

**Agenda for the
Regular Meeting of the
Englewood City Council
Monday, July 19, 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 July 6, 2010.
6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
 - a. Bill Hayes will be present to discuss the Glass/Steagall Act.
 - b. Tracie Romero, Susie Fetters, and Josie Fetters will be present to discuss the Yellow Rose consignment store at 3431 South Broadway, which will open in August 2010.
 - c. Jackie Edwards will be present to discuss medical cannabis.
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.)

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.

8. Communications, Proclamations, and Appointments.
 - a. E-mail from Sunshine Cross advising Council of her resignation from Keep Englewood Beautiful.

9. Consent Agenda Items.
 - a. Approval of Ordinances on First Reading.
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 20, approving an Intergovernmental Agreement with Denver Health and Hospital Authority for Mutual Aid for Emergency Medical Services.
 - ii. Council Bill No. 22, accepting a Pandemic Preparedness Grant up to \$7,500 from the Tri-County Health Department.
 - iii. Council Bill No. 23, an emergency bill for an ordinance amending the budget of the Neighborhood Stabilization Program grant in the amount of \$500,000 and authorizing the purchase of three additional unidentified bank-owned foreclosed single family residences.
 - iv. Council Bill No. 24, an emergency bill for an ordinance authorizing and approving lease-purchase financing for the funding of energy conservation measures.
 - c. Resolutions and Motions.

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

11. Ordinances, Resolutions and Motions
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 21 – Recommendation by the Englewood Office of Emergency Management to adopt a bill for an ordinance accepting a 2010 Emergency Management Performance Grant in the amount of \$32,000 from the State of Colorado. **STAFF SOURCE: Steve Green, Emergency Management Coordinator.**
 - b. Approval of Ordinances on Second Reading.

- c. Resolutions and Motions.
 - i. Recommendation from the City Manager's Office to approve a resolution establishing and describing the City of Englewood's Green Community Program to ensure compliance with Internal Revenue Service requirements pertaining to the issuance of Qualified Energy Conservation Bonds (see Agenda Item 9 b iv - Council Bill No. 24). **STAFF SOURCE: Michael Flaherty, Deputy City Manager.**

- 12. General Discussion.
 - a. Mayor's Choice.
 - b. Council Members' Choice.
 - i. Council Bill No. 25, a bill for an ordinance extending the existing moratorium on the establishment of new medical marijuana dispensing and growing uses until July 1, 2011.
 - ii. A resolution extending the existing moratorium on the enforcement of select provisions of the City of Englewood's Sign Code pertaining to banners, portable signs, and wall murals until February 1, 2011.
 - iii. A motion to approve and sign the Cities of Service Declaration of Service.

- 13. City Manager's Report.

- 14. City Attorney's Report.

- 15. Adjournment

From: Audra Kirk
Sent: Tuesday, July 06, 2010 9:12 AM
To: Nancy Fenton; Susan Wertz
Subject: FW: KEB resignation

Audra,

I have decided I have to resign as a commissioner with KEB. My twins start High School in a month and have signed up for A LOT of extra curriculum activities that will inhibit my dedication to KEB.

It was a hard decision, because I have learned so much and enjoyed my time volunteering in the community.

I wish everyone the best with their future with KEB. I will be at the next meeting July 13th which will be my last attending meeting.

Thanks, again for allowing me to be part of such a wonderful commission.

Thanks,
Sunshine Cross
Aurora Housing Authority
Property Management
Compliance Dept.
720-251-2071-Direct Line
720-279-7618-Fax

Please consider the environment before printing this email.*

BY AUTHORITY

ORDINANCE NO. ____
 SERIES OF 2010

COUNCIL BILL NO. 20
 INTRODUCED BY COUNCIL
 MEMBER WILSON

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN DENVER HEALTH AND HOSPITAL AUTHORITY AND THE CITY OF ENGLEWOOD FOR MUTUAL AID FOR EMERGENCY MEDICAL SERVICES.

WHEREAS, mutual aid agreements exist between Englewood Fire Department and most front range fire departments, including Denver Fire; and

WHEREAS, many of these jurisdictions have emergency medical services which are provided by the fire department; and

WHEREAS, emergency medical services in the City and County of Denver are provided by Denver Health and Hospital Authority; and

WHEREAS, the passage of this Ordinance will allow Denver Health Paramedics to provide emergency medical services within the City of Englewood when called for assistance; and

WHEREAS, the passage of this Ordinance will allow Englewood Fire Department to provide emergency medical services within a limited geographic area of Denver, as specified in the Agreement when called for assistance;

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 accepts and approves the "Agreement" for mutual aid between Denver Health and Hospital Authority and the City of Englewood, attached hereto as Exhibit A.

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

Introduced, read in full, and passed on first reading on the 6th day of July, 2010.

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

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of July, 2010 for thirty (30) days.

Read by title and passed on final reading on the 19th day of July, 2010.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2010, on the 23rd day of July, 2010.

Published by title on the City's official website beginning on the 21st day of July, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2010 by and between **Denver Health and Hospital Authority**, a body corporate and political subdivision of the State of Colorado, with offices at 660 Bannock Street, 5th Floor, M 1919, Denver, Colorado 80204 (hereinafter the "**Authority**") and the **Englewood Fire Department**, a department of the City of Englewood, in the State of Colorado, with offices located at 3615 S. Elati St., Englewood, Colorado 80110 (hereinafter "**Englewood Fire**"). Collectively, the Authority and Englewood Fire shall be referred to as the "Parties."

RECITALS

WHEREAS, the Authority operates the Denver Paramedic Division, which is responsible for responding to all 911 emergency medical service within the corporate boundaries of the City and County of Denver (referred to as the "service area" of the Authority); and

WHEREAS, Englewood Fire was established to provide fire protection, emergency medical, rescue, and emergency medical services to the citizens within the City of Englewood; and

WHEREAS, each of the parties hereto are equipped and staffed to operate advanced life support emergency medical services systems within their respective jurisdictions; and

WHEREAS, the parties have identified certain geographical areas within their jurisdictions which, in the event of a reported need for emergency medical service, would, under certain circumstances, benefit from responses by equipment and personnel of the other jurisdiction, thereby minimizing response time to such request for service; and

WHEREAS, emergencies may arise in one or the other of the service areas of the parties resulting in greater demands than the personnel and equipment of that party can handle, or emergencies of such intensity may occur that they cannot be handled solely by the equipment of the party in whose service area the emergency occurs; and

WHEREAS, the parties desire to establish an agreement to provide for mutual response with respect to equipment and personnel of each of the parties hereto, to those specific areas as identified by the parties; and

WHEREAS, establishment of a mutual response agreement will serve a public purpose and will promote the health, safety, security, and central welfare of the inhabitants of the Authority's service area, Englewood Fire's service area, and the State of Colorado.

NOW, THEREFORE, in consideration of the premises above described and the mutual performance of the covenants, agreements, and promises set forth hereinafter, the parties agree as follows:

I. REPRESENTATIVES. The Authority's Chief Executive Officer ("CEO") is the official Authority Representative and directs all services for the Authority under this Agreement. Communication between the Authority and Englewood Fire shall be

directed through the CEO or such other representative as the CEO shall designate.

The City of Englewood Fire Chief is the official City Representative and directs all services for the Englewood Fire Department under this Agreement. Communication between the Authority and Englewood Fire shall be directed through the Englewood Fire Chief or such other representative as the Fire Chief shall designate.

II. DEFINITIONS. For the purposes of this Agreement, and any exhibits hereto, the definitions of the following words or terms of art shall be controlling for all purpose thereof:

- A. "Advanced Life Support" or "ALS" means emergency medical technician-paramedic level service, the highest attainable level of pre-hospital emergency medical care and treatment under the Colorado Board of Health Rules.
- B. "Ambulance" means any surface vehicle equipped to transport injured, sick, wounded, or disabled persons in either an emergency (*i.e.*, with lights and siren operating) or non-emergency mode, and staffed to provide emergency and non-emergency medical services for such persons.
- C. "Base Station Physician/Hospital" means the hospital or physician from which a party's emergency medical service system receives its On-Line Medical Control.
- D. "Basic Life Support" or "BLS" means emergency medical technician-basic level service, which includes vital signs assessment, oxygen administration, non-invasive airway management, artificial ventilation, cardiopulmonary resuscitation, extrication, axial immobilization, extremity splinting, hemorrhage control, wound care, and bandaging.
- E. "Command Officer" means an employee duly authorized to assume operational and medical control of an Emergency Medical Services Incident within the geographic jurisdiction of said employee's employing agency where such agency is a party of this Agreement.
- F. "Emergency Medical Services Incident" means an occurrence whereby there is either an observed potential need for or an expressed request for immediate medical response and/or assistance by Advance Life Support and/or Basic Life Support equipment and personnel.
- G. "Mutual Aid Response" means the response of one party's equipment and personnel, at the express request of the other party, to handle or assist with an Emergency Medical Services Incident within the service area of the other party.
- H. "On-Line Medical Control" means direct consultation by telephone or radio with a Base Station Physician/Hospital for patient treatment and/or disposition orders or assistance
- I. "Patient" means any person with any degree of injury, illness, or medical complaint.

