colerain Ave | 45225-9998 |
| OH | Columbus | Busch Finance Station | 6204 Busch Blvd | 43226-9998 |
| OH | Columbus | Olde Town Finance | 1035 Mcallister Ave | 43205-9998 |
| OH | Akron | Akron Chapel Hill | 2000 Brittain Rd | 44310-1804 |
| OH | Akron | Akron Downtown Station | 209 S Main | 44308-9998 |
| OH | Akron | Akron East Akron | 1763 Goodyear Blvd | 44305-9998 |
| OH | Akron | Akron Maple Valley | 1518 Copley Rd | 44320-9998 |
| OH | Canton | Canton Deuber | 220 Dueber SW | 44706-9998 |
| OH | Brook Park | Cleveland Brookpark | 14770 Snow Rd | 44142-9998 |
| OH | Lakewood | Cleveland Edgewater | 1380 West 117th Street | 44107-9998 |
| OH | Cleveland | Cleveland Huntington Finance | 925 Euclid Ave Ste 66 | 44115-1411 |
| OH | Cleveland | Cleveland Kamms | 3762 Rocky River | 44111-9998 |
| OH | Maple Hts | Cleveland Maple Heights | 16300 Broadway | 44137-9998 |

**Station/Branch Optimization/Consolidation (SBOC) Initiative
Current List of Stations/Branches Under Review as of December 14, 2009**

| | | | | |
|----|------------------|----------------------------------|-------------------------------------|------------|
| OH | Euclid | Cleveland Shore Finance | 22751 Shore Center Drive | 44123-9998 |
| OH | Mansfield | Mansfield Lincoln Retail | 989 Ashland Rd | 44905-9998 |
| OH | Youngstown | Youngstown Eastside Station | 733 N Garland | 44506-9998 |
| OH | Youngstown | Youngstown Southside Station | 104 Hylda St | 44507-9998 |
| OR | Eugene | Eug-University | 1222 E 13th Ave | 97403-9701 |
| OR | Portland | POR-Soloman | 620 SW Main St Ste 101 | 97205-3058 |
| PA | Reading | Reading - West Lawn BR | 2212 Penn Ave | 19609-9998 |
| PA | Dickson City | Scranton - Dickson City | 735 Main St | 18519-1553 |
| PA | Ashley | Wilkes-Barre - Ashley | 31 N Main St | 18706-9997 |
| PA | York | York - Hellam Br | 11 S Prospect St | 17406-9998 |
| PA | Philadelphia | PHI-Adams Avenue Pos - Frankford | 821 Adams Avenue | 19124-9997 |
| PA | Philadelphia | PHI-Girard Ave - Spring Garden | 905 N Broad Street | 19123-9998 |
| PA | Philadelphia | PHI-Wissinoming Stat - Tacony | 5916 Torresdale Avenue | 19135-9998 |
| PA | Pittsburgh | Corliss Branch | 651 Hillsboro Sst | 15204-9998 |
| PA | Pittsburgh | Mt. Lebanon | 714 Washington Rd | 15228-9998 |
| PA | Pittsburgh | Neville Island Branch | 115 2nd St | 15225-9998 |
| PA | Erie | Wesleyville | 3112 Buffalo Rd | 16510-9998 |
| PR | San Juan | Airport | 3000 Ave Salvador V Caro Suite 3032 | 00979-9998 |
| PR | San Juan | Puerto De Tierra | 163 Ave Fernandez Juncos Suite 2 | 00901-9997 |
| RI | Cumberland | Pawtucket Valley Falls Branch | 197 Broad St | 02864-9998 |
| SC | Greenville | Federal Station (Fin) Greenville | 300 E Washington St | 29603-9998 |
| SC | Spartanburg | Pinewood (Fin) | 1000 N Pine St | 29305-9998 |
| TN | Memphis | MEM-Lee Finance Unit | 826 Mississippi Blvd | 38126-9998 |
| TN | Chattanooga | CHA East Lake STA | 2600 E 34th St | 37407-9998 |
| TX | Irving | Irving Downtown | 125 W Third St | 75060-9998 |
| TX | Arlington | ARL-Great Southwest | 711 106th St | 76011-5326 |
| TX | San Antonio | Cresthaven | 3731 West Ave | 78213-9998 |
| TX | San Antonio | Nimitz Finance | 10300 Heritage | 78216-9998 |
| TX | San Antonio | Station A | 600 N Frio St | 78207-9998 |
| VA | Hampton | Buckroe Finance Unit | 220 Buckroe Ave | 23664-9998 |
| VA | Norfolk | Norfolk Business Center | 2600 Eltham Ave #109 | 23513-9996 |
| VA | Roanoke | Williamson Road - Roanoke | 3623 Williamson Rd NW | 24012-9998 |
| WI | Green Bay | Green Bay-STA A-FIN STA | 119 S Chestnut | 54306-9997 |
| WV | Charleston | Capitol Station - Charleston | 1579 Washington St E | 25311-9998 |
| WV | South Charleston | Spring Hill Station | 609 Chestnut St | 25309-9998 |

