Agenda for the Regular Meeting of the Englewood City Council Monday, April 5, 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 March 22, 2010.

6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)

   a. Karinne Wiebold, Arapahoe County Community Development Administrator, will present information to City Council about Fair Housing Month.

7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City 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. Proclamation declaring the week of April 11 through April 18th as Days of Remembrance for victims of the Holocaust.

   b. Proclamation declaring April as Fair Housing Month.

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.

c. Proclamation declaring Friday, April 16th as Arbor Day.

d. Proclamation declaring April 9th as Jazz Day and April as Jazz Appreciation Month.

9. Consent Agenda Items.

a. Approval of Ordinances on First Reading.

b. Approval of Ordinances on Second Reading.

i. Council Bill No. 6, authorizing an Intergovernmental Agreement with the City of Sheridan for Englewood to provide vehicle maintenance services.

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. 7 — Recommendation from the Parks and Recreation Department to adopt a bill for an ordinance approving a Cooperative Agreement with Denver Urban Gardens for development of a Community Garden at the Englewood Depot site. **STAFF SOURCES: Dave Lee, Manager of Open Space and Jerrell Black, Director of Parks and Recreation.**

ii. Council Bill No. 8 — Recommendation from the Utilities Department to adopt a bill for an ordinance approving a License - City Ditch Crossing Agreement with Cherry Hills Village for a 10" sanitary sewer main crossing the City Ditch. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

b. Approval of Ordinances on Second Reading.

i. Council Bill No. 4, an emergency ordinance amending Ordinance 20, Series of 2009 regarding the Lease-Purchase of certain equipment for City Departments.

c. Resolutions and Motions.

i. Recommendation from the Utilities Department to approve, by motion, the purchase of one Freightliner M2 106 Work Truck. Staff recommends the contract be awarded to Transwest Trucks under the Colorado State Bid in conjunction with the City of Boulder award in the total amount of $132,502. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

ii. Recommendation from the Utilities Department to approve, by motion, the purchase of one, new Rubber-Tired Wheel Loader/Backhoe. Staff recommends the contract be awarded to the lowest responsible bidder, Wagner Equipment Co., in the total amount of $153,285. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

iii. Recommendation from the Utilities Department to approve, by motion, the purchase of water meters and electronic remote transmitters. Staff recommends the contract be awarded to National Meter and Automation, Inc. in the amount of $46,601.10, and placing the order in conjunction with Denver Water Board's Purchase Order #104918 for the best quantity price. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

iv. Recommendation from the Utilities Department to approve, by motion, a proposal for the Allen Water Filtration Plant residuals removal and disposal of approximately 1,600 cubic yards of production. Staff recommends the contract be awarded to the lowest responsible bidder, E.T. Technologies, Inc., in the amount of $83,520. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

v. Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to approve, by motion, Amendment #17 to the Agreement for Engineering Services with Brown and Caldwell for construction management services for the Solids Contact Tanks Air Pipe and Storm Water Projects at the Littleton/Englewood Wastewater Treatment Plant at a cost of $136,588. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

vi. Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to approve, by motion, a Phase 2 Memorandum of Understanding with Xcel Energy to obtain consultative support services offered through the Process Efficiency program. The maximum cost of this program is $7,500. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

12. General Discussion.

a. Mayor's Choice.

b. Council Members' Choice.

i. A resolution recommending the establishment of a temporary suspension or moratorium on enforcement of select provisions of the Englewood Municipal Code pertaining to wall murals for a period of six months.

13. City Manager's Report.

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.

14. City Attorney's Report.

15. Adjournment

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

- Alliance for Commerce in Englewood Committee meeting of January 14, 2010.
- Code Enforcement Advisory Committee meeting of January 20, 2010.
- Englewood Housing Authority meetings of January 6, 2010
- Liquor Licensing Authority Telephone Polls of February 17, March 3, and March 17, 2010.
- NonEmergency Employees Retirement Board meeting of November 10, 2009.
- Planning and Zoning Commission meetings of February 17 and March 2, 2010.
- Transportation Advisory Committee meeting of January 14, 2010
- Urban Renewal Authority meeting of January 13, 2010

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.

PROCLAMATION

WHEREAS, the Holocaust was the state-sponsored, systematic persecution and annihilation of European Jewry by Nazi Germany and its collaborators between 1933 and 1945; and

WHEREAS, Jews were the primary victims - six million were murdered, and millions of others targeted for destruction or decimation for racial, ethnic, religious or national reasons under Nazi tyranny; and

WHEREAS, the history of the Holocaust offers an opportunity to reflect on the moral responsibilities of individuals, societies and governments; and

WHEREAS, we the people of the City of Englewood, Colorado should always remember the terrible events of the Holocaust and remain vigilant against hatred, persecution and tyranny; and

WHEREAS, we the people of the City of Englewood, Colorado should actively rededicate ourselves to the principles of individual freedom in a just society; and

WHEREAS, the Days of Remembrance have been set aside for the people of the City of Englewood to remember the victims of the Holocaust as well as to reflect on the need for respect of all peoples; and

WHEREAS, the theme pays tribute to those who work tirelessly for the cause of justice, both then and now; and

WHEREAS, reflection on the prosecution of Nazi perpetrators reminds us that we must take action to prevent atrocities and vigorously pursue justice for the victims of such acts of hatred and inhumanity; and

WHEREAS, in accordance with its Congressional mandate, the Holocaust Museum will lead the nation in the annual days of Remembrance of the Victims of the Holocaust; and

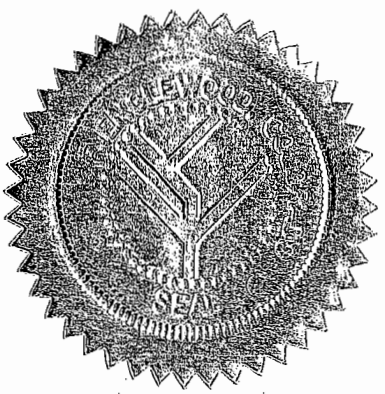
WHEREAS, pursuant to an Act of Congress (Public Law 96-388, October 7, 1980) the United States Holocaust Memorial Council designates the Day of Remembrance of the Victims of the Holocaust to be commemorated this year from Sunday , April 11 through Sunday, April 18, 2010, including the Day of Remembrance known as *Yom Hashoah*, April 11.

NOW THEREFORE, I, James Woodward, Mayor of the City of Englewood, Colorado, hereby proclaim **the week of Sunday, April 11 through Sunday, April 18, 2010** as

DAYS OF REMEMBRANCE

in memory of the victims of the Holocaust and in honor of the survivors, as well as the rescuers and liberators and further proclaim that we, as citizens of the City of Englewood, Colorado should strive to overcome intolerance and indifference through learning and remembrance.

GIVEN under my hand and seal this 5th day of April, 2010.



James K. Woodward, Mayor

PROCLAMATION

WHEREAS, the Congress of the United States passed the Civil Rights Act of 1968, of which Title VIII declared that the law of the land would now guarantee the rights of equal housing opportunity; and

WHEREAS, the City of Englewood, Colorado is committed to the mission and intent of Congress to provide fair and equal housing opportunities for all, and today, many realty companies and associations support fair housing laws; and

WHEREAS, the Fair Housing groups and the U.S. Department of Housing and Urban Development have, over the years, received thousands of complaints of alleged illegal housing discrimination and found too many that have proved upon investigation to be violations of the fair housing laws; and

WHEREAS, equal housing opportunity is a condition of life in our City that can and should be achieved; and

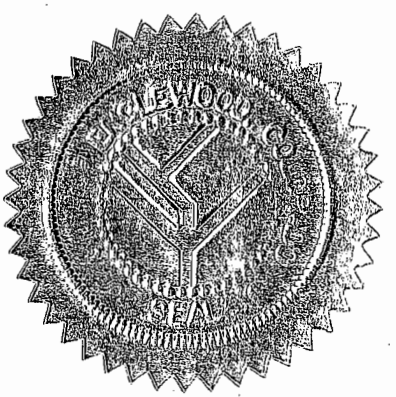
WHEREAS, April has traditionally been designated as Fair Housing Month in the United States;

NOW THEREFORE, I, James K. Woodward, Mayor of the City of Englewood, Colorado, hereby proclaim the **month of April, 2010** as:

FAIR HOUSING MONTH

in the City of Englewood, Colorado. I urge all Englewood citizens to join in this observance by resolving to fight discrimination in their personal daily lives and by making themselves aware of the Fair Housing Law and the ways in which it applies to our community.

GIVEN under my hand and seal this 5th day of April, 2010.



James K. Woodward, Mayor

PROCLAMATION

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

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

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

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

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

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

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

WHEREAS, the City of Englewood, Colorado has been recognized for 25 consecutive years as a Tree City USA by The National Arbor Day Foundation and desires to continue its tree-planting ways; and

WHEREAS, the State of Colorado will celebrate Arbor Day on April 16th, 2010;

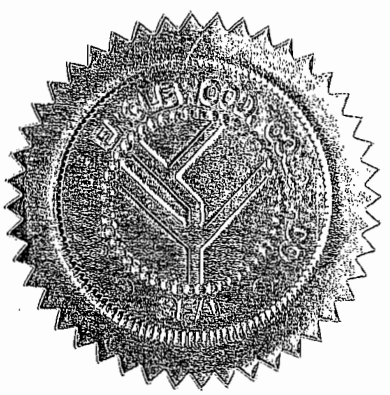
NOW THEREFORE, I, James K. Woodward, Mayor of the City of Englewood, Colorado, hereby recognize

ARBOR DAY

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

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

GIVEN under my hand and seal this 5th day of April, 2010.



James K. Woodward, Mayor

PROCLAMATION

WHEREAS, jazz is an original American art form that affirms the noblest aspirations of our national character, individual discipline, perseverance, and innovation; and

WHEREAS, jazz has produced some of America's leading creative artists and ranks as one of America's greatest exports to the world; and

WHEREAS, jazz has inspired dancers, choreographers, poets, novelists, filmmakers, classical composers, and musicians in many other kinds of music; and

WHEREAS, arts education and an appreciation for the contributions of all American art forms is fundamental to the people of the City of Englewood; and

WHEREAS, America's jazz heritage deserves to be appreciated as broadly as possible and should be part of education for both America's children and adults; and

WHEREAS, jazz has spoken eloquently of freedom for people in the United States and abroad, and has become an international language that bridges differences and brings people of all races, ages, and backgrounds together; and

NOW THEREFORE, I, James Woodward, Mayor of the City of Englewood, Colorado, hereby proclaim Friday, **April 9, 2010 as:**

JAZZ DAY

and the **month of April as:**

JAZZ APPRECIATION MONTH

I urge all citizens to honor and recognize the outstanding work of all jazz artists, educators, and enthusiasts in the City of Englewood.

GIVEN under my hand and seal this 5th day of April, 2010.

ENGLEWOOD COLORADO SEAL

James K. Woodward, Mayor

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2010

COUNCIL BILL NO. 6
INTRODUCED BY COUNCIL
MEMBER PENN

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ENGLEWOOD, COLORADO, AND THE CITY OF SHERIDAN, COLORADO, WHEREBY THE CITY OF ENGLEWOOD WILL PROVIDE THE CITY OF SHERIDAN WITH VEHICLE MAINTENANCE.

WHEREAS, the City of Englewood had agreements with other governmental entities for the servicing of the vehicles of those entities since 1992; and

WHEREAS, the City of Englewood and the City of Sheridan entered into an intergovernmental agreement whereby Englewood provided Sheridan with vehicle maintenance by the passage of Ordinance No. 3, Series of 2004/2005; and

WHEREAS, the Contract authorized the extension of the services for three additional one year periods to be negotiated by the City Manager or his designee and extensions to the Contract were completed for the years 2006, 2007 and 2008; and

WHEREAS, the City of Englewood and the City of Sheridan desire to continue such agreement whereby Englewood shall provide the City of Sheridan with maintenance of their vehicles; and

WHEREAS, the passage of this proposed Ordinance authorizes an Intergovernmental Agreement between Englewood and the City of Sheridan for maintenance of their vehicles for a one year period and includes a provision for an extension of services for three additional one year periods;

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

Section 1. The intergovernmental agreement between the City of Sheridan, Colorado, and the City of Englewood, Colorado, for vehicle maintenance, attached as "Exhibit A", is hereby accepted and approved by the Englewood City Council.

Section 2. The Mayor is authorized to execute and the City Clerk to attest and seal the intergovernmental Agreement for and on behalf of the City of Englewood, Colorado.

Section 3. The City Manager is authorized to negotiate and sign and the City Clerk to attest and seal any extensions of this Contract for three additional one year periods for and on behalf of the City of Englewood, Colorado;

Introduced, read in full, and passed on first reading on the 22nd day of March, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 26th day of March, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 24th day of March, 2010 for thirty (30) days.

Read by title and passed on final reading on the 5th day of April, 2010.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2010, on the 9th day of April, 2010.

Published by title on the City's official website beginning on the 7th day of April, 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

EXHIBIT A

CONTRACT

THIS AGREEMENT, entered into this 24th day of February, 2010 by and between the City of Englewood, whose address is 1000 Englewood Parkway, Englewood, Colorado 80110 and the City of Sheridan, whose address is 4101 South Federal Boulevard, Englewood, Colorado 80110.

TERMS OF CONTRACT

NOW THEREFORE, IT IS AGREED by and between the City of Englewood and the City of the City of Sheridan that:

1. The City of Englewood, Colorado shall perform the following services:

   The City of Englewood shall perform all necessary repairs and maintenance on the vehicles owned by the City of the City of Sheridan to the satisfaction of the City of Sheridan, and the City of the City of Sheridan shall pay to the City of Englewood for such services the sum of sixty-eight dollars ($68.00) per hour, in addition to the cost to the City of Englewood of any parts or outside vendor charges plus thirty percent (30%) handling fee.

2. The City of Englewood will proceed with the performance of the services called for in Paragraph No. 1 on January 1, 2010 and the Contract shall terminate on December 31, 2010. Three additional one (1) year periods may be negotiated by the City Manager or his designee.

3. Some maintenance of the City of the City of Sheridan's vehicles shall be performed by the City of Englewood according to a schedule to be made by the City of The City of Sheridan and approved by the City of Englewood as part of this agreement, and shall include work requested by the City of Sheridan or work identified by Englewood during inspection of the vehicle.

4. The City of Englewood shall repair any vehicles of the City of The City of Sheridan delivered to the City of Englewood for that purpose in a good, workmanlike manner.

5. The City of Englewood and the City of the City of Sheridan agree not to: refuse to hire, discharge, promote, demote or discriminate in any matter of compensation; performance, services or otherwise, against any person otherwise qualified solely because of race, creed, sex, color, national origin or ancestry.

6. This Contract may not be modified, amended or otherwise altered unless mutually agreed upon in writing by the parties.

7. The City of Englewood by and through its employees and agents shall be considered for all purposes of the Contract, to be independent contractors and not employees of the City of The City of Sheridan.

8. The City of Sheridan by and through its employees and agents shall be considered for all purposes of the Contract, to be independent contractors and not employees of the City of Englewood.

9. The City of Englewood shall not assign or transfer its interest in the Contract without the written consent of the City of Sheridan. Any unauthorized assignment or transfer shall render the Contract null, void and of no effect as to the City of Sheridan.

10. Neither party shall not assign or transfer its interest in the Contract without the written consent of the other party. Any unauthorized assignment or transfer shall render the Contract null, void and of no effect.

11. The City of Englewood shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of the repairs under the Contract. The City of Englewood shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services related to the Contract.

12. Either party of the Contract may terminate the Contract by giving to the other party 30 days notice in writing with or without good cause shown. Upon delivery of such notice by the City of Sheridan to the City of Englewood and upon expiration of the 30 day period, the City of Englewood shall discontinue all services in connection with the performance of the Contract. As soon as practicable after receipt of notice of termination, the City of Englewood shall submit a statement, showing in detail the services performed under the Contract to the date of termination. The City of Sheridan shall then pay the City of Englewood promptly that proportion of the prescribed charges which the services actually performed under the Contract bear to the total services called for under the Contract, less such payments on account of the charges as have been previously made.