- J. "Responding Party" means the party whose equipment and/or personnel was dispatched, responded to, and arrived at the location of the Emergency Medical Service Incident within the jurisdiction of a Responsible Party.
- K. "Responsible Party" means the party within whose service area a Mutual Aid Response incident is located.

III. MUTUAL RESPONSE OBLIGATIONS.

- A. The parties agree that the Authority's Paramedic Division and Englewood Fire shall, at the express request of the other party and subject to the limitations set forth herein, provide Mutual Aid Response within each other's jurisdiction without regard for political boundaries and in full compliance with the terms and conditions of this Agreement.
- B. Mutual Aid Response is hereby deemed to be approved by the respective governing bodies of each party, and shall require no further approval by the responsible officials of either party.
- C. Nothing herein shall affect either party's operation of Advanced Life Support emergency medical services within its respective jurisdiction.
- D. Both parties hereto agree to limit the scope of this Agreement to Mutual Aid Response to Advanced Life Support Ambulances. Accordingly, each party's provision of Basic Life Support services shall remain unaffected by this Agreement; nothing in this Agreement shall be constructed to authorize the Mutual Aid Response of such Basic Life Support equipment and personnel.
- E. Only those ALS Ambulances which are staffed with at least two (2) Colorado-certified Emergency Medical Technicians (-Basic, -Intermediate, or -Paramedic) with at least one (1) member of such staff being a Colorado-certified Emergency Medical Technician-Paramedic shall respond to Mutual Response Incidents governed by this Agreement.
- F. Whenever an Emergency Medical Services Incident occurs within a party's jurisdiction where, in the judgment of the Responsible Party's dispatcher, response by the Responding Party's ALS Ambulance would serve to minimize the response time to such call, or is necessary to assist with a multiple Patient call or when the Responsible Party is unavailable, the Responsible Party's dispatcher shall immediately notify the Responding Party's communications center of such call, which shall initiate the contemplated Mutual Response of the Responding Party's ALS Ambulance into the Responsible Party's jurisdiction.
- G. It is recognized that the availability of ALS Ambulances hereunder from one or both of the parties to this Agreement may be subject to or limited by other demands for utilization of such equipment and personnel elsewhere within or outside the jurisdiction of such party. Consequently, any obligation of a Responding Party to supply ALS Ambulances for Mutual Aid Response hereunder shall be expressly limited to, and contingent

upon, the ability of the Responding Party to provide an adequate level of service and protection within its jurisdiction, based on the availability of the Responding Party's equipment and personnel. The determination of whether said conditions exist shall be within the sole discretion of the Responding Party. Should the Responding Party determine it is not available for Mutual Aid Response, it shall immediately notify the Requesting Party and the Requesting Party's dispatcher.

H. Both parties' dispatchers' decision to employ the Mutual Aid Response provisions of this Agreement shall generally comply with the following geographic boundaries:

1. Englewood Fire ALS Ambulances may be dispatched as a Mutual Aid Response within that part of Denver bounded by:

Sheridan Boulevard to the West
Bellevue Avenue to the South
Colorado Boulevard to the East
Evans Avenue to the North

2. Authority ALS Ambulances may be dispatched as a Mutual Aid Response within that part of Englewood Fire's Service Area bounded by:

The geographic boundaries of the City of Englewood.

I. Both parties hereto agree to disregard these aforementioned geographic boundaries when requesting or providing Advanced Life Support assistance in handling a multiple casualty or large-scale Emergency Medical Services Incident, or when the Responsible Party is otherwise unable to timely or adequately respond.

J. Both parties hereto agree to review and revise these aforementioned geographic boundaries when deemed necessary or prudent by either party. Such revision shall be implemented only by written amendment to this Agreement.

K. Both parties agree that a Basic Life Support (BLS) first response may be used in addition to an ALS response when in accordance with that party's dispatch protocol.

IV. MUTUAL RESPONSE COMMAND.

The general command of a Mutual Aid Response incident shall be vested in and carried out by the most senior paramedic aboard the first emergency response unit to arrive at the incident, regardless of the jurisdiction of his or her origin, until arrival of a Command Officer of the Responsible Party and assumption of command by such officer.

V. PATIENT CARE.

A. Both parties hereto agree to operate under the Denver Metropolitan Paramedic Protocols with respect to patient assessment, treatment, drugs, and procedures; destination decisions shall be made by the senior paramedic aboard the Ambulance transporting the patient in accordance with that party's internal operational policies and procedures, except that:

- i. patients in the Authority's service area who are on a Denver Police Department hold (either a legal or mental health hold) shall be transported to Denver Health Medical Center, unless otherwise diverted by the Authority; and
 - ii. patients in the City of Englewood service area who are on an Englewood Police Department hold (either a legal or mental health hold) shall be transported to Swedish Medical Center or Porter Adventist Hospital, unless otherwise agreed to by the officer placing the hold on the patient.
- B. For purposes of continuity within each party's respective operation, On-Line Medical Control for each party shall be provided by that party's Base Station Physician/Hospital, regardless of the jurisdiction within which the Emergency Medical Services Incident is located.

VI. COMPENSATION AND REIMBURSEMENT.

The parties agree that the services to be provided hereunder to each other are of equal value. All aid rendered under this Agreement shall be without charge to the other party. Each party shall have the right to seek compensation or reimbursement, and bill any person or agency not a party to this Agreement, for services provided pursuant to this Agreement, in accordance with its own billing policies and as authorized by law.

VII. TERM AND TERMINATION.

This Agreement shall commence on the day following the date on which both parties have signed the Agreement and shall automatically renew for successive one (1)-year terms, subject to the following:

- A. Either party may terminate this Agreement upon thirty (30) days advance written notice provided in accordance with the "NOTICES" provision herein; or
- B. Any party may immediately terminate this Agreement, for cause or upon breach by any other party of any material provision hereof, or
- C. This Agreement may be terminated by written mutual agreement of the parties.

VIII. DATA AND RECORDS.

Except as limited by law and subject to patient confidentiality protections, both parties hereto agree to share collected event information and data from all Mutual Aid Responses with each other for statistical and quality assurance purposes; both parties also agree to ensure and maintain confidentiality of such shared information in accordance with any and all applicable statutes, rules and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Both parties shall keep and maintain books, records, accounts and other documents (hereinafter collectively referred to as "records") that are sufficient to accurately and completely reflect the operations of the parties in reference to this Agreement.

Both parties agree that, to the extent permitted by law, any duly authorized representative of the other party shall, until the expiration of four (4) years following termination of this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the other party involving transactions related to this Agreement. Such records shall include, but not be limited to, receipts, memoranda, invoices, vouchers and accounts of every kind pertaining to the performance of work and services under this Agreement. Both parties shall, upon request of the other party, make such records available for inspection.

Except as limited by Colorado and federal law and regulation governing confidentiality of patient records and patient privacy protections, either party shall, upon request of the official representative of the other party, make such records available for inspection and copying in the Denver metropolitan area.

IX. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA).

Both parties shall (i) not use or further disclose information other than as permitted or required by this Agreement; (ii) not use or further disclose information in a manner that would violate the requirements of the HIPAA regulations; (iii) use appropriate safeguards to prevent use or disclosure other than as provided in this Agreement; (iv) report to the other party any use or disclosure not provided by this Agreement; (v) ensure that any subcontractors and agents to which the parties may provide protected health information agree to the same restrictions and conditions as apply to the parties; (vi) make appropriate health information available upon individual request as appropriate; (vii) make its practices, books, and records relating to the use and disclosure of protected health information available to the U.S. Department of Health and Human Services; (viii) authorize the other party to terminate this Agreement if one has violated a material term.

X. MEDICARE CLAUSE.

Except as limited by Colorado and federal law and regulation governing confidentiality of patient records and patient privacy protections, Englewood Fire agrees to allow the Secretary of the Department of Health and Human Services and the Comptroller General, and the Authority Auditor, or their duly authorized representatives, access upon request to this Agreement and to the books, documents and records of Englewood Fire that are necessary to verify the nature and extent of costs of services furnished under this Agreement. Englewood Fire also agrees that if it carries out any duties of this Agreement through a subcontractor, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12)-month period with a related organization, the subcontract must contain a clause to the effect that the related organization, subcontract must contain a clause to the effect that the related organization must make available, upon written request, to the Secretary, or upon request to the Comptroller General, or their duly authorized representatives, the subcontract and the books, documents and records of the related organization that are necessary to verify the nature and extent of the costs. Such access shall be until the expiration of four (4) years after the services are furnished under this Agreement.