[Code of Federal Regulations]
[Title 39, Volume 1]
[Revised as of July 1, 2009]
From the U.S. Government Printing Office via GPO Access
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[Page 73-81]

TITLE 39--POSTAL SERVICE

CHAPTER I--UNITED STATES POSTAL SERVICE

PART 241_ESTABLISHMENT CLASSIFICATION, AND DISCONTINUANCE--Table of Contents

Sec. 241.3 Discontinuance of post offices.

(a) Introduction--(1) Coverage. This section establishes the rules governing the Postal Service's consideration of whether an existing post office should

[[Page 74]]

be discontinued. The rules cover any proposal to replace a post office with a community post office, station or branch, consolidation with another post office, and any proposal to discontinue a post office without providing a replacement facility.

(2) Legal requirements. Under 39 U.S.C. 404(b), any decision to close or consolidate a post office must be based on certain criteria. These include the effect on the community served; the effect on employees of the post office; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a post office to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a post office must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the post office at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by the affected post office may appeal the decision to the Postal Rate Commission.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required by 39 U.S.C. 404(b)(5) to make a determination on the appeal no later than 120 days after receiving the appeal.

(vii) The following is a summary table of the notice and appeal periods under the statute for these regulations.

[[Page 75]]

[GRAPHIC] [TIFF OMITTED] TR09JN94.001

(3) Additional requirements. This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading a district manager, Customer Service and Sales, to propose the discontinuance of a particular post office are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(b) Preservation of community address--(1) Policy. The Postal Service permits the use of a community's separate address to the extent practicable.

(2) ZIP Code assignment. The ZIP Code for each address formerly served from the discontinued post office should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued post office may be changed if the responsible district manager, Customer Service and Sales, submits a request with justification to his or her vice president, Area Operations, before the proposal to discontinue the post office is posted.

(i) In a consolidation, the ZIP Code for the replacement community post office, station, or branch is the ZIP Code originally assigned to the discontinued post office.

(ii) If the ZIP Code is changed and the parent post office covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) Post office name in address. If all the delivery addresses using the name of the post office to be discontinued are assigned the same ZIP Code, customers

[[Page 76]]

may continue to use the discontinued post office name in their addresses, instead of the new delivering post office name.

(4) Name of facility established by consolidation. If a post office to be discontinued is consolidated with one or more other post offices by establishing in its place a community post office, classified or contract station, or branch affiliated with another post office involved in the consolidation, the replacement unit is given the same name of the discontinued post office.

(5) List of discontinued post offices. Publication 65, National Five-Digit ZIP Code and Post Office Directory, lists all post offices discontinued after March 14, 1977, for mailing address purposes only if they are used in addresses. The ZIP Codes listed for discontinued offices are those assigned under this subsection.

(c) Initial proposal--(1) In general. If a district manager, Customer Service and Sales, believes that the discontinuance of a post office within his or her responsibility may be warranted, the manager:

(i) Must use the standards and procedures in Sec. 241.3 (c) and

(d).

(ii) Must investigate the situation.

(iii) May propose the post office be discontinued.

(2) Consolidation. The proposed action may include a consolidation of post offices to substitute a community post office or a classified or contract station or branch for the discontinued post office if:

(i) The communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

(ii) A replacement facility is necessary for regular and effective service to the area served by the post office considered for discontinuance.

(3) Views of postmasters. Whether the discontinuance under consideration involves a consolidation or not, the district manager, Customer Service and Sales, must discuss the matter with the postmaster (or the officer in charge) of the post office considered for discontinuance, and with the postmaster of any other post office affected by the change. The manager should make sure that these

Section

officials submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) Preparation of written proposal. The district manager, Customer Service and Sales, must gather and preserve for the record all documentation used to assess the proposed change. If the manager thinks the proposed action is warranted, he or she must prepare a document titled "Proposal to (Close) (Consolidate) the (Name) Post Office." This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) Responsiveness to community postal needs. It is the policy of the Government, as established by law, that the Postal Service will provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should (A) contrast the services available before and after the proposed change; (B) describe how the changes respond to the postal needs of the affected customers; and (C) highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) Effect on community. The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in Sec. 241.3(b).

