

**Agenda for the
Regular Meeting of the
Englewood City Council
Tuesday, February 16, 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 February 1, 2010.
6. Recognition of Scheduled Public Comment. (Please limit your presentation to ten minutes.)
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. Proclamation declaring February 20-21, 2010 as Spay Day 2010.
 - b. A resolution reappointing Brandon Williams to the NonEmergency Employees Retirement Board.
9. Consent Agenda Items.
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 2 – Recommendation from the Utilities Department to adopt a bill for an ordinance approving an Intergovernmental Agreement entitled “Case No. 09SA133 Common Interest Agreement” with FRICO/Burlington. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

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.

- b. Approval of Ordinances on Second Reading.
 - c. Resolutions and Motions.
10. Public Hearing Items (No Public Hearing Scheduled).
11. Ordinances, Resolutions and Motions
- a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 1 – Recommendation from the Community Development Department to adopt a bill for an ordinance accepting a grant in the amount of \$12,500 from the State of Colorado, Economic Development Commission for marketing and administration support in the Enterprise Zone. **STAFF SOURCE: Darren Hollingsworth, Economic Development Coordinator.**
 - b. Approval of Ordinances on Second Reading.
 - c. Resolutions and Motions.
 - i. Recommendation from the Community Development Department to approve, by motion, a professional services agreement for a public improvements financing study on both the Downtown District and the Medical District in Englewood. Staff recommends the contract be awarded to Progressive Urban Management Associates in the amount of \$64,700. **STAFF SOURCE: John Voboril, Community Development Department Planner.**
12. General Discussion.
- a. Mayor's Choice.
 - i. Motion to reschedule the March 15th meeting to March 22, 2010.
 - b. Council Members' Choice.
13. City Manager's Report.
14. City Attorney's Report.
15. Adjournment

The following minutes were transmitted to City Council in January, 2010.

- Alliance for Commerce in Englewood Committee meeting of December 10, 2009.
- Code Enforcement Advisory Committee meeting of November 18, 2009.
- Planning and Zoning Commission meetings of December 8, 2009 and January 5, 2010.
- Urban Renewal Authority meeting of August 12, 2009.
- Water and Sewer Board meetings of October 13, November 10, and December 8, 2009.



PROCLAMATION

WHEREAS, pets provide companionship to more than 71,000,000 households in the United States; and

WHEREAS, humane societies and animal shelters must euthanize more than four million cats, dogs, rabbits and other animals each year, due to a lack of critical resources and public awareness; and

WHEREAS, this tragic overpopulation of pets costs citizens and taxpayers of this country millions of dollars annually through animal service programs aimed at coping with the millions of homeless animals; and

WHEREAS, spaying and neutering has been shown to dramatically reduce the overpopulation of pets and feral cats, proving to be a wise investment in saving animal lives and taxpayer dollars; and

WHEREAS, veterinarians, national and local animal protection organizations, and private citizens worked together to ensure the spaying or neutering of more than 38,000 pets and feral cats through "Spay Day" in 2009; and

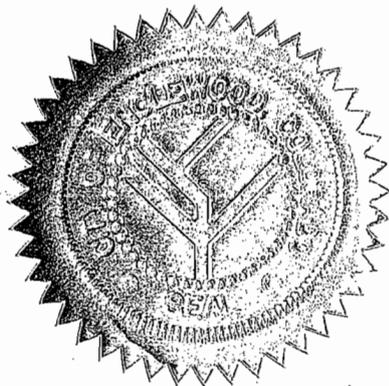
WHEREAS, veterinarians, national and local animal protection organizations, and private citizens have joined together again to advocate the spaying and neutering of pets and feral cats on "Spay Day 2010";

NOW THEREFORE, I, James Woodward, Mayor of the City of Englewood, Colorado, hereby proclaim **February 20-21, 2010** as:

SPAY DAY 2010

in the City of Englewood, Colorado. I urge all of our residents to join together to observe the day by having their own cats, dogs, and rabbits spayed or neutered or by sponsoring the spaying or neutering of another person's pet or of an animal in a shelter awaiting adoption.

GIVEN under my hand and seal this 16th day of February, 2010.



James K. Woodward, Mayor

RESOLUTION NO. _____
SERIES OF 2010

A RESOLUTION REAPPOINTING BRANDON WILLIAMS TO THE NONEMERGENCY RETIREMENT BOARD FOR THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the NonEmergency Employees Retirement Board is the trustee of the NonEmergency Employees Retirement Plan Fund and has the power to establish investment or purchasing plans as necessary; and

WHEREAS, Brandon Williams is a current member of the Englewood NonEmergency Retirement Board; and

WHEREAS, Brandon Williams' current term expired February 1, 2010; and

WHEREAS, Brandon Williams has applied for reappointment to the Englewood NonEmergency Retirement Board; and

WHEREAS, the Englewood City Council desires to reappoint Brandon Williams to the Englewood NonEmergency Retirement Board;

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

Section 1. Brandon Williams is hereby reappointed to Englewood NonEmergency Retirement Board. Brandon Williams' term will be effective immediately and will expire February 1, 2011.

ADOPTED AND APPROVED this 16th day of February, 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

COUNCIL COMMUNICATION

Date: February 16, 2010	Agenda Item: 9 a i	Subject: FRICO/Burlington Water Appeal Case #2009SA133
Initiated By: Utilities Department		Staff Source: Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The Englewood Water and Sewer Board, at their October 9, 2007 meeting, recommended Council approval of the Joint Defense Confidentiality Agreement for the FRICO/United litigation.

RECOMMENDED ACTION

Staff recommends Council adopt a bill for an ordinance approving Case No. 09SA133 Common Interest Agreement.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In 2002, the Farmers Reservoir and Irrigation Company (FRICO), the Burlington Ditch Reservoir and Land Company (Burlington), the Henrylyn Irrigation District, the United Water and Sanitation District and East Cherry Creek Water and Sanitation District (applicants) filed applications to change the water rights which divert at the Burlington Canal headgate. These rights also fill several reservoirs as well as diverting water for immediate use during the irrigation season.

The water rights in question have a history of over-diversions, which injure Englewood's rights. In subsequent cases and rulings the Water Court has severely cut back the water rights of the applicants, to Englewood's benefit, and a series of appeals have resulted.

One of the Water Court rulings is being disputed by Englewood, Denver and the applicants. The ruling prevented the applicants from pumping effluent from Metro Sewer into the Burlington Canal, causing downstream reservoirs to fill slower, and therefore affecting Englewood's McLellan rights. The pumping from Metro Sewer, which has been used since 1968, benefits Englewood. Englewood, Denver and the other applicants are jointly appealing the ruling. Englewood will contest separately other rulings which cut back its rights.