13. All notices and communications under the Contract to be mailed or delivered to the City of Englewood shall be to the following address:

    Director of Public Works
    City of Englewood
    1000 Englewood Parkway
    Englewood, Colorado 80110

    All notices and communications pertaining to the Contract shall be mailed or delivered to the City of Sheridan at the following address:

    _____
    City of Sheridan
    4101 South Federal Boulevard
    The City of Sheridan, Colorado 80110

14. The terms and conditions of the Contract shall be binding upon each City, its successors and assigns.

15. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City of Sheridan and the City of Englewood.

16. This Contract is to be governed by the laws of the State of Colorado. Venue for any proceeding brought in connection with this Contract shall be in Arapahoe County.

17. This Contract may be executed in counterparts, using manual, electronic or facsimile signature, each of which shall be deemed an original and all of which together shall constitute one and the same document.

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

ATTEST:

Loucrishia A. Ellis, City Clerk

CITY OF ENGLEWOOD

James K. Woodward, Mayor

ATTEST:

Arlene Sage, City Clerk

CITY OF SHERIDAN

Dallas Hall, Mayor

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
April 5, 2010	11 a i	DUG Cooperative Agreement for a Community Garden

Initiated By:	Staff Source:
Parks and Recreation Department	Dave Lee, Manager of Open Space Jerrell Black, Director of Parks and Recreation

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved Resolution No. 64, Series of 2009, in support of the Englewood Community Garden on July 20, 2009.

RECOMMENDED ACTION

Staff recommends that Council adopt a bill for an ordinance approving a Cooperative Agreement between Denver Urban Gardens (DUG), a non-profit corporation, and the City of Englewood for development of a community garden at the Englewood Depot, 607 West Dartmouth Avenue.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In early 2009, the Cultural Arts Commission recognized the need for a community garden. A garden committee was formed with representatives from the Cultural Arts Commission, Parks and Recreation Commission, and Keep Englewood Beautiful.

The garden committee recommended to the Cultural Arts Commission that a community garden project move forward. An administrative steering committee was formed to oversee the planning, fund raising, and construction of the community garden.

Staff determined that it was in the City's best interest to form a partnership with Denver Urban Gardens (DUG) in developing the community garden. DUG has extensive expertise in planning and operating nearly 100 community gardens throughout Denver, Lakewood, Aurora, Commerce City, Arvada, Golden, and Sheridan.

The community garden steering committee and members of the Cultural Arts Commission met with City Council in Study Session on May 18, 2009 to discuss creating a sustainable garden and works of art for the garden. A community meeting was held on June 9, 2009 to gather input from the citizens of Englewood. On June 16, 2009, the Englewood Planning and Zoning Commission approved a conditional use permit for the community garden, located on the Depot property. On July 20, 2009, City Council adopted and approved Resolution No. 64, Series of 2009 in support of the community garden. A

second community meeting was held on March 2, 2010 to update citizens on the garden progress, hand out information on the garden, and answer questions.

FINANCIAL IMPACT

Denver Urban Gardens provided staff with an estimated garden construction budget of $25,730. To date, DUG has raised $6,280 in grant funding, with another $9,000 in grant applications pending.

Funds in the amount of $15,000 have been allocated in the 2010 Open Space Fund to assist with the development of the community garden.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2010

COUNCIL BILL NO. 7
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING A "COOPERATIVE AGREEMENT" BETWEEN THE CITY OF ENGLEWOOD AND DENVER URBAN GARDENS FOR THE LEASE, DEVELOPMENT AND MANAGEMENT OF A COMMUNITY GARDEN AT THE ENGLEWOOD DEPOT PROPERTY LOCATED AT 607 WEST DARTMOUTH AVENUE.

WHEREAS, the Englewood City Council supported the Englewood Community Garden with the passage of Resolution No. 64, Series of 2009; and

WHEREAS, in 2009 the Englewood Cultural Arts Commission recognized the need for a community garden and a "Garden Committee" was formed with representatives from the Cultural Arts Commission, the Parks and Recreation Commission and Keep Englewood Beautiful; and

WHEREAS, the "Garden Committee" recommended to the Cultural Arts Commission that a community garden project move forward with an administrative steering committee to oversee the planning, fundraising and construction of the Englewood Community Garden; and

WHEREAS, the City of Englewood owns the Englewood Depot property, located at 607 West Dartmouth Avenue, which was chosen for the Englewood Community Garden; and

WHEREAS, the City determined that it was in the City's best interest to form a partnership with Denver Urban Gardens (DUG) in developing the community garden because of their extensive expertise in planning and operating nearly 100 community gardens throughout Denver, Lakewood, Aurora, Commerce City, Arvada, Golden and Sheridan; and

WHEREAS, the passage of this Ordinance authorizes the "Cooperative Agreement" to lease and manage the Englewood Community Garden to be located at the Englewood Depot property located at 607 West Dartmouth Avenue;

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 "Cooperative Agreement" for the lease, development and managing of the Englewood Community Garden between the City and Denver Urban Gardens, attached hereto as Attachment 1.

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

Section 3. Pursuant to Article V, Section 40, of the Englewood Home Rule Charter, the City Council has determined that Attachment 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 5th day of April, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 9th day of April, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of April, 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 5th day of April, 2010.

Loucrishia A. Ellis

ATTACHMENT 1

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT, made and entered into as of the _____ day of _____, 2010, by and between the **CITY OF ENGLEWOOD**, a municipal corporation of the State of Colorado (the "City"), and **DENVER URBAN GARDENS**, a non-profit corporation, duly organized under the laws of the State of Colorado, and having a place of business located at 3377 BLAKE Street, Unit 113, Denver, Colorado 80205 ("DUG"), and jointly referred to as the "Parties".

WITNESSETH:

WHEREAS, the City owns certain land at the Englewood Depot Property, 607 W. Dartmouth Avenue; and

WHEREAS, DUG, as part of its program for developing and managing community gardens, desires to coordinate the development of a community garden at the Englewood Depot property; and

WHEREAS, the Charter of the City authorizes cooperative agreements such as this entered into by the City through its Department of Parks and Recreation for development of park and recreational facilities, programs and activities; and

WHEREAS, the City, by and through its Director of Parks and Recreation, finds and determines that, considering the size and location of the park, its environments, density of adjacent population and their public needs, it is proper and legitimate that a portion of the Englewood Depot property be set aside and used for a community garden, so long as the property remains available to all City residents and other members of the public, subject only to reasonable restrictions for safety as to access and use.

NOW, THERFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. **RIGHT TO OCCUPY & USE**: The City does hereby grant to DUG, and DUG does hereby accept from the City, the non-exclusive use of certain land at the Englewood Depot property, together with the improvements existing thereon, located in the City of Englewood, State of Colorado, and depicted in **Exhibit A** (Aerial Map), attached hereto and incorporated herein by this reference, for use as a community garden by neighborhood citizens.

The Premises are accepted by DUG "as is, where is" with no warranties or representations by the City as to habitability or usability of the Premises for the intended purpose.

2. **TERM OF AGREEMENT**: The term of this Cooperative Agreement shall be one year, commencing on _____, 2010, and shall terminate on _____, 2011, unless sooner terminated as hereinafter provided. The City hereby grants to DUG the right to hold the garden pursuant to terms of this agreement for a one (1) year with three (3) one (1) year renewals at the option of DUG and with three (3) additional optional one (1) year periods by agreement of both parties. The Director of Parks and Recreation must be notified in writing ninety (90) days prior to the contract extension.

3. **OBLIGATION OF DUG**:

A. DUG agrees to be responsible for developing and managing the garden area. The City will collect fees for the individual garden plots. These fees will be used to pay for water and to make improvements to the garden area. DUG may also apply for grants, donations and volunteers to develop the garden area. The community garden will be limited to the area and organized according to the layout depicted on **Exhibit B** (Garden Design) which is attached hereto and incorporated herein by reference. The City will maintain the Englewood Depot property outside of the Premises. Any changes to the garden design must be approved by the Director of Parks and Recreation or his designee.

B. DUG, in partnership with the City, shall be responsible for setting and enforcing guidelines, rules, standards, and practices for controlling the public's access, use and activities in and on the Premises for community garden purposes, all in accordance with this Cooperative Agreement. DUG shall obtain a waiver and release from each member of the public who elects to participate in gardening and related activities on the Premises. Said waiver and release shall include the City and City's officers, employees, and agents as entities and persons against whom claims by the participating members of the public are being waived and released.

C. DUG agrees not to use, or permit to be used, the described Premises for any purpose whatsoever prohibited by the laws of the United States or the State of Colorado or the Charter, ordinances, rules and regulations of the City, or policies of the Department of Parks and Recreation.

D. DUG shall coordinate the installation and major operational aspects of the community garden with a representative or representatives of the Department of Parks and Recreation designated by the Director of Parks and Recreation ("Park Representative").

E. DUG will be solely responsible for providing and paying for all improvements. DUG will coordinate with the City to provide and maintain all services for the community garden and associated activities. The City will pay for water and other utilities. DUG shall fully and promptly pay for all other expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the Premises and all activities conducted thereon, and City shall have no responsibility of any kind therefore.

F. DUG shall construct and maintain in a safe manner a sturdy perimeter fence around the garden area. Fence materials must be approved by the Park Representative. DUG shall be responsible for securing the site in accordance with DUG practices.

G. Vehicle access to the site will be limited to delivery of bulk materials or delivery of equipment to prepare the site, with such deliveries being made from the alley. There will be no regular vehicle access to garden sites for day-to-day garden care. Vehicle access will be coordinated, in advance, through the Parks Representative.

H. DUG shall maintain all existing improvements and future improvements on the Premises in good order and repair, including fences, at its own expense, and shall keep the area free of rubbish, trash and debris, and shall be responsible for damage to the Premises and the immediately surrounding park caused by misuse by its officers, employees, agents or invitees. All reasonable and prudent measures necessary shall be taken to assure that air and/or water erosion of soil are contained and mitigated. At the end of each growing season, DUG shall arrange for dead or dying vegetation to be removed or trimmed back, as appropriate, and all gardening tools and garden materials to be removed from the Premises or stored in an enclosed and secured garden shed on the Premises. All trash, debris, and waste must be containerized and regularly removed from the Premises by the Parks Division.

I. DUG shall have the right to place and use on the Premises equipment, fixtures, garden shed, and other items necessary for the operation of a community garden. Improvements, alterations, or installations resulting in major change to the Premises shall be subject to the approval of the Director of Parks and Recreation. Improvements, alterations, and installations of a permanent nature on the Premises shall not be removed by DUG at the

termination of this Cooperative Agreement. Equipment and property placed by DUG at its expense in, on, or about the Premises, including fixtures temporarily affixed to the realty but which may be removed without damage, shall remain the property of DUG, and DUG shall have the right to remove all such equipment, property, and temporary fixtures and shall so promptly remove at the termination of the Cooperative Agreement.

J. No non-organic pesticides, herbicides, or other chemicals intended to kill or control insects, vermin, weeds, or unwanted vegetation and no chemical fertilizers shall be brought to, kept, or used at the community garden. DUG shall be responsible for strictly enforcing this prohibition. Organic pesticides, herbicides, and fertilizers shall be utilized and applied sparingly and in accordance with good gardening practices and manufacturer's directions and shall be stored in leak-proof containers or off-site. The Park Representative shall have the authority to specify or limit the use of any organic pesticides, herbicides, or fertilizers.

K. Any water conservation restrictions or requirements imposed by the City shall be strictly applied and enforced by DUG on the Premises.

L. Parks and Recreation shall have a right of access at any time to inspect the Premises.

4. **INSURANCE**:

A. GENERAL CONDITIONS: DUG agrees to secure and deliver to the Director and the City's Risk Manager at or before the time of execution of the Agreement, and to keep in force at all times during the term of this Agreement, as the same may be extended by amendment, insurance policy or policies which shall include commercial general liability, hired and non-owned auto liability, Workers' Compensation, property coverage, and directors and officers liability to the extent and in the amounts specified in **Exhibit C** (DUG Insurance Policy Certificates of Insurance) to this Cooperative Agreement.

B. PROOF OF INSURANCE: DUG shall provide a copy of this Agreement to its insurance agent or broker. DUG certifies that the Certificate(s) of Insurance (COI) attached as **Exhibit C** complies with all insurance requirements of this Agreement. Each policy shall name the City as an additional insured and shall waive subrogation

rights against the City. The COI for each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Englewood Risk Manager, 1000 Englewood Parkway, Englewood, Colorado 80110, and to the Englewood Director of Parks and Recreation, 1155 W. Oxford Avenue, Englewood, Colorado 80110. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Failure to obtain or maintain the required insurance coverage shall be grounds for suspension of DUG's use of the Premises and possible termination of this Cooperative Agreement if not promptly remedied after written notice.

5. **STATUS AND AUTHORITY OF DUG; POLITICAL ACTIVITY:**

A. DUG and the City acknowledge and agree that the status of DUG shall be that of a private, non-profit corporation cooperatively working with the City as an independent contractor solely for the purposes set forth in this Agreement. It is not intended, nor shall it be construed, that DUG's personnel are employees of the City for any purpose whatsoever.

B. The scope of authority DUG may exercise shall be expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. DUG shall have no authority to avoid, modify, or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers.

C. This Cooperative Agreement shall not be construed to grant DUG the right or power to bind, or to impose liability upon, the City through any contracts or agreements DUG may make, unless expressly provided herein or unless the prior, written approval of the Director is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by DUG shall be in its own name and not in the name of the City.

D. DUG shall at all times take such actions as may be necessary to maintain and preserve, and shall refrain from taking such actions as may be detrimental to, its status as a non-profit corporation that qualifies as a tax exempt entity under section 501(c)(3) of the Internal Revenue Code (or any successor provision).

E. Funds raised or grants obtained by DUG, including any earnings thereon, and the Premises shall not be used by DUG in connection with any activity to further the appointment, election, defeat, or removal of any applicant, incumbent, or candidate for public office or take any activity undertaken to influence the passage, defeat or final content of any legislation or ballot proposal unrelated to furthering or implementing the Master Plan.

6. **TERMINATION & SURRENDER OF PREMISES:**

A. The City shall have the right to terminate this Cooperative Agreement and may repossess the Premises, in the event of a default of DUG under this Cooperative Agreement, unless the breach or default, specified in written notice to DUG, has been cured within the time specified in the notice.

B. In the event the Premises or a major portion thereof shall be damaged or destroyed by casualty, fire or otherwise, to an extent which renders the Premises largely unusable, without repair or rebuilding, as a community garden, neither party may but shall be obligated to rebuild or repair such damaged or destroyed portions. In the event either party elects, by written notice, not to proceed with the rebuilding or repair of the Premises or should fail to proceed with such repair or rebuilding within six (6) months after the damage or destruction, then this Cooperative Agreement shall automatically terminate.

C. DUG agrees to deliver up and surrender to the City possession of the Premises at the expiration or termination of this Cooperative Agreement, by lapse of time or otherwise, in as good repair as when DUG obtained the same at the commencement of said term, excepting only ordinary wear and decay or damage by the elements or Act of God or by civil unrest, war, or acts of terrorism, unless said damage was caused by the fault of DUG or other persons permitted by DUG to enter or occupy said Premises or any part thereof.

D. Either party may terminate this contract, with or without cause, with a thirty day written notice (With Cause: Seasonality of termination. Give consideration to complete season: March 1st through October 15th). Notice of termination shall be sent to the Director of DUG, the Director of Parks and Recreation and the City Attorney.

7. **NOTICES**: All notices required to be given to DUG hereunder shall be given by certified or registered mail, return receipt requested, addressed to it at the address contained on Page 1 of the Cooperative Agreement; all notices required to be given to the City hereunder

shall be given by certified or registered mail, return receipt requested, addressed to the Director of Parks and Recreation, 1155 W. Oxford Avenue, Englewood, Colorado 80110, and to the City Attorney's Office for the City of Englewood, 1000 Englewood Parkway, Englewood, Colorado 80110. Either party may designate in writing, from time to time, substitute addresses or persons in connection with the said notices.

8. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any action by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or condition or any default which may then exist on the part of DUG, and the taking of any such action when any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the City with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Cooperative Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

9. **EXAMINATION OF RECORDS**: DUG agrees that any duly authorized representative of the City shall have access to and the right to examine any directly pertinent books, documents, papers and records of DUG, involving transactions related to this Cooperative Agreement.

10. **NO THIRD PARTY BENEFICIARIES**: It is expressly understood and agreed that enforcement of the terms and conditions of this Cooperative Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DUG, and nothing contained in this Cooperative Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and DUG that any person other than the City or DUG receiving services or benefits under this Cooperative Agreement shall be deemed to be an incidental beneficiary only.

11. **DISCRIMINATION**: DUG agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability in connection with membership on the board of directors of DUG and its activities and actions relating to the Premises. In connection with the performance under this Cooperative agreement, DUG agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because

of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts or agreements it may enter.

12. **SIGNAGE**: Signs may be posted as necessary for directional, informational, or regulatory purposes. The signs shall include an acknowledgement of the City's ownership and of the cooperative effort between the City and DUG. All signage must conform to the City of Englewood rules, regulations and signage code.

13. **AMERICANS WITH DISABILITY ACT**: The parties recognize that the City is subject to the provisions of Title II of the Americans with Disabilities Act ("ADA") and that DUG is subject to the provisions of Title III of the ADA. The Englewood Depot property, together with the common areas inside, is accessible to and usable by individuals with disabilities, consistent with the rights and obligations of the City pursuant to Title II of the ADA. City shall be responsible for ensuring that the policies, practices and procedures it applies in its ownership and operation of the Premises are in compliance with Title II of ADA.

DUG represents that it has viewed or otherwise apprised itself of such access to the Premises and common areas and accepts such access, common areas and other conditions of the Premises as adequate for DUG's responsibilities under the ADA. DUG shall be responsible for ensuring that the Premises complies and continues to comply in all respects with the ADA, including accessibility, usability and configuration insofar as DUG modifies, rearranges or sets up in the facility in order to accommodate DUG's usage. DUG shall be responsible for any violations of the ADA that arise from DUG's modification of the Premises in order to accommodate DUG's usage. DUG shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices and procedures it applies are in compliance with the ADA.

14. **USE, POSSESSION OR SALE OF ALCOLHOL OR DRUGS**: DUG, its officers, agents, and employees, shall cooperate and comply with the City of Englewood's Drug and Alcohol Use Policy. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring DUG personnel from City facilities or participating in City operations.

15. **COLORADO GOVERNMENTAL IMMUNITY ACT**: The parties hereto understand and agree that the City is relying upon, and has not waived, the monetary

limitations (presently $150,000.00 per person, $600,000.00 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. __24-10-101 et seq.

16. **CITY FINANCIAL COMMITMENTS**: Financial commitments of the City to make any contract or do anything binding on or impose upon the City any liability to pay money are contingent upon a definite amount of money having been identified in a current appropriation, or in a fund not subject to appropriation, for the liquidation of all pecuniary liabilities so incurred.

17. **TAXES, LATE CHARGES, AND PENALTIES**: The City shall not be liable for the payment of taxes, late charges, or penalties of any nature except as provided by City ordinance. The City is a tax exempt entity.

18. **ENVIRONMENTAL PROTECTION**:

A. DUG shall comply with the applicable Federal, State and local laws, regulations, and standards that are or may become applicable to DUG's activities at the Premises.

B. DUG shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operation under this Cooperative Agreement, independent of any existing permits.

C. DUG shall save, indemnify and hold harmless the City from any damages, costs, expenses, liabilities, fines, or penalties resulting from releases, discharges, emissions, spills, storage, disposal, or any other acts or omissions by DUG, its officers, agents, employees, contractors or subleases, or the invitees of any of them, giving rise to City liability, civil or criminal, or responsibility under Federal, State or local environmental laws. This provision shall survive the expiration or termination of this Cooperative Agreement, and DUG's obligations hereunder shall apply whenever the City incurs costs or liabilities for DUG's actions of the types described in this section.

D. The City's rights under this Cooperative Agreement specifically include the right for City officials to inspect, upon reasonable notice, the Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the City is responsible for enforcing them. Such inspections are without prejudice to the right of duly

constituted enforcement officials to make such inspections. DUG shall have no claim on account of any entries against the City or any officer, agent, employee, or contractor thereof.

E. DUG agrees that the City assumes no liability to DUG should hazardous waste cleanup requirements, whether imposed by law or regulatory agencies, interfere with DUG's use of the Premises. DUG shall have no claim on account of any such interference against the City or any officer, agent, employee or contractor thereof.

F. DUG must comply with all Federal, State, and local laws, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. DUG will not accomplish any treatment, storage, or disposal of hazardous waste unless DUG is in possession of a valid permit issued to it under the Resource Conservation and Recovery Act, as amended.

G. DUG must maintain and make available to the City all records, inspection logs, and manifests that tract the generation, handling, storage, treatment and disposal of hazardous waste, as well as all other records required by applicable laws and requirements. The City reserves the right to inspect the Premises, DUG records for compliance with Federal, State and local laws, regulations, and other requirements relating to the generation, handling, storage, treatment and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by the City to appropriate regulatory agencies, as required by applicable law. DUG will be liable for the payment of any fines and penalties which may accrue as a result of the actions of DUG.

H. DUG shall comply with all requirements of the Federal Water Pollution Control Act, the National Pollutant Discharge Elimination System (NPDES), and any applicable State or local requirements.

I. DUG shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its State equivalent and any other applicable laws, rules or regulations. DUG must provide at its own expense such hazardous waste storage facilities which comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material breach of this Cooperative Agreement. Notwithstanding any other

provisions of this Cooperative Agreement, DUG shall not store or otherwise allow hazardous waste to remain at the Premises without the express written consent of the Director.

J. DUG shall not, under any circumstances, use, own, possess or allow the presence of any nuclear or radioactive material at the Premises.

K. DUG acknowledges that lead-based paint or asbestos may be present in and on facilities, equipment, or land within the Premises. The City or other authorized entities may conduct surveys to determine the existence and extent of any possible lead-based paint or asbestos. DUG will be notified if the City determines there is lead-based paint or asbestos on the Premises. Prior to beginning any alteration or modification, DUG must test any paint or potential asbestos material which would be disturbed unless a conclusive determination has been made that lead-based paint or asbestos is not present. DUG is required to handle all lead-based paint or asbestos material in accordance with all applicable Federal, State, and local laws and regulations.

20. **SUCCESSORS IN INTEREST**: Each and every one of the benefits and burdens of this Cooperative Agreement shall be binding upon and inure to the benefit of the parties hereto and upon the assigns or successors in interest of the parties hereto.

21. **AMENDMENTS**: No amendments to this Cooperative Agreement may be made except in writing, agreed to by all parties to this Cooperative Agreement, and approved and executed in the same manner as this Cooperative Agreement.

22. **ASSIGNMENT**: The City and DUG acknowledge and agree that this Cooperative Agreement and the rights and obligations thereunder shall not be assigned or otherwise transferred to another party.

23. **VENUE AND GOVERNING LAW**:

A. The Charter and Revised Municipal Code of the City of Englewood, as the same may be amended from time to time, are expressly incorporated, as if fully set out in this Cooperative Agreement, by this reference.

B. This Cooperative Agreement and the rights and duties of the parties hereunder shall be interpreted in accordance with the laws of the State of Colorado, the Charter and ordinances of the City and the rules and regulations of the City's Director of Parks and Recreation.

C. Venue for any and all legal actions arising hereunder shall lie in the Municipal Court in and for the City of Englewood, State of Colorado.

24. **INTEGRATION**: This Cooperative Agreement is intended as the complete integration of all understandings between the City and DUG. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in this Cooperative Agreement in writing. Any oral representation by any officer or employee of the City at variance with terms and conditions of this Cooperative Agreement or any written amendment to this Cooperative Agreement shall not have any force or effect nor bind the City.

25. **SEVERABILITY**: The City and DUG agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law of the State of Colorado or the federal government, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the liability of the City, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

26. **CLAIMS**: In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against DUG related in any way to this Cooperative Agreement, DUG shall give written notice thereof to the City within five (5) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by DUG. Such written notice shall be delivered either personally or by mail to the address of the City specified in the notice provision of this Cooperative Agreement.

27. **LIENS AND LICENSES**: DUG shall not permit any mechanic's or materialman's lien or any other to be imposed and remain for more than Ninety (90) days upon the property of the City or any part or parcel thereof by reason of any worker labor performed or materials furnished by any person co-partnership, association of persons, company, or corporation, to or for DUG, either pursuant to C.R.S. __38-26-107, as amended, or by other authority. DUG shall pay promptly when due, all bills, debts and obligations incurred in connection with this Cooperative Agreement and shall not permit same to become delinquent and shall suffer no lien, mortgage, judgment, execution or adjudication of bankruptcy which

will in any way impair the rights of the City. DUG may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, bill, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Cooperative Agreement until final adjudication of validity.

28. **AGREEMENT CHANGES/ADJUSTMENTS**: Any changes or adjustments to this agreement must be approved by the Director of Parks and Recreation.

29. **CITY EXECUTION OF AGREEMENT**: This Cooperative Agreement is expressly subject to, and shall not be or become effective or binding on the City until approved by Englewood City Council by ordinance and fully executed by all signatories of the City of Englewood.

30. **LEGAL AUTHORITY**:

A. DUG and the City each assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Cooperative Agreement.

B. The person or persons signing and executing this Cooperative Agreement on behalf of DUG and the City, do hereby warrant and guarantee that he/she or they have been fully authorized to execute this Cooperative Agreement on behalf of DUG and the City and to validly and legally bind DUG and the City to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its opinion, to either temporarily suspend or permanently terminate this Cooperative Agreement, if there is a dispute as to the legal authority of either DUG or the persons signing the Cooperative Agreement to enter into this Cooperative Agreement. The City shall not be obligated for any performance of the provisions of this Cooperative Agreement after the City has suspended or terminated this Cooperative Agreement as provided in this Section.

31. **COUNTERPARTS OF THE CONTRACT**: This Cooperative Agreement will be executed in counterparts, each of which shall be deemed to be an original, and each of such counterparts will constitute one and the same instrument.

(REMAINDER OF PAGE DELIBERATELY LEFT BLANK.
SIGNATURE BLOCK STARTS ON NEXT PAGE.)

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CITY OF ENGLEWOOD

ATTEST:

By: _____
MAYOR- James K. Woodward

_____
Lou Ellis, Clerk and Recorder,
Ex-Officio Clerk of the City of Englewood

RECOMMNDED AND APPROVED:

By: _____
Director of Parks and Recreation
Jerrell Black

DENVER URBAN GARDENS "DUG"
IRS Identification No. 74-2374848

ATTEST:

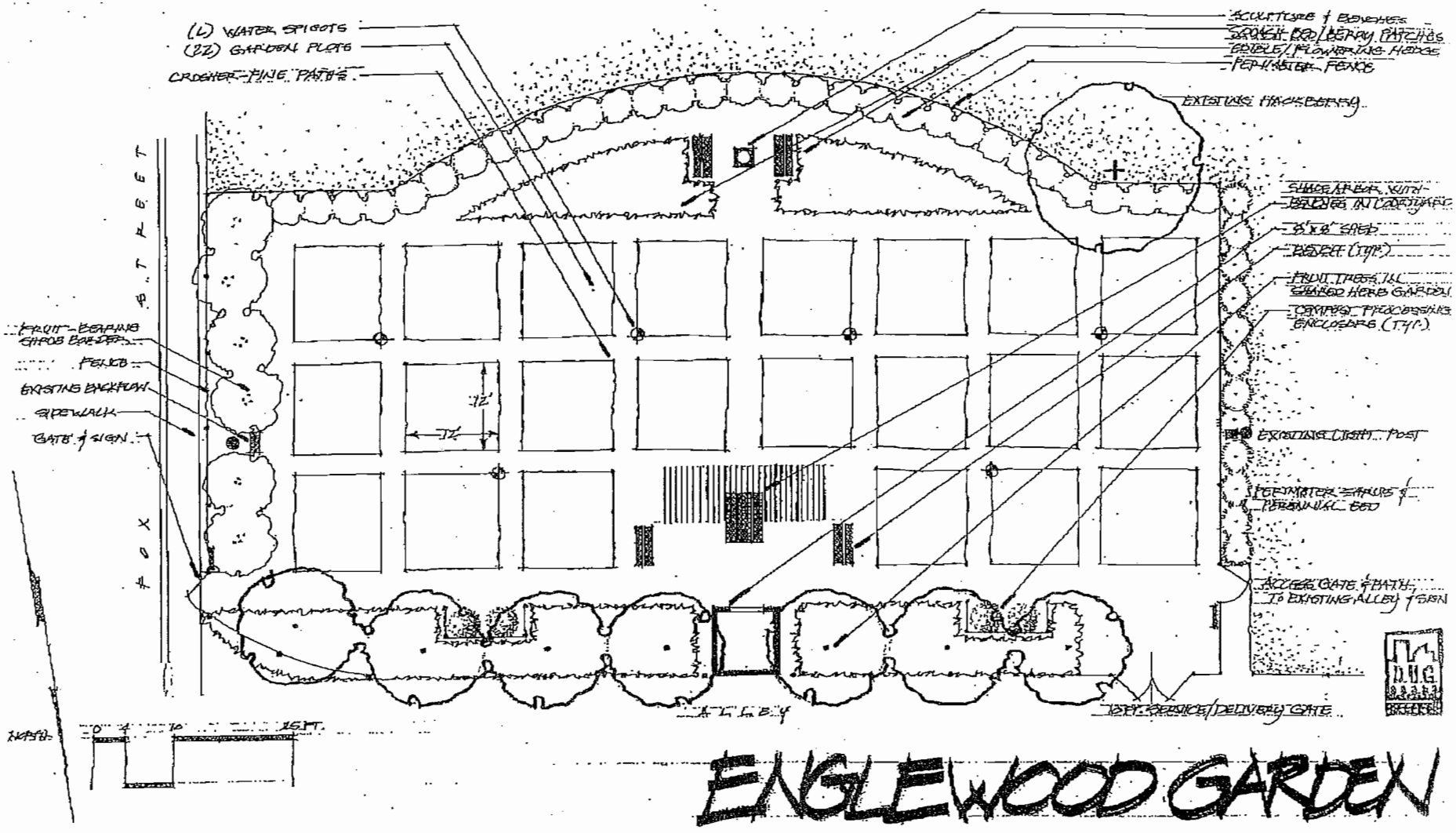
Cheryl A. Brubaker
Cheryl Brubaker, Controller
Denver Urban Gardens

By: _____
Michael J. Buchenau
Title: Executive Director

EXHIBIT A

Proposed
Community Garden Property
Cushing Park
W. Dartmouth Ave
S. Galapago St

EXHIBIT B



ENGLEWOOD GARDEN

EXHIBIT C

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 3/18/2010

PRODUCER (303)442-1484 FAX: (303)442-8822
Taggart & Associates, Inc.
1600 Canyon Boulevard
P. O. Box 147
Boulder CO 80306

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Denver Urban Gardens
3377 Blake St., Suite 113
Denver CO 80205

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Philadelphia Insurance Co.	
INSURER B: Owners Insurance Co	32700
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A		GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	PHPK521504	2/17/2010	2/17/2011	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B		AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	4434581201	2/17/2010	2/17/2011	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
A		EXCESS / UMBRELLA LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE X RETENTION $ 10,000	PHUB296559	2/17/2010	2/17/2011	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000 $ $ $
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
A		OTHER PROPERTY	PHPK521504	2/17/2010	2/17/2011	BPP Deductible	75,000 500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Englewood Park & Recreation is named as Additional Insured including Waiver of Subrogation as respects General Liability and Auto Liability in regard to work performed by the Named Insured. 10 Day Notice of Cancellation applies in the event of Cancellation due to Non-Payment of Premium.