Except as limited by Colorado and federal law and regulation governing confidentiality of patient records and patient privacy protections, the Authority agrees to allow the Secretary of the Department of Health and Human Services and the Comptroller General, and the City of Englewood Director of Finance, or their duly authorized representatives, access upon request to this Agreement and to the books, documents and records of the Authority that are necessary to

verify the nature and extent of costs of services furnished under this Agreement. The Authority also agrees that if it carries out any duties of this Agreement through a subcontractor, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12)-month period with a related organization, the subcontract must contain a clause to the effect that the related organization must make available, upon written request, to the Secretary, or upon request to the Comptroller General, or their duly authorized representatives, the subcontract and the books, documents and records of the related organization that are necessary to verify the nature and extent of the costs. Such access shall be until the expiration of four (4) years after the services are furnished under this Agreement.

XI. STATUS OF THE PARTIES. The parties acknowledge that they operate independently. Neither Englewood Fire, nor any of its agents, representatives, employees, or officers shall be considered agents, representatives, employees, or officers of the Authority. Neither the Authority, nor any of its agents, representatives, employees, or officers shall be considered agents, representatives, employees, or officers of Englewood Fire. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the parties. Each party shall be liable for its own debts, obligations, acts and omissions. Nothing contained in this Agreement, and no performance under this Agreement by personnel of the parties hereto shall, in any respect, alter or modify the status of officers, agents, representatives, or employees of the respective parties for purposes of worker's compensation or other benefits, entitlements, pensions, levels or types of training, internal discipline, certification, or rank procedures, methods, or categories, or for any purpose, condition or requirements of employment.

XII. UNEMPLOYMENT, WORKERS' COMP AND FRINGE BENEFITS. Englewood Fire understands that it is not entitled to unemployment benefits, workers' compensation benefits, or any fringe benefits from the Authority. The Authority understands that it is not entitled to unemployment benefits, workers' compensation benefits, or any fringe benefits from Englewood Fire.

XIII. COLORADO GOVERNMENTAL IMMUNITY ACT. The parties hereto understand and agree that the Authority and Englewood Fire, individually, are relying upon and have not waived the monetary limitations (presently \$150,000 per person, \$600,000 per incident/occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*

XIV. LIABILITY. The Authority and Englewood Fire agree, individually, to be responsible for any and all negligent or wrongful acts or omissions of their respective officers, employees, and agents arising out of the performance of duties under this Agreement. The parties acknowledge that each of them is covered and self-insured under the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*

XV. INSURANCE. The Authority warrants and represents that it self-insures for professional liability for itself and for its public employees who provide health care services (including its physician public employees) pursuant to the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.* Englewood Fire warrants and represents that it self-insures for professional liability for itself and for its employees in amounts at least up to the limits of liability as specified in the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*

XVI. NOTICES. When this Agreement provides for notice, the notice shall be given in writing and shall be sent by U.S. Postal Mail, or by personal delivery to the parties at the following addresses:

If to DHHA:

Denver Health and Hospital Authority
Office of General Counsel
660 Bannock Street, MC 1919
Denver, Colorado 80204

If to Englewood Fire:

Englewood Fire Department
Michael Pattarozzi, Fire Chief
3615 S. Elati Street
Englewood, Colorado 80110

Said notice shall be delivered personally during normal business hours to the appropriate office above, or mailed by the U.S. Postal Service. Mailed notice shall be deemed effective three (3) days after deposit with the U.S. Postal Service.

XVII. CONFLICT OF INTEREST. The parties agree that no employee of the Authority shall have any personal or beneficial interest whatsoever in the services or property described herein. Englewood Fire agrees not to hire or contract for the services of any employee or officer of the Authority without first obtaining the approval of the Authority. The Authority agrees not to hire or contract for the services of any employee or officer of Englewood Fire without first obtaining the approval of Englewood Fire.

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

XIX. VENUE, GOVERNING LAW. This Agreement is entered into and shall be governed and construed according to the laws of the State of Colorado, without regard to conflicts of law. For purposes of this Agreement, Englewood Fire hereby submits to the personal jurisdiction of courts situated in the City and County of Denver, State of Colorado, and waives any right it might have to object to the venue of any proceeding at law or in equity, or that such proceeding has been brought in an inconvenient forum.

XX. ASSIGNMENT. This Agreement shall be binding upon the successor and assigns of each of the parties hereto, except that neither party may assign any of its rights or obligations hereunder, without the prior written consent of the other party.

XXI. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, the parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race,

color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

XXII. NO WAIVER OF RIGHTS. In no event shall performance by either party hereunder following any breach of one or more covenants, provisions, or conditions of this Agreement by the other party, constitute or be construed to be a waiver by the non-breaching party of any such breach or any default which may then exist on the part of the other party. The performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to such party with respect to such breach or default. No assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

XXIII. PARAGRAPH HEADINGS. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions thereof.

XXIV. AGREEMENT AS COMPLETE INTEGRATION AND AMENDMENT. This document, together with any Exhibits attached hereto, constitutes the full understanding of the parties with respect to the subject matter hereof, and a complete and exclusive statement of the terms of their agreement; this Agreement supersedes all prior written and oral agreements regarding the subject matter hereof. No terms, conditions, understandings or agreements purporting to amend, modify, vary or waive the terms of this Agreement shall be binding unless made in writing and signed by an authorized representative of each party. Any Exhibit to this Agreement is hereby incorporated into and made part of this Agreement. In case of any conflict between this Agreement and any Exhibit, the terms of this Agreement shall prevail over the Exhibit.

XXV. COUNTERPARTS OF THIS AGREEMENT. This Agreement shall be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

XXVI. AUTHORITY EXECUTION OF AGREEMENT. This Agreement is expressly subject to, and shall not be or become effective or binding on either party until fully executed by all signatories of the Authority and Englewood Fire.

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

**CITY OF ENGLEWOOD,
FIRE DEPARTMENT**

**DENVER HEALTH AND
HOSPITAL AUTHORITY**

By _____

By _____

Date: _____

Date: _____

James Woodward
Mayor, City of Englewood

Patricia A. Gabow, M.D.
Chief Executive Officer
Contract Control No. 09-086-NF

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 22
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE APPROVING ACCEPTANCE OF THE “2010 PANDEMIC PREPAREDNESS GRANT CONTRACT” BETWEEN TRI-COUNTY HEALTH DEPARTMENT AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, Tri-County Health Department received additional funding from the Colorado Department of Health and Environment (CDPHE) and the Centers for Disease Control and Prevention (CDC) in support of the H1N1 planning and response efforts to distribute vaccine to the residents in TCHD’s jurisdiction; and

WHEREAS, TCHD has completed the H1N1 vaccination campaign, and as such would like to support its First Responder partners by offering some of the remaining allocated funds to each First Responder within its jurisdiction for enhancing each First Responders pandemic planning and response capacity; and

WHEREAS, TCHD offered the City up to \$7,500, and the City has identified areas where the use of these funds would be most effective to assist with that capacity;

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 approves the intergovernmental agreement and accepts the “2010 Pandemic Preparedness Grant Contract” from Tri-County Health Department, attached hereto as Exhibit 1.

Section 2. The Mayor 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 6th day of July, 2010.

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

Published as a Bill for an Ordinance on the City’s official website beginning on the 7th day of July, 2010 for thirty (30) days.

Read by title and passed on final reading on the 19th day of July, 2010.

Published by title in the City’s official newspaper as Ordinance No. ____, Series of 2010, on the 23rd day of July, 2010.

Published by title on the City's official website beginning on the 21st day of July, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis



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2010 PANDEMIC PREPAREDNESS GRANT CONTRACT

This 2010 Pandemic Preparedness Grant Contract ("Agreement"), is made effective as of _____, 2010 by and between the Tri-County Health Department, hereinafter referred to as "TCHD", and _____ City of Englewood _____, hereinafter referred to as "First Responder". TCHD and First Responder may each be referred to herein, individually, as a "Party", or collectively, as "the Parties". The terms Party and Parties shall include their respective successors and assigns.

RECITALS.

WHEREAS, TCHD is the District Public Health Agency for the Counties of Adams, Arapahoe and Douglas, Colorado; and

WHEREAS, TCHD has received additional funding from the Colorado Department of Health and Environment ("CDPHE") and the Centers for Disease Control and Prevention ("CDC") in support of the H1N1 planning and response efforts to distribute vaccine to the residents in TCHD's jurisdiction; and

WHEREAS, TCHD has completed the H1N1 vaccination campaign, and as such, TCHD would like to support its First Responder partners by offering some of the remaining allocated funds to each First Responder within its jurisdiction for enhancing each First Responders pandemic planning and response capacity (the "Grant"); and

WHEREAS, First Responder has submitted a Budget to TCHD for the use of the proceeds of this Grant, which is attached hereto as Exhibit A, and incorporated herein by reference.

NOW THEREFORE, in consideration of the foregoing premises and the covenants and agreements hereinafter set forth, TCHD and First Responder agree as follows:

1. **Grant Funds.** TCHD hereby grants the amount of up to \$7,500 the "Grant Funds") to First Responder, to be used to purchase supplies to enhance First Responder's pandemic planning and response capacity. The payment of the Grant Funds shall be made within thirty (30) days receipt of this executed Agreement. The Grant Funds shall be expended pursuant to the Budget attached hereto as Exhibit A.

