

**Agenda for the
Regular Meeting of the
Englewood City Council
Monday, March 1, 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 16, 2010.
6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)
8. Communications, Proclamations, and Appointments.
 - a. E-mail from Trish Elley announcing her resignation from the Englewood Public Library Board.
 - b. A resolution appointing Randy Kloewer as a youth member to the Parks and Recreation Commission.
 - c. A revised resolution appointing Jordan May as an alternate on the Board of Adjustment and Appeals.

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.

9. Consent Agenda Items.
 - a. Approval of Ordinances on First Reading.
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 1, accepting a \$12,500 grant from the State of Colorado – Economic Development Commission to fund marketing and administration activities for the Arapahoe County Enterprise Zone.
 - ii. Council Bill No. 2, approving an Intergovernmental Agreement entitled “Case No. 09SA133 Common Interest Agreement” with FRICO/Burlington.
 - 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. 3 – Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to adopt a bill for an ordinance approving an Intergovernmental Agreement with Colorado State University for cooperative research projects on the land application of wastewater biosolids to dryland wheat farming operations. The 2010 program cost is \$109,295 which is to be split 50/50 with the City of Littleton. **STAFF SOURCE: Stewart H. Fonda, Utilities Director and Jim Tallent, Operations Division Manager.**
 - ii. Council Bill No. 4 – Recommendation from the Finance and Administrative Services Department to approve a bill for an ordinance amending Ordinance 20, Series of 2009, regarding the lease-purchase of certain equipment for City Departments. **STAFF SOURCE: Frank Grylewicz, Director of Finance and Administrative Services.**
 - iii. Council Bill No. 5 – Recommendation from the Parks and Recreation Department to adopt a bill for an ordinance approving an agreement with Broken T Partners LLC to operate the Broken Tee Englewood Indoor Golf Training Center. **STAFF SOURCE: Jerrell Black, Director of Parks and Recreation and Bob Spada, Golf Operations Manager.**
 - b. Approval of Ordinances on Second Reading.

- c. Resolutions and Motions.
 - i. Recommendation to approve, by motion, a Professional Services Agreement with Historic Preservation Consultant Diane Wray Tomasso to pursue a nomination to have Englewood's downtown Broadway Post Office added to National Register of Historic Places. **STAFF SOURCE: Michael Flaherty, Deputy City Manager.**
12. General Discussion.
 - a. Mayor's Choice.
 - b. Council Members' Choice.
13. City Manager's Report.
14. City Attorney's Report.
 - a. Motion to settle Timothy Scott Parks v. Officers Zasada, Saldivor & O'Connor-U.S. District Court Case #08CV01037-GMA-MJW for \$12,500.
15. Adjournment

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

- Board of Adjustment and Appeals meeting of December 9, 2009.
- Firefighters Pension Board meeting of August 13, 2009.
- Keep Englewood Beautiful Commission meetings of November 10, 2009 and January 12, 2010.
- Liquor Licensing Authority telephone polls of January 6 and 20, 2010 and meeting of February 3, 2010.
- Malley Center Trust Fund meeting of October 14, 2009.
- Planning and Zoning Commission meetings of January 20 and February 2, 2010.
- Police Officers Pension Board meeting of August 13, 2009.
- Transportation Advisory Committee meeting of January 14, 2010.

From: Trish Elley [telley2007@yahoo.com]
Sent: Saturday, February 20, 2010 4:29 PM
To: Hank Long
Subject: A message from Trish Elley

Hi Hank,

I regret to inform you that I will be unable to continue to serve on the Library Advisory Board due to my new schedule. I have fond memories being on the board and I wish all of you the very best.

Sincerely,

Trish Elley

RESOLUTION NO. _____
SERIES OF 2010

A RESOLUTION APPOINTING RANDY KLOEWER AS A YOUTH MEMBER
OF THE PARKS AND RECREATION COMMISSION FOR THE CITY OF
ENGLEWOOD, COLORADO.

WHEREAS, the Englewood Parks and Recreation Commission was established to advise City Council in all matters pertaining to recreation; and

WHEREAS, there is a vacancy on the Englewood Parks and Recreation Commission; and

WHEREAS, Randy Kloewer has applied to serve as a youth member of the Englewood Parks and Recreation Commission; and

WHEREAS, the Englewood City Council applauds the volunteerism of this Englewood youth and desires to appoint Randy Kloewer to the Englewood Parks and Recreation Commission;

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

Section 1. Randy Kloewer is hereby appointed as a youth member to the Parks and Recreation Commission. Randy Kloewer's term will be effective immediately and will expire July 1, 2010.

ADOPTED AND APPROVED this 1st day of March, 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

RESOLUTION NO. _____
SERIES OF 2010

A RESOLUTION APPOINTING JORDAN MAY AS AN ALTERNATE VOTING MEMBER TO THE BOARD OF ADJUSTMENT AND APPEALS FOR THE CITY OF ENGLEWOOD.

WHEREAS, the Englewood City Council has appointed Jordan May as alternate member to the Board of Adjustment and Appeals; and

WHEREAS, City Council has requested staff to send this alternate member packets for the Board he will be serving on so that he can maintain an understanding of the current issues and rules; and

WHEREAS, because of the necessity of having a quorum for this quasi-judicial board and the super majority voting requirement when a regular member is absent, the alternate for this Board may participate in the hearing and vote on the case heard; and

WHEREAS, while the alternate will only vote at the meetings where a regular member is absent, he is nevertheless requested to attend as many meetings as possible to get a feel for the membership and issues; and

WHEREAS, Council wishes to express its gratitude for the volunteerism and service that this individual wishes to bestow upon the City;

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

Section 1. The Englewood City Council hereby appoints Jordan May as an alternate member of the Englewood Board of Adjustment and Appeals who may vote if another member of the Board is absent.

ADOPTED AND APPROVED this 1st day of March, 2010.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2010.

Loucrishia A. Ellis, City Clerk

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2010

COUNCIL BILL NO. 1
 INTRODUCED BY COUNCIL
 MEMBER JEFFERSON

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.

Read by title and passed on final reading on the 1st day of March, 2010.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2010, on the 5th day of March, 2010.

Published by title on the City's official website beginning on the 3rd day of March, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

6.4 6.3.3 other closely related Enterprise Zone activities with prior approval by the State.
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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BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2010

COUNCIL BILL NO. 2
 INTRODUCED BY COUNCIL
 MEMBER WILSON

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.

Read by title and passed on final reading on the 1st day of March, 2010.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2010, on the 5th day of March, 2010.

Published by title on the City's official website beginning on the 3rd day of March, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ____, Series of 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: March 1, 2010	Agenda Item: 11 a i	Subject: Colorado State University Biosolids Research Agreement
Initiated By: Littleton/Englewood WWTP Supervisory Committee		Staff Source: Stewart H. Fonda, Utilities Director Jim Tallent, Operations Division Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

This agreement was previously approved by Ordinance No. 42, Series of 2004. The current proposed ordinance renews the Biosolids Research Agreement with Colorado State University.