CERTIFICATE HOLDER

Englewood Director of Parks & Recreation
1155 W. Oxford Avenue
Englewood, CO 80110

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Robben Derr, CIC/RLD Robben L. Derr

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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 3/18/2010

PRODUCER (303)894-0298 FAX: (303)894-0161
Nonprofit Resources, Inc.
455 Sherman Street
Suite 207
Denver CO 80203

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Pinnacol Assurance	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

INSURED
Denver Urban Gardens
3377 Blake Street Ste 113
Denver CO 80205

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		CLAIMS MADE / OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		POLICY / PRO-JECT / LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		ANY AUTO					
		ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		SCHEDULED AUTOS					
		HIRED AUTOS				BODILY INJURY (Per accident)	$
		NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
		OCCUR / CLAIMS MADE				AGGREGATE	$
							$
		DEDUCTIBLE					$
		RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				X WC STATUTORY LIMITS / OTHER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	3273551	10/1/2009	10/1/2010	E.L. EACH ACCIDENT	$ 100,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 100,000
						E.L. DISEASE - POLICY LIMIT	$ 500,000
		OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

The City of Englewood is named additional insured Funding. Waiver of Subrogation applies to workers compensation.

10-day notice of cancellation for non-payment of premium

CERTIFICATE HOLDER

Englewood Director of Parks and Recreatio
1155 W. Oxford Avenue
Englewood, CO 80110

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Lisa Zuniga/LZ

© ACORD CORPORATION 1988

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 03/18/2010

PRODUCER
PINNACOL ASSURANCE
7501 E Lowry Blvd
Denver, CO 80230-7006

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
DENVER URBAN GARDENS INC
3377 BLAKE STREET STE 113
DENVER, CO 80205

INSURERS AFFORDING COVERAGE		NAIC#
INSURER A:	PINNACOL ASSURANCE	41190
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDNG ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YYYY)	POLICY EXPIRATION DATE(MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR GEN'L AGGREGATE LIMIT APPLIERS PER: POLICY PROJECT LOC				EACH OCCURRENCE DAMAGE TO RENTED PREMISES MED EXP(Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	
		AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea Accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	
		EXCESS/UMBRELLA LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE AGGREGATE	
A		WORKERS COMPENSATION AND EMPLOYER'S LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, please describe under SPECIAL PROVISIONS below	3273551	10/01/2009	10/01/2010	X WC STATUTORY LIMITS OTHER E.L EACH ACCIDENT E.L DISEASE - EA EMPLOYEE E.L DISEASE - POLICY LIMIT	 $100,000 $100,000 $500,000
		OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

The City of Englewood is named additional insured Funding. Waiver of Subrogation applies to workers compensation.

CERTIFICATE HOLDER

1222289
Englewood Director of Parks
and Recreation
1155 W. Oxford Avenue
Englewood CO 80110

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

David Branch
Underwriter

ACORD CORPORATION 1988

PINNACOL
ASSURANCE

7501 E Lowry Blvd
Denver, CO 80230-7006
Phone: (303) 361-4000 / (800) 873-7242
Fax: (303) 361-5000 / (888) 329-2251
www.pinnacol.com

NCCI #: WC000313
Policy #: 3273551

INSURED:
DENVER URBAN GARDENS INC
3377 BLAKE STREET
STE 113
DENVER CO 80205

AGENT:
NONPROFIT RESOURCES, INC.
455 SHERMAN ST, SUITE 207
DENVER, CO 80203-1614
(303) 894-0298

ENDORSEMENT: Waiver Of Subrogation

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

Englewood Director of Parks
and Recreation
1155 W. Oxford Avenue
Englewood CO 80110

Effective Date: March 18, 2010 Expires on October 1, 2010
Pinnacol Assurance has issued this endorsement March 18, 2010.

David Branch
Underwriter

CERTIFICATE HOLDER COPY

Englewood Director of Parks
and Recreation
1155 W. Oxford Avenue
Englewood CO 80110

IMPORTANT

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If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
April 5, 2010	11 a ii	City Ditch License to Cherry Hills Village for an Existing 10" Sewer Crossing

Initiated By:	Staff Source:
Utilities Department	Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at their January 12, 2010 meeting, recommended Council adopt a bill for an ordinance approving the License - City Ditch Crossing Agreement from Cherry Hills Village for a 10" sanitary sewer main crossing the City Ditch.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The City of Cherry Hills Village submitted a license agreement for crossing over the City Ditch with an existing 10" sanitary sewer main. The sanitary sewer main was installed prior to 1970 and is located approximately east of 3700 to 3800 South Clarkson and south of Hampden. No license agreement could be found for the existing sanitary sewer main in this area. The recommended agreement will enable the City of Englewood and Cherry Hills Village to validate the location and address responsibility.

The Licensee expressly assumes full and strict liability for any and all damages of every nature to person or property caused by the point or points where the Licensee performs any work in connection with the crossing provided by the Licensee. The City reserves the right to make full use of the property necessary in the operation of the City Ditch. The City retains all rights to operate, maintain, install, repair, remove or relocate any of its facilities located within the City's right-of-way.

The Englewood City Attorney and the Utilities Engineer have reviewed and approved the license agreement.

FINANCIAL IMPACT

None.

LIST OF ATTACHMENTS

Excerpt from the January 12, 2010 Water and Sewer Board Minutes
Bill for an Ordinance

WATER AND SEWER BOARD
MINUTES
January 12, 2010

The meeting was called to order at 5:04 p.m.

Members present:	Clark, Olson, Higday, Cassidy, Wiggins, Woodward, Mc Caslin, Habenicht
Members absent:	Burns
Also present:	Stewart Fonda, Director of Utilities Bill McCormick, Operations Supt. Tom Brennan, Utilities Engineer

Excerpt from Page 6 of the January 12, 2010 Water and Sewer Board Minutes

. . . . .

5. CITY DITCH LICENSE TO CHERRY HILLS VILLAGE FOR AN EXISTING 10" SEWER CROSSING.

The City of Cherry Hills Village submitted a license agreement for crossing the City Ditch with an existing 10" sanitary sewer main. The sanitary sewer main was installed prior to 1970 and is located approximately east of 3700 to 3800 S. Clarkson Street and south of Hampden. No license agreement could be found for the existing sanitary sewer main in this area. The recommended agreement will enable the City of Englewood and Cherry Hills Village to validate the location and address responsibility.

Englewood's City Attorney and the Utilities Engineer have reviewed and approved the license agreement and construction easement.

Mr. Burns moved;

Mr. Habenicht seconded:	To recommend Council approval by ordinance of the License – City Ditch Crossing Agreement from Cherry Hills Village for a 10" sanitary sewer main crossing the City Ditch east of 3700 to 3800 S. Clarkson and south of Hampden.
Ayes:	Burns, Clark, Olson, Cassidy, Woodward, McCaslin, Habenicht
Nays:	None
Members absent:	Wiggins, Higday

Motion carried.

. . . . .

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 8
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING A "LICENSE - CITY DITCH CROSSING AGREEMENT" TO CITY OF CHERRY HILLS VILLAGE TO LICENSE AN EXISTING SANITARY SEWER MAIN CROSSING THE CITY OF ENGLEWOOD'S RIGHT- OF -WAY FOR THE CITY DITCH BETWEEN THE CITY OF CHERRY HILLS VILLAGE AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, there is an existing ten inch (10") sanitary sewer main crossing the City Ditch Right-of-Way which does not appear in any of the City's records but may be subject of a license from the Denver Water Board dated May 1961; and

WHEREAS, the passage of this Ordinance will clarify the parties rights and locate the existing ten inch (10") sanitary sewer main which crosses the City of Englewood's City Ditch Right-of-Way on the City's records; and

WHEREAS, the City of Cherry Hills Village assumes full and strict liability for any and all damages of every nature to persons or property caused by or in connection with the crossing Cherry Hills Village sewer main; and

WHEREAS, the City reserves the right to make full use of the property in the operation of the City Ditch; and

WHEREAS, the City retains all rights to operate, maintain, install, repair, remove or relocate any of the City's facilities located within the City's Right-of-Way; and

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended City Council approval of the License-City Ditch Crossing Agreement at their January 12, 2010 meeting;

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

Section 1. The License-City Ditch Crossing Agreement between Cherry Hills Village and the City of Englewood, Colorado for an existing ten inch (10") sanitary sewer crossing over the City Ditch, attached hereto as "Exhibit A," is hereby accepted and approved by the Englewood City Council.

Section 2. The Mayor is authorized to execute and the City Clerk to attest and seal the License-City Ditch Crossing Agreement for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 5th day of April, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 9th day of April, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of April, 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 5th day of April, 2010.

Loucrishia A. Ellis

EXHIBIT A

LICENSE - CITY DITCH CROSSING AGREEMENT

THIS LICENSE AGREEMENT, made and entered into as of this _____ day of _____, 20___, by and between the CITY OF ENGLEWOOD, a municipal corporation of the State of Colorado, herein referred to as "City", and CITY OF CHERRY HILLS VILLAGE, a municipal corporation of the State of Colorado, herein referred to as "Licensee".

WHEREAS, there is an existing ten inch (10') sanitary sewer main crossing the City Ditch Right-of-Way. This main does not appear in any of the City's records but it may be the subject of a license from the Denver Water Board dated May 1961. The parties wish to clarify the rights of the current owners with respect to this sanitary sewer main. Except for the emergency maintenance situations where Licensee may proceed to perform the emergency maintenance and provide notice to the City's Director of Utilities as soon as is reasonably practical.

WITNESSETH: The City without any warranty of its title or interest whatsoever, hereby authorizes Licensee, its successor, assigns, to install, operate, maintain, repair and replace an existing ten inch (10") sanitary sewer main over the City's right-of-way for the City Ditch, described as a parcel of land situated in the Southwest ¼ of the Northwest of Section two Township 5 South Range 68 West of the sixth P.M., County of Arapahoe, State of Colorado. More particularly described as follows:

See attached survey drawing consisting of two (2) pages.

1. Any construction contemplated or performed under this License shall comply with and conform to standards formulated by the Director of Utilities of the City.

2. The Licensee shall notify the City's Director of Utilities at least three (3) days prior to the time of commencement of the construction of, or any repairs made to, Licensee's ten inch (10") sanitary sewer main so that the City may, in its discretion, inspect such operations. Except for the emergency maintenance situations where Licensee may proceed to perform the emergency maintenance and provide notice to the City's Director of Utilities as soon as is reasonably practical.

3. Within thirty (30) days from the date of the commencement of construction of any replacement, repair or relocation within the licensed area of Licensee's main, the Licensee shall complete such construction, place and maintain permanent, visible markers, of a type and at such locations as designated by the City's Director of Utilities, referring to the centerline of the installation and shall clear the crossing area of all construction debris and restore the area to its previous condition as near as may be reasonable. In the event the planning of the centerline markers and the clearing and restoration of the crossing area is not completed within the time specified, the City may complete the work at the sole expense of the Licensee.

4. The City shall have the right to maintain, install, repair, remove or relocate the City Ditch or any other of its facilities or installations within the City's right-of-way, at any time and in such manner as the City deems necessary or convenient. The City reserves the exclusive right to control all easements and installations. In the event the sanitary sewer main should interfere with any future use of the City's right-of-way by the City, the Licensee shall, upon request and at its sole expense, relocate, rearrange, or remove its installations so as not to interfere with any such use.

5. Any repair or replacement of any City installation made necessary, in the opinion of the City's Director of Utilities because of the construction or maintenance of the sanitary sewer main or other appurtenant installation thereof, shall be made at the sole expense of the Licensee.

6. The stipulation and conditions of this License shall be incorporated into contract specifications if the construction herein authorized is to be done on a contract basis.

7. The rights and privileges granted in this License shall be subject to prior agreements, licenses and/or grants, recorded or unrecorded, and it shall be the Licensee's sole responsibility to determine the existence of said documents or conflicting uses or installations.

8. The Licensee shall contact and fully cooperate with the City's personnel and the construction shall be completed without interference with any lawful, usual or ordinary flow of water through the City Ditch. Licensee shall assume all risks incident to the possible presence of such waters, or of storm waters, or of surface waters in the City Ditch.

9. All trenches or holes within the City's rights-of-way shall be backfilled and tamped to the original ground line in layers not to exceed six (6) inches loose measure to a compaction of ninety percent (90%) Standard Proctor Maximum Density.

10. Licensee, by acceptance of this License, expressly assumes full and strict liability for any and all damages of every nature to persons or property caused by water from the ditch leaking through the ditch banks or pipeline at the point or points where the Licensee performs any work in connection with the crossing provided by this License. The Licensee assumes all responsibility for maintenance of the installation.

11. To the extent allowed by law, Licensee shall indemnify and save harmless the City, its officers and employees, against any and all claims, damages, actions or causes of action and expenses to which it or they may be subjected by reason of said sanitary sewer main being within and across and under the premises of the City or by reason of any work done or omission made by Licensee, its agents or employees, in connection with the construction, replacement, maintenance or repair of said installation; without waiving any of the immunities protections and defenses afforded Licensee under the Colorado Governmental Immunity Act.

12. It is expressly agreed that in case of Licensee's breach of any of the within promises, the City may, at its option, have specific performance thereof, or sue for damages resulting from such breach.

13. Upon abandonment of any right or privilege herein granted, the right of Licensee to that extent shall terminate, but its obligation to indemnify and save harmless the City, its officers and employees, shall not terminate in any event.

14. Licensee is contemplating conveying Licensee's Facility to the Cherry Hills Village Sanitation District. If such occurs, Licensee shall have the right to assign this License Agreement to said District upon thirty (30) days advance notice to the City on the express condition that the District assumes and agrees to fully perform all of Licensee's obligations hereunder. Upon such assignment, Licensee shall be fully relieved of any and all obligations or liabilities under this License Agreement.

In granting the above authorization, the City reserves the right to make full use of the property involved as may be necessary or convenient in the operation of the water works plant and system under the control of the City.

IN WITNESS WHEREOF, this instrument has been executed as of the day and year first above written.

CITY OF ENGLEWOOD

ATTEST:

By _____
James K. Woodward, Mayor

_____
Loucrishia A. Ellis, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The undersigned authorized officer of the City of Cherry Hills Village has read the foregoing License and agrees for and in behalf of said City of Cherry Hills Village that it will accept and will abide by all the terms and conditions thereof.

