

**Agenda for the  
Regular Meeting of the  
Englewood City Council  
Monday, June 7, 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 May 17, 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.)
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. E-mail from Miodrag Budisa announcing his resignation from the Board of Adjustment and Appeals.
9. Consent Agenda Items.
  - a. Approval of Ordinances on First Reading.

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.
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- b. Approval of Ordinances on Second Reading.
    - i. Council Bill No. 12, authorizing an Intergovernmental Agreement regarding the application for and acceptance of a 2010 Edward Byrne Justice Assistance Grant (JAG) Program Award (Grant No. 2010-H4990-CO-DJ).
  - c. Resolutions and Motions.
10. Public Hearing Items (Please limit your presentation to five minutes).
- a. Motion to reopen a Public Hearing to gather input on Council Bill No. 11, authorizing amendments to Title 16: Unified Development Code to permit buy-back, second-hand, thrift and consignment uses as uses-by-right in the MU-B-1 zone district.
11. Ordinances, Resolutions and Motions
- a. Approval of Ordinances on First Reading.
    - i. Council Bill No. 13 — Recommendation by the Community Development Department to adopt a bill for an ordinance approving an Intergovernmental Agreement between the Denver Regional Council of Governments and the City of Englewood regarding the licensing of the 2010 Denver Regional Aerial Photography Project. **STAFF SOURCE: John Voboril, Planner.**
    - ii. Council Bill No. 14 — Recommendation by the Community Development Department to adopt a bill for an ordinance authorizing an Intergovernmental Agreement with the Colorado Department of Labor and Employment to receive labor and employment data for the City of Englewood through the Denver Regional Council of Governments. **STAFF SOURCE: John Voboril, Planner.**
    - iii. Council Bill No. 15 — Recommendation by the Englewood Police Department to adopt a bill for an ordinance approving a Memorandum of Understanding between the 18<sup>th</sup> Judicial District Juvenile Assessment Center and the City of Englewood establishing the method of fee assessment for use of the Juvenile Assessment Center. **STAFF SOURCE: Thomas E. Vandermee, Chief of Police.**
    - iv. Council Bill No. 16 — Recommendation from the Police Department to adopt a bill for an ordinance authorizing acceptance of Victim Assistance Law Enforcement (VALE) grant funding for 2010 in the amount of \$16,740. **STAFF SOURCE: Thomas E. Vandermee, Chief of Police.**

b. Approval of Ordinances on Second Reading.

- i. Council Bill No. 11, authorizing amendments to Title 16: Unified Development Code to permit buy-back, second-hand, thrift and consignment uses as uses-by-right in the MU-B-1 zone district.

Note: If Public Hearing on this matter is reopened, Council Bill No. 11 will not be considered on second reading at this time unless Council moves to waive the Council Policy which says Council bills are not passed the same night as a Public Hearing on the Council bill (the Kell's Rule). Should that motion pass, "Council Bill No. 11, as amended", may be moved and voted on at this time.

c. Resolutions and Motions.

12. General Discussion.

- a. Mayor's Choice.  
b. Council Members' Choice.

13. City Manager's Report.

14. City Attorney's Report.

- a. Settlement proposal in the amount of \$200,000 for Arapahoe County District Court Case No. 09 CV 2433 (City of Englewood v. Capri Pools, LLC, Louis Pool Company, LLC, and Counsilman-Hunsaker) pertaining to the leak and failure of a wall at Pirates Cove.

15. Adjournment

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

- Alliance for Commerce in Englewood Committee meeting of April 8, 2010.
- Englewood Housing Authority meeting of April 7, 2010.
- NonEmergency Employees Retirement Board meeting of February 9, 2010.
- Planning and Zoning Commission meetings of April 20 and May 4, 2010.
- Urban Renewal Authority meeting of March 10, 2010.

Sent: Tuesday, June 01, 2010 2:42 PM

Dear members Board of Adjustment,

Due to my new professional assignment out of State of Colorado I will not be able to attend Board meetings from June 1, 2010. Please replace my place with another candidate.

My new location is Milwaukee, Wisconsin. I would like to be in touch with you all and here is my new email address: [mbudisa@bloomcos.com](mailto:mbudisa@bloomcos.com) or office: 414-308-8944, 312-876-9500

It has been my very great pleasure to work with you all over few years.

Thank you.

Miodrag Budisa EURAIL-ING, PE

VP Transportation

10501 W. Research Drive, Suite 100

Milwaukee, WI 53226

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. 12  
INTRODUCED BY COUNCIL  
MEMBER McCASLIN

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT  
REGARDING THE APPLICATION FOR AND ACCEPTANCE OF A 2010 EDWARD BYRNE  
JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD – 2010-H4990-CO-DJ.

WHEREAS, the Englewood City Council previously authorized the application for and  
acceptance of Justice Assistance Grants (JAG) with the passage of Ordinance #49, Series of 2008;  
Ordinance #12, Series 2009; and Ordinance #27, Series of 2009; and

WHEREAS, the Justice Assistance Grant is a non-matching grant number 2010-H4990-CO-DJ  
of Thirty Thousand, Six Hundred and Eight dollars, (\$30,608.00);

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the  
intergovernmental agreement to apply for and accept the Justice Assistance Grant from Edward  
Byrne Justice Assistance Grant Program, attached hereto as Exhibit A.

Section 2. The City Manager is authorized to execute said intergovernmental agreement  
regarding the grant for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 17th day of May, 2010.

Published as a Bill for an Ordinance in the City’s official newspaper on the 21<sup>st</sup> day of May, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 19th day of May, 2010 for thirty (30) days.

Read by title and passed on final reading on the 7<sup>th</sup> day of June, 2010.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2010, on the 11<sup>th</sup> day of June, 2010.

Published by title on the City's official website beginning on the 9<sup>th</sup> day of June, 2010 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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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.

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Loucrishia A. Ellis

Exhibit A



BJA FY 10 Edward Byrne Memorial Justice Assistance Grant (JAG) Program Local Solicitation 2010-H4990-CO-DJ



[Application](#)

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<b>APPLICATION FOR FEDERAL ASSISTANCE</b> 1. TYPE OF SUBMISSION Application Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
<b>5. APPLICANT INFORMATION</b>		
Legal Name City of Englewood	Organizational Unit Police Department	
Address 1000 Englewood Parkway Englewood, Colorado 80110-3519	Name and telephone number of the person to be contacted on matters involving this application  Collins, John (303) 783-6946	
6. EMPLOYER IDENTIFICATION NUMBER (EIN) 84-6000583	7. TYPE OF APPLICANT Municipal	
8. TYPE OF APPLICATION New	9. NAME OF FEDERAL AGENCY Bureau of Justice Assistance	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 16.738 CFDA TITLE: EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT Computer Aided Dispatch Record Management System Server Migration	
12. AREAS AFFECTED BY PROJECT 3615 S. Elati Street		
13. PROPOSED PROJECT Start Date: August 15, 2010 End Date: March 01, 2011	14. CONGRESSIONAL DISTRICTS OF a. Applicant b. Project CO01	
15. ESTIMATED FUNDING		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?  Program is not covered by
Federal	\$30,608	
Applicant	\$7,000	
State	\$0	

Local	\$0	E.O. 12372
Other	\$0	
Program Income	\$0	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b>
TOTAL	\$37,608	N
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS REQUIRED.</b>		

**Continue**

Attachment #1: JAG Grant GMS # 2010-H4990-CO-DJ

Program Narrative:

The City of Englewood Police Department currently utilizes a Computer Aided Dispatch system, hereinafter referred to as CAD. CAD systems allow public safety operations and communications to be augmented, assisted, or partially controlled by an automated system. It can include, among other capabilities, computer-controlled emergency vehicle dispatching, vehicle status, incident reporting, and management information. All aspects of a CAD system must be optimized for rapid response time and system reliability. Since time is of the essence, the CAD system must accurately provide a data and time stamp for every activity.

CAD systems collect the initial information for an incident and then provide the information to one or more Records Management systems hereinafter referred to as RMS.

The Englewood Police Department uses CAD to facilitate response and communications in the field. CAD systems, in many cases, are the first point of entry for information coming into the police department's system. Typical CAD system functions include resource management, call taking, location verification, dispatching, unit status management, and call disposition. Additionally, CAD interfaces with mobile data terminals and interfaces with other external local, state, and federal information systems. Englewood Police dispatchers and their supervisors are the primary users of CAD and Englewood police officers interact with the dispatchers via their mobile data terminals. Upon receiving a call for service, Englewood Police Officers complete their investigative reports on a mobile data terminal and those reports are downloaded into the police department's Records Management System (RMS).

Deputy Chief of Police John Collins has partnered with the City of Englewood's

Information Technology Department. Collins was informed that that the two most critical servers in the City of Englewood, which play a key role in public safety, are CAD and RMS. CAD currently resides on physical hardware which was installed six years ago. The typical lifespan of server hardware is 3-4 years, which makes CAD a perfect candidate for replacement consideration. CAD currently has limited failover capability in its current physical state. RMS is currently a virtual server, but resides at the City of Englewood Civic Center. This is not an ideal situation having CAD and RMS split between geographically separate locations. While this is a temporary solution based upon the City of Englewood's current dire budgetary constraints, a better long-term goal would be to have both servers exist in a virtual environment, operating homogeneously within the Police Department's data center. This would provide the very best uptime and overall redundancy, yielding almost 100% availability. The City of Englewood's Information Technology Department has stated that future functionality of the current CAD server may be compromised due to the system's age. If the CAD server were to fail it would seriously jeopardize day-to-day operations for the Englewood Police Department thus necessitating its replacement via this JAG award.



CO	DOUGLAS COUNTY	County	\$30,921
CO	ENGLEWOOD CITY	Municipal	\$30,608
CO	LOVELAND CITY	Municipal	\$16,766
CO	NORTHGLENN CITY	Municipal	\$16,035
CO	THORNTON CITY	Municipal	\$58,343
CO	WESTMINSTER CITY	Municipal	\$41,420
CO	WHEAT RIDGE CITY	Municipal	\$21,990

<b>Local total</b>		<b>\$2,329,530</b>
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<b>State award</b>	<b>\$4,471,938</b>
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<b>Grand total for Colorado</b>		<b>\$6,801,468</b>
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\* Counties that have an asterisk (\*) under the "Formula-Based Individual Amounts" column did not submit the level of violent crime data to qualify for a direct award from BJA, but are in the disparate grouping indicated by the shaded area. The JAG legislation requires these counties to remain a partner with the local jurisdictions receiving funds and must be a signatory on the required Memorandum of Understanding (MOU). A sample MOU is provided online at: <http://www.ojp.usdoj.gov/BJA/grant/jag10/10JAGMOU.pdf>.

Formula-Based Individual Amounts - Disparate jurisdictions do not need to abide by the listed individual amounts which are provided for information only. Jurisdictions in a funding disparity are responsible for determining individual allocations within the Joint Application Award Amount and for documenting individual allocations in the MOU. Additional JAG Frequently Asked Questions can be found on the BJA JAG web page at: <http://www.ojp.usdoj.gov/BJA/grant/jag.html>.