The Case No. 09SA133 Common Interest Agreement will enable Englewood's legal counsel to share strategies with Denver and the other applicants concerning the appeal of the Metro Pump ruling. The agreement grants permission for the parties to work together for this specific litigation to exchange information and share costs and strategy. This agreement does not compromise Englewood's water rights in any manner.

Englewood has previously retained David Hill of Berg Hill Greenleaf & Rusciti to represent Englewood in the FRICO litigation to represent Englewood's rights and ensure that historical patterns of lawful diversions are protected and are in accordance with past decrees.

FINANANCIAL IMPACT

LIST OF ATTACHMENTS

Bill for Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 2
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT ENTITLED "CASE NO. 09SA133 COMMON INTEREST AGREEMENT" BETWEEN FARMERS RESERVOIR AND IRRIGATION COMPANY AND BURLINGTON DITCH, RESERVOIR AND LAND COMPANY; EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT; HENRYLYNN IRRIGATION DISTRICT; UNITED WATER AND SANITATION DISTRICT; CITY OF THORNTON; CITY OF BRIGHTON; CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS; TOWN OF LOCHBUIE; SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, in 2002, the Farmers Reservoir and Irrigation Company (FRICO), the Burlington Ditch Reservoir and Land Company (Burlington), the Henrylyn Irrigation District, the United Water and Sanitation District and East Cherry Creek Water and Sanitation District (applicants) filed applications to change the water rights which divert at the Burlington Canal headgate; and

WHEREAS, these rights also fill several reservoirs as well as diverting water for immediate use during the irrigation season; and

WHEREAS, the water rights in question have a history of over-diversions, which injure Englewood's rights; and

WHEREAS, in subsequent cases and rulings the Water Court has severely cut back the water rights of the applicants, to Englewood's benefit, and a series of appeals have resulted; and

WHEREAS, one of the Water Court rulings is being disputed by Englewood, Denver and the applicants, which prevented the applicants from pumping effluent from Metro Sewer into the Burlington Canal, causing downstream reservoirs to fill slower, and therefore affecting Englewood's McLellan rights; and

WHEREAS, the pumping from Metro Sewer, which has been used since 1968, benefits Englewood; and

WHEREAS, Englewood, Denver and the other applicants are jointly appealing the ruling; and

WHEREAS, Englewood will contest separately other rulings which cut back its rights; and

WHEREAS, the passage of this proposed Ordinance will authorize Englewood to enter the "Case No. 09SA133 Common Interest Agreement" will enable Englewood's legal counsel to share strategies with Denver and the other applicants concerning the appeal of the Metro Pump ruling, granting permission for the parties to work together for this specific litigation to exchange information and share costs and strategy;

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

Section 1. The Intergovernmental Agreement entitled "Case No. 09SA133 Common Interest Agreement" is hereby accepted and approved by the Englewood City Council and is attached hereto as "Exhibit A".

Section 2. The David Hill of Berg Hill Greenleaf & Rusciti for the City of Englewood is authorized to sign said Agreement for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 16th day of February, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 19th day of February, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 17th day of February, 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 a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 16th day of February, 2010.

Loucrishia A. Ellis

Case No. 09SA133 Common Interest Agreement

This **Common Interest Agreement** is entered into by and between the undersigned counsel on behalf of their respective clients as of this 18th day of November, 2009, and amended January 15, 2010 to add the Town of Lochbuie as a party; amended January 19, 2010 to add the South Adams County Water and Sanitation District as a party; and amended February ___, 2010 to add paragraph 8 and the City of Englewood as a party, subject to the provisions of paragraph 8.

WHEREAS, each of the undersigned counsel is representing an Appellant in Case No. 09SA133, which is currently pending in the Colorado Supreme Court, and the undersigned counsel and their clients believe and anticipate that, on the basis of currently available information, the nature of Case No. 2009SA133 and the relationship among the clients will present various common legal and factual issues and a mutuality of interest in connection with the Appeal ("the Appeal"); and

WHEREAS, the undersigned counsel wish to continue to pursue their separate but common interests in the Appeal and to avoid any suggestion of waiver of the confidentiality or immunity of communications and documents protected by the attorney-client privilege, the attorney's work product doctrine or any other applicable privilege or immunity *vis-a-vis* potentially adverse parties; and

WHEREAS, in order to pursue the common interests effectively, the undersigned have also each concluded that, from time to time, their interests will be best served by sharing documents, factual material, mental impressions, memoranda, interview reports, appellate strategies and other information, including the confidences of each client - all of which will hereafter be referred to as the "Common Interest Materials"; and

WHEREAS, it is the purpose of this Agreement to ensure that any exchange and/or disclosure of the Common Interest Materials contemplated herein does not diminish in any way the confidentiality of the Common Interest Materials and does not constitute a waiver of any privilege or immunity otherwise available.

IT IS THEREFORE AGREED as follows:

1. Except as expressly stated in writing to the contrary, any and all Common Interest Materials obtained by any of the undersigned counsel from each other and/or each other's client are being provided solely for internal use of the clients and their counsel and shall remain confidential and shall be protected from disclosure to any third party by the common interest privilege, joint-defense privilege, the clients' attorney-client privilege, the attorneys' work product doctrine and all other applicable privileges and immunities. All Common Interest Materials shall be used solely in connection with the Appeal.

2. Neither the undersigned counsel nor their respective clients shall disclose Common Interest Materials to anyone not a signatory to this Agreement (except the undersigned counsel's client representatives, firms, or undersigned counsel's employees or agents) without first obtaining the written consent of all counsel who are parties to this Agreement. The parties hereby consent to the use of research and drafts that they provide to each other in their respective briefs to be filed in the Appeal. It is expressly understood that nothing contained in this Agreement shall limit the right of any of the undersigned to disclose to anyone as they see fit any of their own documents or information, or any documents or information obtained independently and not pursuant to this Agreement, by the undersigned.

3. All persons permitted access to Common Interest Materials shall be advised that the Common Interest Materials are privileged and subject to the terms of this Agreement.

4. If any person or entity requests or demands, by subpoena or otherwise, any Common Interest Materials from any of the undersigned or their clients, that counsel will immediately notify all counsel who are parties to this Agreement whose clients or who themselves may have rights in said materials, and each counsel so notified will take all reasonable steps necessary to permit the assertion of all applicable rights, privileges and immunities with respect to such Common Interest Materials, including permitting the other affected parties a reasonable opportunity to intervene and be heard, and otherwise cooperating fully with the other affected parties in any judicial proceedings relating to the disclosure of Common Interest Materials.

5. Nothing in this Agreement shall obligate any signatory to share or communicate any Common Interest Materials or independently obtained or created materials with any other signatory hereto.