2. **Budget.** TCHD has reviewed and approved the attached Budget submitted by First Responder. Any items not approved for expenditure have been indicated on the attached Budget. First Responder, at its discretion and without a formal request, may move up to ten percent of the total Grant Funds across budget categories to implement

the Grant. Any expenses in excess of the Grant Funds shall be incurred at First Responders sole cost and expense.

3. Receipts and Accounting. First Responder shall submit to TCHD copies of all receipts for the items purchased with the Grant Funds on or before July 18, 2010. First Responder agrees to maintain accurate and complete records of the expenditure of the Grant Funds and agrees that TCHD may conduct an audit of such records at any time reasonably requested by TCHD.

4. Termination. If First Responder should fail to perform or be in breach of any of the terms, conditions, agreements, covenants, representations or warranties contained in this Agreement, and such default is not cured for a period of 30 days after written notice thereof has been given to First Responder, TCHD, at its sole election, may immediately terminate this Agreement by written notice thereof to First Responder. In the event of termination under this Section 4, First Responder shall reimburse TCHD for all unspent funds granted hereunder as of the termination date.

(i) Notwithstanding the provisions of Section 4, TCHD may terminate the Agreement immediately and receive full reimbursement of the funds granted hereunder in the event TCHD does not receive copies of the receipts evidencing the expenditure of the Grant Funds, as provided herein.

5. Non-Guarantee of Additional Support: This Grant is accepted by First Responder with the understanding that TCHD is not obligated to provide any additional financial support to First Responder, except as may be required by law.

6. Governmental Compliance: First Responder will cooperate with TCHD in supplying additional information to TCHD, or in complying with any procedures which might be required by any governmental agency in order for TCHD to establish that it has observed all requirements of the law with respect to this Grant.

7. Dispute Resolution: In the event of any dispute arising out of this Agreement, the parties shall use good faith efforts to resolve their differences amicably prior to seeking legal recourse.

8. Liability and Indemnification. First Responder agrees, to the fullest extent permitted by law, to indemnify and hold harmless TCHD against all claims, damages, liabilities, costs and expenses to the extent caused by negligent acts of First Responder in connection with the Grant provided under this Agreement.

9. Miscellaneous.

A. Notice. Any notice to be given hereunder by either Party to the other may be effected in writing by personal delivery, or by mail, certified with postage prepaid, or by overnight delivery service. Notices sent by mail or by an overnight

delivery service shall be addressed to the Parties at the addresses appearing following their signatures below, but either Party may change its address by written notice in accordance with this paragraph.

B. Assignment. This Agreement is predicated upon First Responders special abilities or knowledge, and First Responder shall not assign this Agreement, in whole or in part, without the prior written consent of TCHD.

C. Severability. If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such holding shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

D. Governmental Immunity. The Parties acknowledge and agree that TCHD, its officers and employees, are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as it is from time to time amended.

E. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement. THERE ARE NO ORAL AGREEMENTS CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT.

F. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the Parties hereto.

G. Waiver. The failure of either Party at any time to require performance of the other Party of any provision of this Agreement shall in no way affect the right of such Party thereafter to enforce the same provision, nor shall the waiver by either Party of any breach of any provision hereof be taken or held to be a waiver of any other or subsequent breach, or as a waiver of the provision itself.

H. Binding Agreement. This Agreement shall be effective as of the date hereof and shall be binding upon and inure to the benefit of the successor or assign of either Party hereto.

I. Survival. The rights and obligations of the Parties shall survive the term of this Agreement to the extent that any performance is required under this Agreement after the expiration or termination of this Agreement.

J. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same document.

EXHIBIT A

2010 Pandemic Preparedness Grant Contract

BUDGET

Entity: Englewood Fire Department

Item	Quantity	Description	Justification for Pandemic Preparedness	Total Cost	Approved (to be completed by TCHD)			
					Yes	No		
Personal Protective Equipment - EMS Jackets	35	5.11 Responder Hi Vis Parkas	Protect personnel from weather exposures, provide visibility during responses and provide protection from blood and body fluid borne pathogens.	\$7,350.00				
Personal Protective Equipment - Latex Gloves	16 boxes	Microflex Ultra One latex gloves	Protect personnel from blood and body fluid contact.	\$144.00				
Total				\$7,494.00				

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 23
INTRODUCED BY COUNCIL
MEMBER JEFFERSON

AN ORDINANCE AMENDING A STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS NEIGHBORHOOD STABILIZATION PROGRAM (NSP1) GRANT BUDGET AND DECLARING AN EMERGENCY.

WHEREAS, the Housing and Economic Recovery Act (HERA) appropriated \$3.92 billion for the Neighborhood Stabilization Program (NSP1) to support the acquisition, rehabilitation, or demolition of foreclosed and abandoned properties; and

WHEREAS, the City Council of the City of Englewood, Colorado authorized the City's application for Federal funding through the Neighborhood Stabilization Program (NSP1) by the passage of Resolution 34, Series of 2009; and

WHEREAS, the Colorado State Housing Board approved the Project Rebuild NSP1 application on July 14, 2009 and awarded the City of Englewood \$1,253,379; and

WHEREAS, the City Council of the City of Englewood, Colorado authorized the execution of an intergovernmental contract for Neighborhood Stabilization Program grant funding between the Colorado Department of Local Affairs and the City of Englewood, Colorado by the passage of Ordinance No. 37, Series of 2009; and

WHEREAS, Project Rebuild will purchase and rehabilitate abandoned or foreclosed single-family properties in Englewood's ten eligible census tracts; and

WHEREAS, the City Council of the City of Englewood authorized the acquisition of ten (10) single-family vacant foreclosed properties located in the ten (10) eligible census tracts by Ordinance No. 49, Series of 2009; and

WHEREAS, the additional NSP1 grant funding from the Colorado Department of Local Affairs, Division of Housing will allow for the acquisition of up to three (3) additional single-family vacant foreclosed properties;

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

Section 1. An emergency is hereby declared requiring immediate passage of this Ordinance by reason of the September 10, 2010 funding obligation deadline imposed on all recipients of these funds by the federal Housing and Economic Recovery Act of 2008. Failure to obligate these funds by that deadline could result in the loss of these additional funds, loss of funds already obligated, as well as penalties as defined in the Act. Accordingly, the City Council finds and determines that an emergency exists and that the passage of this Ordinance is necessary for the immediate preservation of public property, health, peace, and safety, and said Ordinance shall be effective upon its final passage.

Section 2. The Mayor is authorized to execute the Intergovernmental Grant Agreement attached as "Attachment 1" for and on behalf of the City of Englewood, Colorado.

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

Introduced, read in full as an Emergency Bill for an Ordinance and passed on first reading on the 6th day of July, 2010.

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

Published as an Emergency Bill for an Ordinance on the City's official website beginning on the 7th day of July, 2010 for thirty (30) days.

Read by title as an Emergency Ordinance and passed on final reading on the 19th day of July, 2010.

Published by title as an Emergency Ordinance in the City's official newspaper as Ordinance No. ____, Series of 2010, on the 23rd day of July, 2010.

Published by title as an Emergency Ordinance on the City's official website beginning on the 21st day of July, 2010 for thirty (30) days.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

CONTRACT AMENDMENT

Amendment #1	Original Contract CMS # 6488 Amendment CMS #	Encumbrance # H0NSP09308
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1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between City of Englewood (hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Local Affairs, Division of Housing, (hereinafter called the "CDOH").

2) EFFECTIVE DATE AND ENFORCEABILITY

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

3) FACTUAL RECITALS

The Parties entered into the Contract for/to purchase, rehabilitate and resale of 13 homeownership units.

4) CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6) MODIFICATIONS.

The Amendment and all prior amendments thereto, if any, are modified as follows:

A. §9. of Contract, Payments to Grantee, is revised to read:

"Grantee shall be paid in the following amounts and manners, subject to return of any unexpended Grant Funds:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the Department shall be \$1,753,379.00, as determined by the Department from available funds. The Department shall reimburse Grantee for costs approved in the Grant budget, set forth in **Exhibit B**. Satisfactory performance under the terms of this Grant shall be a condition precedent to the Department's obligation to reimburse Grantee. The maximum amount of Grant Funds payable as reimbursement under this Grant, and any extension hereof, shall include all Grantee's fees, costs and expenses."