(iii) Effect on employees. The written proposal must summarize the possible effects of the change on the postmaster, supervisors, and other employees of the post office considered for discontinuance. (The district manager, Customer Service and Sales, must suggest measures to comply with personnel regulations related to post office discontinuance and consolidation.)

(iv) Savings. The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

[[Page 77]]

(v) Other factors. The proposal should include an analysis of other factors that the district manager, Customer Service and Sales, determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) Summary. The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) Notice. The proposal must include the following notice: "This Is A Proposal. It Is Not A Final Determination To (Close) (Consolidate) This Post Office."

(A) If a final determination is made to close or consolidate this post office, after public comments on this proposal are received and taken into account, a notice of that final determination must be posted in this post office.

(B) The final determination must contain instructions on how affected customers may appeal that decision to the Postal Rate Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination.

(d) Notice, public comment, and record--(1) Posting proposal and comment notice. A copy of the written proposal and a signed invitation for comments must be posted prominently in each affected post office. The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change

on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected post offices.

(iii) Provide a name and telephone number to call for information.

(2) Proposal and comment notice. The following is a sample format that may be used for the proposal and comment notice.

[[Page 78]]

[GRAPHIC] [TIFF OMITTED] TR09JN94.002

(3) Other steps. In addition to providing notice and inviting comment, the district manager, Customer Service and Sales, must take any other steps necessary to ensure that the persons served by the affected post office understand the nature and implications of the proposed action (e.g., meeting with community groups and following up on comments received that seem to be based on incorrect assumptions or information).

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the district manager, Customer Service and Sales, should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the district manager, Customer Service and Sales, may not rely

[[Page 79]]

on communications received from anyone unless submitted in writing for the record.

(4) Record. The district manager, Customer Service and Sales, must keep as part of the record for his or her consideration and for review by the vice president, Delivery and Retail, all the documentation gathered about the proposed change.

(i) The record must include all information that the district manager, Customer Service and Sales, considered, and the decision must stand on the record. No information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended, beginning no later than the date on which notice is posted and extending through the comment period.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in the Administrative Support Manual (ASM) Sec. 352.6.

(e) Consideration of public comments and final local recommendation--(1) Analysis of comments. After waiting not less than 60 days after notice is posted under Sec. 241.3(d)(1) the district manager, Customer Service and Sales, must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent possible how many comments support each point listed.

(2) Re-evaluation of proposal. After completing the analysis, the

district manager, Customer Service and Sales, must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) Discontinuance not warranted. If the district manager, Customer Service and Sales, decides against the proposed discontinuance, he or she must post, in the post office considered for discontinuance, a notice stating that the proposed closing or consolidation is not warranted.

(ii) Discontinuance warranted. If the district manager, Customer Service and Sales, decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the manager must:

(A) Forward the revised proposal and the entire record to the vice president, Delivery and Retail.

(B) Attach a certificate that all documents in the record are originals or true and correct copies.

(f) Postal Service decision--(1) In general. The vice president, Delivery and Retail, or a designee must review the proposal of the district manager, Customer Service and Sales. This review and the decision on the proposal must be based on and supported by the record developed by the district manager, Customer Service and Sales. The vice president, Delivery and Retail, can instruct the district manager to provide more information to supplement the record. Each instruction and the response must be added to the record. The decision on the proposal of the district manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth in this paragraph (f).

(2) Approval. The vice president, Delivery and Retail or a designee may approve the proposal of the district manager, Customer Service and Sales, with

[[Page 80]]

or without further revisions. If approved, the term "Final Determination" is substituted for "Proposal" in the title. A copy of the Final Determination must be provided to the district manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(b). The Final Determination must include the following notices:

(i) Supporting materials. "Copies of all materials on which this Final Determination is based are available for public inspection at the (Name) Post Office during normal office hours."

(ii) Appeal rights. "This Final Determination to (close) (consolidate) the (name) Post Office may be appealed by any person served by that office to the Postal Rate Commission. Any appeal must be received by the Commission within 30 days of the date this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Rate Commission, or the parties to the appeal, must be made available for public inspection at the (name) Post Office during normal office hours."

(3) Disapproval. The vice president, Delivery and Retail, or a designee may disapprove the proposal of the district manager, Customer Service and Sales, and return it and the record to the manager with written reasons for disapproval. The manager must post a notice in each affected post office that the proposed closing or consolidation has been determined to be unwarranted.