RECOMMENDED ACTION

We recommend Council adopt a bill for an ordinance approving an Intergovernmental Agreement with Colorado State University for cooperative research projects on the land application of wastewater biosolids to dryland wheat farming operations. The 2010 program cost is \$109,295.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Since 1982, the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP), in cooperation with Colorado State University (CSU) Department of Soil and Crop Sciences, has successfully conducted a continuous research program to observe the long-term effects of the application of wastewater biosolids for dryland wheat farming. The research has provided long-term research data and a sound basis of knowledge of the biosolids produced by the L/E WWTP and the environmental impacts of the product. The information has been used extensively as a public relations tool, as well.

Additionally, the L/E WWTP/CSU research project has been instrumental in establishing the basis for biosolids beneficial use for the growth of dryland wheat crops in the arid western states of the United States and in Australia. The long-term research demonstrates that the beneficial use of wastewater biosolids is an environmentally safe, economically beneficial, and agriculturally sound practice for recycling and conserving a valuable resource. The research has resulted in 27 referred journal articles and book chapters, 42 technical papers, numerous bulletins and reports, two doctoral thesis and two masters' thesis (another is in progress). The research has benefited not only western states farming communities, but also biosolids researchers, regulators, generators, appliers and other environmental professionals. The L/E WWTP biosolids program has also received the following recognition:

- US EPA Region 8 Excellence Award for Beneficial Use of Sewage Sludge (1989)
- RMWEA Biosolids Management Merit Award (1996, 1998, 2003)
- US EPA Beneficial Use of Biosolids for Operating Projects National Honorable Mention (1996)

- US EPA Biosolids Research, National First Place (1999)
- AMSA - Research and Technology Award Biosolids (2000)
- US EPA Biosolids Management Excellence National First Place (2003)

Colorado State University has submitted its proposal for the cooperative research project on land application of sewage biosolids on dryland wheat. The 2010 studies include study sites at the Bennett site and the Byers site, which is the City-owned farm. The cost for each study site is as follows:

Bennett	\$ 48,853
Byers	57,352
Microbial Study	<u>3,090</u>
TOTAL	\$109,295

FINANCIAL IMPACT

The cost of the project is \$109,295, which will be split 50/50 with the City of Littleton. This project cost is included in the Wastewater Treatment Plant's 2010 Budget.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance
 CSU Biosolids Research Project Agreement

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 3
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN COLORADO STATE UNIVERSITY (CSU) AND LITTLETON/ENGLEWOOD WASTEWATER TREATMENT PLANT FOR THE COOPERATIVE RESEARCH PROJECT ON LAND APPLICATION OF SEWAGE BIOSOLIDS ON DRYLAND WHEAT.

WHEREAS, since 1982 the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) and Colorado State University (CSU), Department of Soil and Crop Sciences, have successfully conducted a continuous research program to observe the long-term effects of the application of biosolids for dryland wheat farming; and

WHEREAS, the City Council of the City of Englewood approved an IGA between CSU and the Littleton/Englewood Wastewater Treatment Plant with the passage of Ordinance No. 42, Series of 2004; and

WHEREAS, the research has provided long-term research data and a sound basis of knowledge of the biosolids produced by the L/E WWTP and the environmental impacts of the product; and

WHEREAS, the L/E WWTP-CSU research project has been instrumental in establishing the basis for biosolids beneficial use for the growth of dryland wheat crops in the arid western states and in Australia; and

WHEREAS, the long-term research demonstrates that the beneficial use of wastewater biosolids is an environmentally safe, economically beneficial and agriculturally sound practice for recycling and conserving a valuable resource; and

WHEREAS, the research has benefited not only farming communities of western states but also biosolids researchers, regulators, generators and other environmental professionals; and

WHEREAS, in 1999 the L/E WWTP and CSU received the U.S. EPA award for Outstanding Research Contributing to Beneficial Use of Wastewater Solids – First Place National; and

WHEREAS, CSU has submitted their proposal for the cooperative research project on land application of sewage biosolids on dryland wheat; and

WHEREAS, the 2010 study includes study sites at the Bennett site, and the Byers site; and

WHEREAS, the cost of the CSU Application of Sewage Biosolids Research Project is split 50/50 between Englewood and Littleton.

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

Section 1. The Colorado State University Biosolids Research Proposal, attached hereto as Exhibit A; and the letter of acceptance, attached hereto as Exhibit B, are hereby accepted and approved by the City Council of the City of Englewood.

Section 2. The Director of the Littleton/Englewood Wastewater Treatment Plant is authorized to execute the Colorado State University Biosolids Research acceptance letter for and on behalf of the Littleton/Englewood Wastewater Treatment Plant.

Section 3. The Director of the Littleton/Englewood Wastewater Treatment Plant is hereby authorized to further extend the Intergovernmental Agreement between Littleton/ Englewood Wastewater Treatment Plant and Colorado State University, Biosolids Research Proposal, for the cooperative research project on land application of sewage biosolids on dryland wheat for five additional one year periods.

Introduced, read in full, and passed on first reading on the 1st day of March, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 5th day of March, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 3rd day of March, 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 _____ day of _____, 2010.

Loucrishia A. Ellis

LAND APPLICATION OF SEWAGE BIOSOLIDS

**PROPOSAL FOR COOPERATIVE
RESEARCH PROJECT BETWEEN**

COLORADO STATE UNIVERSITY

AND

**LITTLETON/ENGLEWOOD JOINT
COUNCIL**

2010

I. Land Application of Biosolids

II. Personnel

Project Leaders: K.A. Barbarick, Professor
J. McDaniel, Research Associate
N.C. Hansen, Associate Professor

III. Introduction

We have studied the beneficial use of Littleton/Englewood (L/E) biosolids since 1982 at East and West Bennett, 1988 at Kiowa, 1993 at North Bennett, and 1999 at Byers. We lost the East Bennett plots in 1993 due to a shift from dryland to irrigated agriculture and the last of the West Bennett sites to development in 2005. We ceased research at the Kiowa location in 2007. We will present the proposed research and associated budget separately for three studies (North Bennett, Microbial study, and Byers) and then present the total budget for our proposed research.

IV. Bennett Study Site

North Bennett

We initiated the North Bennett experimental location to replace the East Bennett plots that we lost in 1993. Our former cooperating farmer at East Bennett, Kevin Helzer, decided to grow irrigated crops on our study sites in 1993. We also changed the experimental approach at North Bennett to focus on determining the N equivalency of L/E biosolids associated with repeated applications in a dryland wheat summer-fallow agroecosystem. We will complete harvest soil and biomass sampling and analyses; however, we plan to grow proso millet (*Panicum miliaceum* L.) or sunflowers (*Helianthus annuus*, L.) to help control an infestation of jointed goat grass (*Aegilops cylindrica* Host).

We have added Ba, Be, and Mn to our plant and soil analyses since USEPA has identified them as potential pollutants to the CFR503 regulations. Although Ag has also been added to the CFR503 regulations, Colorado State University instrumentation utilized to detect Ag has been less than adequate. Therefore, at this point in time we will not analyze plants and soils for Ag.