6. In the event any undersigned counsel determines that his or her client no longer has, or will no longer have, any mutuality of interest in the subject matter of this Agreement, such counsel will promptly notify the other undersigned counsel of his or her withdrawal from this Agreement, which will thereupon be terminated as to that client; provided, however, that such termination shall not affect or impair the obligations of confidentiality with respect to Common Interest Materials previously furnished pursuant to this Agreement; and this Agreement shall continue as to all other parties. If a party to this Agreement adopts an adverse position on certain issues in the Appeal, that party may continue as a party but will only have access to the Common Interest Materials pertaining exclusively to the issues on which that party is aligned with the other parties. The party whose position is or becomes adverse must immediately notify in writing the other parties of its adverse position so that no further Common Interest Materials will be provided regarding those issues, and shall return any Common Interest Materials that do not pertain exclusively to issues on which the party remains aligned with other the parties to this Agreement.

7. Should any client choose to withdraw from this Agreement, he or she shall provide prior written notice to the other clients, in which case this Agreement shall no longer be

operative as to the withdrawing client and his or her counsel, but shall continue to protect all Common Interest Materials disclosed to the withdrawing client and its counsel prior to such withdrawal. The withdrawing client and his or her counsel shall promptly return all Common Interest Materials and shall continue to be bound by the obligations of confidentiality with respect to Common Interest Materials previously furnished pursuant to this Agreement.

8. The City of Englewood is only a party to this Agreement insofar as it pertains to the Metro Pumps issue. It is understood and agreed that on all other issues in the appeal, the City of Englewood is adverse to the Applicants as well as any other parties to this Agreement who are aligned with or may support the Applicants appeal and, therefore, that the City of Englewood and the other parties to this Agreement are only entering into this Agreement as it relates to those Common Interest Materials that pertain to the Metro Pumps issue. For purposes of this Agreement, the "Metro Pumps issue" means the appeal of the Water Court's rulings set forth in paragraphs 136-180 of its Findings of Fact, Conclusions of Law, and Order entered on September 5, 2008 and in paragraphs 33, 34, 36 and 37 of the Water Court's Findings of Fact, Conclusions of Law, and Decree, dated May 11, 2009.

9. This Agreement memorializes any earlier oral agreements and incorporates any prior written agreements, between or among any of the undersigned pursuant to which Common Interest Materials have been exchanged.

10. This Agreement may not be amended or modified except by a written agreement signed by each signatory hereto.

11. This Agreement does not create a common interest among or between any of the parties with respect to any case or matter other than the Appeal.

12. This Agreement shall terminate when a judgment in Case No. 09SA133 becomes final and subject to no further appeal.

13. The existence of this Agreement is itself confidential and will not be disclosed to a third party unless necessary to demonstrate the privilege or protection established or preserved by this Agreement.

**Farmers Reservoir and Irrigation Company and
Burlington Ditch, Reservoir and Land Company**

AKOLT & AKOLT, L.L.C.

John P. Akolt, III
John C. Akolt

DIETZE AND DAVIS, P.C.

Star L. Waring

East Cherry Creek Valley Water and Sanitation District

RYLEY CARLOCK & APPLEWHITE

William B. Tourtillott
Brian M. Nazareus
Susan M. Curtis

Henrylynn Irrigation District

LAW OFFICES OF STEVEN L. JANSSEN

Steven L. Jansen

United Water and Sanitation District

WHITEING & SMITH

Tod J. Smith

City of Thornton

WHITE & JANKOWSKI, LLP

William A. Hillhouse II
David F. Jankowski

CITY ATTORNEY, CITY OF THORNTON

Dennis A. Hanson

City of Brighton

FISCHER, BROWN, BARTLETT & GUNN, P.C.

Brent Bartlett

**City and County of Denver, acting by and through its Board of Water
Commissioners**

Patricia L. Wells
Casey S. Funk
Daniel J. Arnold

Town of Lochbuie (Appellee)

BERNARD, LYONS, GADDIS & KAHN, P.C.

Steven P. Jeffers

Date

South Adams County Water and Sanitation District (Appellee)

MOSES, WITTEMEYER, HARRISON & WOODRUFF, P.C.

Richard Mehren

Date

The City of Englewood (Appellant/Appellee)

BERG, HILL, GREENLEAF & RUSCITTI, LLP

David G. Hill
Jon N. Banashek
Heidi C. Potter

Date

COUNCIL COMMUNICATION

Date: February 16, 2010	Agenda Item: 11 a i	Subject: State of Colorado – Enterprise Zone Marketing and Administration Grant
Initiated By: Community Development Department		Staff Source: Darren Hollingsworth Economic Development Coordinator

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Community Development Goal: Initiate business retention, revitalization, and growth strategies.

Community Development Goal: Leverage City resources through grant funding.

On January 19, 2010 City Council approved a resolution authorizing an application to the State of Colorado – Economic Development Commission for a 2010 grant to support Enterprise Zone marketing and administrative activities.

RECOMMENDED ACTION

Staff recommends that City Council adopt a bill for an ordinance accepting a \$12,500 grant from the State of Colorado – Economic Development Commission (EDC). This grant will be used to fund marketing and administration activities for the Arapahoe County Enterprise Zone.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In 1990, the City applied to the State of Colorado and was granted Enterprise Zone status for a majority of the industrially and commercially zoned property in Englewood. Englewood administers the Arapahoe County Enterprise Zone for the Cities of Sheridan, Littleton, and Englewood. The Economic Development Commission has a competitive grant program for Enterprise Zones, which provides marketing and administrative support. If approved, this will be the 14th consecutive year Englewood has applied for and received funding to administer and market the Arapahoe County Enterprise Zone.

The Enterprise Zone marketing grant is used to support business retention and community marketing activities. Marketing activities funded with this grant encourage businesses to take advantage of Enterprise Zone tax credits and highlight the Englewood business community.

In 2009, 56 Englewood businesses claimed tax credits through the Enterprise Zone. Benefits to Englewood businesses located in the Arapahoe County Enterprise Zone total \$1,589,279 in State of Colorado tax credits. This includes tax credits in the following categories: \$1,195,408 in investment tax credit, \$139,288 in new business facility tax credit, \$202,301 in job training tax

credit, \$14,600 in health insurance tax credit, \$182 in research and development credits, and \$37,500 in rehabilitation credits. Englewood businesses reported total capital investments of over \$69 million during 2009.

Englewood businesses reported 238 new jobs with an average FTE salary of \$43,130 per employee. Englewood salaries decreased 1.7% over 2008; however, the capital investment increased from \$39 million in 2008 to \$69 million in 2009.