## COUNCIL COMMUNICATION

<b>Date:</b> June 7, 2010	<b>Agenda Item:</b> 10 a	<b>Subject:</b> Amendment to Title 16: Unified Development Code to Permit Buy-Back, Second-Hand, Thrift and Consignment Uses in the MU-B-1 Zone District
<b>Initiated By:</b> Community Development Department		<b>Staff Source:</b> Tricia Langon, Senior Planner

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council directed the Planning and Zoning Commission to consider amendments to the Unified Development Code (UDC) to address buy-back, second-hand, thrift and consignment uses in the MU-B-1 zone district. Council considered proposed Title 16 amendments at first reading on May 3, 2010 and set a Public Hearing for May 17, 2010. Council also directed staff to prepare a separate definition for each use under consideration.

### RECOMMENDED ACTION

Recommendation from the Community Development Department to consider testimony during Public Hearing on a bill for an ordinance amending Title 16 of the Englewood Municipal Code to permit buy-back, second-hand, thrift and consignment uses in the MU-B-1 zone district.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In late January 2010 the Community Development Department received an inquiry about consignment store use in the MU-B-1 downtown central business district. Per *Table 16-5-1.1: Table of Allowed Uses* of the UDC consignment use is not permitted in the zone district. Use variances are prohibited by Code and the property in question did not meet rezoning thresholds; therefore, the only option allowing consignment use in the MU-B-1 zone was amendment of the zoning regulations.

Staff reviewed zoning regulations of nine metro municipalities and found that eight cities grouped buy-back, second hand, thrift and consignment uses into a single category. Though one city did list thrift/consignment as a separate use, all municipalities treated all four uses as general retail and permitted them wherever retail use was allowed.

Staff also noted that at this time no buy-back, second-hand, or consignment uses operate in the MU-B-1 district. However, one thrift store use is in the district and has been at that MU-B-1 location for more than 35 years. It is currently identified as a nonconforming use.

Planning and Zoning Commission considered the issue during the March 2, 2010 study session. The Commission reviewed four options including maintaining the current prohibition, allowing all uses in

MU-B-1, separating the uses and designating in which zone district each use would be allowed. The Commission discussed prohibiting thrift use in the district and ultimately determined that all four uses (buy-back, second hand, thrift and consignment) were appropriate uses in MU-B-1.

The Planning and Zoning Commission conducted a Public Hearing on April 6, 2010, to consider the proposed amendments. Five members of the public spoke in favor of the proposed amendments; no one spoke against. Following public input and discussion, the Commission voted 8 to 1 to forward the proposed amendments to City Council to permit buy-back, second hand, thrift and consignment use in MU-B-1. The favorable recommendation was based on the proposed amendments being supportive of Objectives 1-2 and 1-3 of the Business and Employment section of Roadmap Englewood: 2003 Englewood Comprehensive Plan as stated in the attached Findings of Fact.

In preparing a separate definition for each use, staff based the suggested definitions on each use's retail operation and the current UDC definition of Secondhand Goods:

***Secondhand Goods:* Includes any tangible personal property not sold as new and normally having been sold used by one (1) or more intermediaries. Secondhand property does not include items that were sold as new and returned by the customer for exchange or refund. Also, secondhand property does not include reconditioned property purchased from a wholesaler.**

The resulting definitions are:

***Buy-Back.* A retail establishment that deals primarily in the buying, selling, trading, or trading for credit of second-hand goods such as sporting goods, and electronic games and systems.**

***Consignment.* A retail establishment that deals primarily in second-hand goods resold through a broker for the owner with the provision that payment is expected only on completed sales and that unsold items may be returned to the owner.**

***Second-Hand.* A retail establishment that deals primarily in second-hand goods, such as apparel, household items furniture, and books. This use type does not include the sale of second-hand motor vehicles, parts or accessories, scrap or waste.**

***Thrift.* A retail establishment that deals primarily in donated second-hand goods operated by a non-profit charitable organization, as defined in Internal Revenue Service Code 26 USCS 501 as amended. This use type does not include the sale of second-hand motor vehicles, parts or accessories, scrap or waste.**

As an additional alternative, Thrift stores could be further defined by size as follows:

***Thrift, small.* A retail establishment containing 10,000 square feet or less of floor area, that deals primarily in donated second-hand goods operated by a non-profit charitable organization, as defined in Internal Revenue Service Code 26 USCS 501 as amended. This use type does not include the sale of second-hand motor vehicles, parts or accessories, scrap or waste.**

***Thrift, large.* A retail establishment containing more than 10,000 square feet of floor area, that deals primarily in donated second-hand goods operated by a non-profit charitable**

organization, as defined in Internal Revenue Service Code 26 USCS 501 as amended. This use type does not include the sale of second-hand motor vehicles, parts or accessories, scrap or waste.

The current UDC definition of Floor Area is: The sum of the areas of the several floors of the structure, as measured by the exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding:

- (A) Garage space which is in the basement of a building or, in the case of garage space accessory to a dwelling, is at grade;
- (B) Basement and cellar areas devoted exclusively to uses accessory to the operation of the structure; and
- (C) Areas elsewhere in the structure devoted to housing mechanical equipment customarily located in the basement or cellar such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities, and storage facilities.

Amendment Alternatives and Outcomes:

1. *Adopt amendments as proposed by Planning and Zoning Commission.*

- The four uses under consideration, buy-back, second-hand, thrift and consignment, would be permitted in MU-B-1 as well as in MU-B-2, M-2, I-1 and I-2 zone districts.
- The existing nonconforming thrift use in MU-B-1 would become a conforming use.
- No amendments to Council Bill No. 11 are required.
- Council Bill No. 11 proceeds to Second Reading on June 7, 2010.
- Anticipated effective date of Ordinance is July 12, 2010.
- Opens these four uses to the entire MU-B-1 zone as shown below:



2. Amend Council Bill No. 11 by separating the four uses into individual use types with separate definitions and using only one definition of thrift.
  - Amend *Table 16-5-1.1: Table of Allowed Uses* to show where each of the four uses is allowed as either a permitted use or conditional use. (All of the uses are currently permitted uses in M-2, MO2, MU-B-2, I-1 and I-2.)
  - Any existing use not permitted in MU-B-1 by the amendments to Table 16-5-11 becomes a nonconforming use.
  - Amendments require Council Bill No. 11 to be sent back for 1<sup>st</sup> Reading, as Amended.
  - Anticipated effective date of Ordinance could be delayed 2 - 4 weeks depending on the degree of amendments.
  
3. Amend Council Bill No. 11 by using the two definitions of thrift store in addition to the separate definitions of buy-back, second-hand, and consignment.
  - Amend *Table 16-5-1.1: Table of Allowed Uses* to show where each of the five uses is permitted. (Buy back, second-hand, consignment and thrift shops are currently permitted in M-2, MO2, MU-B-2, I-1 and I-2.) The use types *Thrift, small* and *Thrift, large* would need to be included in the Table with an indication of what zone districts they would be permitted in.
  - The definition of floor area excludes mechanical rooms and storages areas from the calculation of the floor area of a structure. It is conceivable that a structure containing 15,000 square feet could have 5,000 square feet of storage and therefore be classified as a small thrift store. The differentiation in size may not achieve what is intended.
  - Any existing use not permitted in MU-B-1 by the amendments to Table 16-5-11 becomes a nonconforming use.
  - Amendments require Council Bill No. 11 to be sent back for 1<sup>st</sup> Reading, as Amended.
  - Anticipated effective date of Ordinance could be delayed 2 - 4 weeks depending on the degree of amendments.

Conclusion:

The majority of cities in the metropolitan area treat buy-back, second-hand, thrift and consignment uses as general retail and allow them wherever retail use is permitted. The UDC also classifies these four uses into a single use type based on their common function (retail sales) and product (second-hand goods). Though each use may acquire or sell merchandise differently, retail sales remains the basic function of each of these uses. No real distinction for prohibiting any of these four retail sales use from the MU-B-1 district is identified.

Concern has been noted regarding the perceived impact of a thrift use in MU-B-1 being incompatible or not in character with the downtown area. These concerns appear to focus on the three blocks of the South Broadway corridor. Construction of a large retail use, whether thrift or another allowed use, would require land assemblage in this area. The existing ownership and development patterns of small lots in the central downtown are not conducive to large-format development in the three blocks of South Broadway that are zoned MU-B-1. All retail uses, large or small, have the potential for impacts on surrounding properties. Not all thrift uses are large scale operations, as witnessed by the existence for the past thirty-five years of a 1,500 square feet shop in the district.

Several comments have been received concerning limiting the size of thrift stores. Because storage is excluded from the calculation of floor area, limiting the size of a thrift store may have no impact in excluding them from the MU-B-1 zone district.

Any amendments affecting buy-back, second-hand, thrift and consignment uses in the MU-B-1 zone will affect the entire MU-B-1 district, which extends beyond the Broadway corridor (See map above). Amendments have the potential of affecting all parcels in the district including the Englewood Market Place, Englewood Plaza (former Phar-mor site) or even Mason Square that have available parking, loading and drop-off areas that may be more appropriate to larger-scale development.

**FINANCIAL IMPACT**

No financial impacts are anticipated from the adoption of the proposed UDC amendments.

**LIST OF ATTACHMENTS**

Council Request 10-110  
Memo regarding Survey of Zoning Regulations in Metro Municipalities



M E M O R A N D U M  
C O M M U N I T Y D E V E L O P M E N T

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TO: Mayor and City Council

THROUGH: Gary Sears, City Manager

FROM: Alan White, Community Development Director ✓  
Tricia Langon, Senior Planner ✓

DATE: May 28, 2010

RE: Council Request #10-110  
Changes to the MU-B-1 Zone District with regard to Thrift, Buyback,  
Second Hand and Consignment Use

Below are the questions posed, with staff's response following:

**1. Why is "non-profit charitable organization" used in the definition of thrift store?**

This characteristic distinguishes thrift stores from all the other stores that sell used or second hand items. Thrift stores typically accept donations of goods that are then resold. In order for those donated items to receive tax deductions for their donations, the organization to which the items are donated needs to be a non-profit charitable organization. With the other types of stores, those bringing goods that are then resold are paid for those goods.

**2. Please provide information and the names of the nine metro municipalities zoning regulations referenced in the Council Communication from May 17.**

Attached is a memorandum with a chart showing the municipalities surveyed and whether they have separate definitions and designated zone districts for the various retail establishments selling used goods.

**3. Was the 10,000 sq. ft. referenced under "Thrift Small" an arbitrary number?**

The figure of 10,000 square feet was discussed by the Planning and Zoning Commission during their deliberations on the code amendment. The Commission felt that 10,000 square feet was a reasonable delineation between stores having minimal impact compared to those having a more significant impact. Staff used that figure to define the difference between small and large thrift stores.