A. Objectives for the Bennett study sites (North Bennett)

The objectives of the Bennett study are:

1. To quantify the N equivalency of repeated biosolids application under field conditions compared with commercial N fertilizer at our North Bennett plots.
2. To study the long-term effects of L/E biosolids on soil accumulation and wheat uptake of Ba, Be, Cd, Cr, Cu, Mn, Ni, Pb, Mo, and Zn.
3. To study the long-term effects of L/E biosolids on As, Hg, and Se levels in soil and grain in the 0, 2, and 5 dry tons/acre plots for the North Bennett site. Samples will consist of a composite of all replications for each rate for grain analyses. This gives three grain samples. We also will composite separately the 0-20 and 20-60-cm soil samples from the same plots as the grain samples. This will provide us a total of six soil samples to analyze for each site.
4. To determine the accumulated $\text{NO}_3\text{-N}$ levels to a depth of 180 cm (6 feet) associated with repeated application of various N fertilizer or sewage biosolids at our North Bennett plots.
5. To determine the carryover effects of biosolids and N fertilizer on introduction of proso millet (*Panicum miliaceum* L.) or sunflowers (*Helianthus annuus*, L.) into the wheat-fallow rotation. This change is required to control the noxious weed jointed goat grass (*Aegilops cylindrica* Host). Since jointed goat grass has a life cycle that is similar to winter wheat, about the only control option is to add a crop to the rotation that has a different life cycle. Once the jointed goat grass is controlled, we tentatively plan to return to the wheat-fallow rotation.

B. Bennett study sites budget (See Table 1 on the next page).

Table 1. Proposed budgets for the North Bennett sewage biosolids studies.

North Bennett Category	Current 2009	Proposed 2010	Proposed 2011
Routine Analyses	1325	1364	1405
As, Hg, Se Analyses	481	495	510
Student hourly salary [†]	668	668	668
Student hourly fringe [‡]	7	4	4
Travel	1680	1730	1782
Harvest, plot set-up	747	769	792
Research Assoc. (6 months) [¶]	16000	16000	16000
Research Assoc. fringe [§]	3936	4128	4128
Professor (2 weeks) [¶]	6419	6419	6419
Professor fringe [§]	1579	1656	1656
Total direct costs	32841	33233	33364
Indirect costs ^ψ	15435	15620	15681
Total costs	48276	48853	49045

[†] Assumes 50% of the student hourly's effort on the North Bennett and 50% effort on the Byers site.

[‡] Student-hourly fringe rate is 0.6% in 2010 and 2011.

[¶] Assumes 50% on the North Bennett study and 50% on the Byers study. We also assumed a 0% salary increase for 2010 and 2011. We assumed that all other costs for 2009 and 2010 will increase by 3% per year.

[§] Fringe benefit rates were estimated to be 25.1% for 2009, and 25.8% for 2010 and 2011 for the Research Associate and Professor.

^ψ The total indirect costs are 47% for 2009 through 2011.

V. Microbial Study (To Replace the Phosphorus Study)

A. Introduction

Most biosolids land-application studies focus on risk assessment of potential problems associated with contamination of soils and water with heavy metals, pathogens, personal care products, flame retardants, etc. Other than studies regarding soil fertility status and crop production, studies which test hypotheses of biosolids as beneficial soil amendments are scarce. It is surprising that few scientists have sought to quantify the environmental benefits of biosolids land application, given that many studies have found little or no harmful effects of biosolids when land applied at agronomic rates.

A novel laboratory incubation study to examine the effects of a biosolids amendment on soil microbial-faunal interactions is proposed. Of the soil fauna, the study will focus on Enchytraeidae worms because their members have diverse feeding strategies (bacteria, fungi, and soil organic matter), and because they are known to affect dissolved organic carbon production and reservoirs in soil. This is important because the production of available dissolved organic carbon is the rate-limiting step in microbial nitrogen mineralization-immobilization processes in a newly developed soil N biogeochemical model. The objectives for this study are to determine:

- 1) if enchytraeid worm populations increase in response to biosolids amendment,
- 2) if the worms selectively graze on biosolids material or on bacteria due to increased bacterial biomass in biosolids-amended soil,
- 3) if biosolids amendment results in increased soil dissolved organic carbon concentrations due to enhanced microbial-faunal interactions,
- 4) whether these interactions ultimately lead to greater N mineralization rates in soil. The hypothesis is that biosolids amendment to soil will increase enchytraeid trophic interactions with soil bacteria, resulting in greater release of dissolved organic carbon and mineral N into soil.

B. Microbial study budgets (See Table 2 below)

Table 2. Proposed budgets for the microbial sewage biosolids study.

Micro study Category	Microbial Study 2009 [†]	Microbial Study 2010 [†]	Microbial Study 2011 [†]
Supplies	300	309	318
Analyses	1741	1793	1847
Total direct costs	2041	2102	2165
Indirect costs [‡]	959	988	1018
Total costs	3000	3090	3183

[†] We assumed that all costs for 2010 and 2011 will increase by 3% per year.

[‡] The total indirect costs are 47% for 2009 through 2011.

VI. Byers Study Site

A. Introduction

With the establishment of the L/E Byers biosolids-application site, we are developing some practical, never-done-before research. No-till and minimum tillage management is increasing in popularity in eastern Colorado because it improves water conservation and allows more intensive cropping. Biosolids application could enhance the benefits of no-till or minimum tillage by improving soil cover and soil physical characteristics when surface applied. Biosolids could work in concert with crop residues to allow farmers to meet the Natural Resource Conservation Service 30% soil coverage required to comply with conservation programs.

Biosolids application could initially supply soil cover until adequate crop residue can accumulate. Continued additions may even provide production and economic advantages. Farmers may eventually use biosolids as an integral part of a conservation program. Because of continuing droughty conditions, beginning in Fall 2005, we changed our crop rotations. We

eliminated the wheat-wheat-corn-sunflower-fallow (WWCSF) and converted those plots to our other two rotations (wheat-fallow, WF and wheat-corn-fallow, WCF). This increased our replications for WF and WCF from two to four, providing us with a more robust statistical analysis of the effects of these two rotations.

B. Objectives

Our objectives at the Byers site are:

1. To determine if increasing biosolids application from once every two years to two out of three years is a feasible management alternative.
2. To determine if biosolids behave like crop residues in terms of moisture storage and crop production. Available-water storage and crop yields are the properties of greatest interest.
3. To determine the effects of biosolids application at the agronomic rate compared with commercial N fertilizer in two cropping systems on soil and grain accumulation of plant nutrients and trace elements limited by the Colorado Department of Public Health and Environment biosolids-application regulations.

C. Procedures

Treatments:

1. Two crop rotations:
 - a. Wheat-fallow (typical rotation)
 - b. Wheat-corn-fallow
2. Biosolids/fertilizer treatments:
 - a. Biosolids application to supply N recommended for the measured soil $\text{NO}_3\text{-N}$ (e.g., the agronomic rate).
 - b. Commercial N fertilizer at the agronomic rate.

D. Experimental design

We now use four blocks (replications) of each treatment arranged in a split-plot design. The main plots will consist of the cropping rotations. Each main plot will be split to accommodate biosolids application on half the plot and commercial fertilizer addition on the other half.

All phases of each rotation will be present each year to allow assessment of all soil and crop responses each year. This requires a total of 20 main plots and 40 split plots (4 replications, 5 cropping rotations, biosolids/fertilizer treatment splits).