LICENSEE:

City of Cherry Hills Village

ATTEST:

Laura Smith
Title Laura Smith, City Clerk

(SEAL)

By Michael J. Wozniak
Title Mike Wozniak, Mayor
Address:
Phone:

APPROVED AS TO FORM

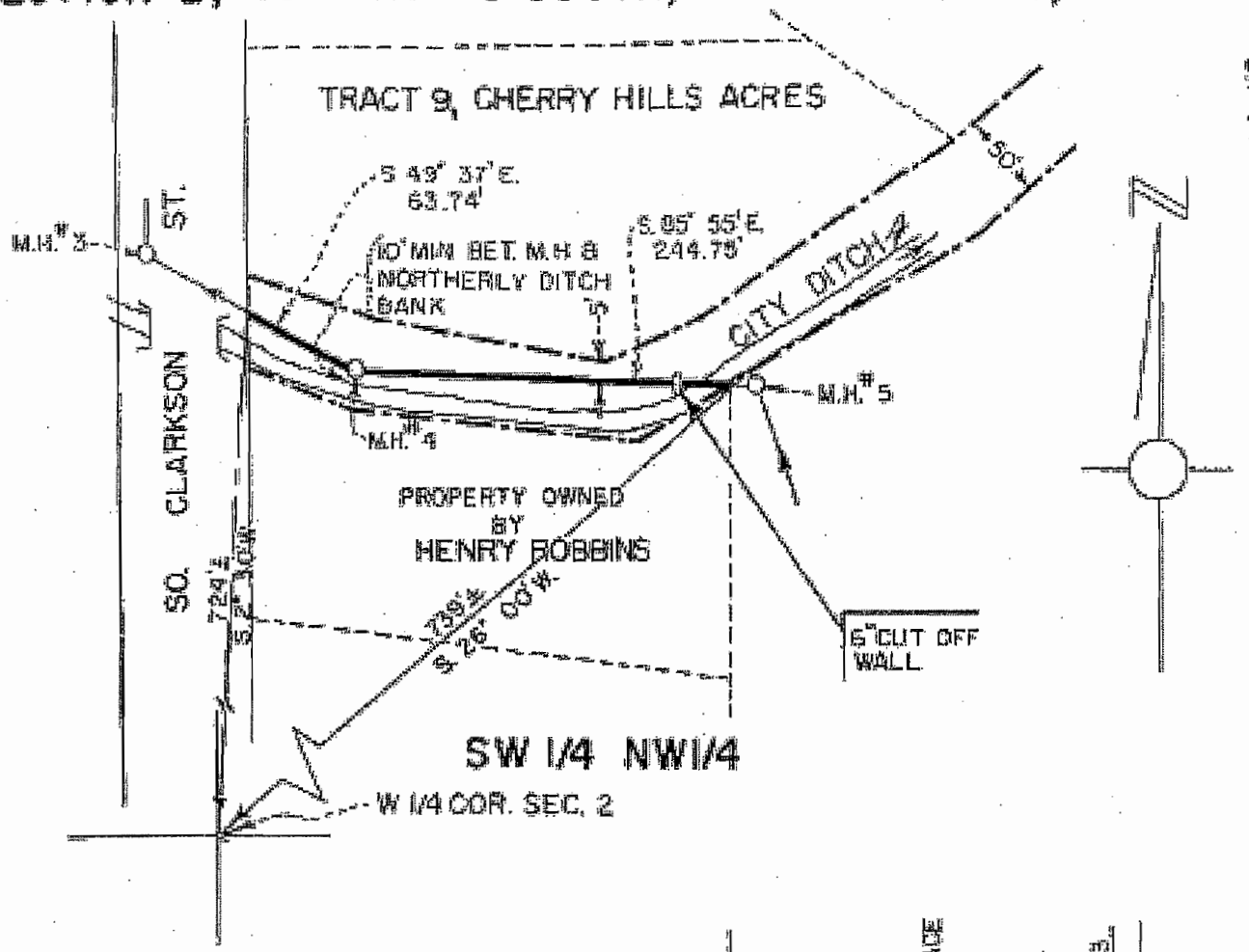
Kenneth S. Fellman, City Attorney

A ten (10) inch sanitary sewer along and across the City's right-of-way for the City Ditch, situated in the southwest quarter of the northwest quarter (SW1/4 NW1/4) of Section 2, Township 5 South, Range 68 West of the Sixth Principal Meridian in Arapahoe County, State of Colorado. The Centerline of the crossing is more particularly described as follows:

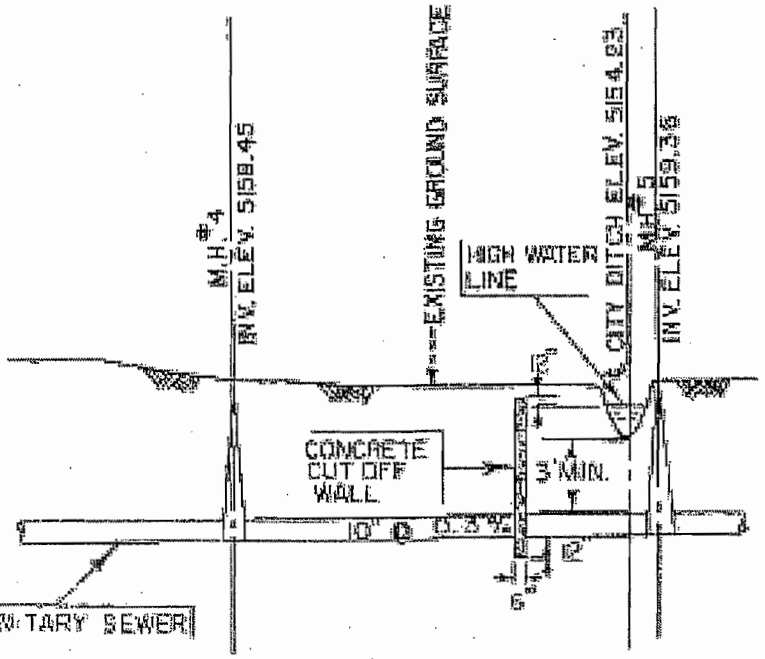
Beginning at a point on the east property line of South Clarkson Street, whence the west quarter (W1/4) corner of said Section 2 bears south 2°30' west a distance of 724 feet more or less; thence south 49°37' east a distance of 63.74 feet to manhole No. 4; thence south 85°55' east a distance of 244.75 feet to the point of terminus on the southeasterly right-of-way boundary of the City Ditch, whence the west quarter (W1/4) corner of said Section 2 bears south 26°0' west a distance of 739 feet more or less.

The above description was taken from an original Denver Water License prepared in May of 1961

SECTION 2, TOWNSHIP 5 SOUTH, RANGE 68 WEST, 6th P.M.



PLAN
SCALE 1" = 100'



PROFILE
SCALES: HORZ. 1" = 100'
VERT. 1" = 10'

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2010

COUNCIL BILL NO. 4
INTRODUCED BY COUNCIL
MEMBER GILLIT/OLSON

AN EMERGENCY ORDINANCE OF THE CITY OF ENGLEWOOD WHICH AMENDS 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 an alternate Lease/Purchase Agreement and related documents recently presented to the City (collectively, the "Lease Agreements"), CAFCO Leasing LLC, a Colorado limited liability company, 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. Emergency declaration and Effective Date. It is necessary to amend Ordinance No. 20, which was adopted with a 30-day effective date in 2009, to provide for alternate Lease Agreements as set forth in this Ordinance. In order to enable the purchase of the Information Technology and Police Department Equipment to proceed pursuant to the current proposal which expires April 8, 2010. The City Council hereby finds and determines that this Ordinance is necessary for the immediate preservation of public property, health, peace and safety. This Ordinance shall be effective immediately upon final passage and be published within seven days after 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.

Amended, reintroduced as amended, read in full, and passed as amended on first reading on the 22nd day of March, 2010.

Published as an amended Bill for an emergency Ordinance on the 26th day of March, 2010.

Published as an amended Bill for an emergency Ordinance on the City's official website beginning on the 24th day of March, 2010 for thirty (30) days.

Read as an emergency Ordinance by title and passed on final reading on the 5th day of April, 2010.

Published as an emergency Ordinance by title in the City's official newspaper as Ordinance No. ___, Series of 2010, on the 9th day of April, 2010.

Published as an emergency Ordinance by title on the City's official website beginning on the 7th day of April, 2010 for thirty (30) days.

ATTEST:

James K. Woodward, Mayor

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 emergency Ordinance passed on final reading and published by title as Ordinance No. ___, Series of 2010.

_____
Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
April 5, 2010	11 c i	Purchase of Work Truck

Initiated By:	Staff Source:
Utilities Department	Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None.

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at their February 9, 2010 meeting recommended Council approve, by motion, the purchase of one Freightliner M2 106 work truck in the amount of $122,108 plus $10,394 for options, for a total of $132,502 from Transwest Trucks in conjunction with the City of Boulder State bid.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The proposed work truck replacement for Unit #1315 is being used by the Utilities Department Distribution/Collection crew for water and sewer main cleaning and repairs. The purchase is being recommended to replace the existing ten year old unit according to the CERF replacement schedule. The base bid amount is $122,108. An additional option of $8,865 is being added for a 3,000 pound telescopic crane and $1,529 for removal of the under deck compressor from the old truck and installation into the new truck.

FINANCIAL IMPACT

The vehicle will be purchased from Transwest Trucks under the Colorado State bid in conjunction with Boulder Award BID #5248-09. The base price for the truck is $122,108. The Utilities Department will pay an additional $8,865 for the telescopic crane and $1,529 for the under deck compressor removal and reinstallation for a total of $10,394. The base truck amount will be funded by the CERF Fund. The telescopic crane and the compressor removal and installation are 2010 Budget items with the Utilities Department contributing $10,394 for the options from the Capital Equipment Replacement Fund.

LIST OF ATTACHMENTS

Quotation Sheet
Excerpt from the February 9, 2010 Water and Sewer Board Minutes

SERVICENTER GARAGE

SUMMARY SPECIFICATION SHEET
FOR
NEW VEHCICLES

AWARD # Boulder Award BID#5248-09

ENGLEWOOD BID# _____

MANUFACTURER OF VEHICLE Freightliner

MODEL OF VEHICLE M2 106

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

DEPARTMENT VEHICLE ASSIGNED TO 401604, Utilities Transmission

COMMENTS: This unit has met both the years of service and hours of use criteria for replacement. Total cost of this unit is $122,108.00. Utilities is contributing $8,865.00 for the purchase of a 3000lbs telescopic crane and 1,529.00 to facilitate the removal and installation of the under deck compressor from the existing truck. The current unit is a 2000 Chevrolet 8500 single axle truck, Unit 1315.

SUMMIT
TRUCK BODIES

To: City of Englewood
Pat White
Date: 02-01-2010

Prepared By: Brian Wiest
Summit Truck Equipment
970-397-7869

Options for service body

Summit (Stellar) model 3315 telescopic crane

- 11,500 ft-lbs
- Hexagonal Boom Construction
- Planetary winch 30ft/min with hydraulic / mechanical brake
- 20' corded hand held remote control
- 3000lbs @ 3', ... 1625lbs @ 7' ,,,,,, 1025lbs @ 11', ... 750lbs @ 15'

Summit provided crane $8865.00

**** Includes installation**

Installation of customer supplied under deck compressor

- Install shaft driven compressor
- Plumb compressor through cooler to P-4 compartment
- Customer to do finale hook-up to customer supplied air delivery components (FLR and air reels)

Labor and misc parts for installation included in quote $1529.00

Thank you,

Brian Wiest

Brian West

970-397-7869 mobile
866-739-5537 ext. 7504
bwiest@summitbodies.com

SUMMIT
TRUCK EQUIPMENT

WATER AND SEWER BOARD
MINUTES
February 9, 2010

The meeting was called to order at 5:05 p.m.

Members present:	Clark, Olson, Cassidy, Wiggins, Woodward, Mc Caslin, Habenicht
Members absent:	Burns, Higday
Also present:	Stewart Fonda, Director of Utilities Bill McCormick, Operations Supt. John Bock, Manager of Administration

Excerpt from Page 5 of the February 9, 2010 Water and Sewer Board Minutes

. . . . .

5. WORK TRUCK.

The Utilities Department Distribution/Collection crew is requesting a work truck replacement for Unit #1315 used for water and sewer main cleaning and repairs. The purchase is being recommended to replace the existing ten year old unit according to the CERF replacement schedule.

The base bid is $122,108. An additional option of $8,865.00 is being added for a 3,000 lb. telescopic crane and $1,529.00 for removal of the under deck compressor from the old truck and installation into the new truck. The vehicle will be purchased from Transwest Trucks under the Colorado State bid in conjunction with Boulder Award Bid #5248-09.

Mr. Habenicht moved;

Mr. Wiggins seconded:	To recommend Council approval for the purchase of one Freightliner M2 106 work truck in the amount of $122,108 plus $10,394 for options for a total of $132,645.
Ayes:	Clark, Olson, Cassidy, Wiggins, Woodward, McCaslin, Habenicht
Nays:	None
Absent:	Burns, Higday

Motion carried.

. . . . .

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
April 5, 2010	11 c ii	Purchase of Loader/Backhoe

Initiated By:	Staff Source:
Utilities Department	Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Existing Rubber-Tired Wheel Loader/Backhoe was approved by Council on June 16, 1997 in the amount of $89,089.

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at their March 9, 2010 meeting, recommended Council approve, by motion, the purchase of one, new Rubber-Tired Wheel Loader/Backhoe from Wagner Equipment Co., the lowest responsible bidder, in the amount of $121,450. Options for a hydraulic breaker ($23,925) and a hydraulic compactor ($7,910) were added for a total of $153,285.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The proposed loader/backhoe is the primary piece of equipment used for excavating dirt and fill for water, sewer and stormwater projects. The proposed backhoe will have quick-detaching features that will combine two pieces of equipment – a hydraulic breaker and a compactor. The purchase is being recommended to replace the existing 13-year old Unit #1304 according to CERF replacement schedule.

Bids were received from two vendors:

Honnen Equipment	$121,731
Wagner Equipment Co.	$121,450

FINANCIAL IMPACT

Wagner Equipment Co. is the recommended bidder at $121,450 for the basic backhoe. The base truck amount will be funded by the CERF Fund. Options for a hydraulic breaker ($23,925) and a hydraulic compactor ($7,910) were added for $31,835. These options are 2010 Budget items with the Utilities Department contributing $31,835 from the Capital Equipment Replacement Fund.

LIST OF ATTACHMENTS

Bid Proposal Tabulation Sheet dated February 23, 2010
Excerpt from the March 9, 2010 Water and Sewer Board Minutes

City of Englewood Bid Tabulation Sheet

Bid Opening: Tuesday, February 23, 2010 10:00 A.M

ITEM: IFB-10-104 Rubber Tired Wheel Loader-Backhoe

Vendor	Addendum 1 Acknowledged Y/N?	Rubber Tired Wheel Loader-Backhoe Bid Price		Option: Parts Manual X3	Option: Shop Service Manual X3	Option: Extended backhoe boom	Option: Mechanical Front Wheel Drive	Option: Hydraulic Breaker	Option: Hydraulic Compactor	Total Price with all 6 options:	*Exceptions:*
Rueter's											
10000 Brighton Road											
Henderson, CO 80640											*No Bid*
Preston Schwisow (Sales Rep)											
303-287-1361 fax 303-287-1256											
		No Bid		No Bid	No Bid	No Bid	No Bid	No Bid	No Bid		
Van's Equipment											*Gave price sheet for following options:*
4046 Joe Collier Dr											*Okada 6500 plate compactor $4221.00*
Dacono, CO 80514											*Okada 13,500 plate compactor $7750.00*
Kevin Moore (President)											*Okada Hammer $23,148.00*
303-828-9600 fax 303-828-4733											*All information provided has been sent to*
		No Bid		No Bid	No Bid						*Fleet Mgr for review*
Honnen Equipment Co.											
5055 E 72nd Ave											*None Listed*
Commerce City, CO 80022											
Steve Stotz (Territory Mgr)											
303-286-4819 fax 303-287-0086											
stevestotz@honnen.com											
	Y	$ 121,731.00		$ 650.00	$ 365.00	$ 10,230.00	$ 6,750.00	$ 20,938.00	$ 9,291.00	$ 169,955.00	
Wagner Equipment Co.											
18000 Smith Rd											*None Listed*
Aurora, CO 80011											
Andy Kratt (Sales Rep)											
303-739-3299 fax 303-739-3191											
akratt@wagnerequipment.com							Included				
	Y	$ 121,450.00		$ 135.00	$ 1,554.00	$ 4,495.00	No Charge	$ 23,925.00	$ 7,910.00	$ 159,469.00	

SERVICENTER GARAGE

SUMMARY SPECIFICATION SHEET
FOR
NEW VEHCICLES

STATE AWARD # _____

ENGLEWOOD BID# IFB-10-104

MANUFACTURER OF VEHICLE CAT

MODEL OF VEHICLE 450E Backhoe Loader

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

DEPARTMENT VEHICLE ASSIGNED TO Utilities, 401604

COMMENTS: This unit replaces Unit 1304, a 1997 John Deere 710B backhoe. This unit has met the replacement criteria both in hours of use and age. This is the lowest bidder; funds are available through the CERF fund. The cost of the unit is $121,450.00.