Other size thresholds are contained in the Code. Convenience stores are defined as general retail establishments having a floor area no larger than 5,000 square feet. The phrase "small retail store" refers to a retail establishment with less than 20,000 square feet of gross floor area; a "large retail store" contains 20,000 square feet or more of gross

floor area. Retail uses are limited to 10,000 square feet of floor area in the Medical-1 and Medical-2 zone districts.

(Gross floor area is not defined in the Code, but commonly the term means the sum of the areas of all floors of a structure measured from the exterior faces of exterior walls, excluding any space used for parking. Jurisdictions vary in what is excluded in addition to parking. Our current definition of floor area could also be the definition of gross floor area.)

**4. Would modifications to the current definition of “Floor Area” under item “C” in the Communication require the return of the ordinance to P & Z? Examples of modifications could be “maximum floor area of XXX sq. ft.”; exclusions including those mentioned in the Communication and restrooms, offices, defined shipping and receiving areas, stairwells and vestibules? How would this affect and ripple through the rest of the Code?**

If the ordinance is amended to include the exceptions to floor area as noted above, not just the subject under consideration in Council Bill 11, this change would require review by the Planning and Zoning Commission.

The City Attorney’s Office advised that findings would need to be made to justify the necessity for including a different definition for thrift store floor area. Community Development staff is concerned about taking this approach because there would then be two definitions of floor area, creating potential confusion for applicants and staff.

The term “floor area” is used throughout the Unified Development Code to establish thresholds for the application of certain requirements or to calculate certain other requirements. The areas of the Code affected by the definition of floor area are:

- a. Structures not requiring a building permit, but requiring zoning site plan review.
- b. Calculation of floor area ratio. The Code establishes maximum floor area ratios in the I-1 and I-2 zone districts and for office uses in the MU-R-3-A and MU-R-3-B zone districts.
- c. Modifications to a zoning site plan due to an increase in floor area ratio.
- d. Maximum area permitted for retail establishments in the Medical-1, Medical-2, Medical Overlay-1 and Medical Overlay-2 zone districts.
- e. Accessory structure floor area calculation.
- f. Determining parking requirements.
- g. Determining loading requirements.
- h. Determining lot coverage.
- i. Determining additional landscaping required if a building is enlarged.
- j. Determining if undergrounding of utilities is required if residential structures are enlarged.
- k. Determining if residential design standards apply when a structure is substantially expanded.
- l. Determining whether a retail use is large or small which in turn determines what design standards apply.
- m. Special sign provisions for wall signs for uses meeting a certain threshold in floor area.

- n. Whether a non-conforming use is expanded or extended (no increase in floor area is permitted).
- o. Several definitions use the term floor area or set floor area limits to define the use:
  - Convenience store
  - Enlargement or to enlarge
  - Extension
  - Floor area
  - Roof line
  - Warehousing and/or storage

In determining the floor area of a structure, the current definition excludes: 1) Garage space which is in the basement of a building or, in the case of garage space accessory to a dwelling, is at grade; 2) Basement and cellar areas devoted exclusively to uses accessory to the operation of the structure; and 3) Areas elsewhere in the structure devoted to housing mechanical equipment customarily located in the basement or cellar, such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities, and storage facilities.

To additionally exclude restrooms, offices, shipping and receiving areas, stairwells and vestibules would have unintended consequences. The additional exclusions would, for example, significantly reduce the parking requirement for a warehouse, allow a nonconforming retail use in a residential zone district to expand by adding office space, a high rise office building would have no parking requirement, or a retail store may not be subject to the large retail store design standards because the office space and shipping/receiving areas are excluded in determining the size of the store.

**5. Can a basement or mezzanine space that is not ADA accessible be utilized as sales Floor Area?**

For new construction, ADA accessibility would be a requirement to utilize any space under a mercantile occupancy (the occupancy classification for retail uses under the International Building Code). An existing structure not undergoing a change in occupancy is permitted to be used under the building code it was constructed under. In other words, ADA accessibility requirements would or would not apply to structures or spaces used under a mercantile occupancy if the structure was constructed and has been used under a mercantile occupancy, depending upon when the building was constructed and the code in effect at the time of construction.

**Attachment:** Memorandum Showing Survey Results



# M E M O R A N D U M

## COMMUNITY DEVELOPMENT

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**TO:** Mayor Woodward and Council Members  
**THRU:** Gary Sears, City Manager  
Alan White, Community Development Director ✓  
**FROM:** Tricia Langon, Senior Planner ✓  
**DATE:** June 7, 2010  
**SUBJECT:** Council Bill 11: MU-B-1 Unified Development Code Amendments Permitting Buy-back, Second-hand, Thrift and Consignment Uses

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Below is the information requested during Public Hearing on the survey of area municipalities regarding thrift and consignment uses. The following points are noted:

1. Only Commerce City actually listed thrift and consignment as allowed uses in their Code, but did not have definitions for these uses.
2. Only Westminster defined thrift store, but did not single out the use in the list of allowed uses.

Jurisdiction	Allowed Use?	Separate Definitions?	Notes
Arvada	Buy-back stores, consignment shops, secondhand stores and thrift stores are not singled out as separate uses	No definitions included for these uses	
Aurora	Same as above	No definitions included for these uses	
Commerce City	Thrift/consignments stores listed as uses by right in C-1, C-2, C-3, MU-1 and I-1 districts	No definitions included	
Ft. Collins	Buy-back stores, consignment shops, secondhand stores and thrift stores are not singled out as separate uses	No definitions included for these uses	
Lakewood	Same as above	Same as above	
Littleton	Same as above	Same as above	
Parker	Same as above	Same as above	
Thornton	Same as above	Same as above	
Westminster	Same as above	Thrift store is included in definitions	An establishment selling used clothing and/or other merchandise

## COUNCIL COMMUNICATION

<b>Date:</b> June 7, 2010	<b>Agenda Item:</b> 11 a i	<b>Subject:</b> IGA with DRCOG Regarding Licensing of 2010 Denver Regional Aerial Photography
<b>Initiated By:</b> Community Development Department		<b>Staff Source:</b> John Voboril, Planner

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved City participation in the Denver Regional Council of Governments Denver Regional Aerial Photography Project in 2002, 2004, 2006, and 2008.

### RECOMMENDED ACTION

Staff recommends Council adopt a bill for an ordinance authorizing an Intergovernmental Agreement (IGA) between the City of Englewood and the Denver Regional Council of Governments (DRCOG) for the Denver Regional Aerial Photography Project (DRAPP).

### BACKGROUND AND ANALYSIS

The City of Englewood has participated in the DRCOG Denver Regional Aerial Photography Project since the inception of the program in 2002. The program takes place every two years. Denver metro municipalities benefit through the program by acquiring imagery together as one entity to substantially drive down the costs that would be incurred by each member if acquiring the imagery on an individual city project basis.

Aerial photography is used extensively by Community Development, Utilities, Wastewater, and Public Works for the purposes of mapping and analysis, project planning and engineering, and infrastructure management. In order to be effective for these purposes, it is imperative that the imagery be updated every two years, in order to effectively track real world changes on the ground.

This IGA will permit the City to participate in the DRCOG sponsored Denver Regional Aerial Photography Project. This project will provide updated digital photography (6 inch resolution) of the DRCOG region to participating members. The 'not to exceed cost' to the City is \$5,000 and will be shared between Community Development, Utilities, Wastewater, and Public Works. The cost is substantially less than the cost would be if the City were to undertake such an aerial photography project itself.

### FINANCIAL IMPACT

Funding of this project is included in the approved 2010 budgets of the participating departments.

**ATTACHMENTS**

Bill for an Ordinance

DRCOG Regional Aerial Photography License

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. 13  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) ENTITLED "LICENSING AGREEMENT REGARDING DENVER REGIONAL AERIAL PHOTOGRAPHY PROJECT" BETWEEN THE DENVER REGIONAL COUNCIL OF GOVERNMENTS AND THE CITY OF ENGLEWOOD, COLORADO FOR THE CITY'S PARTICIPATION IN THE DENVER REGIONAL AERIAL PHOTOGRAPHY PROJECT (DRAPP).

WHEREAS, the City of Englewood has participated in the Denver Regional Council of Governments Denver Regional Aerial Photography Project in 2002, 2004, 2006 and 2008; and

WHEREAS, the Denver Regional Aerial Photography Project will provide the City with updated digital orthophotography of the DRCOG region to participating members; and

WHEREAS, the cost is substantially less than if the City were to undertake such an aerial photography project itself; and

WHEREAS, the cost to Englewood is not to exceed \$5,000 and will be shared between Community Development, Utilities, Wastewater and Public Works Departments of the City of Englewood; and

WHEREAS, the updated photography is critical in keeping the City's geographic information system (GIS), permit tracking system (Trakit), water and wastewater utilities mapping up-to-date; and

WHEREAS, the passage of this Ordinance will permit the City of Englewood to participate in the DRCOG sponsored Denver Regional Aerial Photography Project;

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

Section 1. The City Council of Englewood, Colorado, hereby approves the Intergovernmental Agreement "License Agreement between the Denver Regional Council of Governments (DRCOG) and the City of Englewood for Denver Regional Aerial Photography Project" authorizing the City's participation in the Denver Regional Aerial Photography Project (DRAPP), a copy of which is attached hereto as Exhibit 1.

Section 2. The Mayor is hereby authorized to sign and the City Clerk to attest said Intergovernmental Agreement entitled "Licensing Agreement Regarding Denver Regional Aerial Photography Project" for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 7<sup>th</sup> day of June, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 11<sup>th</sup> day of June, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 9<sup>th</sup> day of June, 2010 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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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 7<sup>th</sup> day of June, 2010.

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Loucrishia A. Ellis

Exhibit 1

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LICENSING AGREEMENT BY AND BETWEEN THE  
DENVER REGIONAL COUNCIL OF GOVERNMENTS  
1290 Broadway, Suite 700  
Denver, Colorado 80203  
(DRCOG)

and

CITY OF ENGLEWOOD  
1000 Englewood Parkway  
Englewood, Colorado 80110  
(PARTNER)

for

**DENVER REGIONAL AERIAL PHOTOGRAPHY PROJECT**

Project Number: 820010

Agreement Number: RV10008

**RECITALS**

WHEREAS, the parties desire to cooperate in the creation, preparation, use, and distribution of digital orthophotography (hereinafter referred to as the "Product") developed through the Denver Regional Aerial Photography Program (referred to as "DRAPP").

WHEREAS, the Partner is a governmental or public service entity.

NOW THEREFORE, the parties hereto mutually agree as follows:

**1. Purposes**

The purposes of this Agreement are to define the rights and obligations of the parties with respect to the Product and to protect and control the rights, reproduction, and resale of the Product.

**2. Term**

The term of this Agreement shall be from the date of execution of this Agreement through two years following release of the last product update in which the Partner chooses to participate.