Each main plot will be 0.8 km (0.5 miles) long by 30 m (100 feet) wide. Each biosolids/fertilizer split would, therefore, be 15 m (50 feet) wide.

E. Measurements

We will complete the following measurements or analyses.

1. Annual grain and biomass yields.
2. Records on farmer inputs.
3. Plant-available concentrations of $\text{NO}_3\text{-N}$, P, K, Fe, Mn, Cu, Zn, Na, Cd, Cr, Pb, Mo, Ni, Ba, Be, and Mn in soil before each crop planting (determined in 0-5, 5-10, 10-20, and 20-30 cm samples from each replicated plot).
4. We will composite 0-5-cm soil samples for As, Hg, and Se analyses for each replication before each crop planting. This will give us 14 soil samples to analyze for As, Hg, and Se each year.
5. Deep soil sampling before each crop planting by hydraulic probe for $\text{NO}_3\text{-N}$ (determined 0-30, 30-60, 60-90, 90-120, 120-150, 150-180 cm samples, if possible, from each replicated plot).
6. Concentrations of P, K, Fe, Mn, Cu, Zn, Na, Cd, Cr, Pb, Mo, Ni, Ba, Be, and Mn in grain sampled from each replicated plot.
7. For annual As, Hg, and Se grain analyses, we will composite grain samples for each biosolids or N fertilizer replication for each type of crop. This scheme will provide us with four wheat and two corn samples for As, Hg, and Se analyses each year.

F. **Byers study site budgets (See Table 3 on the next page.)**

Table 3. Proposed budgets for the Byers sewage biosolids study.

Byers Category	Current 2009	Proposed 2010	Proposed 2011
Analyses	2938	3026	3117
Hourly salary [†]	668	668	668
Hourly Fringe [‡]	7	4	4
Research Assoc. (6 months) [¶]	16000	16000	16000
Research Assoc. fringe [§]	3936	4128	4128
Professor (2 weeks) [¶]	6419	6419	6419
Professor fringe	1579	1656	1656
Harvest, plot set-up	2117	2180	2245
Weather Station Maintenance ^ψ	446	459	473
Travel	4345	4475	4609
Total direct costs^θ	38454	39015	39319
Indirect costs	18073	18337	18480
Total costs	56527	57352	57799

[†] Assumes 50% of the student hourly's effort on the North Bennett and 50% effort on the Byers site.

[‡] Student-hourly fringe rate is 0.6% in 2010 and 2011.

[¶] Assumes 50% on the North Bennett study and 50% on the Byers study. We also assumed a 0% salary increase for 2010 and 2011. We assumed that all other costs for 2009 and 2010 will increase by 3% per year.

[§] Fringe benefit rates were estimated to be 25.1% for 2009, and 25.8% for 2010 and 2011 for the Research Associate and Professor.

^ψ The total indirect costs are 47% for 2009 through 2011.

VII. Total Budgets

We have tabulated the total budgets by location (Table 4) and by budget category (Table 5) for 2008 through 2010.

Table 4. Total budgets by location for 2009-2011.

Total by location Category	Current 2009	Proposed 2010	Proposed 2011
North Bennett			
Total direct costs	32841	33233	33364
Indirect costs	15435	15620	15681
Total costs	48276	48853	49045
Byers			
Total direct costs	38454	39015	39319
Indirect costs	18073	18337	18480
Total costs	56527	57352	57799
Micro study			
Total direct costs	2041	2102	2165
Indirect costs	959	988	1018
Total costs	3000	3090	3183
Total			
Total direct costs	73336	74350	74848
Indirect costs	34468	34945	35179
Total costs	107804	109295	110027

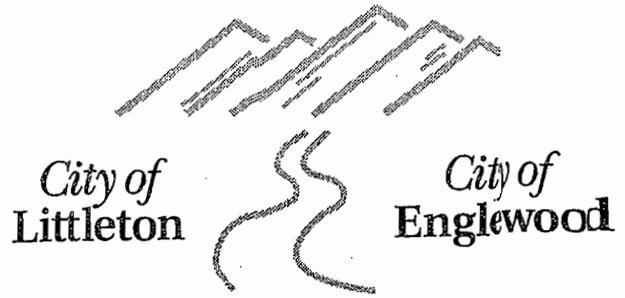
Table 5. Total budgets by budget categories for 2009-2011.

Total by category Category	Current 2009	Proposed 2010	Proposed 2011
Analyses	6784	6987	7197
Personnel (salary plus fringe)	57218	57750	57750
Harvest, plot set up, weather station	3309	3408	3510
Travel	6024	6205	6391
Total direct costs	73336	74350	74848
Indirect costs[†]	34468	34945	35179
Total costs	107804	109295	110027

[†] Total indirect costs are 47% of total direct costs for 2009-2011.

**LITTLETON/ENGLEWOOD
WASTEWATER TREATMENT PLANT**

2900 S. Platte River Drive
Englewood, Colorado 80110
(303) 762-2600
FAX 762-2620



March 6, 2010

Office of Sponsored Programs
2002 Campus Delivery
Fort Collins, Colorado 80523-2002
Attention: Christine Carsten, Research Administrator

RE: COOPERATIVE RESEARCH PROJECT - SLUDGE APPLICATION TO DRYLAND
WHEAT FIELDS - 2010 FISCAL YEAR

Dear Ms. Carsten:

We are pleased to inform you that the 2010 proposals for continuing the research projects at the Bennett and Byers sites, and for Microbial Study were approved at the February 18, 2010 Littleton/Englewood Wastewater Treatment Plant Supervisory Committee meeting. This letter serves as authorization for the 2010 studies. Authorization is based on the following understanding:

1. The upper expenditure limit for the Bennett study is \$48,853 for fiscal year 2010.
2. The upper expenditure limit for the Byers study is \$57,352 for fiscal year 2010.
3. The upper expenditure limit for the Microbial study is \$3,090 for fiscal year 2010.
4. Separate authorization must be obtained for additional work beyond that described in the proposals.
5. Progress reporting and invoicing will be on a quarterly basis. Project reports must accompany all invoices, also on a quarterly basis. A final report will be provided.
6. Invoices are to provide detailed background of project costs according to categories shown in the Proposed Budget Tables in your proposal.
7. All publications pertaining to the research work will be submitted to the cities for review prior to release. All other conditions set forth in your July 2009 proposal shall be incorporated in this agreement.

CSU Research Projects

March 6, 2010

Page Two

We anticipate your program will proceed immediately. Please acknowledge your acceptance of the terms of the agreement by signing the bottom portion of both agreements and returning one original to me for the official City records. Please retain one original for your records.

Sincerely,

Stewart H. Fonda

Director

ACCEPTANCE OF TERMS OF AGREEMENT:

Signature

Title

Date

SHF/ca

Attachment

cc: Dr. Ken Barbarick, Dept of Soil & Crop Sciences, 1170 Campus Delivery, CSU, Ft Collins, CO 80523-1170

COUNCIL COMMUNICATION

Date: March 1, 2010	Agenda Item: 11 a ii	Subject: A bill for an ordinance amending Ordinance 20, Series of 2009 regarding the lease-purchase of equipment for City departments
Initiated By: Finance and Administrative Services Department		Staff Source: Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council previously discussed leasing self contained breathing apparatus (SCBA) equipment, police tactical vests, and a voice over internet protocol (VOIP) telephone system at the 2009 Budget Retreat.