WATER AND SEWER BOARD
MINUTES
March 9, 2010

The meeting was called to order at 5:05 p.m.

Members present:	Burns, Clark, Olson, Cassidy, Higday, Wiggins, Woodward, Mc Caslin, Habenicht
Members absent:	None
Also present:	Stewart Fonda, Director of Utilities Bill McCormick, Operations Supt. Tom Brennan, Utilities Engineer Bruce Behrer, Engineer, Muller Engineering

Excerpt from Pages 2 and 3 of the March 9, 2010 Water and Sewer Board Minutes

. . . . .

3. PURCHASE OF LOADER/BACKHOE.

The proposed loader/backhoe is the primary piece of equipment used for excavating dirt and fill for water, sewer and stormwater projects. The proposed backhoe will have quick-detaching features that will combine the hydraulic breaker and the hydraulic compactor. The purchase is to replace the existing 13-year old unit according to the CERF replacement schedule.

Bids were received from two vendors, with Wagner Equipment the recommended bidder at $121,450.00. Options for the hydraulic breaker ($23,925.00) and a hydraulic compactor ($7,910.00) were added at the Utilities Department's expense, for a total of $153,285.00.

Ms. Cassidy moved;

Mr. Higday seconded:	To recommend Council approval of the purchase of a new rubber-tired loader/backhoe from Wagner Equipment Company in the amount of $121,450.00 with additional options for a total of $153,285.00.
Ayes:	Burns, Clark, Olson, Cassidy, Higday, Wiggins, Woodward, McCaslin, Habenicht
Nays:	None
Members absent:	None

Motion carried.

. . . . .

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
April 5, 2010	11 c iii	Water Meter and ERT Purchase

Initiated By:	Staff Source:
Utilities Department	Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved the 2005 meter purchase in the amount of $76,785.10 at their March 21, 2005 meeting.

Council approved the 2006 meter purchase in the amount of $51,331.40 at their May 15, 2006 meeting.

Council approved the 2009 meter purchase in the amount of $114,140 at their February 2, 2009 meeting.

RECOMMENDED ACTION

The Water and Sewer Board, at their March 9, 2010 meeting, recommended Council approve, by motion, the purchase of water meters and electronic remote transmitters (ERTs). Staff recommends awarding the bid to National Meter and Automation, Inc. in the amount of $46,601.10, and placing the order in conjunction with Denver Water Board's Purchase Order #104918 for the best quantity price.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Utilities Department purchases water meters needed for an entire year by requesting one large bid proposal for additional cost savings. The Utilities Department is converting the metering system to the ITRON Automatic Meter Reading System. All meters and registers purchased will be compatible with the ITRON System. A portion of these meters will be resold to Englewood customers for new installations as part of the flat-rate-to-meter conversion process. Some of the meter stock will be used to replace inactive or poorly functioning meters and to convert existing meters to the ITRON system.

A portion of the 2010 order is electronic remote transmitters (ERTs) for updating existing residential meters, enabling meter readers to obtain meter readings using radio frequencies. This improves accuracy, and at the same time, is a labor saving device.

FINANCIAL IMPACT

Englewood's meter and ERT order is being placed in conjunction with Denver Water Board's Purchase Order #104918 for the best quantity price. Meters and ERTs will be purchased from

National Meter & Automation for the amount of $46,601.10 for meters and ERTs. Of this amount, approximately $20,000 will be resold to Englewood customers for flat-rate to meter conversions.

There is money budgeted for these meters in the 2010 Budget.

LIST OF ATTACHMENTS

Quote from National Meter and Automation, Inc.
Excerpt from the March 9, 2010 Water and Sewer Board Minutes

NATIONAL
METER AND AUTOMATION, INC.

9800 E. Easter Ave, Ste. 130, Centennial, CO 80112 Tel: (303) 339-9100 Fax: (303) 649-1017

Mr. Randy Pierce
City of Englewood
Water Department
Englewood, CO 80110

February 23, 2010

Dear Randy:
Per your request please find the following quotation:

70 - 5/8x3/4 Badger LP meter with Encoder register for Pit ERT: $64.00 ea

100 - 3/4" Badger Meter with Encoder Register for Remote ERT: $70.73 ea

40 – 3/4" Badger Meter with Encoder Register for Pit ERT: $70.73 ea

10 – 1" Badger Meter with Encoder Register for Remote ERT: $101.17 ea

20 – 1" Badger Meter with Encoder Register for Pit ERT: $101.17 ea

130 – 60W ERT with in-line connector for Remote Series: $89.62 ea

110 – 60W ERT with in-line connector for Pit Series: $89.62 ea

50 – 5/8x/3/4" Badger RTR Register with potted wire: $76.75 ea

50 – 3/4" Badger RTR Register with potted wire: $76.75 ea

Full Freight Allowed
Delivery: 30-45 Days ARO
Terms: Net 30 Days

Thank you,

Noel Frakes
President

Meter and Itron 2010 - National Meter and Automation, INC.

National Meter & Automation, Inc
9800 E Easter Ave.
Suite 130
Centennial, CO 80112
303-981-9330 Phone
303-649-1017
Attention Noel Frakes

Quanity	Discriprion	Cost per Unit	Total Idem
70	5/8" x 3/4 Badger Meter LP with Encoder Register for Pit ERT	$ 64.00	$4,480.00
	5' Wire with in-line connector for Itron ERT		
100	3/4" Badger Meter with Encoder Register for Remote ERT	$ 70.73	$7,073.00
	5' Wire with in-line connector for Itron ERT		
40	3/4" Badger Meter with Encoder Register for Pit ERT	$ 70.73	$2,829.20
	5' Wire with in-line connector for Itron ERT		
10	1" Badger Meter with Encoder Register for Remote ERT	$ 101.17	$1,011.70
	5' Wire with in-line connector for Itron ERT		
20	1" Badger Meter with Encoder Register for Pit ERT	$ 101.17	$2,023.40
	5' Wire with in-line connector for Itron ERT		
130	60W ERT with in-line conncetor for Remote Series	$ 89.62	$11,650.60
110	60W ERT with in-line conncetor for Pit Series	$ 89.62	$9,858.20
50	5/8" x 3/4" Badger RTR with Potted wire for Pit ERT	$ 76.75	$3,837.50
50	3/4" Badger RTR with Potted wire for Pit ERT	$ 76.75	$3,837.50
		total	$46,601.10

WATER AND SEWER BOARD
MINUTES
March 9, 2010

The meeting was called to order at 5:05 p.m.

Members present:	Burns, Clark, Olson, Cassidy, Higday, Wiggins, Woodward, Mc Caslin, Habenicht
Members absent:	None
Also present:	Stewart Fonda, Director of Utilities Bill McCormick, Operations Supt. Tom Brennan, Utilities Engineer Bruce Behrer, Engineer, Muller Engineering

Excerpt from Pages 3 and 4 of the March 9, 2010 Water and Sewer Board Minutes

. . . . .

4. WATER METER AND ERT PURCHASE.

The Utilities Department purchases water meters needed for an entire year by requesting one large bid proposal for additional cost savings. A portion of these meters will be resold to Englewood customers for new installations as part of the flat-rate-to-meter conversion process. Some of the meter stock will be used to replace inactive poorly functioning meters.

Englewood's meter and electronic remote transmitters (ERT) order is being placed in conjunction with Denver Water Board's meter bid for the best quantity price. Meter and ERTs will be purchased from National Meter & Automation for the amount of $46,601.10.

Mr. Burns moved;

Mr. Higday seconded:	To recommend Council approval of the purchase of water meters and electronic remote transmitters (ERT's) from National Meter and Automation, Inc. in the amount of $46,601.10.
Ayes:	Burns, Clark, Olson, Cassidy, Higday, Wiggins, Woodward, McCaslin, Habenicht
Nays:	None
Members absent:	None

Motion carried.

. . . . .

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
April 5, 2010	11 c iv	Allen Plant Alum Residuals Removal and Disposal

Initiated By:	Staff Source:
Utilities Department	Stewart H. Fond, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved on July 19, 2004 the bid for the Allen Water Filtration Plant Residuals Removal and Disposal Service to Waste Management in the amount of $163,260 for disposal of one year of production.

Council approved on June 19, 2006 the bid for Allen Water Filtration Plant Residuals Removal and Disposal Service to Waste Management, Inc. in the amount of $49,768 for disposal of approximately 800 cubic yards of production.

Council approved, on February 19, 2008, the proposal for the Allen Water Filtration Plant residuals removal and disposal to Allied Waste in the amount of $108,775 for disposal of approximately 2,000 cubic yards of production.

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at their March 9, 2010 meeting, recommended Council approve, by motion, the proposal for the Allen Water Filtration Plant residuals removal and disposal to E.T. Technologies, Inc., the lowest responsible bidder, in the amount of $83,520 for disposal of approximately 1,600 cubic yards of production.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Alum residuals are produced by the settling process and filter backwashing. Residuals build up in the washwater reservoir and the settled solids are pumped out by the sludge-handling barge. It then goes into the belt press, which dewaters the residuals. This process allows us to stockpile up to 2,000 cubic yards of residuals annually.

Residuals are produced year-round, and it is imperative that the residuals be processed when the weather is amenable and stored until disposal. Storage space has since run out, and the Allen Filter Plant needs to dispose of these residuals in the quickest, most economical, and legally compliant method.

The dewatering process concentrates a naturally occurring radioactive material (NORM), also known as technologically enhanced radioactive material (TERM) that falls under State Health Department requirements with EPA guidelines. For a comparison of relative radiation exposure - standing next to the residuals pile for 6 months produces 1 – 2 mrem/year, watching TV produces 1

mrem/year and living in a brick or stone house produces 7 mrem/year. Information was provided by Joseph Cattafe of Camp Dresser & McKee Inc. (CDM).

The disposal site must be approved by the State Health Department as an allowed site for properly disposing of residuals resulting from normal sludge removal operations at the Allen Water Filter Plant.

FINANCIAL IMPACT

E.T. Technologies, Inc. is the recommended acceptable bidder at $83,520 for one year's production (1,600 yards). The Utilities Department budgeted $110,000 in the 2010 Budget for this project. CDM reviewed the bids and did a technical evaluation deeming the E.T. Technologies, Inc. bid the lowest, acceptable bid.

LIST OF ATTACHMENTS

Bid Tabulation Sheet dated March 1, 2010
Excerpt from the March 9, 2010 Water and Sewer Board Minutes

City of Englewood Bid Tabulation Sheet

Bid Opening Date: March 1, 2010 10:00 A.M. MST

Apparent Low Bidder

ITEM BID: IFB-10-105 Allen Water Filtration Plant Residuals Removal & Disposal Service

Vendor	Estimate 1600 Cubic Yards	Unit Cost	Total Bid	Statement of Qualifications Y/N	Statement of Delivery Accordance Y/N	*Exceptions:*
E.T. Technologies, Inc						
10000 S Dransfeldt Rd Ste 100						
Parker, CO 80134						
Robert Krumberger						
(303) 680-9414 fax (303) 680-5427						
robert@ettechinc.net	1600 CY	$ 52.20	$ 83,520.00	Y	Y	None
Waste Management of Colorado						
7780 E 96th Ave						WM will require pH analysis for profile approval,
Henderson, CO 80640						& takes exception of the Indemnification clause
Geoff Aardsma						in the contract
(303) 968-5339 fax (303) 280-9848						
gaardsma@wm.com	1600 CY	$ 70.82	$ 113,312.00	N	Y	
Republic Services/Allied Waste Services						
8480 Tower Rd						
Commerce City, CO 80022						
Mike Riley						
(303) 459-8744 fax (303) 371-5150						
mriley@republicservices.com	No Bid	No Bid	No Bid	No Bid	No Bid	No Bid

CDM
555 17th Street, Suite 1100
Denver, Colorado 80202

March 2, 2010

Bill McCormick
Operations Superintendent-Utilities
City of Englewood – Utilities Department
1000 Englewood Parkway
Englewood, CO 80110

Subject: IFB-10-105 Allen Water Filtration Plant Residuals Removal & Disposal Service Bid Evaluation and Recommendation

Dear Bill:

As requested, CDM completed a review of the bids for the above referenced project. This letter lists the actions taken to complete this review, as follows:

- Evaluated the original bid documents submitted to the City on March 1, 2010.
- Verified the estimated quantity and unit price equals the Total Base Bid amount.
- Verified completeness of bids

Based on the evaluation of the bids received, it is our opinion that all contractors submitted responsive bids. E.T. Technologies, Inc. is the low apparent bidder and did not take any exceptions to the Contract. Therefore, CDM recommends that the City award the contract for the referenced project to E.T. Technologies, Inc.

Please call with any questions you may have.

Very truly yours,

James J. Kriss, P.E.
Principal
Camp Dresser & McKee Inc.

cc: project files

P:\0710-Englewood\59588 - Residuals Landfill Disposal Assessment\2010 Reisduals Disposal\IFB-10-105 Bid evaluation letter.doc

WATER AND SEWER BOARD
MINUTES
March 9, 2010

The meeting was called to order at 5:05 p.m.

Members present:	Burns, Clark, Olson, Cassidy, Higday, Wiggins, Woodward, Mc Caslin, Habenicht
Members absent:	None
Also present:	Stewart Fonda, Director of Utilities Bill McCormick, Operations Supt. Tom Brennan, Utilities Engineer Bruce Behrer, Engineer, Muller Engineering

Excerpt from Page 2 of the March 9, 2010 Water and Sewer Board Minutes

. . . . .

2. ALUM RESIDUAL DISPOSAL.

Alum residuals are produced by the settling process and filter backwashing at the Allen Filter Plant. Residuals build up in the washwater reservoir and the settled solids are pumped out by the sludge handling barge. This process allows us to stockpile up to 2,000 cubic yards of residuals annually. The dewatering process concentrates a naturally occurring radioactive material that falls under State Health Department requirements with EPA guidelines. To properly dispose of residuals resulting from normal sludge removal operations at the Allen Filter Plant, the disposal site must be approved by the State Health Department as an allowed site.

Bids were received from three State approved vendors. CDM reviewed the bids and did a technical evaluation deeming E.T. Technologies the lowest, acceptable bid at $83,520.00 for one year's production (1,600 yards).

Mr. Habenicht moved;

Mr. Wiggins seconded:	To recommend Council approval of the proposal for the Allen Water Filtration Plant residuals removal and disposal to E.T. Technologies, Inc. in the amount of $83,520.00 for disposal of approximately 1,600 cubic yards of production.
Ayes:	Burns, Clark, Olson, Cassidy, Higday, Wiggins, Woodward, McCaslin, Habenicht
Nays:	None
Members absent:	None

Motion carried.

. . . . .

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
April 5, 2010	11 c v	Solids Contact Tanks Air Pipe and Storm Water Projects Construction Management Services Agreement

Initiated By:	Staff Source:
Littleton/Englewood WWTP Supervisory Committee	Stewart H. Fonda, Director of Utilities Chong Woo, Project Engineer

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approval of the Professional Services Projects in the Littleton/Englewood WWTP 2010 Budget.

RECOMMENDED ACTION

Recommendation from the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Supervisory Committee to approve, by motion, Amendment #17 to the Agreement for Engineering Services for construction management services for the Solids Contact Tanks (SCT) Air Pipe and Storm Water Projects at the Littleton/Englewood Wastewater Treatment Plant. Staff recommends approving the agreement with Brown and Caldwell Environmental Engineers and Consultants in the amount of $136,588.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

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

City Council previously approved the construction contract to Stanek Constructors, Inc. on January 4, 2010. Notice to Proceed was given to the contractor as of February 16, 2010. The expected final completion date is October 13, 2010. Brown and Caldwell completed the project design and they are recommended to perform the construction management services.

Services will include:

- Project Management:
  - Project coordination and communication.
  - Planning and monitoring of construction budget and schedules.
  - Contract documents administration.

- Submittal Review:
  - Review and provide response to detailed fabrication and erection drawings, laboratory, shop and mill testing reports.