FINANCIAL IMPACT

The Economic Development Commission requires that the City provide matching funds to meet grant requirements. The attached contract between the Economic Development Commission and the City of Englewood pledges \$12,500 in local matching funds to meet this obligation. These funds are included in the Community Development departmental budget. Grant and matching funds will be used for a variety of Enterprise Zone marketing and administrative activities.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 1
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING ACCEPTANCE OF A GRANT FROM THE STATE OF COLORADO, ECONOMIC DEVELOPMENT COMMISSION FOR MARKETING AND ADMINISTRATIVE SUPPORT IN THE ENTERPRISE ZONE.

WHEREAS, in 1990 the City of Englewood applied to the Colorado Department of Local Affairs and was granted, Enterprise Zone status for a majority of the industrially and commercially zoned property in the City of Englewood; and

WHEREAS, the State Economic Development Commission has a competitive grant program for marketing and administrative support of Enterprise Zones; and

WHEREAS, the Enterprise Zone is used in the City to initiate business retention and community marketing activities; and

WHEREAS, the Enterprise Zone Marketing Grant encourages businesses to take advantage of Enterprise Zone tax credits, and highlights, the Englewood business community; and

WHEREAS, the Colorado State Economic Development Commission requires that the City provide matching funds to meet Grant requirements; and

WHEREAS, the Grant and related Agreement between the State of Colorado Economic Development Commission and the City of Englewood pledges \$12,500.00 in local matching funds to meet this obligation; and

WHEREAS, matching funds have been allocated in Community Development's budget; and

WHEREAS, this Grant and the matching funds will be used for a variety of Enterprise Zone marketing and administrative activities in the City of Englewood;

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

Section 1. The Agreement between the State of Colorado, Economic Development Commission, and the City of Englewood for a Grant of \$12,500.00 to be used for Enterprise Zone Marketing and Administrative activities, a copy of which is attached hereto as Exhibit 1, is hereby accepted.

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

Section 3. Pursuant to Article V, Section 40, of the Englewood Home Rule Charter, the City Council has determined that Exhibit 1, attached to this Ordinance, shall not be published because of its size. A copy is available in the Office of the Englewood City Clerk.

Introduced, read in full, and passed on first reading on the 16th day of February, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 19th day of February, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 17th day of February, 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 a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 16th day of February, 2010.

Loucrishia A. Ellis

STATE OF COLORADO
Office of Economic Development and International Trade
Enterprise Zone Marketing Grant Agreement
with
City of Englewood

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1. PARTIES

This Grant Agreement (hereinafter called “Grant”) is entered into by and between City of Englewood, 1000 Englewood Pkwy., Englewood, CO 80110 (hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Colorado Office of Economic Development and International Trade, Colorado Economic Development Commission, 1625 Broadway, Suite 2700, Denver, CO 80202 (hereinafter called the “State” or “OEDIT”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

CRS §24-46-101 through 24-46-105 establishes the Colorado Economic Development Fund (hereinafter called “CEDF”), and is to be administered by the Colorado Office of Economic Development and International Trade. Authority to enter into this Grant and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment.

Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The State desires to promote economic development in Colorado by assisting local communities in expanding their economic base. Grant funds will support marketing the local area in the Enterprise Zone.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating is based on criteria established in §6 and **Exhibit A**.

C. CEDC

“CEDC” means the Colorado Economic Development Commission who made this Grant available.

D. Exhibits

The following exhibit is attached hereto and incorporated by reference herein: **Exhibit A**.

E. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

F. Grant or Agreement

“Grant” or “Agreement” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

G. Grant Funds

“Grant Funds” or “CEDF” means funds available for distribution by the CEDC from the Colorado Economic Development Fund payable by the State to Grantee pursuant to this Grant.

H. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

I. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and **Exhibit A**.

J. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

K. Sub-grantee

“Sub-grantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

L. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A**, including the performance of the Services and delivery of the Goods.

M. Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM AND EARLY TERMINATION.

A. Initial Term and Work Commencement

The Parties respective performances under this Grant shall commence on the later of either the Effective Date or January 1, 2010. This Grant shall terminate on December 31, 2010 unless sooner terminated or further extended as specified elsewhere herein.

B. State's Option to Extend

The State may require continued performance for a period of 3 months at the same rates and same terms specified in the Grant. The total duration of this Grant, including the exercise of any options under this clause, shall not exceed 1 year and 3 months."

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** on or before December 31, 2010. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Sub-grantees shall be considered Grantee's or Sub-grantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is \$12,500, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Grant or in **Exhibit A** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds, Contingency and Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or

otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Exhibit A.

D. Matching Funds

Grantee shall provide matching funds as provided in Exhibit A.

8. REPORTING AND NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

Grantee shall submit a report to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in Exhibit A.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of OEDIT.

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Sub-grants

Copies of any and all Sub-grants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all Sub-grants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such Sub-grants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following: (i) a period of three years after the date this Grant is completed or terminated, or (ii) final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable

times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION AND STATE RECORDS

Grantee shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Sub-grantees, and assigns that may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure and Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the

State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantees Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Sub-grantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Sub-grantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Sub-grantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Sub-grantees that are not "public entities".

B. Grantees and Sub-Grantees

Grantee shall require each Grant with Sub-grantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Sub-grantee employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent Grantees, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

Grantee and the State shall be named as additional insured on the Commercial General Liability (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee and Sub-grantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Sub-grantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and Sub-grants with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or Sub-grants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Grantee's employees, agents, or Sub-grantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Kevin Tilson
Colorado Office of Economic Development and International Trade
1625 Broadway, Suite 2700
Denver, CO 80202
kevin.tilson@state.co.us

B. Grantee:

Nancy Fenton
City of Englewood
1000 Englewood Pkwy.
Englewood, CO 80110
nfenton@englewoodgov.org

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the nonexclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Grant Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the OEDIT, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and Sub-grants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or sub-granted without the prior, written consent of the State. Any attempt at assignment, or to transfer, or sub-grant without such consent shall be void. All assignments, Sub-grants, or Sub-grantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of sub-granting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not 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, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by both parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF GRANTS - TOOLS AND FORMS.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The provisions of the main body of this Grant,
- iii. Exhibit A.

J. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

K. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

M. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, 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.

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21. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Grants except where noted in italics.

A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. 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.

C. 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant 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.

D. 4. INDEPENDENT CONTRACTOR.

Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee 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 Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee 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.

E. 5. COMPLIANCE WITH LAW.

Grantee 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.

F. 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. 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 Grant, to the extent capable of execution.

G. 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 contact or incorporated herein by reference shall be null and void.

H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. 9. EMPLOYEE FINANCIAL 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 Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. 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.