**3. Partner Participation**

The Partner will be notified by DRCOG of planned product updates. At that time, the Partner will be asked to submit a Letter of Intent to participate in the update. The Partner will also be asked to commit funds as appropriate in its Letter of Intent. If the Partner chooses not to participate in the next Product update, it should not submit a Letter of Intent. Following receipt of the Partner's Letter of Intent and upon completion of updated financial projections, DRCOG will invoice the Partner for its portion of the Product update costs. The Product update will not be released to the Partner until payment is received by DRCOG.

#### 4. Termination

- a. Funds not Available. In the event that enough local Partner funds are not collected in order to fund the next round of Product updates, this Agreement shall terminate two years from release of the last Product update.
- b. Termination for Cause. If through any cause, either party should fail to fulfill in a timely and proper manner its obligations under this contract or violate any of the covenants or stipulations in this Agreement, the wronged party has the right to terminate this contract by giving sixty (60) days written notice to the other party of such termination. If DRCOG is at fault in this instance, the Partner will be refunded any payments received for the current Product update. If the Partner is at fault, the Partner will return all copies of the current Product version in its possession.

#### 5. Payment and License

In consideration for the payment to DRCOG of the license fee set forth in Exhibit A, attached hereto and incorporated herein by reference, DRCOG grants the Partner a non-exclusive, non-transferable license to the Product to be used strictly and only in accordance with the provisions stated in this Agreement. The Partner will receive one copy of the Product, and any Product updates in which the Partner participates, in electronic format for the geographical area they have specified. If the Partner is unable or chooses not to participate in the current Product update, this Agreement shall terminate two years following release of the latest Product update in which the Partner did participate.

DRCOG shall provide an invoice to the Partner for the fee due (in part or in full) in accordance with Exhibit A. Partner shall remit the undisputed invoiced amount within thirty (30) days after receipt of an invoice.

#### 6. Use of Product

##### a. Current Product Version

##### i) Permitted Use

- (1) The Partner may use the current version of the Product only to meet the goals and objectives of its business and/or governmental activities.
- (2) Contractors engaged by the Partner providing contractual services directly to the Partner may use the current version of the Product in order to fulfill these contractual services, so long as there is written agreement between the Partner and the Contractor that the Product will not be utilized beyond this purpose.
- (3) Derivative images based on the Product may be displayed on the Partner's World Wide Web site.

##### ii) Restrictions on Use

- (1) Outside of the Permitted Uses listed above, the Partner shall not allow access to the current version Product by any other person or organization, by any means, unless authorized in writing by DRCOG.

- iii) The Current Product Version is considered proprietary for a period of two years following product release. After two years, the Product version is categorized as a Past Product Version, regardless of whether or not a Product update has been performed.

##### b. Past Product Versions

##### i) Permitted Use

- (1) Past Product versions, that is, those versions that have since been replaced with a current product version or those versions that are more than two years old, may be distributed to the public at large.

## **7. Product Resale**

- a. The Partner shall not resell the Product.
- b. The Partner authorizes DRCOG to sell the Product and any Product derivations.
- c. The Partner authorizes DRCOG to collect proceeds from sales of the Product and any Product derivations and to hold this money for future DRAPP projects.
- d. Whenever applicable, the Partner agrees to direct purchase requests for the Product to DRCOG or DRCOG's Authorized Reseller(s).

## **8. Limited Warranty and Remedy**

- a. Limited Warranty
  - i) DRCOG shall use its best efforts to ensure that the Product is delivered free of physical defect.
  - ii) DRCOG disclaims any other warranties, express or implied, respecting these terms and conditions or the Product.
- b. Remedy
  - i) Partner's sole and exclusive remedy for breach of this limited warranty will be to return the Product within 60 days of receipt.
  - ii) DRCOG shall, at its discretion, replace the Product or repair the Product and return it to the Partner.

## **9. Assignment and Transfer**

Partner shall not disclose, lease, sell, distribute, make, transfer or assign the Product or engage in any other transaction which has the effect of transferring the right of use or part of the Product without the prior written consent of DRCOG, except as noted in Section 6 above.

## **10. Liability**

Without waiving the privileges and immunities conferred by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., each party shall be responsible for any claims, damages, demands or suits arising out of its own negligence.

DRCOG shall not be liable for any activity involving the Product with respect to the following:

- a. The fitness of the Product for a particular purpose.
- b. The installation of the Product, its use, or the results obtained.

## **11. Colorado Law to Govern**

This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Colorado.

## **12. No Continuing Waiver**

The waiver of any default by either party or the failure to give notice of any default shall not constitute waiver of any subsequent default or be deemed to be a failure to give notice with respect to any subsequent default. Waiver of the breach of any provision of this Agreement shall not be construed to be a modification of the terms

of this Agreement unless stated to be such in writing and signed by authorized representatives of both parties.

**13. Governmental Immunity**

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

**14. Invalid/Unenforceable Provision(s)**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced as written to the fullest extent permitted by law.

**15. Integration and Amendment**

This Agreement represents the entire agreement between the parties, and there are no oral or collateral agreements or understandings. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by both parties.

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

**DENVER REGIONAL COUNCIL  
OF GOVERNMENTS  
"DRCOG"**

**CITY OF ENGLEWOOD  
"PARTNER"**

By: \_\_\_\_\_  
Executive Director

By: \_\_\_\_\_  
James K. Woodward, Mayor

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Administrative Officer

By: \_\_\_\_\_  
Loucrishia A. Ellis,  
City Clerk

## COUNCIL COMMUNICATION

<b>Date:</b> June 7, 2010	<b>Agenda Item:</b> 11 a ii	<b>Subject:</b> IGA with Colorado Department of Labor and Employment Regarding Licensing of Employment Data for City Use
<b>Initiated By:</b> Community Development Department		<b>Staff Source:</b> John Voboril, Planner

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council last established an Inter-governmental Agreement (IGA) with the Colorado Department of Labor and Employment regarding licensing of employment data for City use in 2008.

### RECOMMENDED ACTION

Staff recommends Council adopt a bill for an ordinance authorizing an IGA between the City of Englewood and the Colorado Department of Labor and Employment to receive through the Denver Regional Council of Governments (DRCOG) labor and employment data for the City of Englewood. Obtaining the data through DRCOG will allow the City to avoid a \$230 State processing fee.

### BACKGROUND AND ANALYSIS

This IGA will permit the City to receive labor and employment data through DRCOG from the Colorado Department of Labor and Employment. The Department of Labor and Employment provides this data to DRCOG who will in turn provide it to the City of Englewood. Obtaining the data through DRCOG will allow the City to avoid a \$230 State processing fee. In order to receive this data, the Department of Labor and Employment requires a license agreement between the State and the recipient. Acquisition of this data will enable the Community Development Department to further economic development goals by gaining a better understanding of labor and employment issues within the City.

### FINANCIAL IMPACT

There are no financial impacts to the City associated with this Intergovernmental Agreement.

### ATTACHMENTS

Bill for an Ordinance  
City-Colorado Department of Labor and Employment QCEW Data License

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. 14  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) ENTITLED "LICENSE AGREEMENT" BETWEEN THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT AND THE CITY OF ENGLEWOOD, COLORADO IN SUPPORT OF THE CITY'S USE OF STATE WAGE AND EMPLOYMENT DATA.

WHEREAS, the Englewood City Council established an IGA with the Colorado Department of Labor and Employment regarding licensing of employment data for City use by the passage of Ordinance No. 18, Series of 2008; and

WHEREAS, the Englewood Community Development Department is seeking to receive Colorado State Labor and Employment data through the Denver Regional Council of Governments; and

WHEREAS, the Colorado Department of Labor and Employment provides this data to DROCOG who will in turn provide it to the City of Englewood; and

WHEREAS, in order to receive such data, the Colorado State Department of Labor and Employment required a license agreement between the City of Englewood and the State Department of Labor and Employment for use of the data; and

WHEREAS, acquisition of this data will enable the Englewood Community Development Department to further economic development goals by gaining a better understanding of labor and employment issues within the City;

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

Section 1. The City Council of Englewood, Colorado, hereby approves the Intergovernmental Agreement entitled "License Agreement" between the Colorado Department of Labor and Employment and the City of Englewood, Colorado in support of the City's use of State Wage and Employment Data through the Denver Regional Council of Governments, a copy of which is attached hereto as Exhibit A.

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

Introduced, read in full, and passed on first reading on the 7th day of June, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 11<sup>th</sup> day of June, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 9th day of June, 2010 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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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 7th day of June, 2010.

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Loucrishia A. Ellis

BILL RITTER JR  
Governor

DONALD J MARES  
Executive Director

ALEXANDRA E HALL  
Director



*Exhibit A*  
**DEPARTMENT OF LABOR AND EMPLOYMENT**  
LABOR MARKET INFORMATION

633 17<sup>th</sup> Street, Suite 600  
Denver, Colorado 80202-2107  
(303) 318-8864 (303) 318-8871

EXHIBIT  
A

**This is a legal document. Legal counsel should be consulted before signing.**

**LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT is made by and between:**

City of Englewood  
1000 Englewood Parkway  
Englewood, CO 80110  
(Licensee)

and

THE STATE OF COLORADO  
DEPARTMENT OF LABOR AND EMPLOYMENT  
633 17<sup>th</sup> Street, Suite 600  
Denver, CO 80202-2107  
(Licensor)

The Licensor is an agent of the United States Bureau of Labor Statistics for the purposes of collecting and securing Quarterly Census of Employment Wages "QCEW" wage, employment data from Colorado employers and is authorized to issue a non-exclusive license for this information to public and non-public entities provided that the information is adequately secured from non-authorized access or publication.