On May 8, 2009, City Council passed on final reading Ordinance 20, Series of 2009, which approved the lease-purchase of equipment for various City of Englewood departments.

RECOMMENDED ACTION

Staff recommends the City Council approve the attached bill for an ordinance amending Ordinance 20, Series of 2009, to remove funding that is no longer needed.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The original bill for an ordinance included equipment for lease-purchase that was subsequently funded by other sources, leaving only information technology-related equipment subject to lease-purchase.

This bill for an ordinance amends the Ordinance 20, Series of 2009, but still allows the City to lease-purchase needed information technology equipment and conserve its capital and take advantage of interest rates.

FINANCIAL IMPACT

This action preserves a low interest rate not to exceed 4.75 percent. The annual principal and interest payments over the term of the lease will not exceed \$128,000. The total principal paid will not exceed \$350,000 and will not extend beyond calendar year 2013.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 4
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE OF THE CITY OF ENGLEWOOD AMENDING ORDINANCE NO. 20,
SERIES OF 2009 REGARDING THE LEASE-PURCHASE OF CERTAIN EQUIPMENT FOR
CITY DEPARTMENTS.

WHEREAS, the City of Englewood, Colorado (the "City"), is a home rule municipality of the State of Colorado (the "State") duly organized and operating under the Home Rule Charter of the City and the Constitution and laws of the State; and

WHEREAS, pursuant to Ordinance No. 20, Series of 2009 which passed on final reading on May 8, 2009 ("Ordinance No. 20"), the City Council of the City (the "City Council") approved the lease-purchase of certain "Fire Department Equipment" for an amount not to exceed \$330,000 and the "Information Technology and Police Department Equipment" for an amount not to exceed \$625,000, as more specifically provided in Ordinance No. 20 (capitalized terms used in this Ordinance but not otherwise defined or redefined herein shall have the meanings set forth in Ordinance No. 20); and

WHEREAS, since the adoption of Ordinance No. 20, a significant portion of the Equipment has been acquired through non-lease funding sources and the initial lease-purchase proposal to be funded pursuant to Ordinance No. 20 has expired; and

WHEREAS, certain of the Information Technology and Police Department Equipment in an amount not greater than \$350,000 remains to be financed and an alternate lease-purchase proposal has been received by the City; and

WHEREAS, pursuant to a Lease/Purchase Agreement and related documents recently presented to the City (collectively, the "Lease Agreements"), Zions First National Bank, as lessor, is to lease the Information Technology and Police Department Equipment specifically identified in the Lease Agreements for "Lease Payments" (set forth in an exhibit to Lease Agreements and defined in Ordinance No. 20 as Rental Payments) which are subject to annual appropriation by the City Council; and

WHEREAS, the City Council is desirous of reauthorizing and directing the transaction described above;

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

Section 1. Amendment of Section 1 of Ordinance No. 20. Section 1 of Ordinance No. 20 is hereby amended to read as follows:

The City Council hereby approves the lease-purchase of the Information Technology and Police Department Equipment identified in the Lease Agreements for an aggregate amount not to exceed \$350,000, with annual aggregate payments not to exceed \$128,000 and lease terms which shall not extend beyond calendar year 2013. The City Council hereby reaffirms its delegation to the Mayor, or in the absence thereof, the Mayor Pro Tem, of authority to determine the net effective

rate for the lease-purchase financing, which rate shall not be in excess of 4.75% per annum, and the final amounts of the Lease Agreements.

Section 2. Reaffirmation of Ordinance No. 20. The City Council hereby reaffirms the authorization, declarations, findings and determinations set forth in Ordinance No. 20, except as amended pursuant to Section 1 of this Ordinance.

Section 3. Effective Date. The Ordinance shall be effective thirty days after publication following final passage.

Introduced, read in full, and passed on first reading on the 1st day of March, 2010.

Published as a Bill for an Ordinance on the 5th day of March, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 3rd day of March, 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 1st day of March, 2010.

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: March 1, 2010	Agenda Item: 11 a iii	Subject: Broken T Englewood Indoor Golf Training Center
Initiated By: Department of Parks and Recreation		Staff Source: Jerrell Black, Director of Parks and Recreation Bob Spada, Golf Operations Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

2002 Approval of Learning Center contract - TNT
2008 Approval of Learning Center contract - McGetrick Golf Academy

RECOMMENDED ACTION

Staff recommends that City Council adopt a bill for an ordinance approving an agreement with Broken T Partners LLC to operate the Broken Tee Englewood Indoor Golf Training Center.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Broken Tee Golf Course indoor training center was part of the clubhouse expansion in 1995. Six hitting bays with two computer swing analyzers were put in place. While the facility has been a positive addition to the clubhouse, the revenue stream has been minimal. Monthly use passes were created in 1999 to generate participation and revenue in the facility. In the first year approximately ninety (90) passes were sold. The following year that number was cut in half. At that time, it was realized that in order for the training center to be successful, additional staff was needed to be on site during operating hours due to golf swing analysis and to operate the computers properly. Revenue from the Learning Center was approximately \$10,000 annually.

In October of 2002, Tim Grove (owner TNT) leased this space to offer indoor lessons, club fittings and golf training sessions. TNT decided to terminate their contract in the fall of 2006 due to lack of sales and usage.

In April 2007, staff sent out an RFI (Request for Information) to determine if any area retail businesses were interested in a location at the golf course. Sixteen vendors picked up the documents but none were submitted. At that time, the golf course was undergoing a renovation and most of the facilities were closed.

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

McGetrick Golf Academy terminated its contract with the City effective November 30th 2009. Steve Buretz and Kevin Hollern, investors with MGA, approached staff and proposed a new agreement that includes many of the same benefits that are in place plus new program ideas. These benefits include discounted lessons to Englewood residents, free Hole-N-One instruction, emphasis on junior golf, improvements to the facility, seeking sponsorships for the Hole-N-One program and other benefits.

FINANCIAL IMPACT

The term of the agreement is for one year with two year renewal options by Broken T Partners LLC, and two additional year options by agreement of both parties. Broken Tee Englewood will receive \$20,000 plus 20% of utility costs for the duration of the contract.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 5
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF ENGLEWOOD AND BROKEN T PARTNERS LLC FOR A TRAINING CENTER AT BROKEN TEE ENGLEWOOD.

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

WHEREAS, while the facility has been a positive addition to the Clubhouse although the revenue stream has been minimal; and

WHEREAS, TNT leased the Training Center offering indoor lessons, club fittings and golf training sessions from 2002 to 2006; and

WHEREAS, TNT decided to terminate their contract in the fall of 2006; and

WHEREAS, in 2007 a Request for Information was sent to determine if any area golf related retail businesses were interested in a location at the Englewood golf course; and

WHEREAS, proposals were received and interviews were held; and

WHEREAS, the Englewood City Council had previously approved an Agreement with McGetrick Golf Academy to lease and manage the Training Center located at the Broken Tee Englewood; and

WHEREAS, McGetrick Golf Academy terminated their contract as of November 30, 2009; and

WHEREAS, Broken T Partners LLC submitted a proposal and was selected for the following reasons: many of the same benefits that are currently in place, discounted lessons to all Englewood residents, free instruction to our Hole-N-One with emphasis on junior golf, improvements to the facility, seeking sponsorships for the Hole-N-One program and other benefits; and

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

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

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

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

Introduced, read in full, and passed on first reading on the 1st day of March, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 5th day of March, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 3rd day of March, 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 1st day of March, 2010.