K. 11. PUBLIC GRANTS 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*] Grantee certifies, warrants, and agrees that it does not knowingly employ or Grant with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)©, Grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant or enter into a Grant with a Sub-grantee that fails to certify to Grantee that the Sub-grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Sub-grantee and the Granting State agency within three days if Grantee has actual knowledge that a Sub-grantee is employing or Granting with an illegal alien for work under this Grant, (c) shall terminate the Sub-grant if a Sub-grantee does not stop employing or Granting 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 Grantee participates in the State program, Grantee shall deliver to the Granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the Granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

L. 12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Grantee, 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 Grant.

SPs Effective 1/1/09

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23. EXHIBIT A – STATEMENT OF WORK

CMS #: 10825

1. GENERAL DESCRIPTION

The purpose of this Grant is to provide the Grantee with matching funds for the promotion of the Enterprise Zone and economic development in the **Arapahoe County Enterprise Zone** area.

2. GRANTEE'S OBLIGATIONS

- 2.1 Grantee's Work activities under this Grant shall include the promotion of the following economic development activities:
 - 2.1.1 marketing the advantages of locating a business in the Grantee's Enterprise Zone area,
 - 2.1.2 creating a positive identity for the Enterprise Zone area,
 - 2.1.3 promoting business attraction to the Enterprise Zone,
 - 2.1.4 encouraging business retention and expansion of existing Enterprise Zone businesses,
 - 2.1.5 promoting redevelopment of the Enterprise Zone area,
 - 2.1.6 expanding the region's tourism industry in the Enterprise Zone area, and
 - 2.1.7 generally enhancing the economic growth of the Enterprise Zone area.
- 2.2 Promotional material shall include the words "Created with (or Supported by) funds from the Colorado Enterprise Zone Marketing Grant".
- 2.3 The contribution from the CEDF under this Grant shall not exceed the amount of local matching funds expended on this Project, or \$12,500, whichever is less. Grantee may allocate funds to one or more Sub-grantees involved in promotion and economic development activities in the Enterprise Zone. All Project costs in excess of this grant amount shall be the responsibility of the Grantee.

3. PERSONNEL

3.1 Responsible Administrator

Grantee's performance hereunder shall be under the direct supervision of **Nancy Fenton**, an employee or agent of Grantee, who is hereby designated as the responsible administrator of the Work.

3.2 Replacement

Grantee shall immediately notify OEDIT if the Responsible Administrator ceases to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace the Responsible Administrator, it shall notify OEDIT and seek its approval. Such approval is at OEDIT's sole discretion, as OEDIT issued this Grant Agreement in part reliance on Grantee's representations regarding the Responsible Administrator. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change would take effect. Anytime key personnel cease to serve, OEDIT, in its sole discretion, may direct Grantee to suspend the Work until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with the Notices and Representatives provisions of this Grant Agreement.

4. REPORTING AND PAYMENT

Payments shall be made in accordance with the provisions set forth in this Agreement and **Exhibit A**. OEDIT may transfer Grant Funds in advance of performance only if a Fiscal Rule waiver has been granted by the State Controller for this Agreement.

4.1 Interim Reporting and Payment Requests

Grantee shall submit reporting documentation using the format required and provided by the State and as described herein for each interim request for payment. This report and payment request shall include:

- 4.1.1 a statement of the total dollar amount spent including match, and shall be twice the amount requested,
- 4.1.2 a statement of the dollar amount being requested from this Grant,
- 4.1.3 a statement of how the funds have been spent,

4.1.4 signature by the Responsible Administrator as defined in §3.1 herein, on the request certifying that receipts and documentation have been checked, are on file with the Grantee, and shall be submitted to the State upon request and that the information represented in this interim report is true, and

4.1.5 copies of all promotional material, advertisements, and other marketing collateral created with funds from the Grant.

4.2 Final Report and Payment Request

Grantee shall submit reporting documentation using the format required and provided by the State and as described herein for the final report and final payment request. Final payment is to be made upon satisfactory completion of the Project. This final report shall include:

4.2.1 the items listed in §4.1 herein, for the amount being requested and/or remaining,

4.2.2 a final report in spreadsheet form, using a format required and provided by the State, itemizing all expenditures of Grant funds and matching funds for which payment has been requested for this Grant.

5. ADMINISTRATIVE REQUIREMENTS

5.1 Accounting

5.1.1 At all times from the Effective Date of this Agreement until completion of the Work, the Grantee shall maintain properly segregated books of State Grant funds, matching funds, and other funds associated with the Work.

5.1.2 All receipts and expenditures associated with the Work shall be documented in a detailed and specific manner, and shall accord with the Work Budget set forth herein.

5.2 Monitoring

OEDIT shall monitor the Work on an as-needed basis. OEDIT may choose to audit the activities performed under this Agreement. Such audit will be requested by OEDIT via electronic media, and all documentation shall be made available for audit by OEDIT within 30 days of such request. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to this Agreement. Such books and records shall contain documentation of the participant's pertinent activity under this Agreement in a form consistent with good accounting practice.

6. WORK BUDGET

6.1 Matching Funds

Grantee shall match EDC funds used on this Project with at least a dollar-for-dollar cash match from local sources. Local match dollars shall not be used to meet other state contractual matching fund requirements.

6.2 Administrative Costs

Grantee may use 25 percent of Grant to pay for Grantee's Administrative Costs associated with the Enterprise Zone. Administrative Costs include: the salary of the zone administrator, processing public records requests, faxing or mailing costs associated with Enterprise Zone certifications, and other Enterprise Zone related Administrative Costs with prior approval.

6.2.1 Enterprise Zone Meeting

Grantee may increase their allocation for Administrative Costs by \$1,000 to be used to support travel to attend two Enterprise Zone Administrator meetings or \$500 to attend one Enterprise Zone Administrator meeting. The total Grant amount from the CEDF shall not exceed the amount set for in §2.3 herein.

6.3 Eligible Expenditures

Specific activities eligible for reimbursement from this grant include:

6.3.1 the preparation, production, and/or distribution of market research, marketing collateral, direct mail campaigns, Enterprise Zone informational seminars/events, online media advertising, online informational service, trade show promotions;

6.3.2 direct business prospect visitation, or the promotion of events that attract tourists or economic activity to the Enterprise Zone area;

6.3.3 other closely related Enterprise Zone activities with prior approval by the State.
 6.4 Enterprise Zone Marketing Grant Budget

<u>LINE ITEM</u>	<u>AMOUNT</u>
Local Match	\$12,500
Enterprise Zone Grant (CEDF)	
Optional: 25% of Grant for Admin. Costs (§6.2 herein).	Max. allocation: \$3,125
Optional: \$1,000 for travel to 2 Admin. Meetings (§6.2.1 herein).	Max. allocation: \$1,000
Remainder: Expenditures listed §6.3 herein.	Allocation at least: \$8,375
	Total CEDF: \$12,500
TOTAL GRANTEE EXPENDITURES	\$25,000

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COUNCIL COMMUNICATION

Date: February 16, 2010	Agenda Item: 11 c i	Subject: Progressive Urban Management Associates Professional Services Agreement
Initiated By: Community Development Department		Staff Source: John Voboril, Planner

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The Englewood Downtown and Medical District Public Improvements Financing Study has been conceived as an economic implementation strategy designed to further Council's goal of fostering economic development. Community Development staff made a presentation to Council on the proposed professional services contract with Progressive Urban Management Associates at the December 14, 2009 City Council Study Session.