B. §1.1 of Exhibit B, Project Description, is revised to:

"The City of Englewood has been awarded an NSP grant in the amount of \$1,753,379.00 to purchase, rehabilitate, and resale 13 homeownership units. These units will be sold to households with incomes at or below 120% of Area Median Income (AMI). This Project will benefit the State by stabilizing communities through the purchase, rehabilitation and sale of abandoned or foreclosed properties. The units will be located within a Division of Housing (DOH) designated census block group(s) serving one of the areas of greatest need within the State. 30% of these funds will serve households with incomes at or below 50% of AMI. The properties will be purchased for an average discount of at least 1% from the appraised value. Homes will be rehabilitated to meet current local code and will use Energy Star appliances and upgrades

and will be sold for no more than the cost of the purchase and rehabilitation. A minimum of eight (8) hours of home buyer counseling will be provided to the potential home buyers through this activity. The City of Englewood may need to leave a portion of the NSP funding in the property as a soft second for the home buyer. In instances where NSP funding remains in the home after sale to the homeowner, the appropriate affordability period and recapture provisions will be included in the loan documents. This activity qualifies under 24 CFR 570.202 and 570.201(a)."

C. §5 of Exhibit B, Payment is revised to read:

"Payments shall be made in accordance with the provisions set forth in §9 of the Grant.

Payment Schedule. Grantee shall disburse Grant Funds received from the State within fifteen days of receipt. Excess funds shall be returned to the Department.

Payment	Amount	
Interim Payment(s)	\$1,752,379.00	Paid upon receipt of actual expense documentation and written requests from the Grantee for reimbursement of eligible approved program activities.
Final Payment	\$1,000.00	Paid upon substantial completion of the Project, provided that the Grantee has submitted, and the Department has accepted, all required reports.
Total	\$ 1,753,379.00	

D. §7. of Exhibit B, Project Budget, is revised to read:

Project Activities	Total Cost	NSP Funds	Other Funds	Other Fund Source
Property Acquisition	\$1,603,500.00	\$1,303,500.00	\$300,000.00	Developer
Appraisals	\$4,550.00		\$4,550.00	Sales Proceeds
Property Inspection / Estimates	\$3,900.00		\$3,900.00	Developer
Building Permits and Fees	\$19,500.00		\$19,500.00	Developer
Rehabilitation	\$650,000.00		\$650,000.00	Developer
Rehabilitation Contingency	\$65,000.00		\$65,000.00	Developer
Pre-Purchase Counseling	\$3,250.00		\$3,250.00	Sales Proceeds
Property Carrying Costs	\$18,000.00		\$18,000.00	Sales Proceeds
Financing Fees	\$55,000.00		\$55,000.00	Sales Proceeds
Marketing	\$130,000.00		\$130,000.00	Sales Proceeds
Legal	\$10,000.00		\$10,000.00	Sales Proceeds
Developer Fee	\$408,500.00	\$408,500.00		
Project Delivery Costs	\$55,379.00	\$5,379.00	\$50,000.00	Sales Proceeds
Start up Costs	\$6,000.00		\$6,000.00	Sales Proceeds
Other Project Activity Costs	\$100,000.00		\$100,000.00	Sales Proceeds
NSP Administration	\$100,000.00	\$350,000.00	\$65,000.00	Sales Proceeds
CDOH Final Payment	\$1,000.00	\$1,000.00		
Total	\$3,233,579.00	\$1,753,379.00	\$1,480,200.00	

E. §8.1.1 NSP Assisted Unit Identification, is revised to read:

"Grantee shall designate 13 unit(s) as NSP-assisted units. The units shall be made up of 13-three bedroom. As these units will be floating units over the period of affordability, as described in §8.1.3 below, Grantee shall ensure that the designated units will be comparable in terms of size, features, and number of bedrooms to the originally designated NSP units."

F. §8.5 of Exhibit B, Rental Project Eligible Beneficiaries, is revised to read:

"Grantee shall insure that 13 housing units shall be occupied by LMMI households whose income does not exceed the following:

Type of Units	Number of Units	Maximum income for a four-person family*
<u>NSP-Assisted Units</u>		
(5) single family units	5	≤ 50% AMI (\$37,950)
(8) single family units	8	≤ 120% AMI (\$91,080)
<u>Total Units</u>	13	

7) **START DATE**

This Amendment shall take effect on the later of its Effective Date or July 15, 2010.

8) **ORDER OF PRECEDENCE**

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9) AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR
City of Englewood

By: James K. Woodward

Title: Mayor

*Signature

STATE OF COLORADO
Bill Ritter, Jr. GOVERNOR
Department of Local Affairs

By: _____
Susan E. Kirkpatrick, Executive Director

PRE-APPROVED FORM CONTRACT REVIEWER

By: _____
Alison A. George, Housing Programs Manager

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: _____

Barbara M. Casey, Controller Delegate

Date: _____

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2010

COUNCIL BILL NO. 24
 INTRODUCED BY COUNCIL
 MEMBER WILSON

AN ORDINANCE OF THE CITY OF ENGLEWOOD AUTHORIZING AND APPROVING A LEASE-PURCHASE FINANCING FOR THE FUNDING OF ENERGY CONSERVATION MEASURES EXPECTED TO REDUCE ENERGY CONSUMPTION AND RESULT IN COST SAVINGS TO THE CITY, AND DECLARING AN EMERGENCY.

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

WHEREAS, pursuant to Section 30 of the Charter, the City Council of the City (the "Council") has all municipal legislative powers as conferred by general law, except as provided by the Charter; and

WHEREAS, the Council has, by separate Council action, authorized and approved the execution of an Energy Performance Contract (the "EPC") between the City and Ameresco, Inc. (the "Contractor"), pursuant to which the Contractor is to sell, install and service certain energy efficiency equipment of a specified type or class described in the EPC and provide other services (collectively, the "Energy Conservation Measures"), for the purpose of achieving utility cost reductions and guaranteed energy savings all as more specifically set forth in the EPC; and

WHEREAS, the Energy Conservation Measures to be made to various public buildings of the City will lower the electrical, natural gas and water usage in the buildings and will create a cost savings to the City which is guaranteed by the Contractor as more specifically set forth in the EPC; and

WHEREAS, pursuant to the Charter and Section 31-15-101 of the Colorado Revised Statutes, the City has the power to acquire, hold, lease and dispose of property, both real and personal, and the Council desires to spread the cost of the capital improvements set forth in the EPC over a period not to exceed seventeen years; and

WHEREAS, due to varied locations and nature of the Energy Conservation Measures, a alternative asset of the City is to be substituted as the capital asset (the "Leased Property") which is to be leased by the City, the value of such asset being approximately equal to the amount necessary to finance the EPC and related costs, all as more specifically set forth in the Lease Documents (defined hereafter); and

WHEREAS, the City has applied for, and received notification of award from the Governor's Energy Office, of volume cap allocation for the issuance of "qualified energy conservation bonds" (also known as "QECBs"), which allocation will result in a federal subsidy for a significant portion of the interest costs relating to the lease-purchase financing authorized pursuant to this Ordinance; and

WHEREAS, the City has received a proposal from Hutchinson, Shockey, Erley & Co. for the private placement of the lease-purchase financing and Stifel, Nicolaus & Company, Incorporated is acting as financial advisor to the City; and

WHEREAS, the City intends to enter into a lease agreement, pursuant to which the Lease Property is to be leased to a third-party for a lump-sum rental payment to be used to finance the EPC and related costs, and a financing lease, pursuant to which the City intends to lease back the Leased Property (such lease agreement, financing lease and ancillary documents and certificates referred to as the "Lease Documents"); and

WHEREAS, pursuant to the Lease Documents, copies of which have been reviewed by City staff and made available to Council, the details of the financing are fully set forth, and the financial obligation of the City under the Lease Documents shall constitute currently budgeted expenditures of the City which are expected to be offset by the savings realized by the City from the Energy Conservation Measures; and

WHEREAS, the Council is desirous of financing the Energy Conservation Measures;

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

Section 1. Approval of Lease Purchase Terms. The City Council hereby approves the lease-purchase of the Leased Property for the amount not to exceed \$1,500,000, with aggregate annual payments not to exceed \$175,000 over annual terms which shall not exceed sixteen calendar years. The City Council hereby delegates to the Mayor, or in the absence thereof, the Mayor Pro Tem, the authority to determine the net effective rate for the lease-purchases, which rate shall not be in excess of 8.0% per annum and the final terms of the Lease Documents.

Section 2. Approval of Lease Documents. The Lease Documents, in substantially the form and with substantially the content presented to the City, are in all respects approved, authorized and confirmed.

Section 3. Execution and Delivery of Documents. The Mayor or, in the absence thereof, the Mayor Pro Tem is hereby authorized and directed to execute the Lease Documents, and the signature of the Mayor or Mayor Pro Tem shall conclusively determine acceptance of the final form and content of the Lease Documents and the valid execution of the Lease Documents by the City. Additionally, the Mayor, other officials and employees of the City are hereby authorized and directed to execute and deliver for and on behalf of the City any and all additional agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the financing authorized and contemplated by this Ordinance, including but not limited to an Internal Revenue Service Form 8038-TC.

Section 4. Designation of Lease-Purchase Financing as a “Qualified Energy Conservation Bond”. The City hereby elects to designate the Lease Documents as a “Qualified Energy Conservation Bond” within the meaning of Section 54D of the Internal Revenue Code of 1986, as amended.