**UPON ACCEPTING RECEIPT OF THE LICENSED INFORMATION LISTED BELOW, OR ANY PART THEREOF, THE LICENSEE AGREES TO THE TERMS AND CONDITIONS LISTED ON PAGE 2 OF THIS LICENSE AGREEMENT.**

**LICENSED INFORMATION PROVIDED:**

Report Description	Report Period	Amount
CIPSEA Compliant QCEW Micro Data	As Requested	\$230.00
<b>TOTAL AMOUNT DUE WITHIN 30-DAYS OF INVOICE RECEIPT * ALL FEES ARE NON-REFUNDABLE</b>		

Received by:  
LICENSEE

LICENSOR

Name: James K. Woodward, Date  
Mayor

By: Alexandra E. Hall Date  
Director  
Labor Market Information

ATTEST:

Loucrishia A. Ellis, City Clerk

## LICENSE AGREEMENT TERMS AND CONDITIONS

1. Upon receipt of total payment due (as specified on Page 1), the Licensor grants a non-exclusive revocable license to the Licensee to access and use, as limited herein, all Licensed Information (as specified on Page 1). LICENSOR DISCLAIMS ALL WARRANTIES REGARDING THE LICENSED INFORMATION, SPECIFICALLY THE WARRANTIES OF MERCHANTABILITY AND PARTICULAR PURPOSE. LICENSEE RELEASES LICENSOR FROM ANY CLAIMS, JUDGMENTS, OR DAMAGES, CONSEQUENTIAL OR DIRECTLY ARISING FROM ANY ERRORS OR OMISSIONS CONTAINED WITHIN THE LICENSED INFORMATION, OR ANY PART THEREOF, OR ARISING FROM THE LICENSEE'S RELIANCE UPON THE LICENSED INFORMATION OR OMISSIONS OF INFORMATION, OR ANY PART THEREOF.
2. Licensee shall pay the total non-refundable payment due within thirty (30) days of receipt of the information. If payment is not received by Licensor during this period, Licensor shall invoice the Licensee, and Licensee shall immediately pay, the total amount specified on Page 1 plus a billing fee calculated at the greater of eighteen percent per annum of the total amount due or twenty-five and no/100 dollars (\$25.00). If the fee is not paid within the above specified time, Licensee shall immediately return all Licensed Information to the Licensor.
3. Licensee acknowledges and agrees to protect the confidentiality of the Licensed information provided and to adequately secure the Licensed information from non-authorized access or publication.
  - (a) Except in the event it is necessary for the Licensee to utilize a third-party to format, process or use the information, the Licensee shall not copy or permit others to copy the Licensed Information, or any part thereof. In the event the Licensee must utilize a third-party to format, process, or use the information, the Licensee shall not allow the third-party to use the information, or any part thereof, for any purpose other than the Licensee's valid administrative function. Any breach of Licensed Information's confidentiality or any of the duties specified in section 3 by Licensee's third-party shall be deemed to be a breach on the part of the Licensee.
  - (b) Licensee shall use the Licensed Information, or any part thereof, only to the extent necessary to assist in the Licensee's valid administrative function;
  - (c) The Licensee's rights to use the information are not assignable, the Licensee shall not assign or transfer, nor attempt to assign or transfer its rights pursuant to this contract.
  - (d) Licensee shall restrict access to the Licensed Information to only those employees or agents of the Licensee whose access is necessary to assist the Licensee's valid administrative function. Upon Licensor's request, Licensee shall provide to Licensor in a timely manner, a listing of all individuals who may access the Licensed Information.
  - (e) Licensee shall not publish, sell, or disclose the Licensed Information, or any part thereof, to the extent that the information published of any area, industry, Federal Department or Federal Agency level contains fewer than three (3) reporting units (as defined in C.R.S. 8-70-103(9), 1987 Rep. Vol., as amended), or eighty percent (80%) of the total employment of the applicable reporting level is made up by a single reporting unit.
4. In the event of Licensee's breach of the Licensed Information's confidentiality or any of the Licensee's duties specified in section 3, the Licensee shall, to the extent authorized by law, indemnify, save and hold harmless the Licensor, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Licensee, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract, and the Licensee shall return all Licensed Information to the Licensor and pay the Licensor within thirty (30) days the sum of one-thousand and no/100 dollars (\$1,000.00).
5. The term of the License Agreement shall commence upon Licensor's receipt of total payment. The License Agreement shall continue until it is terminated upon Licensee's discontinued use of Licensor's confidential information for a one (1) year period or if Licensee defaults on the obligations and conditions of this License Agreement and fails to correct the default within thirty (30) days.
6. The Licensee warrants that it possesses the legal authority to enter into this Contract. The person or persons signing this Contract on behalf of the Licensee also warrants that they have full authorization to execute this contract.
7. The Licensee agrees that all Licensed Information is the sole property of the Licensor.
8. Licensee shall permit the Licensor, the U.S. Department of Labor, or any other duly authorized agent or governmental agency, to monitor all activities conducted by the Licensee pursuant to the terms of this Contract. Such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with Licensee's work.
9. The Licensee shall notify the Licensor, within five (5) days after being served with a summons, complaint, or other pleading in a case which involves services provided under this contract and which has been filed in any Federal or State court or administrative agency, and shall deliver copies of such document to the Licensor.
10. This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State of Colorado Fiscal Rules. Any Licensor waiver of an alleged breach of confidentiality by the Licensee or third party agents of the Licensee is not to imply a waiver of any subsequent breach.
11. All notices required and permitted pursuant to this Contract shall be in writing and shall be deemed given when personally served or three (3) days after deposit in the United States Mail, postage prepaid, registered or certified, return receipt requested, and addressed to the addresses stated on Page 1 or to such other address as has been designated by a notice complying with the foregoing requirements.
12. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this contract. Any provision of this contract whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. The terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term of provision hereof. In the event the Controller of the State of Colorado subsequently disapproves this contract, this contract shall terminate and the State shall return all sums paid by the Licensee, and the Licensee shall return all Licensed Information without penalty, or right to cause of action.

## COUNCIL COMMUNICATION

<b>Date:</b> June 7, 2010	<b>Agenda Item:</b> 11 a iii	<b>Subject:</b> Juvenile Assessment Center MOU
<b>Initiated By:</b> Police Department		<b>Staff Source:</b> Chief Thomas E. Vandermee

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

In 2000, City Council first approved a Bill for an Ordinance authorizing an intergovernmental agreement with the 18<sup>th</sup> Judicial District Juvenile Assessment Center. Since that time there have been several similar ordinances. The most recent was in 2008 which authorized the approval of a waiver of direct sub-grant awards for the Colorado Division of Criminal Justice Juvenile Accountability Incentive Block Grant Program.

### RECOMMENDED ACTION

The Police Department is recommending that City Council adopt a bill for an ordinance approving a Memorandum of Understanding between the City of Englewood and the 18<sup>th</sup> Judicial District Juvenile Assessment Center which maximizes limited resources and reduces duplication of efforts among participating agencies when processing certain juvenile subjects.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Juvenile Assessment Center (JAC) will have completed its tenth year of operation in June 2010. The facility is open 24 hours a day for law enforcement. The facility is a "one stop shop" for youth, families, and law enforcement. Since its inception, the Juvenile Assessment Center has provided a multi-agency focus to the individual needs of at-risk youth and their families. The Juvenile Assessment Center maximizes limited resources and reduces duplication of efforts across participating agencies. The Juvenile Assessment Center continues to serve as a single point entry and saves law enforcement a significant amount of time spent on processing juveniles.

The purpose of this new Memorandum of Understanding is to establish the method in which the participating governmental entities are assessed fees for the use of the JAC. This agreement as set forth is a one-year agreement with the funds to be paid by January 31 of the year in which the monies are expended and ending on December 31<sup>st</sup> of that same year. It also provides for an automatic renewal of ten successive one-year terms unless the party is given written notice of termination.

### FINANCIAL IMPACT

The City of Englewood's matching contribution to the Juvenile Assessment Center for fiscal year 2010 was \$15,666 which is included in the Police Department budget. Exact costs for 2011 are not yet available but are not expected to increase.

### LIST OF ATTACHMENTS

Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. 15  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT ENTITLED "MEMORANDUM OF UNDERSTANDING FOR THE 18<sup>TH</sup> JUDICIAL DISTRICT JUVENILE ASSESSMENT CENTER" ESTABLISHING THE METHOD IN WHICH THE PARTICIPATING GOVERNMENTAL ENTITIES ARE ASSESSED FEES FOR THE USE OF THE JUVENILE ASSESSMENT CENTER.

WHEREAS, the 18<sup>th</sup> Judicial District Juvenile Assessment Center (JAC) moved into its permanent facility as a part of the Arapahoe County Detention Center complex in 2002; and

WHEREAS, the facility is a "one stop shop" for youth, families and law enforcement agencies within the 18<sup>th</sup> Judicial District, with outreach activities at local schools, law enforcement and community agencies; and

WHEREAS, since its inception, the Juvenile Assessment Center has provided a multi-agency focus to the individual needs of at-risk youth and their families; and

WHEREAS, the Juvenile Assessment Center continues to serve as a single point entry and saves law enforcement a significant amount of time spent on processing juveniles; and

WHEREAS, the Englewood City Council authorized the approval of a waiver of direct subgrant awards for the Colorado Division of Criminal Justice Juvenile Accountability Incentive Block Grant Program since 2003 to help fund the Center; and

WHEREAS, due to the decreases of federal grant funding provided to the Juvenile Assessment Center, the 18<sup>th</sup> Judicial District local law enforcement agencies agreed on the implementation of a funding formula that is based upon 50% usage and 50% population; and

WHEREAS, the passage of this Ordinance will establish the method in which the participating governmental entities are assessed fees for the use of the JAC; and

WHEREAS, the passage of this proposed Ordinance will authorize a one year period and extensions with automatic renewal of ten successive one year terms unless the City or another party gives written notice of termination; and

WHEREAS, the Englewood City Council authorized the Chief of Police to sign and attest to a waiver of Direct Sub grant Award Juvenile Accountability Incentive Block Grant (JAIBG) together with the City's matching contribution transferring the City's grant allocation to the 18<sup>th</sup> Judicial District Juvenile Assessment Center for the Federal Fiscal years of October 2003 – September 2004, with the passage of Resolution No. 55, Series 2004; and

WHEREAS, the City of Englewood's matching contribution to the Juvenile Assessment Center for fiscal year 2010 was \$15,666 and was included in the Englewood Police Department's matching funds in their annual budget;

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

Section 1. The City Council of the City of Englewood, Colorado hereby accepts and approves the "Memorandum of Understanding for the 18<sup>th</sup> Judicial District Juvenile Assessment Center" attached hereto as Exhibit A.

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 or his designee is authorized to extend the "Memorandum of Understanding for the 18<sup>th</sup> Judicial District Juvenile Assessment Center" for 10 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 7<sup>th</sup> day of June, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 11<sup>th</sup> day of June, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 9<sup>th</sup> day of June, 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 7th day of June, 2010.

---

Loucrishia A. Ellis

Exhibit A

MEMORANDUM OF UNDERSTANDING  
For The 18<sup>TH</sup> Judicial District Juvenile Assessment Center

THIS AGREEMENT, ("MOU") is made and entered into by and between the COUNTIES OF ARAPAHOE, DOUGLAS, ELBERT AND LINCOLN, the STATE OF COLORADO, a body politic and corporate regarding the use and benefit of the 18<sup>th</sup> Judicial Juvenile Assessment Center and the Arapahoe, Douglas, Elbert and Lincoln Counties Sheriffs' Offices; and the CITIES/TOWNS OF: AURORA, BENNETT, BOW MAR, CASTLE PINES NORTH, CENTENNIAL, CHERRY HILLS VILLAGE, COLUMBINE VALLEY, DEER TRAIL, ENGLEWOOD, FOXFIELD, GREENWOOD VILLAGE, GLENDALE, LARKSPUR, LITTLETON, SHERIDAN, LONE TREE, CASTLE ROCK, PARKER, ELIZABETH, KIOWA, SIMLA, ARRIBA, GENOA, HUGO AND LIMON (collectively referred to as the "Law Enforcement Participants"), all the above collectively referred to as the "parties".

WITNESSETH:

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S. permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S. authorizes governments to contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units through the establishment of a separate legal entity; and

WHEREAS, the entity known as the 18<sup>th</sup> Judicial District Juvenile Assessment Center (the "JAC") provides a centralized location for the coordinated provision of mental health, booking, detention screening and other intervention programs and services for juveniles and their families who were referred to the JAC by the parties and/or any citizens of the 18<sup>th</sup> Judicial District; and

WHEREAS, the parties desire to enter into a new agreement for funding the JAC as described herein, which MOU supersedes all prior agreements and amendments.