RECOMMENDED ACTION

Staff recommends that Council approve, by motion, a professional services agreement with Progressive Urban Management Associates. Under the agreement, Progressive Urban Management Associates will lead a public improvements financing study process for both the Downtown and Medical Districts that will involve City Council, City staff, and key community stakeholders.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Following up on the successfully completed conceptual streetscape design process for the Englewood Downtown and Medical Districts held last spring with community stakeholders, Community Development is ready to move forward with the first step identified in the Urban Design Action Plan: a public improvements financing study.

Community Development has selected Progressive Urban Management Associates from among four consulting firms to conduct the Englewood Downtown and Medical District Public Improvements Financing Study. Progressive Urban Management Associates is a small consulting firm that specializes in developing organizational and financial strategies for urban commercial business districts. Progressive Urban Management Associates previously assisted the City with establishment of the South Broadway Business Improvement District.

Progressive Urban Management Associates will analyze Englewood's financial and budgetary conditions, as well as best practices for financing public improvements identified in a survey of Colorado business districts, in order to develop a range of financing alternatives to be considered for the Englewood Downtown and Medical Districts. Progressive Urban Management Associates will also work to develop a select group of community stakeholders that will hopefully become

vocal advocates for the project and rally community support for the preferred financing plan going forward into the future.

Community Development received four responses to the Englewood Downtown and Medical District Public Improvements Financing Study Request for Proposals. Based on these submittals, as well as subsequent interviews with each consulting team, staff recommends that the professional service agreement be awarded to Progressive Urban Management Associates in the amount of \$64,700.

FINANCIAL IMPACT

The funding for the professional services agreement is included in the 2010 Community Development Department budget.

LIST OF ATTACHMENTS

Professional Services Agreement and Scope of Services from Progressive Urban Management Associates

City of Englewood, Colorado
Contract for Professional Services

THIS CONTRACT and agreement made and entered into this **19th** day of January, **2010** by and between the City of Englewood, a home rule municipal corporation of the State of Colorado, hereinafter referred to as the "City", party of the first part, and **Progressive Urban Management Associates**, hereinafter referred to as the "Consultant", party of the second part, for the following:

**PROJECT: Englewood Downtown and Medical District Public Improvements
Financing Study**

WHEREAS, a proposal pursuant to said project has been received by the City of Englewood and reviewed by the Director of Community Development; and

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

NOW THEREFORE, in consideration of the compensation to be paid to the Contractor, the mutual agreements hereinafter contained are subject the terms hereinafter stated:

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

- **Scope of Services (attached)**
- **Contract (this instrument)**

B. City Obligations/Confidentiality: The City shall provide Consultant with reports and such other data as may be available to the City and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of the City or pursuant to a lawful Court Order directing such disclosure. All documents provided by the City to Consultant shall be returned to the City. Consultant is authorized by the City to retain copies of such data and materials at Consultant's expense.

C. Scope of Services: The Consultant agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required

to do, perform and complete all the work described, drawn, set forth, shown and included in attached Scope of Services.

D. Indemnification: The Consultant agrees to indemnify and hold harmless the City, and its officers and its employees, from and against all liability, claims, demands, and expenses, including reasonable court costs and attorney fees, on account of any injury, loss, or damage, which arise out of or are in any manner connected with the work to be performed under this Agreement, if such injury, loss, or damage, to the extent caused by the negligent act of omission, error, professional error, mistake, accident, or other fault of the Consultant, any subcontractor of the Consultant, or any officer, employee, or agent of the Consultant. The obligations of this Section D shall not apply for damages which the City shall become liable by final judgment to pay a third party as the result of the negligent act or omission, error, professional error, mistake, accident, or other fault of the City of Englewood.

E. Terms of Performance: The Consultant agrees to undertake the performance of the work under this Amendment to Contract within ten (10) days from being notified to commence work by the Director of Community Development and agrees to fully complete said work within the time frame detailed in the attached Scope of Services, plus such extension or extensions of time, requested in writing, as may be granted by the Director of Community Development.

F. Ownership of Work Product: Upon payment to Consultant pursuant to this Agreement, all work, drawings, designs, plans, reports, computer programs (non-proprietary), computer input and output, analyses, maps, or any other materials developed for this project are and shall be the sole and exclusive property of the City. However, any reuse of the documents by the City without prior written authorization by Consultant other than for the specific intended purpose of this Agreement will be at the City's sole risk. The Consultant will provide the City with a ten (10) day written notice prior to disposal of project documents it has retained during which time the City may take physical possession of same at the storage site.

G. Terms of Payment: The City agrees to pay the Consultant for the performance of all the work required under this contract, and the Consultant agrees to accept as his full and only compensation therefore, such sum or sums of money as may be proper in accordance with the price or prices set forth in the Consultant's fee schedule hereto attached and made a part hereof, the total cost thereof not to exceed **Sixty-four Thousand and Seven Hundred Dollars (\$64,700.00)**.

H. Appropriation of Funds: At present, **\$64,700.00** has been appropriated for the project. Notwithstanding anything contained in this Agreement to the contrary, in the event no funds or insufficient funds are appropriated and

budgeted by the governing body or are otherwise unavailable by any means whatsoever in any following fiscal period, the City may terminate this contract. If this contract is terminated due to insufficient funding, the Consultant will only be required to complete and deliver that prorated portion of the Scope of Work completed with the available funds. In this situation, delivery of the prorated portion of the Scope of Work will constitute completion of the Scope of Work and fulfillment of this agreement by Consultant.

The City shall immediately notify **Progressive Urban Management Associates** or its assignee of such occurrence in the event of such termination. All work accomplished by the Consultant prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the City prior to payment for services rendered.

I. Contract Binding: It is agreed that this Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrator, assigns, and successors.

J. Laws to be Observed: The Consultant shall be cognizant of all Federal and State laws and local ordinances and regulations which in any manner affect those engaged or employed in the work or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations, and decrees, and shall protect and indemnify the City against any claim or liability arising solely from or based solely on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subconsultants, agents or employees.