Section 5. Declarations and Findings. The City Council hereby determines and declares that the respective rental payments under the Lease Documents (the “Rental Payments”) represent the fair value of the use of the Leased Property, and that the Purchase Price (as defined in the Lease Documents) represents the fair purchase price of the Leased Property. The City Council hereby determines and declares that the Rental Payments do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to appropriate moneys to make payments under the Lease Documents or to exercise its option to purchase the Leased Property pursuant to the Lease Documents. In making such determinations, the City Council has given consideration to the current market value of the Leased Property, the cost of acquiring the Leased Property, the option of the City to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the City. The City Council hereby determines and declares that the duration of the Lease Documents, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Leased Property. The City has received an allocation from the State during the current calendar year of authorization to issue Qualified Energy Conservation Bonds in an amount equal to not less than the aggregate principal amount authorized pursuant to this Ordinance, and has not previously issued any bonds or other obligations pursuant to such authorization. The City Council hereby determines and declares that 100% of the available proceeds under the lease financing authorized herein are to be used for the Energy Conservation Measures and related costs, which are a qualified conservation purpose.

Section 6. Obligations of the City. No provision of this Ordinance or the Lease Documents shall be construed as creating or constituting a general obligation or a multiple-fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the City nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease Documents shall be in effect.

Section 7. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City regarding the acquisition or lease-purchase of the Leased Property, or directed toward satisfaction of the City’s obligations under the Lease Documents, are hereby ratified, approved and confirmed.

Section 8. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 9. Repealer. All ordinances, or parts thereof, inconsistent or in conflict herewith are hereby repealed to the extent only of such inconsistency or conflict.

Section 10. Emergency Declaration and Effective Date. The QECB allocation award by the Governor's Energy Office requires scheduled milestones which must be completed to retain such allocation. The designation of the lease-purchase financing as a QECB will result in a federal subsidy for a significant portion of the interest costs. In order to meet the requirement that the financing be closed by August 1, 2010, an emergency is declared to exist. This Ordinance shall be effective immediately upon final passage and be published within seven days after publication following final passage.

Introduced, read in full as an Emergency Bill for an Ordinance and passed on first reading on the 6th day of July, 2010.

Published as an Emergency Bill for an Ordinance on the 9th day of July, 2010.

Published as an Emergency Bill for an Ordinance on the City's official website beginning on the 7th day of July, 2010 for thirty (30) days.

Read by title as an Emergency Ordinance and passed on final reading on the 19th day of July, 2010.

Published by title as an Emergency Ordinance in the City's official newspaper as Ordinance No. ____, Series of 2010, on the 23rd day of July, 2010.

Published by title as an Emergency Ordinance on the City's official website beginning on the 21st day of July, 2010 for thirty (30) days.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date: July 19, 2010	Agenda Item: 11 a i	Subject: 2010 Emergency Management Performance Grant
Initiated By: Englewood Office of Emergency Management		Staff Source: Steve Green Emergency Management Coordinator

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

This grant supports the following Council Goals:

- 1) Englewood as a city that is safe, clean, healthy and attractive.
- 2) Englewood as a progressive city that provides responsive and cost efficient services.

Council has approved several previous grants from this program.

RECOMMENDED ACTION

Staff recommends Council adopt a bill for an ordinance accepting a 2010 Emergency Management Performance Grant (EMPG) awarded to the City of Englewood by the State of Colorado in the amount of \$32,000.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Emergency Management Performance Grants (EMPG) program is designed to provide supplemental funds for the strengthening of local government emergency management offices in preparing their communities for disaster planning, mitigation, response and recovery, while conserving local resources.

The City of Englewood received grants from the 2007-Supplemental, 2008 and 2009 EMPG program, to assist in the development of the emergency management program for the city. The Colorado Division of Emergency Management has stated that the EMPG program is expected to continue for the foreseeable future and has encouraged the City's participation.

We have been able to use past funding for a number of improvements in the City of Englewood emergency management program, including:

- Funding for one temporary, part-time staff member to assist with day-to-day emergency management duties.
- Development of the Emergency Operations Guidelines for the City of Englewood.
- Exercising the City's Emergency Operations Guidelines.

- Training of emergency management personnel and other city staff members in disaster planning and preparedness, and continuity of operations planning.
- Significant improvements and development of the emergency operations center infrastructure, including visual displays, data and information management, back-up electrical capabilities (connecting the facility to the generator power supply) and storage cabinets.

FINANCIAL IMPACT

The award is a soft-match grant, so there are no direct costs to the City in accepting it. Required matching funds are accounted for through the existing salaries of full-time employees who work in emergency management as all or part of their duties.

LIST OF ATTACHMENTS

Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 21
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING ACCEPTANCE OF THE 2010 EMERGENCY
MANAGEMENT PERFORMANCE GRANT AGREEMENT BETWEEN THE STATE OF
COLORADO AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the Emergency Management Performance Grants (EMPG) program is designed to provide supplemental funds for the strengthening of local government emergency management offices in preparing their communities for disaster planning, mitigation, response and recovery, while conserving local resources; and

WHEREAS, the City of Englewood received grants from the Emergency Management Grant Program (EMPG) in 2007, 2008 and 2009, to supplement the development of the emergency management office; and

WHEREAS, the City of Englewood applied for the 2010 Emergency Management Grant and has been awarded \$32,000; and

WHEREAS, the Emergency Management Performance Grant is a soft-match grant, so there are no direct costs to the City in accepting and the required matching funds are accounted for through the existing salaries of the emergency management personnel; and

WHEREAS, the passage of this Ordinance authorizes the acceptance of the State of Colorado Department of Local Affairs Emergency Management Performance Grant for 2010;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the acceptance of the State of Colorado Department of Local Affairs Emergency Management Performance Grant (EMPG) to the City of Englewood, attached hereto as Exhibit A.

Section 2. The Mayor is authorized to execute said agreement for and acceptance of the Grant for and on behalf of the City of Englewood.

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

Introduced, read in full, and passed on first reading on the 19th day of July, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 23rd day of July, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of July, 2010 for thirty (30) days.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 19th day of July, 2010.

Loucrishia A. Ellis

EMPG/LEMS: 10EM0L98

AGREEMENT*between the***STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS***and the***CITY OF ENGLEWOOD****Summary**Form of Financial Assistance: Grant Loan Award Amount: **\$32,000****Agreement Identification:**Contract Encumbrance #: **10EM0L98** (*DOLA's primary identification # for this agreement*)Contract Management System #: _____ (*State of Colorado's primary identification # for this agreement*)**Project Information:**Project/Award Number: **10EM0L98**Project Name: **2010 Emergency Management Performance Grant/Local Emergency Management Support (LEMS)**Performance Period: Start Date: **10/1/2009** End Date: **06/30/2011**

Brief Description of Project / Assistance: The annual EMPG/LEMS grants enhance all-hazards emergency management planning/preparedness, mitigation, response and recovery capabilities in the State of Colorado by providing financial support to local jurisdictions to staff and operate their emergency management program.

Program & Funding Information:Program Name **Emergency Management Performance Grant (EMPG)**Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): **97.042**Funding Account Codes: **100-SB00-710-5110-F0L0-3710**

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1. PARTIES

This Agreement (hereinafter called “Grant”) is entered into by and between the **CITY OF ENGLEWOOD** (hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Emergency Management (hereinafter called the “State” or “DOLA”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

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

- A. The Effective Date.
- B. The later to occur of the Effective Date or the date of a separate letter issued by the Department (“Release of Funds Letter”) notifying Grantee of the completion of a satisfactory environmental review and authorizing Grantee to obligate or use Grant Funds.
- C. The Effective Date; provided, however, that all Project costs, if specifically authorized by the funding authority, incurred on or after _____, may be submitted for reimbursement as if incurred after the Effective Date.
- D. insert date for authorized pre-agreement costs, as defined in §4 below and/or in **Exhibit B**, Statement of Project. Such costs may be submitted for reimbursement as if incurred after the Effective Date.
- E. The Effective Date; provided, however, that the costs identified in the checked subsections below may be submitted for reimbursement as if incurred after the Effective Date (*see checked suboption(s) below*):
 - i. All Project costs incurred on or after **October 1, 2009**; and

- ii. Pre-award costs for insert purpose, if any, incurred on or after insert starting date allowed under the federal award for pre-award costs.
- F. All or some of the costs or expenses incurred by Grantee prior to the Effective Date which have been or will be paid with non-federal funds may be included as a part of Grantee's non-federal match requirement, set forth herein and in **Exhibit B**, Statement of Project, if such costs or expenses are properly documented as eligible expenses in accordance with Exhibit B, §6.6.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in CRS §24-32-2105 and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

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

C. Purpose

The purpose of this grant agreement is described in **Exhibit B**.

D. References

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

4. DEFINITIONS

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

A. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in §6 and **Exhibit B**.