Loucrishia A. Ellis

AGREEMENT

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

WITNESSETH:

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

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

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

Section 1. STATEMENT OF INTENT.

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

Section 2. GRANT.

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

Section 3. DEFINITION OF PREMISES.

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

Section 4. TERM OF AGREEMENT.

The City hereby grants to Trainer the right to hold the Leased Premises pursuant to the terms of this Lease for a one (1) year Lease with two (2) one (1) year renewals at the option of the Trainer and with two (2) additional optional one (1) year periods by agreement of both parties. If the Trainer intends to renew the contract they must inform the Director of Parks and Recreation ninety (90) days prior to termination of the Lease. The City shall inform Trainer of its decision through the Director of Parks and Recreation.

Section 5. USE OF THE PREMISES.

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

Section 6. SERVICES.

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

Section 7. HOURS OF OPERATION.

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

Section 8. MAINTENANCE, REPAIR AND REPLACEMENT.

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

Section 9. CLEANLINESS GUIDELINES.

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

Section 10. RENT.

- a) Trainer shall pay rent to the City:
 - i. Commencing on January 1st, 2010, the Trainer shall pay \$20,000 per year, in accordance with the following schedule:

April through November: \$2,500 per month.

Rent can be prepaid anytime .
 - ii. Trainer will provide reasonable efforts to attain sponsorships for the Hole-N-One Jr. Program.

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

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

Section 11. UTILITIES.

The Trainer will be responsible for twenty percent (20%) of all utility costs for the entire building. In the event of major changes to the existing facility which increases utility costs, this Section needs to be adjusted.

Section 12. PARKING FACILITIES.

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

Section 13. SIGNS.

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

Section 14. ADDITIONAL FACILITIES AND EQUIPMENT.

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

Section 15. SECURITY.

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

Section 16. PERSONNEL.

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

Section 17. LICENSES AND PERMITS.

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

Section 18. INSURANCE/INDEMNIFICATION.

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

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

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

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

- vi. The parties hereto understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$1,000,000 per person and \$1,000,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to the parties, their officers, or their employees.

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

Section 19. FIRE OR NATURAL DISASTERS.

In the event fire or natural disaster renders the Club House and its Training Center facilities inoperable, the Trainer shall be released from the terms of compensation to be paid the City until such time as the Club House and its Training Center facilities are declared open and operable by the City. If in the event such Training Center facilities are not open and operable within a period of thirty (30) days from the time of such disaster, Trainer has the right to terminate its contract and Lease with the City under Section 24, Termination of Lease, contained herein.

Section 20. TERMINATION OF LEASE.

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

Section 21. DELIVERY AND REMOVAL UPON TERMINATION.

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

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

Section 23. ATTORNEY FEES PREVAILING PARTY.

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

Section 24. NOTICES.

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

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

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

with a copy to:

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

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

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

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

Section 25. ENTIRE AGREEMENT.

This Lease, together with the Exhibit A attached hereto:

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

Section 26. SEVERABILITY.

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

Section 27. CAPTIONS.

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

Section 28. BINDING EFFECT.

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

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

CITY OF ENGLEWOOD, COLORADO
"City"

By: _____
Jerrell Black, Director of Parks & Recreation

BROKEN T PARTNERS LLC
"Trainer"

By: _____
Manager

STATE OF Colorado,
COUNTY OF Arapahoe, ss.

The foregoing instrument was acknowledged before me this 18 day of February, 2010, by Stephen W. Buetz as Manager of Broken T Partners LLC.

Notary Public

My Commission expires: 12/17/2012

COUNCIL COMMUNICATION

Date: March 1, 2010	Agenda Item: 11 c i	Subject: Professional Services Agreement – Broadway Post Office Historic Designation Project
Initiated By: City Council		Staff Source: Michael Flaherty, Deputy City Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council discussed the issue of historic designation for the Broadway Post Office during the Study Session on February 22, 2010 and directed staff to proceed with the project.

RECOMMENDED ACTION

Recommendation to approve, by motion, a Professional Services Agreement with Historic Preservation Consultant Diane Wray Tomasso to pursue a nomination to have Englewood's downtown Broadway Post Office added to National Register of Historic Places.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

When the U.S. Postal Service announced late last year that it was considering the possibility of closing and selling the Broadway Post Office in downtown Englewood, the community rallied to help save the Post Office. During that process, it became abundantly clear that efforts must be undertaken to preserve this historic landmark. City Council followed up with correspondence to both Congresswoman DeGette's office and the United States Postal Service regarding the pursuit of historic designation for this building. Both have expressed a willingness to support this undertaking.

The City of Englewood was approached by Historic Preservation Consultant Diane Wray Tomasso with a proposal to prepare a nomination for inclusion of the Broadway Post Office on the National Register of Historic Places. The proposal also includes community meetings to gather support for the nomination and pursue fund-raising efforts to help pay for it.

Previous estimates from the U.S. Postal Service indicated that the costs associated with a nomination would be approximately \$25,000. Diane Wray Tomasso's services would be provided to the City at a fee of \$5,300. The City would be responsible for \$2,800; the remaining compensation (\$2,500) would be contingent upon fund-raising efforts. Given Ms. Wray Tomasso's modest consulting fees, coupled with her local background and familiarity with this particular project, staff believes it is in the City's best interests to enter into a contract with her to further research and prepare a National Register nomination for Englewood's Broadway Post Office.

FINANCIAL IMPACT

The Community Development Department has sufficient funds in its 2010 Budget to pay for the City's portion of the associated fees.

LIST OF ATTACHMENTS

Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this ____ day of _____, 20__, (the "Effective Date") by and Diane Wray Tomasso _____ ("Consultant"), and The City of Englewood, Colorado, a municipal corporation organized under the laws of the state of Colorado ("City").

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

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

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

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

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

other Intellectual Property Rights created, developed or prepared, documented and/or delivered by Consultant, pursuant to the provision of the Services.

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

3. Performance of Services.

(a) **Performance.** Consultant shall perform the Services necessary to complete all projects outlined in a Statement of Work in a timely and professional manner consistent with the specifications, if any, set forth in the Statement of Work, and in accordance with industry standards. Consultant agrees to

exercise the highest degree of professionalism, and to utilize its expertise and creative talents in completing the projects outlined in a Statement of Work.

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

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

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

5. Taxes. City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be

included in quoted prices. City shall not be obligated to pay or reimburse Consultant for any taxes attributable to the sale of any Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Consultant. Upon written notification by City and subsequent verification by Consultant, Consultant shall reimburse or credit, as applicable, City in a timely manner, for any and all taxes erroneously paid by City. City shall provide Consultant with, and Consultant shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

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

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

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

(a) Convenience. City may, without cause and without penalty, terminate the provision of Services under any or all Statements of Work upon thirty (30) days prior written notice. Upon such termination, City shall, upon receipt of an invoice from Consultant, pay Consultant for Services actually rendered prior to the effective date of

such termination. Charges will be based on time expended for all incomplete tasks as listed in the applicable Statement of Work, and all completed tasks will be charged as indicated in the applicable Statement of Work.