- Request for Information:
  - Receive and respond to construction and contract related information requests, clarifications of design, and unknown or changed site conditions from the contractor.

- Change Orders:
  - Review proposed change order requests to verify conformance with design intents and evaluate cost effectiveness.
  - Initiate change orders where required to clarify or modify the design to suit field conditions.
  - Negotiate cost and time of change orders and validate time extensions.
  - Review claims.

- On-site Monitoring and Start-up Services:
  - One resident engineer will be provided for the estimated 9-month construction duration.
  - The engineer shall review monthly updates to the cost loaded construction schedule and provide comments where necessary.
  - Review of monthly progress payments.
  - Provide tracking of contract documents, including correspondence, schedules, submittals, product, payments, change orders, RFIs, and photographs.
  - Review construction record drawings and provide final as-build drawings.
  - Design engineer site visits and inspections.

- Supplementary Design:
  - Provide supplementary designs and drawings necessary to respond to changed field conditions, to provide additional details for construction, and to communicate proposed changes.

- Project Completion:
  - Provide a project incomplete and punch list.
  - Review and recommend final completion and final payment.
  - Final project closure report.

Brown and Caldwell is an award winning and nationally recognized full service environmental engineering and consulting firm with 45 offices located across the country. One of its larger offices is located in Golden, Colorado and is comprised of over 70 professionals with extensive expertise in the areas of water/wastewater that includes engineers, scientists, construction managers, designers, and financial and utility management experts. Brown and Caldwell has completed numerous municipal projects along the Front Range and mountain communities.

FINANCIAL IMPACT

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

LIST OF ATTACHMENTS

Proposed Agreement

Feb '11

AMENDMENT 17
TO
AGREEMENT FOR ENGINEERING SERVICES
BETWEEN BROWN AND CALDWELL
AND
CITY OF ENGLEWOOD
FOR
SCT AIR PIPE AND STORM WATER PROJECTS
CONSTRUCTION PHASE SERVICES

THIS AMENDMENT NO. 17 to the Agreement, made and entered into on this _____ day of _____, 2010 by and between the City of Englewood, herein collectively referred to as "Owner," and Brown and Caldwell, a California corporation, authorized to provide engineering services in Colorado, hereinafter referred to as "Engineer".

WITNESSETH:

WHEREAS, the Cities of Littleton and Englewood have entered into a joint use agreement which describes each City's respective rights in and responsibilities for the ownership and operation of the Littleton/Englewood Wastewater Treatment Plant (WWTP) pursuant to which agreements and contracts may be administered by Englewood on behalf of both Cities; and

WHEREAS, Owner and Engineer entered into an Agreement on March 29, 2001 to provide professional engineering services in connection with implementation of Phase 2 Littleton/Englewood WWTP Expansion, herein after referred to as the "Project"; and

WHEREAS, Amendment No. 1 was executed on October 5, 2001 to provide engineering services associated with the Design of Phase 2; and

WHEREAS, Amendment No. 2 was executed on October 5, 2001 to provide engineering services associated with the Design of the Disinfection Improvements; and

WHEREAS, Amendment No. 3 was executed in May 2002 to provide engineering services associated with the Standby Generator at the Headworks Facility; and

WHEREAS, Amendment No. 4 was executed in May 2002 to provide engineering services associated with the Wastewater Utility Plan; and

WHEREAS, Amendment No. 5 was executed in June 2002 to provide engineering services associated with a Process/Value Engineering Workshop, an Advisory Committee Workshop, and a Joint City Council Meeting; and

WHEREAS, Amendment No. 6 was executed in August 2002 to provide engineering services associated with a Denitrification Field Visit to Germany and Malmo and to provide reimbursement costs.

WHEREAS, Amendment No. 7 was executed in September 2002 to provide engineering services associated with Construction Management Services – Disinfection, Design Contract Additions and Subtractions, Denitrification Facilities Design and Development of Preliminary Effluent Limits; and

WHEREAS, Amendment No. 4-A was executed in December 2002 to provide engineering services associated with additional mapping and preliminary effluent limit tasks associated with the wastewater utility plan; and

WHEREAS, Amendment No. 7-A was executed in May 2003 to provide engineering services associated with additional design for Phase 2, titled Design Contract Additions and Subtractions; and

WHEREAS, Amendment No. 8 was executed in October 2003 to provide engineering services associated with Ammonia Bypass Line; and

WHEREAS, Amendment No. 9 was executed in December 2003 to provide Phase 2 Construction Services; and

WHEREAS, Amendment No. 10 was executed on December 12, 2003 to provide programming and record drawing services; and

WHEREAS, Amendment No. 11 was executed on March 12, 2007 to provide an electronic operations and maintenance manual (OLM) and operations management system (OMS) for the Phase 2 project; and

WHEREAS, Amendment No. 12 was executed on October 17, 2008 to provide additional Construction Services from August 7, 2008 through October 3, 2008; and

WHEREAS, Amendment No. 13 was executed in January, 2009 to provide additional Construction Services from October 3, 2008 through December 15, 2008; and

WHEREAS, Amendment No. 14 was executed in January, 2009 to provide additional Construction Services from December 15, 2008 through December 31, 2008; and

WHEREAS, Amendment No. 15 was executed in January, 2009 to provide additional Design Projects from January 22, 2009 through December 31, 2009; and

WHEREAS, Amendment No. 16 was executed in January, 2010 to provide additional engineering services for SCT Lighting and Struvite Design, Bid Assistance for SCT/AD3 Project an PM.

WHEREAS, the Owner has requested the Engineer to provide additional Construction Services. The approval was made by the Littleton/Englewood WWTP Supervisory Committee on December 17, 2009.

NOW, THEREFORE, Owner and Engineer agree to amend the Agreement as follows:

I. SCOPE OF ENGINEERING SERVICES

Objective: To provide construction management services associated with the SCT Air Pipe and Strom Water Projects construction contract. This amendment is detailed in Exhibit A.

II. COMPENSATION

For these services described in Exhibit A, which are to be performed by the Engineer, Owner agrees to pay, and Engineer agrees to accept compensation of a lump sum price of $136,588 - dollars.

The compensation is to be paid in ten (10) equal monthly disbursements with invoicing beginning January 2010. Compensation for services not covered in Exhibit A, including a construction period exceeding that specified in the contract documents, shall be as agreed upon by the Owner and Engineer and set forth in an amendment to this Agreement or under a separate Task Order Agreement. Payment will be as specified in Article VI "Compensation" of the Agreement.

IN WITNESS WHEREOF, the Engineer and the Owner do hereby execute this Amendment 17 to the Agreement.

CITY OF ENGLEWOOD

By _____

Title _____

Date _____

BROWN AND CALDWELL, INC.

By Kirk Petrik

Title Vice President

Date 1/18/2010

EXHIBIT A

CONSTRUCTION ENGINEERING SERVICES – FOR SCT AIR PIPE AND STORM WATER PROJECTS
SCOPE OF ENGINEERING SERVICES

I. SCOPE OF ENGINEERING SERVICES

Construction services shall commence with the Notice to Proceed issued to the General Contractor anticipated in early 2010. The contract shall be complete with the submission of a project closure report and within 30 days of final completion of the construction contract. Amendment 17 - Scope of Services is based on a 9-month construction period. The effort for Task 105 – On-Site Monitoring and Start-Up Services has accounted for the on-site inspection associated with the Stormwater Contract (Amendment 5 – As-needed Engineering Contract). The scope of work for engineering services to be provided by the Engineer under Construction Services includes the tasks listed below. If additional hours are required, Brown and Caldwell will notify the LE staff to increase the cost and for written approval.

Task 101 Project Management.

Project Management includes assignment and supervision of project staff, project coordination, planning and monitoring of construction management work budget and schedule, and invoice to the Owner.
This task includes assistance to the owner for coordination with materials testing during construction, and advise the Owner regarding impacts to project schedule, cost, or plant operations.
Engineer shall develop a contract administration manual at the initiation of construction to establish procedures for administration of the construction contract, and distribute to Owner and Contractor. This task includes 119 hours for the Project Management task.

Task 102 Submittal Review.

Engineer shall review detailed fabrication and erection drawings, and laboratory, shop, and mill test reports for materials and equipment submitted by manufacturers. Engineer shall determine whether proposed installations, materials, and equipment comply with the specifications. Engineer shall respond to each submittal by marking it no exceptions taken, accepted as noted, revise and resubmit, or rejected. Owner shall receive one copy of all accepted test results, drawings, and reports. Product data submitted by the Contractor without specific questions or deviations will be filed for reference without review as specified in the construction contract documents. A total of 30 submittals (which includes subsequent submittal reviews) are assumed totaling 180 hours for this task.

Task 103 Information Requests.

Receive and respond to written information requests regarding clarification of design and unknown or changed site conditions. A total of 16 Requests for Information (RFI's) are assumed totaling 64 hours for this task.

Task 104 Change Orders.

Review proposed change orders and proposed contract modifications (PCM's) to verify conformance with the design intent and evaluate cost effectiveness. Initiate change orders where required to clarify or modify the design to suit field conditions.

Following procedures established in the Contracts Administration Manual, negotiate and administer change orders. Negotiate with Contractor the validity, cost, and time of change orders, time extensions, and claims. Maintain documentation and records of the status of changes, time extensions, and claims. A total of 5 PCM's are assumed for this task totaling 56 hours.

Task 105 On-site Monitoring and Start-up Services.

The Engineer shall provide one resident engineer for the 9 month construction duration that includes 55 hours per month to monitor general conformance of Contractor's work to plans and specifications. The field administrative assistance will be provided in the Denver office and includes 4 hours per month of assistance for the project.

The resident engineer shall monitor Contractor's monthly updates of cost-loaded construction schedule and provide comments to Contractor regarding conformance of his schedule with requirements of the project manual. The tasks includes assistance with coordination of plant outages and tie-ins.

In addition the field personnel shall review and recommend Owner action on contractor progress payments. Meet with the Contractor monthly to review and update actual status of cost and time. Recommend to the Owner the progress payment amount due to the Contractor.

Because of the limited hours per month for the resident engineer, the owner shall maintain the construction documentation and project records. The resident engineer shall assist with the tasks that include correspondence, schedules, submittals, product data, payments, change orders, RFI's and photographs. The tracking system shall be provided by the Owner or the Engineer will provide the system in Microsoft Excel. Tracking will be needed Contractor submittals, product data and requests for

information. The resident engineer shall review for contract compliance the construction record drawings on a monthly basis and make a recommendation to approve or withhold a portion of progress payments. The Engineer shall determine "critical" locations that are needed for future projects.

Task 106 Design Team Site Visits and Progress Meetings.

Site visits by the project manager or project engineer, and other members of the design team, will be made periodically to observe the progress of the work and to advise the Owner and construction manager concerning conformance of the work with the original design intent. Contractor progress meetings will be conducted and documented by the resident engineer on a bi-weekly or monthly basis. The project manager or project engineer from the design team shall attend on an as-needed basis and for this task it is estimated at one meeting per month. The total estimated hours for the site visits and the progress meetings is 80 hours.

Task 107 Supplementary Design

Prepare supplementary drawings to respond to actual or changed field conditions. Supplementary drawings will be prepared by the Engineer needed to provide additional details for construction and to communicate proposed changes to the Contractor. This supplementary design task includes 20 hours for this effort.

Task 108 Project Completion, Closure Report and Closeout Meeting

A list of incomplete work shall be provided to the contractor by the resident engineer and project engineer. The resident engineer shall review and recommend final completion to the Owner upon completion of all incomplete work. The engineer shall provide a project closure report within 30 days of final completion. The total hours for this task are 40 hours.

II. SCOPE OF OWNER PROVIDED SERVICES

Owner agrees to provide facilities and equipment, and to perform services in connection with the construction Phase services, which are particularly described as follows:

A. Approve and pay acceptable progress payment requests.

B. Maintain the Owner's project accounting system to collect and track project income and expenses.

C. Provide legal services for the Owner related to required contracts, permits, insurance certificates, rights-of-way, interagency agreements, and construction dispute resolution, if required.

D. Approve acceptable change orders.

E. Initiate Owner requested changes.

F. Monitor contract provisions for affirmative action, insurance coverage, and other related activities.

G. Provide available information related to the Project.

H. Provide direct communication with the Colorado Department of Health and the U.S. Environmental Protection Agency regarding the Project as needed.

I. Designate an Owner representative to provide timely direction to Construction Manager and render Owner decisions.

J. Award construction contracts. Actions will include assistance in receiving the required contractor documents, issuing notice of award, executing the construction agreement with the successful contractor, and issuing "notice to proceed".

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
April 5, 2010	11 c vi	Xcel Energy Memorandum of Understanding

Initiated By:	Staff Source:
Littleton/Englewood WWTP Supervisory Committee	Stewart H. Fonda, Director of Utilities Jim Tallent, Operations Division Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None

RECOMMENDED ACTION

Recommendation from the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Supervisory Committee to approve, by motion, a Phase 2 Memorandum of Understanding (MOU) with Xcel Energy to obtain consultative support services offered through the Process Efficiency program. The maximum cost of this program to L/E WWTP is $7,500.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The L/E WWTP staff met with Xcel Energy to inquire about a Process Efficiency program being offered by the Utility. This program looks beyond existing "lighting and HVAC" savings/ optimization programs, to the industrial side of our wastewater treatment process, where most of our energy is consumed. In our case specifically, 2009 energy expenditures for L/E WWTP operation were approximately 13% of the Operations and Maintenance (O&M) expenditures (or $1.7M)

The Process Efficiency program from Xcel Energy identifies opportunities for the L/E WWTP to improve our site's business practices associated with energy management and potential technical energy efficiency opportunities. The program Phase 2 services are set up to serve as a catalyst for achieving sustainable energy conservation results with the following goals:

- Establish energy benchmarks, an energy baseline, and a tracking process
- Provide niche expertise to ensure that an objective analysis of energy costs is a part of the normal capital decision-making process
- Provide a mechanism to take corrective actions to manage energy usage in a timely manner
- Complement and enhance your team's productivity

The ultimate goal of the Process Efficiency program is to develop and implement an energy management plan that results in sustainable energy conservation.

This review typically includes lighting and HVAC as part of the system analysis. However, since a Technical Energy Audit was completed by Ameresco for L/E WWTP, these specific activities are deleted from the MOU and Process Efficiency program analysis.

FINANCIAL IMPACT

The cost of the project is split 50/50 with the City of Littleton as part of the L/E WWTP electric budget.

LIST OF ATTACHMENTS

MOU Recommendation by Staff
Memorandum of Understanding

MEMORANDUM

To: Dennis Stowe, Plant Manager
From: Jim Tallent, Operations Division Manager
Date: February 24, 2010
Subject: Process Efficiency Memorandum of Understanding – XCEL Energy

Late 2009, plant staff met with XCEL Energy to inquire about a Process Efficiency program being offered to "industrial level users". This program looks beyond existing "lighting and HVAC" savings/optimization programs, to the industrial side of our process, where most of our energy is consumed. In our case specifically, 2009 energy expenditures for L/E WWTP operation were approximately 13% of the O&M expenditures (or $1.7M).

The program began with an energy management improvement opportunity assessment, looking at 'Best Practice in Energy Management' at L/E WWTP. This "BPEM" is designed to create a level of understanding and awareness on how energy and the management of energy is viewed throughout the organization. This exercise was conducted early January 2010.

From this session, a scope of work was developed to further investigate opportunities which address energy efficiency, as well as conservation. This scope of work includes a Memorandum of Understanding, addressing business processes and technical projects (the baseline audit). This includes the following:

- Understanding Performance and Opportunities
- Accountabilities
- Demonstrated Corporate Commitment
- Planning
- Reporting Feedback and Control System

The third phase of this program is to evaluate, recommend, plan and implement specific projects resulting from this study.