B. Exhibits and Other Attachments

The following are attached hereto and incorporated by reference herein:

- i. Exhibit A (Applicable Laws)
- ii. Exhibit B (Statement of Project)
- iii. Exhibit C (Grant Application Package)
- iv. Form 1 (Grant Funding Change Letter)

C. Goods

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

D. Grant

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

E. Grant Funds

"Grant Funds" means available funds payable by the State to Grantee pursuant to this Grant.

F. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

G. Pre-contract costs

"Pre-agreement costs", when applicable, means the costs incurred on or after the date as specified in §2 above, and the Effective Date of this Grant. Such costs shall have been detailed in Grantee's grant application and specifically authorized by the State and incorporated hereinto **Exhibit B**.

H. Project Budget

"Project Budget" means the budget for the Work described in **Exhibit B**.

I. Program

"Program" means the grant program, as specified on the first page, that provides the funding for this Grant.

J. Review

"Review" means examining Grantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and Exhibit B

K. Services

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

L. Sub-grantee

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

M. Work

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

N. Work Product

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

5. TERM and EARLY TERMINATION.

A. Initial Term

Unless otherwise permitted in §2 above, the Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on June 30, 2011, unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in §16, may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF PROJECT

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in Exhibit B. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

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

C. Employees

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

7. PAYMENTS TO GRANTEE

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

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is \$32,000, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in Exhibit B.

B. Payment

i. Advance, Interim and Final Payments

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

ii. Interest

The State shall not pay interest on Grantee invoices.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may terminate it in whole or to the extent of funding reduction, without further liability, after providing notice to Grantee in accordance with §16.

iv. Erroneous Payments

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

C. Use of Funds

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

D. Matching Funds

Grantee shall provide matching funds as provided in **Exhibit B**.

8. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Subgrants

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

9. GRANTEE RECORDS

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

A. Maintenance

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

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures.

C. Monitoring

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

D. Final Audit Report

Grantee shall provide a copy of its audit report to DOLA as specified in **Exhibit B**.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee

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

D. Disclosure-Liability

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

11. CONFLICTS OF INTEREST

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

12. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

B. Legal Authority – Grantee and Grantee's Signatory

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

C. Licenses, Permits, Etc.

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

13. INSURANCE

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

A. Grantee

i. Public Entities

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

ii. Non-Public Entities

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

B. Grantees and Sub-Grantees

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

i. Worker's Compensation

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

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Sub-grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

iii. Automobile Liability

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

iv. Additional Insured

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

v. Primacy of Coverage

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

vi. Cancellation

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

vii. Subrogation Waiver

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

C. Certificates

Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other

time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

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

B. Notice and Cure Period

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

15. REMEDIES

If Grantee is in breach under any provision of this Grant, provided that a breach is not necessary under §15(B), the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. If the form of financial assistance is a loan, as specified in the table on page 1 of this Grant, and in the event of a termination of this Grant, such termination shall not extinguish Grantee's obligations under the Promissory Note and the Deed of Trust.

A. Termination for Cause and/or Breach

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

i. Obligations and Rights

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

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and

the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

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

B. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

C. Remedies Not Involving Termination

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

i. Suspend Performance

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

ii. Withhold Payment

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

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

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

16. NOTICES and REPRESENTATIVES

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

A. State:

Mr. Hans Kallam, Director
Colorado Department of Local Affairs
Division of Emergency Management
9195 E. Mineral Ave., Ste. 200
Centennial, CO 80112
Email: hans.kallam@state.co.us

B. Grantee:

Mr. Stephen Green, Coordinator
City of Englewood
City of Englewood Emergency Management
3615 S. Elati
Englewood, CO 80110
Email:

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section shall shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System. Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress. Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS

This section shall shall not apply to this Grant.

Grantee must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the following:

A. Identification:

The applicant shall produce one of the following personal identifications:

- i. A valid Colorado driver's license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S.; or
- ii. A United States military card or a military dependent's identification card; or
- iii. A United States Coast Guard Merchant Mariner card; or
- iv. A Native American tribal document.

B. Affidavit

The applicant shall execute an affidavit herein attached as **Form 2**, Affidavit of Legal Residency, stating:

- i. That they are United States citizen or legal permanent resident; or
- ii. That they are otherwise lawfully present in the United States pursuant to federal law.

21. GENERAL PROVISIONS

A. Assignment and Subgrants

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

B. Binding Effect

Except as otherwise provided in §21(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification-General

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

G. Jurisdiction and Venue

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

H. List of Selected Applicable Laws

Grantee at all times during the performance of this Grant shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws, attached hereto, which laws and regulations are incorporated herein and made part hereof. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

I. Loan Forms

If the form of financial assistance provided by the State is a loan, as specified in the table on page 1 above, Grantee shall execute a promissory note substantially equivalent to **Form** __ and record a deed of trust substantially equivalent to **Form** _ with the county in which the property resides.

J. Modification

i. By the Parties

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

ii. By Operation of Law

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

iii. Grant Funding Change Letter

The State may increase or decrease funds available under this Grant and modify selected other provisions of this agreement using a Grant Funding Change Letter substantially equivalent to **Form 1**. The provisions of the Grant Funding Change Letter shall become part of and be incorporated into the

original agreement. The Grant Funding Change Letter is not valid until it has been approved by the State Controller or designee.

K. Order of Precedence

i. This Grant

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

- a) Colorado Special Provisions
- b) The provisions of the main body of this Grant
- c) Exhibit A
- d) Exhibit B

ii. Loan Document

This section shall apply if the form of financial assistance, as specified in the table on page 1 above, is a loan. In the event of conflicts or inconsistencies between this Grant and the Deed of Trust or the Promissory Note, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- a) The Promissory Note
- b) This Grant
- c) The Deed of Trust

L. Severability

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

M. Survival of Certain Grant Terms

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

N. Taxes

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

O. Third Party Beneficiaries

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

P. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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COLORADO SPECIAL PROVISIONS

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

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

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

B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 4. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. 5. COMPLIANCE WITH LAW.

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G. 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

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

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

I. 9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

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

K. 11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.

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

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

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

SPs Effective 1/1/09

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;">GRANTEE CITY OF ENGLEWOOD</p> <p>By: <u>James K. Woodward</u> Printed Name of Authorized Individual</p> <p>Title: <u>Mayor</u> Official Title of Authorized Individual</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Bill Ritter, Jr., GOVERNOR DEPARTMENT OF LOCAL AFFAIRS</p> <p>By: _____</p> <p style="text-align: center;">Susan E. Kirkpatrick, Executive Director</p> <p>Date: _____</p>
	<p style="text-align: center;">PRE-APPROVED FORM CONTRACT REVIEWER</p> <p>By: _____</p> <p style="text-align: center;">William F. Archambault, Jr., Finance and Administration Chief</p> <p>Date: _____</p>

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

**STATE CONTROLLER
David J. McDermott, CPA**

By: _____

Barbara M. Casey,
Controller Delegate

Date: _____

EXHIBIT A – APPLICABLE LAWS

Laws, regulations, and authoritative guidance incorporated into this Grant include, without limitation:

1. Age Discrimination Act of 1975, 42 U.S.C. Sections 6101, et seq.
2. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634
3. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq.
4. Equal Pay Act of 1963, 29 U.S.C. 206(d)
5. Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b
6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794
7. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d
8. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e
9. Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, et seq.
10. Section 24-34-301, et seq., Colorado Revised Statutes 1997, as amended
11. The applicable of the following:
 - 11.1. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
 - 11.2. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
 - 11.3. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122), and
 - 11.4. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133); and/or the Colorado Local Government Audit Law, 29-1-601, et seq., C.R.S., and State implementing rules and regulations.
 - 11.5. Immigration Status -Cooperation with Federal Officials, CRS 29-29-101, et seq.
 - 11.6. Davis-Bacon Act, 40 U.S.C. SS 276a to 276a-7.
 - 11.7. Copeland Act, 40 U.S.C. S 276c and 18 U.S.C. SS 874.
 - 11.8. Contract Work Hours and Safety Standards Act, 40 U.S.C. SS 327-333, regarding labor standards for federally assisted construction sub-awards.
 - 11.9. Wild and Scenic Rivers Act of 1968, 16 U.S.C. SS 1271 et. seq., related to protecting components or potential components of the national wild and scenic rivers system.
 - 11.10. National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, Executive Order No. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469a-1 et. seq.
 - 11.11. Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5121 et seq., as amended.
 - 11.12. National Flood Insurance Act of 1968, 42 U.S.C. 4001 et. seq.
 - 11.13. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 104.
 - 11.14. Department of Defense Authorization Act of 1986, Title 14, Part B, Section 1412, Public Law 99-145, 50 U.S.C. 1521.
 - 11.15. USA PATRIOT Act of 2001, (Pub. L. 107-56).
 - 11.16. Digital Television Transition and Public Safety Act of 2005, (Pub L. 109-171)
12. Federal Emergency Management Agency, Department of Homeland Security Regulations: All Applicable Portions of 44 CFR Chapter 1, with the following Parts specially noted and applicable to all grants of FEMA/DHS funds:
 - 12.1. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 44 C.F.R. 13.
 - 12.2. Governmentwide Debarment and Suspension (Nonprocurement) and Requirements for Drug-Free Workplace, 44 C.F.R. 17.
 - 12.3. New Restrictions on Lobbying, 44 C.F.R. 18.
13. Privacy Act of 1974, 5 U.S.C. S 5529 and Regulations adopted thereunder (44 C.F.R. 6).
14. Prohibition against use of Federal Funds for Lobbying, 31 U.S.C. 1352
15. None of the funds made available through this agreement shall be used in contravention of the Federal buildings performance and reporting requirements of Executive Order No. 13123, part 3 of title V of the National Energy Conservation Policy Act, 42 U.S.C. 8251 et. Seq., or subtitle A of title I of the Energy Policy Act of 2005 (including the amendments made thereby).
16. None of the funds made available shall be used in contravention of section 303 of the Energy Policy Act of 1992, 42 U.S.C. 13212.
17. Buy American Act, 41 U.S.C. 10a et seq.
18. 2010 EMPG Grant Guidance