(4) Return for further action. The vice president, Delivery and Retail, or a designee may return the proposal of the district manager, Customer Service and Sales, with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) Public file. Copies of each Final Determination and each disapproval of a proposal by the vice president, Delivery and Retail,

Section

must be placed on file in the Postal Service Headquarters library.

(g) Implementation of final determination--(1) Notice of final determination to discontinue post office. The district manager, Customer Service and Sales, must:

(i) Provide notice of the Final Determination by posting a copy prominently in the affected post office or offices. The date of posting must be noted on the first page of the posted copy as follows: ``Date of posting:`` The district manager, Customer Service and Sales, must notify the vice president, Delivery and Retail, of the date of posting.

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each post office where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in the ASM 352.6.

(2) Implementation of determinations not appealed. If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office must be published in the Postal Bulletin, effective the first Saturday 90 days after the Final Determination was posted. A district manager, Customer Service and Sales, may request a different date for official discontinuance in the Post Office Change Announcement document submitted to the vice president, Delivery and Retail. However, the post office may not be discontinued sooner than 60 days after the posting of the notice required by paragraph (g)(1) of this section.

(3) Actions during appeal--(i) Implementation of discontinuance. If an appeal is filed, only the vice president, Delivery and Retail, may direct a discontinuance before disposition of the appeal. However, the post office may not be discontinued sooner than 60 days after the posting of notice required by paragraph (g)(1) of this section.

(ii) Display of appeal documents. Legal Policy and Ratemaking Law, Postal Service General Counsel, must provide the district manager, Customer Service and Sales, with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The district manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the post office to be discontinued. If the operation of

[[Page 81]]

that post office has been suspended, the manager must display copies in the affected post offices.

(B) All documents except the Postal Rate Commission's final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed for 30 days.

(4) Actions following appeal decision--(i) Determination affirmed. If the Commission dismisses the appeal or affirms the Postal Service's determination, the official closing date of the office must be published in the Postal Bulletin, effective the first Saturday 90 days after the Commission renders its opinion, if not previously implemented under Sec. 241.3(g)(3)(i). However, the post office may not be discontinued sooner than 60 days after the posting of the notice required under Sec. 241.3(g)(1).

(ii) Determination returned for further consideration. If the Commission returns the matter for further consideration, the vice president, Delivery and Retail, must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the vice president, Delivery and Retail, may provide.

[59 FR 29725, June 9, 1994, as amended at 60 FR 32273, June 21, 1995; 69 FR 11536, Mar. 11, 2004]



Memorandum

City Manager's Office

TO: Mayor Woodward and Members of City Council
FROM: Gary Sears, City Manager
DATE: December 30, 2009
SUBJECT: Water Plant Incident

I thought it important to inform you of a situation that occurred at the City's Allen Water Treatment Plant in the early morning of Christmas Eve, December 24, 2009, and the very quality work by the staff on duty at the plant and those who responded to the emergency call for service. Their quick action and attention to detail averted a very serious potential impact to the City's Water supply.

Early in the morning on December 24th (approximately 1:00 a.m.) our plant operators noticed a strong petroleum odor in the water coming into the treatment plant from the Platte River. Using Plant Operating Procedures, the operators on duty shut off the intake of this water and stopped the water from entering the plant. They immediately contacted the Environmental Protection Agency (EPA) and EPA representatives were soon at the scene to take samples. Due to the operators' quick efforts, **none of this contaminated water proceeded through the plant and into the City's water system.** Other sources of water were then added to our supply to guarantee an adequate flow of water for the City's citizens and fire protection requirements. After isolating the contaminated water for several hours, and with the authorization of EPA, this water was then slowly released back into the Platte River, which could absorb this type of flow as it was released.

Early in the morning of the 24th, an investigation was made with the assistance of the City's Fire Department regarding the source of the contamination. The Plant Operators and Fire Department kept me informed about the status of the situation throughout the day. While the issue is still being investigated, it appears that some kind of petroleum product was released into the Platte just above the City's intake system.

While the City's system and procedures allowed us to isolate and remove this inflow before it entered the City's water treatment system, I thought it important to inform City Council of the quality work by the members of the Water Department and our employees who work for the City's Allen Water Treatment Plant.

Because the Plant continued to operate without interruption and the issues are still being investigated, I thought it more appropriate to inform you by this letter than by phone. We will continue to keep you informed as more information comes available.