I. GENERAL PROVISIONS

THE JUVENILE ASSESSMENT CENTER has been established as a 501(c)(3) with its own Board of Directors (hereinafter referred to as the Board) and by-laws, and consists of members from four segments of the 18<sup>th</sup> Judicial District. Board member representation shows equal distribution from law enforcement, school districts, juvenile services and citizens. The parties acknowledge that the Board pursuant to its bylaws, has delegated the daily activities of the JAC to the Executive Director of the JAC.

Furthermore, the parties acknowledge the JAC provides statutorily mandated services concerning detained juveniles.

## II. POWERS OF THE JAC

A. GENERAL POWERS. The parties acknowledge the JAC is empowered with the authority to improve, construct, maintain, repair, control, regulate, and operate the JAC within a centralized location(s) within the 18<sup>th</sup> Judicial District for the use and benefit of the parties to this Agreement and their constituents. The parties hereto further agree the JAC Board shall have the authority reasonable and necessary to carry out the powers set forth in this Agreement.

B. SPECIFIC POWERS. The JAC provides the services identified below to children who are under the age of eighteen. The mission of the 18<sup>th</sup> Judicial District Juvenile Assessment Center is to provide a coordinated, multi-agency, single entry site, which contributes to the safety of youth, families and the community through early intervention, comprehensive assessment and improved access to appropriate services.

C. PRINCIPAL GOALS OF THE JAC ARE TO:

1. Identify at-risk and delinquent youth in the community in need of intervention;
2. Enhance public safety through identification, comprehensive assessment, intervention and service referrals for at-risk and delinquent youth to include follow-up by JAC personnel;
3. Provide a single point of entry for law enforcement allowing them to return to their other duties in a timely manner;
4. Increase coordination of information and services;
5. Utilize an individualized approach tailored to obtain positive outcomes for youth, families and the community;
6. Increase effectiveness in the use of limited resources through the elimination of duplication of effort and enhanced accountability;
7. Facilitate better working relationships between agencies serving youth, families and the community; and
8. Serve as a resource to the community concerning youth related issues and services.

D. DUTIES OF THE JAC:

1. Provide rapid dissemination of assessment information to municipal, county and state courts, and collaborating agencies including but not limited to, the parties, school districts, Probation, Department of Human Services and Division of Youth Corrections in accordance with all laws, including those related to confidentiality;
2. Assist with intervention planning concerning arrest, incarceration, intervention, and consequences for juveniles pursuant to the Juvenile Code and the Chief Judge order regarding the management of the juvenile detention population dated, April 13, 2010 and subsequent applicable orders;

3. Prepare pre-disposition reports for municipal, county and state courts as ordered by the judicial officer;
4. Provide pursuant to Section 19-2-508, C.R.S., short-term holding and assessment of juveniles: detained or arrested by Law Enforcement; juveniles with status, ordinance, misdemeanor or felony level charges; juveniles considered to be "at risk" or "runaway"; or juveniles referred to or in the care of Human Services, who are not in immediate danger and who pose no threat to themselves or others (juveniles awaiting placement or family services);
5. Receive and assess juveniles who are beyond the control of their parent(s) or school and/or who are truant;
6. Apply for, receive and administer grants and other sources of funding, and provide all services related to juveniles which monies are authorized by the terms of any such grant or funding awards;
7. Provide ongoing training of law enforcement personnel on changes in the Juvenile Code, accessing and using JAC services and detention, screening procedures as applicable;
8. Provide screening of juveniles for Law Enforcement parties to determine eligibility for pretrial placement in Division of Youth Corrections' facilities and other facilities per local or state and local policy; or per Senate Bill 94 contract;
9. Have any additional duties that are authorized in writing by the Board.

### III. FUNDING CONTRIBUTIONS OF PARTIES

The parties agree that the fees to be charged for services shall be established by the Board and shall be uniform and reasonable. The parties agree that each party shall contribute to the JAC their fees as set forth herein.

A. **LAW ENFORCEMENT PARTIES' CONTRIBUTIONS.** The annual using a formula that is weighed equally by each Law Enforcement parties' Total Population and the average of the Law Enforcement parties' usage of the JAC for the three calendar years preceding the date the preliminary budget is approved (the "Three-Year Usage Period").

1. **Total Population Calculation.** One-half of the Law Enforcement parties' annual contribution will be determined as follows:
  - a. By identifying a total population figure for each Law Enforcement party using official demographic data provided by the Department of Local Affairs. The Sheriff's jurisdiction shall be the unincorporated portion of Arapahoe, Douglas, Elbert, and Lincoln Counties, including those communities under contract with said Sheriffs' Office.

2. Program Usage. The remaining one-half of the Law Enforcement parties' annual contribution will be determined as follows:

- a. The JAC shall keep a record of the number of Juveniles referred or transported to the JAC by each Law Enforcement party during each full calendar year (the "Law Enforcement Parties Usage Number").
- b. All of the Law Enforcement Party Usage Numbers for the Three-Year Usage Period will be added together (the "Three-Year Total Usage Number"). Each Law Enforcement Parties' percentage of the Three-Year Total Usage Number will determine one-half of their annual contribution.

B. FEE BASED CONTRIBUTION: The parties agree that the Board shall have the power to set fees for non-party referred juveniles, which may be waived by the JAC Executive Director so long as said waivers are applied in a consistent manner and according to applicable laws including anti-discrimination laws.

#### IV. APPROPRIATION AND PAYMENTS BY PARTIES OR OTHER ENTITIES.

A. APPROPRIATION AND PAYMENT OF FUNDS: The parties agree to consider for appropriation the amounts computed as set forth annually which are to be expended by the JAC. The parties agree to pay said amounts to the JAC by January 31st of the year during which said monies are to be expended by the JAC. All payments to the JAC pursuant to this Agreement are, however, subject to annual appropriation by the parties hereto in the manner required by statute or ordinance. It is the intention of the parties that no multiple-year fiscal debt or other obligation shall be allowed by the Agreement.

#### V. REPORTS

A. ANNUAL REPORT. By July 1<sup>st</sup> of each year the JAC Executive Director shall prepare and present to the Board a comprehensive annual report of the JAC's activities and finances during the preceding year, which will be made available to the parties.

B. REPORTS REQUIRED BY LAW, REGULATION OR CONTRACT. The JAC Executive Director shall also prepare and present such reports as may be required by law, regulation, or contract to any authorized federal, state, and/or local officials to whom such report is required to be made in the course and operation of the JAC.

C. REPORTS REQUESTED BY THE PARTIES. The JAC Executive Director shall also render to the parties hereto, at reasonable intervals, such reports and accountings as the parties hereto may from time to time request.

#### VI. DEFAULT IN PERFORMANCE

A. In the event any party fails to pay its share of fees when due, or to perform any of its covenants and undertakings under this Agreement, the Board shall cause written notice to be given to the governing body of the party of the Board's intention to terminate said Agreement as to such party in default, unless such default is cured within thirty (30) days from the date of such notice. Absent timely cure said defaulting party shall thereafter be denied service by the JAC.

#### VII. TERM, RENEWAL AND TERMINATION OF AGREEMENT

A. TERM AND RENEWAL OF AGREEMENT. This Agreement shall be in full force and effect for a one-year term beginning January 1, 2011, and terminating December 31, 2011; provided that this agreement shall automatically renew for 10 successive one-year terms unless a party gives written notice of termination pursuant to subsection B of this section.

B. TERMINATION BY WRITTEN NOTICE. This Agreement may be terminated by written notice from a party or parties to the Board at least 90 days prior to January 1<sup>st</sup> of any given year. Any party terminating its participation pursuant to this provision shall not be entitled to any reimbursement of its annual fee contributions previously paid to the JAC.

C. TERMINATION OF PARTY/LOSS OF FUNDS. Upon termination of a party, whether by default in performance or by written notice, the remaining parties may continue to participate in this Agreement. The Board, upon such termination of a party or parties, shall act to adjust the budget of Annual Assessment to accommodate the loss in funds unless the remaining parties negotiate an amendment to the Agreement setting forth revised percentages of participation or the parties agree to terminate the Agreement.

#### VIII. SEVERABILITY CLAUSE

If any provisions of this Agreement or the application thereof to any party or circumstances is held invalid, such invalidity shall not affect any other provision or applications of the Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of the Agreement are declared to be severable.

## IX. COUNTERPARTS

This Agreement may be signed in counterparts, and each counterpart shall be deemed an original, and all the counterparts taken, as a whole shall constitute one and the same instrument.

## X. NO THIRD PARTY BENEFICIARIES

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not named as parties, limit in any way governmental immunity as provided in 24-10-101, C.R.S., *et. seq.* and other limited liability statutes for the protection of the parties, nor limit the powers and responsibilities of any other entity not a party hereto. Nothing contained herein shall be deemed to create a partnership or joint venture between the parties with respect to the subject matter hereof. The parties shall be responsible for their own negligent acts and the conduct of their respective employees without waiving any protections afforded by the Governmental Immunity Act.

## XI. SUPERSEDES

This Agreement supersedes and replaces all prior agreements among the parties whether written or oral.

## XII. NONDISCRIMINATORY POLICY

The JAC shall make its services, facilities, and programs available to all persons regardless of race, color, age, creed, national origin, gender, sexual orientation or disability.

## XIII. NO GENERAL OBLIGATION INDEBTEDNESS

Because this Agreement will extend beyond the current fiscal year, the parties understand and intend that the obligation of the parties to pay the annual fees hereunder constitutes a current expense of the parties payable exclusively from the parties' funds and appropriated each fiscal year and shall not in any way be considered to be a multi-fiscal year debt or other financial obligations within the meaning of Article X, Section 20 of the Colorado Constitution; a general obligation indebtedness of the parties within the meaning of any provision of Article XI of the Colorado Constitution, or any other constitutional or statutory indebtedness. None of the parties has pledged the full faith and credit of the state, or the parties to the payment of the charges hereunder, and this Agreement shall not directly or contingently obligate the parties to apply money from, or levy or pledge any form of taxation to, the payment of the annual operating costs.

CITY OF ENGLEWOOD

By: \_\_\_\_\_  
James K. Woodward, Mayor

ATTEST:

\_\_\_\_\_  
Loucrishia A. Ellis, City Clerk

## COUNCIL COMMUNICATION

<b>Date:</b> June 7, 2010	<b>Agenda Item:</b> 11 a iv	<b>Subject:</b> Victim Assistance Law Enforcement Grant, 2010
<b>Initiated By:</b> Englewood Police Department		<b>Staff Source:</b> Thomas E. Vandermee, Chief of Police

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The City of Englewood has applied for and accepted the Victim Assistance Law Enforcement Grant (VALE) Grant from 1990 through 2009.