K. Termination and Assignment of Contract: The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the City will have the right to annul this contract without liability, or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee. It is the intent hereunder to secure the personal services of the Consultant, in manner aforesaid, and this contract shall not be assigned, sublet or transferred without the consent, in writing of the City.

L. Termination: This Agreement may be canceled by either party providing thirty (30) day notice to the other party. If this contract is terminated under this clause, the Consultant will only be required to complete and deliver that prorated portion of the Scope of Work completed to the termination date. In this situation,

delivery of the prorated portion of the Scope of Work will constitute completion of the Scope of Work and fulfillment of this agreement by Consultant.

M. Inspections, Reviews and Audits: During all phases of the work and services to be provided hereunder the Consultant agrees to establish a working office at a place agreeable to the City, and permit duly authorized agents and employees of the City to enter the Consultant's offices for the purpose of inspections, reviews and audits during the normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

Consultant and its subconsultants shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract, for inspection by the City, or any authorized representatives of the City, and copies thereof shall be furnished if requested.

N. 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, and which is clearly within the intent of the Scope of Work, will be decided by the Community Development Director for the City of Englewood. The decision of the Community Development Director will be final and conclusive unless, within 30 days after the date of receipt of a copy of such written decision, the Consultant mails or otherwise furnishes to the City a written appeal addressed to the Community Development Director of the City of Englewood. In connection with any appeal proceeding under this clause, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Community Development Director shall have 30 days to respond to Consultants appeal. If the dispute is not adequately resolved after responding to the appeal, the City and Consultant may unilaterally terminate this agreement without further notice. Pending final decision of a dispute hereunder, the Consultant shall proceed diligently with the performance of the contract in accordance with the Scope of Work attached herein. If this contract is terminated under this clause, the Consultant will only be required to complete and deliver that prorated portion of the Scope of Work completed to the termination date. In this situation, delivery of the prorated portion of the Scope of Work will constitute completion of the Scope of Work and fulfillment of this agreement by Consultant.

This disputes clause does not preclude consideration of questions of law in connections with decisions provided for in Paragraph above. 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.

O. Verification Of Compliance With C.R.S. 8-17.5-101 Et.Seq. Regarding Illegal Aliens

(a) **Employees, Contractors and Subcontractors:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that (i) knowingly employs or contracts with an illegal alien to perform work under this Contract or (ii) fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]

(b) **Verification:** Contractor has verified or attempted to verify through participation in the "basic pilot program" (authorized by P.L.204 of 104th Congress and amended by P.L.156 of 108th Congress) that Contractor does not employ any illegal aliens. And, if not accepted into the "basic pilot program" prior to entering into this Contract, Contractor further verifies, Contractor will apply to participate in the "basic pilot program" every three months until Contractor is accepted or this Contract is completed, whichever is earlier. [CRS 8-17.5-102(2)(b)(I).]

(c) **Limitation regarding the "Basic Pilot Program:** Contractor shall not use basic pilot program procedures to undertake pre-employment screening of job applicants while performing this Contract. [CRS 8-17.5-102(2)(b)(II).]

(d) **Duty to Terminate a Subcontract:** If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall;

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

(2) Terminate the subcontract with the subcontractor if, within three days of receiving notice that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, the subcontractor does not stop employing or contracting with the illegal alien. [CRS 8-17.5-102(2)(b)(III)(A) & (B).]

(3) **Exception:** If the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien and the subcontractor stops employing or contracting with the illegal alien.

(e) **Duty to Comply with State Investigation:** Contractor shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. 8-17.5-102 (5). [CRS 8-17.5-102(2)(b)(IV).]

(f) **Damages for Breach of Contract:** The City may terminate this contract for a breach of contract, in whole or in part, due to Contractor's breach of any section of this paragraph. Contractor shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract.

IN WITNESS WHEREOF, the parties have caused these presents to be signed personally or by their duly authorized officers or agents and their seals affixed and duly attested the day and year first above written.

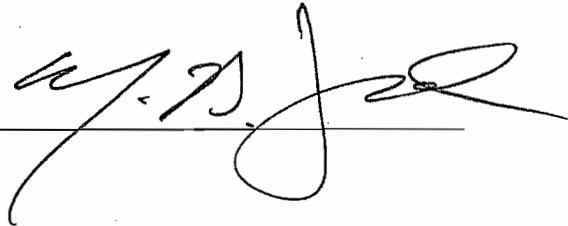
This Contract is executed in 2 counterparts.

CITY OF ENGLEWOOD

By _____
Community Development Director
Party of the First Part

ASSOCIATES

PROGRESSIVE URBAN MANAGEMENT

By  (sign)

(Print Name & Title) M. Bradley Segal
President
Party of the Second Part

Englewood Downtown and Medical District Public Improvements Financing Study

Scope of Services

P.U.M.A. proposes to assist the City of Englewood in creating financing strategies, cultivate partnerships and identify local champions to facilitate the creation of financial and organizational mechanisms to implement public improvements identified in Englewood's Downtown and Medical Districts.

Objectives of the project include:

- Identify a financing strategy that is responsive to the market dynamics, political realities, fiscal constraints and opportunities that exist in Englewood.
- Appropriately engage stakeholders in downtown and the medical district (as well as the broader community) in a participatory process that builds enthusiasm and ownership in the financing plan.
- Identify partnerships and organizational structure(s) that can ensure effective implementation and future sustainability of the financing plan.

The P.U.M.A. team will work closely with the City to identify a group of stakeholders that will comprise a **Steering Committee** that will oversee the financing study and help the consulting team determine process and desired outcomes. The Steering Committee will include primary property owner, business and resident interests from each of the study areas –Downtown and the Medical district. The Committee may be organized in sub-groups to determine the best financing strategies for each sub-area, and then convened as a full group to look at common issues, connections and strategies. The consultants, with help from the Steering Committee and City staff, will design a participatory process that will include property, business, government and civic stakeholders. The result will be a comprehensive financing and organizational strategy tailored to the unique needs of each district.

Three phases in this process are anticipated:

Phase I Project Orientation & Research of Financing Options

The PUMA team will become acquainted with the different districts, the improvements and recommended phasing for each district, meet with public and private sector leaders and obtain background information to orient the team to the project.

During Phase I, the PUMA team will embark on Task 1 outlined in the RFP – *A Survey of Colorado Business District Public Improvement Projects* – to identify funding sources and financing methods used in similar communities for public improvements, specifically outlining the benefits to the community as a result of those investments. We will research up to eight comparable projects and will focus, as much as possible, on recent projects that have been successfully advanced in the current recessionary economic climate. The research will help educate the stakeholder participants involved in the process in terms of applying best practices and lessons learned in other Colorado communities.