The maximum contribution from the L/E WWTP for this study is $7,500, invoiced via our utility bill. The balance of the study cost is paid by XCEL Energy. Although this study itself is not specifically budgeted, the estimated *potential* of reducing our energy expenditure by $100,000 to $320,000/year, in my opinion, justifies the expense. In addition, taking a look at energy use is a key component in our long-term sustainability planning.

Recommendation: I recommend L/E WWTP proceeds with this study.

MEMORANDUM OF UNDERSTANDING
PHASE II - SCOPING

Jim Tallent
Operations Division Manager
Plant Engineer
Littleton-Englewood Wastewater Treatment
2900 S Platte River Drive
Englewood, CO 80110

Thank you for your continued interest in the Process Efficiency program from Xcel Energy. As a result of Littleton-Englewood Wastewater Treatment completing the Phase 1 activities of the Process Efficiency program on January 5, 2010, we identified opportunities for saving energy in both your business processes and technical projects.

Business Processes (EnVinta One-2-Five)

1. Understanding of Performance and Opportunities
2. Accountabilities
3. Demonstrated Corporate Commitment
4. Planning
5. Reporting Feedback and Control System

Technical Projects (Baseline Audit)

1. Pumps - Pumping System Optimization
2. Fans and Blowers: Odor controls Fans/Blowers Controls
3. Air Compressors: Compressed Air System

The intent of this Memorandum of Understanding is to confirm Littleton-Englewood Wastewater Treatment intent to participate in Phase 2 of the Process Efficiency program. The purpose of this phase is to obtain the consultative support services offered through the Process Efficiency program for implementing the recommended actions from the One-2-Five Energy Diagnostic session and scoping audit. As a result of that session Graphet Inc. created the Planning and Technical Assessment Phase Proposal dated February 4, 2010, (Attachment A), which outlines many components of the services that will be offered.

Additional study funding from Xcel Energy's Process Efficiency program will be available to identify and scope technical opportunities. This includes paying the full cost of any studies that would normally be approved under our Compressed Air, Lighting Redesign, Recommissioning and Engineering Analysis programs. For a study to be included in the funding provided by the Process Efficiency program Littleton-Englewood Wastewater Treatment must receive pre-approval in writing before the project is started. Pre-approval criteria will be the same as the current Xcel Energy program associated with that technology. Funding for these studies is contingent on Littleton-Englewood Wastewater Treatment

continued good-faith efforts to implement measures identified that meet their financial performance criteria. All studies funded through this Memorandum of Understanding, Phase 2 Scoping, must be initiated by July 31, 2010.

Our Process Efficiency program identifies opportunities for improving your site's business practices associated with energy management and potential technical energy efficiency opportunities. In order to accomplish this, the Process Efficiency program Phase 2 services are set up to serve as a catalyst for achieving sustainable energy conservation results with the following goals:

- Establish energy benchmarks, energy baseline and tracking process.
- Provide niche expertise to ensure that an objective analysis of energy costs is a part of normal capital decision-making process.
- Provide a mechanism to take corrective actions to manage energy usage in a timely manner.
- Complement and enhance your team's productivity.

Participation in Phase 2 of Xcel Energy's Process Efficiency program requires that the customer, Littleton-Englewood Wastewater Treatment, agrees to:

- Select a manager to oversee development of energy management.
- Provide plant access and safety reviews.
- Establish plant primary contact for contract coordination.
- Provide plant support personnel during the service period for on-site field evaluations. This support shall include a plant contact that is knowledgeable of plant facilities and operations to address the field assessments required. Support shall include up to 16 hours of a knowledgeable electrician or pipe fitter as needed by Graphet Inc. for setting up monitoring equipment.
- Furnish plant data (if available) including floor plan layouts, equipment description and data sheets, and previous reports or data collected.
- Provide metered data for energy and key volume indicators for the last two years in electronic format.
- Provide prior reports that document understanding of energy conservation opportunities with estimated savings potential for use in energy targeting;
- Provide financial approval criteria or hurdle rate for projects;
- Proceed with good-faith efforts to apply for applicable Xcel Energy rebates and incentive programs, fund, and implement prescribed actions and projects that meet your business objectives;
- Provide a financial contribution of 25% of the cost of the studies completed under this agreement (see Attachment A), with a **maximum contribution of $7,500**. The funding contribution from Littleton-Englewood Wastewater Treatment will be

invoiced on your Xcel Energy utility bill at the time the studies are completed or the maximum contribution from Littleton-Englewood Wastewater Treatment is reached ($30,000 in completed study costs).

- Agree that Xcel Energy may terminate, at any time, any remaining Phase 2 activities in the event that further investigation indicates limited opportunity for energy conservation.

The ultimate goal of the Process Efficiency program is to develop and implement an energy management plan that results in sustainable energy conservation. Many of the projects identified through Phase 1 and 2 of the program would normally be rebated under Custom Efficiency. Through the Process Efficiency program projects are analyzed using the same performance criteria as the Custom Efficiency program, but discovery of the technical opportunity through the work associated with Process Efficiency can be substituted as the pre-approval date. Xcel Energy will still need to analyze them to determine if they qualify for a rebate and the associated amount. This pre-approval would not be applicable to projects initiated before program participation.

The Memorandum of Understanding for Phase 3 of Process Efficiency will document an installation plan for the measures identified. It will also include a bonus schedule for meeting and exceeding the associated conservation goals.

Thanks again for your continued interest in Xcel Energy's Process Efficiency program and we look forward to assisting Littleton-Englewood Wastewater Treatment in achieving sustainable energy conservation results.

For Littleton-Englewood Wastewater Treatment:	For Xcel Energy:
_____	_____
Stewart Fonda Utilities Director	Karen Rhodes Manager, Conservation Marketing
Date: _____	Date: _____

Attachment A

Planning and Technical Assessment Phase Proposal
Graphet Inc.
01/22/2010
(Reviside 3/10/2010)

ConservationWise from Xcel Energy[SM]

Process Efficiency

Planning and Technical Assessment Phase

Proposal

For

Littleton Engelwood WWTP CO
Engelwood, Colorado

Attn: Jim Tallent
Operations Division Manager

1/22/2010 Rev 1

Xcel Energy®

GRAPHET INC
ENERGY DATA MINING AND ANALYSIS

Executive Overview

Xcel Energy's Process Efficiency Program – Sustainable Energy Conservation (SEC) Services is a structured method that results in:

- Definition of an energy baseline and a tracking process to demonstrate consistent progress.
- Identification of potential opportunities and prioritization based on ability to achieve business and operational goals; and
- Reduction in operating costs to achieve a sustainable competitive advantage.

Your team at Littleton Engelwood WWTP CO, Engelwood, Colorado participated in the One-2-Five Energy Diagnostics Session and Technical Walkthrough conducted under the sponsorship of the Xcel Energy Services Inc. – Process Efficiency Program on 1/5/2010.

As we discussed, One-2-Five® Energy helps identify the most important next steps for further developing your energy management program – extracting greatest value from resources by ensuring each project undertaken is supported by other relevant activities. Taking a systems approach for establishing energy conservation processes is a critical success factor in an energy management program and necessary for achieving sustainable savings.

The top five priorities for achieving results set using the One-2-Five energy diagnostic session were to address:

1. **Understanding Performance and Opportunities**
2. **Accountabilities**
3. **Demonstrated Corporate Commitment**
4. **Planning**
5. **Reporting Feedback and Control System**

Total annual utility cost for Littleton Engelwood WWTP CO is $1,705,466 that includes electric cost of $1,500,129 and a gas cost of $205,337. Preliminary analysis using QuickPEP (DOE) tool indicates a savings potential for Littleton Engelwood WWTP CO in the range of $100,000 to $320,000 per year. Based on the information provided by plant personnel, we estimate that the following opportunities for energy conservation are possible at your facility:

1. Pumps : Pumping Systems Optimization
2. Lighting : Lighting Upgrades and Controls (Utilize previous study / recommendations and incorporate into energy plan)
3. Air Handling Units : HVAC Systems Optimization (Utilize previous study / recommendations and incorporate into energy plan)

4. Fans and Blowers : Odor Controls Fans / Blowers Controls
5. Air Compressors : Compressed Air System
6. Cogeneration: Reassessment of potential cogeneration strategies

Graphet Inc's mission is to promote sustainable energy conservation. Our customers benefit from our team's 20+ years niche expertise in planning and in helping industries achieve sustainable energy conservation.

These top five priorities require development of an energy management action plan and technical assessment of the utility systems and end users.

Graphet Inc is pleased to present to Littleton Engelwood WWTP CO, Engelwood, Colorado, this proposal to provide SEC services aimed at establishing an objective framework for achieving energy conservation.

Services Scope of Work

The SEC services are most effective as a renewable annual service program with the following goals:

1. Establish energy benchmarks, energy baseline and tracking process.
2. Provide niche expertise to ensure that an objective analysis of energy costs is a part of normal capital decision-making process.
3. Provide a mechanism to take corrective actions to manage energy usage in a timely manner.
4. Complement and enhance your team's productivity.

The services scope for Littleton Engelwood WWTP CO involves developing a structure and a plan for implementing sustainable energy conservation initiatives. To address the top five priorities, the phase 2 scope of work includes the tasks listed below. Implementation activities required to address the above-listed priority items will focus on the following tasks. Some of the priorities are identified as being addressed internally, based on your team's feedback during the site visit.

A. Understanding Performance and Opportunities: Primary responsibility: Xcel Energy IEP Team

1. Establish baseline energy consumption and identify conservation opportunities. This will build upon the studies already completed for lighting and HVAC. The focus will be on process fans & blowers, pumping systems and compressed air.
2. Benchmark against similar operations and establish potential energy savings for each major operation / product line.
3. Evaluate technical options and develop cost benefit analysis based on concept design and critical performance requirements
4. Develop a prioritized action plan for energy conservation projects.

5. Establish energy use metrics for each major operations/product line based on best available data

B. Accountabilities: Primary responsibility: Littleton Engelwood WWTP CO

1. Evaluate options for assigning accountability for energy management directly to end users.
2. Coordinate metering and monitoring needs to track accountabilities.
3. Set up process for supporting end users in achieving their energy goals.
4. Identify a key person responsible for energy management.
5. Assist in establishing a group/committee organized by a representative from operations in setting up and coordinating energy conservation activities at the right level.

C. Demonstrated Corporate Commitment: Primary responsibility: Littleton Engelwood WWTP CO

1. Support the development of an energy policy containing specific goals.
2. Set objectives for improving energy efficiency and reducing energy costs.
3. Report on energy management activities made towards the goals set in the energy policy.
4. Evaluate incorporation of energy management into existing ISO or Quality programs

D. Planning: Primary responsibility: Xcel Energy IEP Team

1. Develop a prioritized list of energy savings opportunities
2. Utilize list to establish capital budgets for the next year's prioritized projects for improving energy performance
3. Establish strategic plan for energy conservation based on understanding of opportunities and business goals.

E. Reporting Feedback and Control System: Primary responsibility: Xcel Energy IEP Team

1. Evaluate monthly energy costs per unit of activity and weather
2. Examine results and variation of usage observed
3. Identify of key parameters
4. Analyze correlation among energy, weather and other relevant parameters
5. Develop energy benchmarking, monthly tracking and reporting formats
6. Develop shift/daily electric reports that highlight variations from targets

The above planning efforts will result in the definition of the energy management process and short and long term goals for energy management at the Littleton Engelwood WWTP CO.

Littleton Engelwood WWTP CO Responsibilities

The SEC services program requires coordinated work between Littleton Engelwood WWTP CO staff and Graphet Inc. Littleton Engelwood WWTP CO investment will be in meeting the customer responsibilities as outlined in this proposal and identifying an energy champion to ensure on-going success of the program. Littleton Engelwood WWTP CO will be responsible for the following:

1) Select a manager to oversee development of energy management.
2) Provide plant access and safety reviews.
3) Establish plant primary contact for contract coordination.
4) Provide plant support personnel during the service period for on-site field evaluations. This support shall include a plant contact that is knowledgeable of plant facilities and operations to address the field assessments required. Support shall also include up to 16 hours of a knowledgeable electrician or knowledgeable pipe fitter as needed by Graphet Inc for setting up monitoring equipment.
5) Furnish plant data (if available) including floor plan layouts, equipment data sheets, and previous reports or data collected.
6) Provide metered data for energy and key volume indicators for the last two years in electronic format.
7) Provide prior reports that document understanding of energy conservation opportunities with estimated savings potential for use in energy targeting.
8) Provide financial approval criteria or hurdle rate for projects.

Compensation for Services

SEC services is a program focused on supporting not only planning, but also implementation, monitoring and tracking which are the keys to achieving sustainable results.

The planning and technical services proposed are a part of a proven approach for managing energy. Through this process Littleton Engelwood WWTP CO will:

- Increase profitability
- Improve asset utilization and efficiency
- Reduce capital expenditure
- Establish a sustainable energy conservation process by enhancing team capabilities.

Total investment for the services as described above are:

PLANNING & TECHNICAL Phase: scope of work (Primary Responsibility: Graphet Inc) is a lump sum of $43,280 (Forty three thousand two hundred and eighty dollars).

Payment terms are due upon invoice as follows:

- 25% of total contract amount on contract award
- 65% progress payment of completed work
- 10% at project completion and acceptance

Project start will be within three weeks of contract award. Project completion will be twelve to sixteen weeks after project start.

There is funding available for this phase of work under the sponsorship of Xcel Energy's Industrial Efficiency Program. The details of this funding are provided in the *Memorandum of Understanding for Phase 2 participation*, provided to Littleton Engelwood WWTP CO by Xcel Energy.

RESOLUTION NO. _____
SERIES OF 2010

A RESOLUTION RECOMMENDING TO THE CITY MANAGER OF THE CITY OF ENGLEWOOD, COLORADO THE ESTABLISHMENT OF A TEMPORARY SUSPENSION OR MORATORIUM ON THE ENFORCEMENT OF SELECT PROVISIONS OF THE ENGLEWOOD MUNICIPAL CODE 2000, THE SIGN CODE, PERTAINING TO WALL MURALS FOR A PERIOD OF SIX MONTHS UNTIL OCTOBER 1, 2010.

WHEREAS, the City has spent a great deal of money and effort promoting its downtown area as a shopping destination and a cultural and artistic venue; and

WHEREAS, City Council has directed staff to review and revise, if necessary, provisions of the Sign Code concerning the use and display of wall murals; and

WHEREAS, staff will need sufficient time to review and coordinate recommendations relating to the provisions in the Code; and

WHEREAS, City Council deems it necessary to coordinate the review of the Unified Development Code and finds it appropriate to temporarily suspend enforcement of select provisions of the Sign Code relating to wall murals until review by the staff and City Council; and

WHEREAS, the moratorium would temporarily stop enforcement of those sections; and

WHEREAS, any review or revision to the Unified Development Code will help protect the public health, safety and welfare by preserving a safe, healthy, and sound environment within the City; and

WHEREAS, the City Council finds that a six month moratorium or temporary suspension of the enforcement of certain provisions of the Englewood Municipal Code 2000 pertaining to wall murals is necessary to implement and begin review of the Unified Development Code; and

WHEREAS, after a review of the effect of the moratorium relating to wall murals on the community, the recommendation may be to keep the Code as it currently exists so any person who purchases, erects or maintains a wall mural during the moratorium period in contravention of the existing Sign Code will do so at the risk of being subject to enforcement at the termination of the six month moratorium;

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

Section 1. The City Council of the City of Englewood, Colorado recommends the City Manager establish a moratorium or temporary suspension on the enforcement of the Englewood Municipal Code 2000 pertaining to wall murals through October 1, 2010.

Section 2. All wall murals, even those subject to this moratorium, shall still be required to comply with 16-6-13(N) Prohibited, Hazardous, and Abandoned Signs as well as 16-6-13(M) Maintenance.

Section 3. The City Council finds the provisions of this Resolution are temporary in nature and are intended to be replaced by subsequent legislative enactment so that the moratorium or temporary suspension as specified in this Resolution should terminate on October 1, 2010.

ADOPTED AND APPROVED this 5th day of April, 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