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

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

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

(e) TABOR. The parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of

TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period ending upon the next succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

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

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

10. Staff. Consultant is an independent consultant and neither Consultant nor Consultant's staff is, or shall be deemed to be employed by City. City is hereby contracting with Consultant for the Services described in a Statement of Work and Consultant reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by

Consultant or Consultant's staff, and City shall not be required to hire, supervise or pay any assistants to help Consultant perform the Services under this Agreement. Except to the extent that Consultant's work must be performed on or with City's computers or City's existing software, all materials used in providing the Services shall be provided by Consultant.

11. Confidential Information.

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

Agreement shall restrict either party with respect to information or data identical or similar to that contained in the Confidential Information of the other party but which (1) that party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that party; (3) is subsequently furnished rightfully to that party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure.

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

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

the expiration or termination of this Agreement for any reason.

12. Project Managers. Each party shall designate one of its employees to be its Project Manager under each Statement of Work, who shall act for that party on all matters under the Statement of Work. Each party shall notify the other in writing of any replacement of a Project Manager. The Project Managers for each Statement of Work shall meet as often as either one requests to review the status of the Statement of Work.

13. Warranties.

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

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

(c) Personnel. Unless a specific number of employees is set forth in the Statement of Work, Consultant warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement or as set forth in the Statement of Work.. During the course of performance of Services, City may, for any or no reason, request

replacement of an employee or a proposed employee. In such event, Consultant shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. Consultant shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies.

(d) Compensation and Benefits.

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

14. Indemnification.

(a) Consultant Indemnification.

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

(b) Infringement. Consultant will indemnify, defend, and hold City harmless from all Indemnifiable Losses arising from any third party claims that any Work Product or methodology supplied by Consultant infringes or misappropriates any Intellectual Property rights of any third party; provided, however, that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on: (1) use of the Work Product in combination with products or services not provided by Consultant to the extent that such infringement or misappropriation would have been avoided if such other products or services had not been used; (2) any modification or enhancement to the Work Product made by City or anyone other than Consultant or its sub-consultants; or (3) use of the Work Product other than as permitted under this Agreement.

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

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

from time to time amended, or otherwise available to City, its officers, or its employees.

15. Insurance.

(a) Requirements. Consultant agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance during the term of this Agreement:

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

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

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

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

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

(c) **Certificates.** Consultant shall provide City with certificates of insurance evidencing compliance with this Section 15 (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Certificates of insurance will list the City of Englewood as an additional insured. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially change the insurance afforded under the above policies unless thirty (30) days' notice of such cancellation, reduction or material change has been provided to City.

16. **Rights in Work Product.**

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

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

17. **Relationship of Parties.** Consultant is acting only as an independent consultant and does not undertake, by this Agreement, any Statement of Work or otherwise, to perform any obligation of City, whether regulatory or contractual, or to assume any responsibility for

City's business or operations. Neither party shall act or represent itself, directly or by implication, as an agent of the other, except as expressly authorized in a Statement of Work.

18. **Complete Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the matters covered herein.

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

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

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

22. **Sub-consultants.** Consultant may not subcontract any of the Services to be provided hereunder without the prior written consent of City. In the event of any permitted

subcontracting, the agreement with such third party shall provide that, with respect to the subcontracted work, such sub-consultant shall be subject to all of the obligations of Consultant specified in this Agreement.

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

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

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

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

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

any provision of this Agreement be taken or held to be a waiver of the provision itself.

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

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

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

31. Media Releases. Except for any announcement intended solely for internal distribution by Consultant or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Consultant, all media releases, public

announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Consultant or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of City, shall be coordinated with and approved in writing by City prior to the release thereof. Consultant shall not represent directly or indirectly that any Services provided by Consultant to City has been approved or endorsed by City or include the name, trade mark, or symbol of City on a list of Consultant's customers without City's express written consent.

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

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

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

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

(b) **Verification:** Consultant will participate in either the E-Verify program or the Department program, as defined in C.R.S. 8-

17.5-101 (3.3) and 8-17.5-101 (3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services. Consultant is prohibited from using the E-Verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

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

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

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

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

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

in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract under this Paragraph 34.

35. The Consultant is hereby notified of the requirements of Colorado Constitutional Amendment 54, effective December 31, 2008, which limits the rights of the holder of a sole source government contract to make political contributions.

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

CITY OF ENGLEWOOD, COLORADO

By: _____

Title: _____

ATTEST:

City Clerk

(Consultant Name)

Address

City, State, Zip Code

By: _____

Title: _____

SCHEDULE A

**SCOPE OF SERVICES FOR BROADWAY POST OFFICE PROJECT
DIANE WRAY TOMASSO , CONSULTANT**

Diane Wray Tomasso will make a series of three brief presentations to citizens and downtown property and business owners to assist the City of Englewood in raising matching funds for the preparation of a National Register of Historic Places nomination for the Broadway Post Office.

Concurrently, Diane Wray Tomasso will prepare a National Register nomination for the Englewood Post Office.

Diane Wray Tomasso will interface as necessary with the City of Englewood, Colorado Historical Society, U.S. Post Office and National Register of Historic Places to submit the application and assist and coordinate the required state and federal nomination and review process.

The City of Englewood understands that the National Park Service alone determines whether or not a property will be listed on the National Register, and that the preparation of a National Register nomination cannot guarantee National Register listing of the Englewood Post Office.

At the completion of this project, Diane Wray Tomasso (Consultant), shall prepare a report and bill the City for the services described herein. In addition, consultant shall provide an itemized statement of related reimbursable expenses.

Consultant's compensation for services described in this statement of work shall be as follows:

1. For consulting services for the Broadway Post Office Project,
Two-thousand, five hundred dollars \$ 2,500.00
2. For related reimbursable expenses, not to exceed
Three-hundred dollars \$ 300.00
3. Any Public contributions to a City "donor" fund
set up for the Broadway Post Office Project in an
amount not to exceed two-thousand, five-hundred
dollars. \$ 2,500.00

The amounts for items one and two are currently budgeted in the Community Development department. The compensation from the "donor" fund are contingent upon the City receiving such contributions.

Because of the limited scope of this contract, the City agrees that in lieu of the insurance requirements of Paragraph 15 in this professional services agreement, proof of Consultant's umbrella policy shall be provided to the City.

The City agrees that any contributions to the Broadway Post Office Project Donor fund in excess of the \$2,500.00 noted above, shall be retained by the City for related historical preservation uses as determined by City Council.