As we near completion of the research of financing methods and case study applications, we will work with city staff to prepare for and present our findings at an initial City Council study session. The study session will review the scope of the project and provide city officials with an understanding of the financing options available to advance civic improvements. We will focus on applications that are relevant for downtown and the medical district, but will also be prepared to discuss how these applications could potentially be applied in the future towards capital improvements projects for other commercial areas within Englewood.

Phase I Deliverables:

- Public Engagement Plan
- Summary of Colorado Business District Public Improvement Research
- Preparation for and presentation of project scope and initial research at a City Council Study Session

Phase II Outreach & Financing Assessment

The next phase of the study will incorporate extensive stakeholder engagement through one-on-one interviews and small group meetings to educate stakeholders on financing options and to determine priorities. Stakeholder groups, which would be identified with assistance from the Steering Committee, could include:

- Property owners
- Business owners
- South Broadway BID
- Swedish Medical Center
- Craig Hospital
- Other key stakeholders within each district.

The stakeholder engagement process will **match priorities to potential financing options** and will provide a basis for developing a framework for the overall strategy.

During Phase II, the team will embark on RFP Task 2a – *Assessment of Potential Sources of Public Funds* – an analysis of Englewood's current fiscal capacity to fund public improvements. In conjunction with assessing the City's fiscal capacity, the consulting team will identify other potential sources of financing to pay for improvements along with ideas about how to leverage those funds, if appropriate.

Finally during Phase II, the consulting team will embark on RFP Task 2b – *Identification and Assessment of Potential Public and Private Financing Options*. During Phase II, the consulting team will identify a range of potential financing options and assess the pros and cons of each.

The financial tools we will explore for Englewood will likely include several of the following:

- Statutory Special districts (BIDs, DDAs, GIDs, SIDs, etc.,)
- Charter special districts (if available and/or appropriate)
- Community development tools
- Tax-sharing agreements
- Bonds
- Grants
- Philanthropic giving
- Federal stimulus resources

Depending on the desired financing options, extraction, refinement, and management of County assessor property data records for both districts could be necessary. Database fields could include information on property ownership for both owners of real and personal property and include valuation, lot acreage, tax-exemption status and physical characteristics (i.e. linear frontage, building square footage, etc.). Database refinement will continue throughout the process as new information is obtained from property and business owners and the City and County Assessor. *Ongoing database extraction, refinement, and management will be the responsibility of the client.*

At the conclusion of Phase II of the study, the consulting team, City Staff and Steering Committee will participate in **Creative Workshop 1**. The Creative Workshop will be a hands-on, half day work session in which all of the initial information and recommendations will be thoroughly examined to determine the solutions that best address Englewood's needs, capacity and political realities.

- **Phase II Deliverables:**

- *A Detailed Analysis of Preferred Financing Options* (Task 3 outlined in the RFP). Based upon the consultant's research and analysis along with information gained from the City and Steering Committee, the

consulting team will outline the preferred financing option(s). The analysis will include options and comparable data developed in task 2a and 2b.

- Final Summary of "Best Practices" Research

Phase III Financing Action Plan

Following Phase II, we will work with city staff to prepare for and present a second City Council study session that summarizes our findings from community outreach, provides an evaluation of the preferred financing options for downtown and the medical district, and offers team recommendations for moving forward. The study session will aim to obtain additional input from city leadership into the development of the financing plan for each district.

The final phase of the study will result in the development of the Downtown and Medical District Public Improvement Financing Study outlining financing and accompanying organizational strategies and sequencing recommendations for each district. A draft financing plan will be reviewed by the Steering Committee during the **Creative Workshop #2**. The outcome(s) of Creative Workshop #2 will be incorporated into the final recommendations developed by the consulting team.

▪ **Phase III Deliverables:**

- Preparation for and presentation at a second City Council Study Session
- Based upon the outcomes of the Creative Workshop #2, the P.U.M.A. Team will develop up to three financing scenarios for each district, including funding sources, funding amounts and phasing (**Task 4** outlined in the RFP). With guidance from city staff, City Council and the Steering Committee, preferred options and sequencing for implementation for each district will be identified.

A summary of project timing and cost by phase follows. A detailed step-by-step fee estimate is attached..

Summary of the Project Methodology

	Phase I: Project Orientation & Research of Financing Options	Phase II: Outreach & Financing Assessment	Phase III: Financing Recommendations
Tasks	Review existing plans & reports Initial meetings with key stakeholders Identify & convene Steering Committee Initiate "Best Practices" research Convene City Council Study Session to discuss scope of project and best practices	Individual & small group meetings Assessment of City capacity Identify public/private financing options Creative workshop #1 with Steering Committee	Convene a second City Council Study Session to discuss financing options emerging for each district Finalize financing options and organizational strategies Creative workshop #2 with Steering Committee
Deliverables	"Best Practices" research summary Public involvement strategy outline	"Best Practices" research summary Summary of outreach & priorities Analysis of financing options	Financing Action Plan that includes up to three financing options for each district, including tools, responsibilities & sequencing.
Time Frame	8 to 10 weeks	8 to 10 weeks	8 to 10 weeks
Estimated Cost	\$ 19,170	\$ 23,380	\$ 22,150

Englewood Downtown & Medical District Public Improvement Financing Study

Fee Schedule

<u>Task</u>	<u>Segal</u> <u>Hrs.</u>	<u>Rate</u>	<u>Jones</u> <u>Hrs.</u>	<u>Rate</u>	<u>George</u> <u>K</u> <u>Baum</u>	<u>TOTAL</u>
Project Orientation						
Orientation Meetings, Review	12	200	16	145		4,720
Best Practices Survey	8	200	40	145		7,400
City Council Study Session #1	8	200	10	145		3,050
Total Project Orientation	28	200	66	145	4,000	19,170
Outreach & Financing Assessment						
Outreach Meetings	16	200	30	145		7,550
City Financing Capacity	16	200	8	145		4,360
Financing Options	12	200	16	145		4,720
Creative Workshop #1	4	200	10	145		2,250
Total Outreach & Financing	48	200	64	145	4,500	23,380
Financing Action Plan						
City Council Study Session #2	8	200	10	145		3,050
Draft Financing Action Plan	20	200	30	145		8,350
Creative Workshop #2	4	200	10	145		2,250
Final Financing Action Plan	8	200	20	145		4,500
Total Financing Action Plan	40	200	70	145	4,000	22,150
TOTAL PROJECT COSTS	116	200	200	145	12,500	64,700

Includes all reasonable expenses, including local travel.