### RECOMMENDED ACTION

Staff seeks Council support of a bill for an ordinance accepting the 2010 VALE grant funding in the amount of \$16,740.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The VALE Grant finances approximately 30% of the salary and benefits for the Victim Witness Program at the Englewood Municipal Court. The Victim Witness Program provides services for victims of domestic violence.

### FINANCIAL IMPACT

The Victim Witness program would lose 30% funding.

### LIST OF ATTACHMENTS

Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. 16  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A VICTIM ASSISTANCE LAW ENFORCEMENT (VALE) GRANT FROM THE VICTIM ASSISTANCE LAW ENFORCEMENT BOARD OF THE 18TH JUDICIAL DISTRICT.

WHEREAS, the City of Englewood Safety Service Department applied for funding under the VALE Grants Program to be used for funding the Victim/Witness Program in the Englewood Municipal Court; and

WHEREAS, the Victim/Witness Program in the Englewood Municipal Court has served the victims of domestic violence since 1990; and

WHEREAS, the staff seeks Council approval of an Ordinance accepting a 2010 VALE grant funding in the amount of \$16,740, for the period of July 1, 2010 to June 30, 2011;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the acceptance of the VALE Grant and accompanying intergovernmental agreement, a copy of which is marked as "Exhibit A" and attached hereto.

Section 2. The City Manager, the Chief of Police and the Director of Finance/Administrative Services are hereby authorized to sign said VALE Grant and accompanying intergovernmental agreement on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 7th day of June, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 11<sup>th</sup> day of June, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 9th day of June, 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 7th day of June, 2010.

---

Loucrishia A. Ellis

# Exhibit A

EXHIBIT  
A

## VICTIM ASSISTANCE AND LAW ENFORCEMENT BOARD

### CONTRACT

Pursuant to the Assistance to Victims of and Witnesses to Crimes and Aid to Law Enforcement Act, Article 4.2 Title 24 C.R.S., the Victim Assistance and Law Enforcement Board of the 18<sup>th</sup> Judicial District has made the following award:

Grantee: Englewood Department of Safety Services  
3615 South Elati Street, Englewood, Colorado 80110

Grant number: 10-38

Project Title: Victim/Witness Advocate

Purpose of Grant Funds: Law Enforcement Victim Services

Services/Equipment Being Funded: Portion of Salary and Benefits for Victim Assistance Advocate

Grant Period: July 1, 2010 to June 30, 2011

Amount of Grant Award: \$16,740.00

Quarterly Installments: Four (4) Quarterly Payments of \$4,185.00

#### BE IT UNDERSTOOD THAT:

(1) All disbursements of awards are contingent upon the availability of VALE funds.

(2) The contents of the grant application will become contractual obligations of the grant recipient and are incorporated into this contract as if fully set forth herein.

(3) The grant recipient is required to submit Financial Reports quarterly: October 29, 2010, January 28, 2011, April 29, 2011 and July 29, 2011 for funding for 2010/2011. The report due on July 29, 2011 shall be the year-end report. The VALE Board will provide Financial Reporting Forms. Grant recipients are required to use these forms.

(4) The grant recipient is required to submit Program Reports on: January 28, 2011 and July 29, 2011 for funding for 2010/2011. These reports must address any special conditions that are listed in this contract. The report due on July 29, 2011 shall be the year-end report. It shall show totals for the entire year and must address any special conditions that are listed in this contract. The VALE Board will provide Program Reporting Forms. Grant recipients are required to use these forms.

Englewood Department of Safety Services  
10-38

Reports shall be sent to:

Tara Lassiter, Grant Evaluator  
VALE Board  
District Attorney's Office  
6450 S Revere Pkwy  
Centennial, Colorado 80111  
(720) 874-8608

(5) Failure to submit these required reports on the dates due may result in suspension of the grant, termination of the grant, return of awarded funds or the loss of future funding by VALE.

(6) Special conditions for the award which have been stipulated between the VALE Board and the grant recipient are as follows:

NONE

(7) Any equipment purchased with VALE funds must remain with the grant recipient. Equipment must be used for the purpose designated in the grant application. Any use by others or transfer of ownership must be reported to the VALE Board, in writing, prior to the occurrence of such use or transfer. The Board may approve such use or transfer or may request return of the equipment.

(8) Any change in the use of grant funds shall be approved by the VALE Board. The request for such change shall be in writing. Approval of the VALE Board shall be obtained prior to any such use.

(9) Amendment of any other terms of this contract shall have prior approval of the Board. Requests for amendment shall be in writing.

(10) The grant recipient shall submit written notification by June 1, 2011 to the VALE Board if the grant recipient will have any remaining funds at the end of the grant period.

All unused funds shall be returned to the VALE Board unless the grant recipient makes a request in writing for use of the funds beyond the grant period and such request has been approved by the VALE Board.

Such requests shall include:

The amount of remaining funds  
How the funds will be used  
When the funds will be expended  
Why the funds were not expended.

Upon receipt of the request, the VALE Board shall decide whether to grant or deny the request without further presentation or hearing.

(11) The grant recipient agrees that all funds received under this grant shall be expended solely for the purposes stated above and that any funds not so expended, including funds lost or diverted to other purposes, shall be repaid to the VALE fund.

(12) The grant recipient agrees to comply with the letter and spirit of the Colorado Anti-discrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (C.R.S. Sec. 24-34-402) and required by Executive Order, Equal Opportunity and Affirmative Action, date April 16, 1975.

(13) Non-compliance with this contract may include failure to submit reports, making unapproved changes to the budget, performance failures or adherence to special conditions. Non-compliance with any portion of this contract may result in:

- Suspension of grant funds

- Termination of grant

- Withholding of funds

- Requiring grant recipient to return money to the VALE fund

- Other action as deemed necessary by the members of the VALE Board

- Any combination of the above.

(14) All grant recipients shall make available to the Board or its authorized designee all current books, records, procedures or other information relative to the grant application and implementation.

(15) The funds granted by this contract for Victim Services shall be disbursed in quarterly installments pending VALE Board approval of all required reports and verification of expenses. The funds granted by this contract for equipment may be dispersed by a single payment for the full amount, pending VALE Board approval of all required reports and verification of expenses.

Englewood Department of Safety Services  
10-38

The grant recipient, through the following signatories, understands and agrees that any VALE monies received as a result of the awarding of the grant application shall be subject to the terms of this contract.

Project Director Tom Vandermeer, Chief of Police	Date _____
Financial Officer Frank Gryglewicz, F/AS Director	Date _____
Authorizing Official Gary Sears, City Manager	Date _____
Kevin Duffy Chair, VALE Board	Date _____

Authorized Official: The authorized official is the person who is, by virtue of such person's position, authorized to enter into contracts for the grant recipient.

This could include: Mayor or City Manager, Chairperson of the County Commissioners, District Attorney, President or Chairperson of the Board of Directors, Superintendent, or other Chief Executive Officer.

Financial Officer: The person is responsible for all financial matters related to the program and who has responsibility for the accounting, management of funds, verification of expenditures, audit information and financial reports. The person who actually prepares the financial reports may be under the supervision of the Financial Officer. The Financial Officer must be a person other than the Authorized Official or the Project Director.

Project Director: The person who has direct responsibility for the implementation of the project. This person should combine knowledge and experience in the project area with ability to administer the project and supervise personnel. He/she shares responsibility with the financial Office for seeing that all expenditures are within the approved budget. This person will normally devote a major portion of his/her time to the project and is responsible for meeting all reporting requirements. The Project Director must be a person other than the Authorized Official or the Financial Officer.

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. 11  
INTRODUCED BY COUNCIL  
MEMBER GILLIT

AN ORDINANCE AMENDING TITLE 16, CHAPTER 5, SUBSECTION 1.1, AND CHAPTER 11, SUBSECTIONS 1 AND 2, OF THE ENGLEWOOD MUNICIPAL CODE 2000, TO PERMIT BUY-BACK, SECOND-HAND, THRIFT AND CONSIGNMENT USES AS USES-BY-RIGHT IN THE MU-B-1 ZONE DISTRICT.

WHEREAS, a business requested a review of the Englewood Municipal Code relating to consignment stores in the MU-B-1 Zone District; and

WHEREAS, the Englewood Planning and Zoning Commission held a public hearing on April 6, 2010 and received evidence relating to the subject; and

WHEREAS, the zoning change conforms to Roadmap Englewood: 2003 Englewood Comprehensive Plan Objective 1-2: which objective is to actively engage in attracting new businesses to the City and Objective 1-3: Create a balanced mix of businesses that complement each other; and

WHEREAS, the Englewood Planning and Zoning Commission decided all four of these uses were appropriate in the MU-B-1 Zone as well as all other Business Districts; and

WHEREAS, the Englewood Planning and Zoning Commission has referred this Ordinance to Council with a favorable recommendation; and

WHEREAS, passage of this Ordinance will also transform an existing non-conforming thrift store use in the MU-B-1 Zone to a conforming status.

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 amending Title 16, Chapter 5, Section 1.1 "Table Of Allowed Uses" – Commercial Uses Section, of the Englewood Municipal Code 2000, to read as follows:



**TABLE 16-5-1.1: TABLE OF ALLOWED USES**  
**P = PERMITTED USE    C = CONDITIONAL USE    A = ACCESSORY USE    T = TEMPORARY USE    L = LIMITED USE**  
**C-A = ACCESSORY USE APPROVED CONDITIONALLY    L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE**

Use Category	Use Type	Residential							Non-Residential							Additional Regulations			
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 2 C	MU R 3 A	MU R 3 B	MU R 3 C	M 1	M 2	M 3	MU B 1	MU B 2		T S A	I 1	I 2
Assembly	Assembly hall or auditorium, hall rental for meetings or social occasions																		
	Membership organization (excluding adult use)																		
Dependent Care	Dependent care center (less than 24-hour care, any age)																		16-5-2.C.7
	Amusement/Amusement: Indoor																		
Entertainment/Amusement: Indoor	Amusement establishment																		
	Hookah Lounge																		
	Physical fitness center/spa																		
	Theater and performance/concert venue, not including adult entertainment																		

**TABLE 16-5-1.1: TABLE OF ALLOWED USES**  
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**C-A = ACCESSORY USE APPROVED CONDITIONALLY    L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE**

Use Category	Use Type	Residential							Non-Residential							Additional Regulations		
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	MU R 3 A	MU R 3 B	M 1	M 2	M ---	M O 2	MU B 1	MU B 2	T S A		I 1	I 2
Entertainment/ Amusement: Outdoor	General outdoor recreation																	
	Check cashing facility																	
Financial Institution	Financial institution, with drive-through service																	
	Financial institution, without drive-through service																	
Food and Beverage Service	Brewpub																	
	Caterer																	
	Microbrewery																	
	Restaurant, bar, tavern with or without outdoor operations																	
	Restaurant, with drive-through service																	