ERIC M. ZIPORIN | eziporin@sgrllc.com
 MONICA N. KOVACI | mkovaci@sgrllc.com

February 19, 2010

VIA ELECTRONIC AND U.S. MAIL

Dan Brotzman
 City of Englewood, City Attorney
 1000 Englewood Parkway
 Englewood, CO 80110

Dianne Hall
 Colorado Intergovernmental Risk Sharing Agency
 3665 Cherry Creek North Drive
 Denver, Colorado 80209

RE: Claimant : Timothy Scott Parks
 Member : City of Englewood
 Claim No. : 5009470
 Trial Date : March 15, 2010

Dear Mr. Brotzman and Ms. Hall:

The purpose of this letter is to provide you with a brief case background, an update as to case status, as well as to inform you of the proposed settlement agreement we have reached with Plaintiff Timothy Parks.

I. Case Background

On May 9, 2006 at approximately 11:45 p.m., Officer Eric Zasada observed a truck traveling eastbound on E. Oxford Ave. in the City of Englewood. Officer Zasada stopped the truck after he observed the driver fail to use a signal while making a turn and on the belief that the truck had expired license plates. Upon contacting Plaintiff, who was the driver, Officer Zasada believed that there was a strong odor of alcohol on Plaintiff's breath. Plaintiff did not have a driver's license, which had been revoked for previous alcohol convictions, and the registration on the vehicle had expired in 2003. Plaintiff also indicated that he did not have proof of insurance. Officer Zasada arrested Plaintiff and conducted an inventory search of the truck, following which Sergeant Michael O'Connor impounded the truck. The search of Plaintiff's truck yielded drugs and drug paraphernalia.

Plaintiff was charged with multiple counts of drug possession. At the suppression hearing, however, the trial court dismissed the criminal case upon finding that the prosecution had failed to show that Officer Zasada had an articulable and specific basis in fact for suspecting Plaintiff of criminal activity to justify the traffic stop. This ruling was based on Officer Zasada's testimony that the only reason he stopped Plaintiff was because of his belief that the license plate was expired. The license plate had a 2006 sticker and, on its face, it did not appear to be expired. Further, the officer testified that he could not recall whether he ran a license plate check and obtained results of same before conducting the traffic stop. Officer Zasada also made no mention of Plaintiff's failure to use a signal while making a turn, which would have provided him with a lawful basis to conduct the stop.

Following dismissal of the criminal case, Plaintiff sued a number of police officers who were involved in the arrest. Following issues with proper service of all the Defendant officers and the Court's dismissal of same, the only remaining Defendants are Officer Zasada and Sergeant O'Connor. Plaintiff's claims against Defendants were as follows: (1) malicious prosecution; (2) unlawful traffic stop; (3) false arrest; and (4) unlawful search.

II. Case Status

On October 30, 2009, we filed a Motion for Partial Summary Judgment and requested that all claims against Sergeant O'Connor be dismissed as he had no personal participation in the stop of Plaintiff's vehicle, his arrest, or the vehicle search. We also sought dismissal of the malicious prosecution claim against Officer Zasada because the district attorney, not the officer, caused Plaintiff's criminal prosecution and there was no evidence that the officer acted with malice.

The Court issued an Order on February 16, 2010 granting our Motion in its entirety. The Order is enclosed for your review. The only remaining claims that could proceed to trial are the unlawful traffic stop, false arrest, and unlawful search claims against Officer Zasada.

Though we are prepared to go to trial and believe in a likely defense verdict, Plaintiff has raised some issues that could result in a finding of liability for Officer Zasada. It would be Officer Zasada's testimony at trial that he conducted the initial traffic stop based on observing Plaintiff's failure to use a turn signal while making a turn. During the criminal case, Officer Zasada based the stop on expired license plates but could not recall at trial (nor can he now) if he ran the plate prior to making the stop. In addition, there is no mention in the police report, dispatch records, or the officer's testimony in the criminal case of the purported turn signal violation. In fact, Officer Zasada testified at the suppression hearing that the license plates were the only reason he conducted the traffic stop. The record established to date would present us with a difficult hurdle at trial on the unlawful traffic stop claim. Additionally, Plaintiff claims that the police officers had no reason to impound his vehicle, which the inventory search was based upon. Plaintiff claims that his car was lawfully parked in front of his house, it did not impede traffic, and he would have normally parked the car in that spot. Therefore, if there was no need to move the car, there was no need for it to be impounded and searched.

If the jury believes Plaintiff's version of the facts and finds that Officer Zasada had no reasonable basis for conducting the traffic stop, the jury could potentially award Plaintiff

compensatory damages resulting not only from the stop, but also from all actions that occurred as a result of the stop, such as the arrest, search, and Plaintiff's incarceration for seven months. Plaintiff has indicated that his out-of-pocket damages resulting from the arrest are \$80,000, which include damages associated with storage fees, paying on a lease agreement, "lost vehicles," hiring movers, and attorney fees in the criminal case (in the amount of \$12,500). While most of these claims have not been appropriately substantiated by any documentation, it would appear that Plaintiff would likely recover the \$12,500 in attorney fees were he to prevail on any claim at trial. Plaintiff also seeks damages for emotional distress and punitive damages.

Realistically, we believe that even if the jury would find for Plaintiff on the traffic stop claim, they will not award him much money considering that he was found with drugs and drug paraphernalia and that he is a prior felon. Our best estimate is that a damages award would not exceed \$20,000.

III. Settlement Strategy

Considering the new case status, Plaintiff is interested in settlement. Plaintiff ultimately agreed to dismiss all his claims arising out of his arrest in exchange for payment in the amount of \$12,500, and our agreement to waive our attorneys' fees and costs. This settlement amount is dramatically lower than Plaintiff's last demand of \$80,000.

In making the determination whether to settle for this amount, please note that we are fully prepared to try this case and do not believe there is a great risk of a finding of liability against Officer Zasada. With that said, however, you must also consider the costs associated with trying this case. Also, our only remaining client, Officer Zasada, has expressed a strong desire to have this case settled.

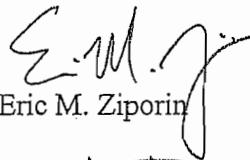
At this stage, we are a little less than one month from trial, which is scheduled to start on March 15, 2010, and there are many tasks that still need to be completed. We still need to finalize jury instructions, verdict forms, voir dire questions, exhibit and witness lists, attend the Final Trial Preparation Conference, and prepare ourselves and all our witnesses for trial. We have filed a Notice of Settlement, which is also enclosed, notifying the Court of the settlement discussions and requesting that case deadlines be vacated until a final decision is made as to settlement. If the case proceeds to trial, our costs and attorney fees to fully prepare for trial and try the case will be \$12,000-\$15,000. There is also the possibility that Plaintiff, who is currently proceeding without an attorney, will find an attorney to take his case, which may result in a reset trial date and additional costs.

As such, if the City takes an economic view of the case, settlement of this matter for \$12,500 makes financial sense. Furthermore, settlement will eliminate the possibility of any liability against Officer Zasada. If, however, the City wants to move forward with trial as a matter of principle, we are fully prepared to try the case.

We hope this letter has sufficiently apprised you as to case status and the proposed settlement agreement and we look forward to hearing from you as to how to proceed. If you have any questions or if we can provide you with any additional information, please feel free to contact us. Thank you.

Very truly yours,

SENER GOLDFARB & RICE, L.L.C.



Eric M. Ziporin



Monica N. Kovaci

EMZ:MNK

cc (w/ enclos.):

Pat Merrill, CIRSA

Tom Vandermee

Joan Weber