**TABLE 16-5-1.1: TABLE OF ALLOWED USES**  
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Use Category	Use Type	Residential							Non-Residential							Additional Regulations			
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 2 C	MU R 3 A	MU R 3 B	MU R 3 C	M 1	M 2	M 3	MU B 1	MU B 2		T S A	I 1	I 2
Medical/Scientific Service	Take out and delivery only																		
	Clinic																		
	Hospital																		
Office	Laboratory (dental, medical or optical)																		
	Office, type 1 (general)																		
Retail Sales and Service (Personal Service)	Office, type 2 (limited)																		16-5-2.C.8
	Crematorium																		C
	Dry cleaner, drop-off site only																		
	Instructional service																		
	Massage therapy																		
	Mortuary																		
	Personal care																		

**TABLE 16-5-1.1: TABLE OF ALLOWED USES**  
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Use Category	Use Type	Residential						Non-Residential						Additional Regulations				
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	MU R 3 A	MU R 3 B	MU R 3 C	M 1	M 2	M 3	MU B 1		MU B 2	T S A	I 1	I 2
Service: photography studio and photo lab, upholstery, printer, locksmith, tailor	Tattoo and body-piercing establishment																	
Temporary employment business	Tattoo and body-piercing establishment																	
Retail Sales and Service (Repair and Rental)	Equipment rental																	
Retail Sales and Service (Sales)	Repair shop (not including auto)																	
Retail Sales and Service (Sales)	Antique store																	
Retail Sales and Service (Sales)	Art gallery																	
Retail Sales and Service (Sales)	Auction house																	
Retail Sales and Service (Sales)	Buy-back shop, second-hand, thrift, consignment stores																	

**TABLE 16-5-1.1: TABLE OF ALLOWED USES**  
**P = PERMITTED USE C = CONDITIONAL USE A = ACCESSORY USE T = TEMPORARY USE I = LIMITED USE**  
**C-A = ACCESSORY USE APPROVED CONDITIONALLY L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE**

Use Category	Use Type	Residential						Non-Residential						Additional Regulations					
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 2 C	MU R 3 A	MU R 3 B	MU R 3 C	M 1	M 2	M 3		MU B 1	MU B 2	T S A	I 1	I 2
	Convenience store																		
	Grocery/specialty food store																		
	Internet sales location																		
	Liquor store																		
	Pawnbroker																		
	Retail sales, general merchandise																		
School	Trade or business school																		
Studio	Radio/television broadcasting studio, recording/film studio																		

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Use Category	Use Type	Residential						Non-Residential						Additional Regulations							
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 2 C	MU R 3 A	MU R 3 B	MU R 3 C	M 1	M 2	M 3		MU B 1	MU B 2	T S A	I 1	I 2		
Vehicle and Equipment	Automobile pawnbroker																	P	P	16-5-2.C.10	
	Automotive sales, rental																		P	P	16-5-2.C.3
	Automotive service and repair, including body or fender work																		P	P	16-5-2.C.4
	Automotive service and repair, not including body or fender work																				
	Automotive service station (gasoline facility)																		L	P	16-5-2.C.4
	Car wash, auto detailing																				
	Commercial storage of operable vehicles																				
	Fuel dispensing																		L	P	

**TABLE 16-5-1.1: TABLE OF ALLOWED USES**

P = PERMITTED USE    C = CONDITIONAL USE    A = ACCESSORY USE    T = TEMPORARY USE    L = LIMITED USE  
 C-A = ACCESSORY USE APPROVED CONDITIONALLY    L-A = ACCESSORY USE APPROVED WITH LIMITED USE PROCEDURE

Use Category	Use Type	Residential							Non-Residential							Additional Regulations			
		R 1 A	R 1 B	R 1 C	R 2 A	R 2 B	R 2 C	MU R 3 A	MU R 3 B	MU R 3 C	M 1	M 2	M 3	MU B 1	MU B 2		T S A	I 1	I 2
	Parking facility, structure (operable vehicles), principal use																		16-5-2.C.3 16-5-2.C.14
	Parking area, surface (operable vehicles), principal use																		16-5-2.C.13; 16-5-2.C.3
	Recreational vehicles and boats, sales or rental																		
Visitor Accommodation	Bed and breakfast																		
	Hotel																		
	Hotel, Extended Stay																		
Wholesale	Sales and distribution																		

**[EDITOR'S NOTE: The recommended changes are only effective in the Commercial portion of the table. The Manufacturing/Industrial Uses, Accessory Uses, Temporary Uses, and Uses Not Mentioned portions of Table 16-5-1.1 Table of Allowed Uses contain no changes and are therefore not included here]**

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 11, Section 1(F), Subsection 14, of the Englewood Municipal Code 2000, to read as follows:

**16-11-1: Use Classifications.**

F. *Commercial Uses.*

14. Retail Sales and Service (Sales).

- a. *Characteristics.* Retail sales and service (sales) establishments are involved in the sale of new or used products to the general public. Accessory uses may include offices, parking, storage of goods, and assembly, repackaging, or repair of goods for on-site sale.
- b. *Specific Use Types.* This category includes the following use types:
  - (1) **Antique Store.** Any premises used for the sale or trading of articles of which eighty percent (80%) or more are over fifty (50) years old or have collectible value. An "antique store" does not include the collection, recycling, sale, or storage of "junk" as that term is defined in this Chapter.
  - (2) **Art Gallery.** An establishment engaged in the sale, loan, or display of art, books, paintings, sculpture, or other works of art. Art galleries do not include libraries, museums, or non-commercial art galleries.
  - (3) **Auction House.** Any establishment in which is carried on the business of auctioning articles for sale by public outcry and where such items offered for auction are sold immediately to the highest bidder.
  - (4) **Buy-Back Shop, Second-Hand, Thrift, Consignment.** A retail establishment that deals primarily in second-hand apparel, household goods, furniture, books, or appliances. This use type does not include the sale of second-hand motor vehicles, parts or accessories, scrap or waste.
  - (5) **Convenience Store.** A retail establishment offering for sale food and beverage for off-site consumption, household items, newspapers and magazines, and other small convenience items typically found in establishments with long or late hours of operation. A convenience store has a gross floor area no larger than five thousand (5,000) square feet. This definition excludes delicatessens or other specialty food stores, as defined below. Establishments at which twenty percent (20%) or more of the transactions are sales of prepared food for on-site consumption shall be classified as food and beverage service uses rather than convenience stores.

- (6) Grocery/Specialty Food Store. A retail establishment offering for sale primarily food and beverage for off-site consumption, specializing in the sale of one type of food item, and/or maintaining a sizable inventory of fresh fruits, vegetables, fresh-cut meats, or fresh seafood. A grocery/specialty food store may also include sales of personal convenience and small household goods. Grocery/specialty food stores include, but are not limited to, bakeries, delicatessens, seafood sales, and meat or poultry stores (e.g., butcher shops). Establishments at which twenty percent (20%) or more of the transactions are sales of prepared food for on-site consumption shall be classified as food and beverage service uses rather than grocery/specialty food stores.
- (7) Liquor Store. A state-licensed, retail establishment selling packaged alcoholic liquors (including beer, wine, and spirituous liquors) for consumption off-site. Liquor stores do not include restaurants, taverns, or bars.
- (8) Pawnbroker. An establishment regularly engaged in the business of making contracts for purchase or purchase transactions in the course of business.
- (9) Retail Sales, General Merchandise. Establishments that sell, lease, or rent consumer, home, and business goods, but excluding merchandise/retail uses classified or defined more specifically in this chapter (e.g., food/beverage sales, convenience stores, restaurants). Typical uses include department stores, furniture stores, clothing stores, and establishments providing the following products or services: art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, hardware, home improvements, household products, jewelry, pet food, pharmaceuticals, printed material, sporting goods, stationary, and videos.

c. *Exceptions.* No outdoor display is permitted as part of, or accessory to, a retail sales and service (sales) use unless specifically authorized by this Title.

Section 3. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 11 Section 2(B), "*Definition of Words, Terms, and Phrases*" of the Englewood Municipal Code 2000 to read as follows:

**16-11-2: Definition of Words, Terms, and Phrases.**

A. *Undefined Terms.* For words, terms, and phrases used in this Title that are not defined below, or elsewhere in this Title, the City Manager or designee shall interpret or define such words, terms, and phrases. In making such interpretations or definitions, the City Manager or designee may consult secondary sources related to the planning profession for technical words, terms and phrases, including but not limited to: A Glossary of Zoning, Development, and Planning Terms - Planning Advisory Service Report 491/492, edited by Michael Davidson and Fay Dolnick (American Planning Association, Chicago, Ill. 1999); A Survey of Zoning Definitions - Planning Advisory Service Report Number 421, edited

by Tracy Burrows (American Planning Association, Chicago, Ill. 1989); Zoning and Development Definitions for the Next Century, edited by Michael Davidson, in Zoning News (American Planning Association, August 1999); and The Illustrated Book of Development Definitions, by Harvey S. Moskowitz and Carl G. Lindbloom (Center for Urban Policy Research, Rutgers University. N.J. Third Edition. 1987). The City Manager or designee may consult Webster's Unabridged Dictionary (Random House Reference and Information Publishing, New York, 1997), as supplemented, or other available reference source for other words, terms, and phrases.

B. *Definition of Words, Terms, and Phrases.*

*Buy-Back Shop, Second-Hand, Thrift, Consignment:* A specific type of retail sales and service (sales) use. A retail establishment that deals primarily in second-hand apparel, household goods, furniture, books, or appliances but does not include the sale of second-hand motor vehicles, parts or accessories, scrap or waste. See definition of "Retail Sales And Service (Sales)".

Section 4. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5 Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 6. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 7. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 8. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 3<sup>rd</sup> day of May, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 7<sup>th</sup> day of May, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 5<sup>th</sup> day of May, 2010 for thirty (30) days.

A Public Hearing was held on May 17<sup>th</sup>, 2010.

Read by title and passed on final reading on the 7<sup>th</sup> day of June, 2010.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2010, on the 11<sup>th</sup> day of June, 2010.

Published by title on the City's official website beginning on the 9<sup>th</sup> day of June, 2010 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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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.

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Loucrishia A. Ellis

MEMORANDUM

TO: Daniel L. Brotzman, Esq.  
FROM: Dana L. Eismeier, Esq.  
DATE: May 18, 2010  
CLIENT: Englewood/Pirates Cove  
SUBJECT: Reasons to Settle

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Englewood has filed suit against several construction-related entities relating to improper installation of piping beneath the Pirates Cove leisure pool. The Defendant Group (including certain third-party contractors and subcontractors involved) has made a collective settlement offer of \$200,000.00, in exchange for releases (meaning Englewood will give up the right to bring claims against members of the Defendant Group). That settlement should be approved because: (i) that settlement will cover the out-of-pocket costs of all major and necessary repairs incurred to date; (ii) the amount will also cover a portion of costs of certain additional cosmetic repairs, *i.e.*, Diamond Brite pool coating; (iii) there are inherent risks in any litigation, including the passage of significant time since the original improper construction; and (iv) pursuing this matter further to trial may not significantly increase the total recovery, yet would result in significant additional legal and out-of-pocket experts and other expense fees to the City of Englewood.

For these reasons, we believe the Englewood City Council should approve the proposed settlement.