EXHIBIT B – STATEMENT OF PROJECT (SOP)

1. GENERAL DESCRIPTION OF THE PROJECT(S).

1.1. Project Description. Grantee will carry-out the annual work plans in the Annual Program Paper and Staffing Plan (Exhibit C) for each of the Emergency Management Functions (EMF).

1.2. Project expenses. Project expenses include the costs for salaries and benefits for Grantee's emergency manager and emergency management staff, travel, emergency management office operational costs, and the costs associated with, emergency management exercises, training and planning. No more than 3% of this Grant may be used for Management and Administration (M&A) costs. It should be noted that salaries of local emergency managers are not typically categorized as M&A, unless the local Emergency Management Agency (EMA) chooses to assign personnel to specific M&A activities. Additional specific eligible and ineligible cost information is listed in the 2010 EMPG program guidance at http://www.fema.gov/pdf/government/grant/2010/fy10_empg_kit.pdf.

2. DELIVERABLES:

2.1. Grantee shall submit narrative and financial reports describing project progress and accomplishments, any delays in meeting the objectives and expenditures to date as described in §5 of this Exhibit B.

2.2. List additional grant deliverables. Grantee will complete the annual work-plan described by the Grantee in Exhibit C. Grantee must participate in NIMSCAST by entering or updating the Grantee's data as part of meeting the NIMS compliance requirements.

3. PERSONNEL.

3.1. Replacement. Grantee shall immediately notify the Department if any key personnel specified in §3 of this Exhibit B cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the Department and seek its approval, which shall be at the Department's sole discretion, as the Department issued this Grant in part reliance on Grantee's representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what his/her qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the Department, in its sole discretion, may direct Grantee to suspend work on the Project until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with §16 of the Grant.

3.2. Responsible Administrator. Grantee's performance hereunder shall be under the direct supervision of Stephen Green, Coordinator, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this project.

3.3. Other Key Personnel. None.

4. FUNDING.

The State or Federal provided funds shall be limited to the amount(s) specified in §7 of the Grant and in the Federal and/or State funds and percentage(s) section of §4.2 of this Exhibit B, Project Budget.

4.1. Matching Funds.

4.1.1. Requirement. The following checked option shall apply

4.1.1.1. Matching Funds are not required under this Grant.

4.1.1.2. Grantee's required non-federal or state match contribution is detailed in §4.2 below. The match may:

4.1.1.2.1. include in-kind match;

4.1.1.2.2. not include in-kind match; or

4.1.1.2.3. include no more than _____% in-kind match.

4.1.2. General. Grantee's required matching contribution, if any, need not be provided on a line-item by line-item basis, but must be at least the percentage of the total project expenditures specified in the Project Budget table.

4.1.3.Documentation. Documentation of expenditures for the non-federal match contribution is required in the same manner as the documentation for the grant funded expenditures.

4.2. Project Budget

Category	Requested Total Project
Personnel	\$82,912
Travel	6,500
Office Support/Other	6,500
Total Estimated Budget (Total Rounded to Nearest \$100)	\$95,900
Total Requested Federal Share - 50% of Total Budget (Rounded to Nearest \$100)	\$48,000

Actual 2010 Award Amount	
2010 Federal Share (up to 50% of Total)	\$32,000
Required Non-Federal Match (at least 50% of Total)	\$32,000
Total Project	\$64,000

Remaining 2009 Award Funds*	
2009 Federal Share Remaining Available for Reimbursement During the FFY 10 Grant Period.*	\$0
Total Federal Funds Available During FFY 2010 Grant Period	\$32,000

*For information purposes only. Not part of this 2010 award. Any remaining balance is from the 2009 award and remains part of that grant and is reimbursable during the 2010 award period because of the overlapping performance terms. If all four quarters' reimbursements for the 2009 award have been submitted and paid, the 2009 Federal Share Remaining shown above is available for reimbursement during the first three quarters of the 2010 Federal Fiscal Year (FFY). Remaining 2009 funds will be paid for the 2010 first, second and third quarter reimbursement requests as necessary to utilize the full 2009 award. Payments will be identified as fifth, sixth and seventh quarter 2009 payments as appropriate on the reimbursements, and the required 50% non-federal match will be counted toward the 2009 grant to properly match the reimbursed amounts. If any 2009 first-fourth quarter reimbursements have not yet been submitted or paid, the 2009 amount remaining available will be reduced by any payments made when submitted and approved. If the 2009 Federal Share Remaining Available amount shown is \$0, the full 2009 award amount has been reimbursed, and has no effect on the funds available during FFY 2010.

4.3. Project Budget Line Item Adjustments. Grantee may (see checked option below):

- 4.3.1. not adjust individual budget line amounts without approval of the State. Such approval shall be in the form of:
- 4.3.1.1. a notice issued by the State in accordance with §16 of the Grant; or
 - 4.3.1.2. an amendment in accordance with the **Modification** subsection of the **General Provisions** of the Grant.
- 4.3.2. adjust individual budget line amounts without the State's approval if:
- 4.3.2.1. there are no transfers to or between administration budget lines; and
 - 4.3.2.2. cumulative budgetary line item changes do not exceed the lesser of ten percent of the total budgeted amount or \$20,000.

4.4. Non-Supplanting of Grantee Funds.

Grantee will ensure that the funds provided by this Grant are used to supplement and not supplant their funds budgeted for the purposes herein.

5. PAYMENT:

Payments shall be made in accordance with this section, the provisions of this Exhibit, and the provisions set forth in §7 of the Grant.

5.1. Payment Schedule. Grantee shall submit requests for reimbursement at least quarterly using the Department provided form or by letter with documentation attached if no form is required. One original signed reimbursement request is due on the same dates as the required financial reports. All requests shall be for eligible actual expenses incurred by Grantee, as described in §1 above. Requests will be accompanied by supporting documentation totaling at least the amount requested for reimbursement and any required non-federal match contribution. Documentation requirements are described in §6.6 below. If any financial or progress reports are delinquent at the time of a payment request, the Department may withhold such reimbursement until the required reports have been submitted. Up to one quarter of the total grant will be reimbursed with each quarterly payment. No more than 50% of the reported expenses will be reimbursed at any time. If one quarter's reported expenses do not warrant reimbursement of a full quarter's payment, any remaining funds from that quarter will be available for subsequent quarters so that additional expenses incurred in the later quarters may be reimbursed. Likewise, if excess expenses for one quarter are reported, those unreimbursed expenses will be added to the following quarters' expenses as necessary to maximize each quarter's reimbursement. If the total reimbursable expenses reported for the year's grant exceed the amount of the award, the excess expenses may be eligible for consideration for any reallocation additions made at the end of the federal grant period. If any grant end reallocation funding is available, eligibility for these funds will require timely report submittal, and strong performance demonstrated through the quarterly progress reports and through ongoing contact/monitoring.

5.2. Payment Amount. When non-federal match is required, such match must be documented with every payment request. Periodic payments will be made as requested at the same percentage of the documentation submitted as the Grant funded share of the budget up to any applicable quarterly or other pre-closeout maximums. Payment will not exceed the amount of cash expenditures documented. Excess match documented and submitted with one reimbursement request will be applied to subsequent requests as necessary to maximize the allowable reimbursement.

5.3. Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with §16 of the Grant:

City of Englewood
3615 S. Elati
Englewood, CO 80110

6. ADMINISTRATIVE REQUIREMENTS:

6.1. Accounting. Grantee shall maintain properly segregated accounts of Grant funds, matching funds, and other funds associated with the Project and make those records available to the State upon request.

6.2. Audit Report. If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA, Grantee shall submit an electronic copy of the final audit report, including a report in accordance with the Single Audit Act, to dola.audit@state.co.us, or send the report to:

Department of Local Affairs
Accounting & Financial Services
1313 Sherman Street, Room 323
Denver, CO 80203

6.3. Monitoring. The State shall monitor this Grant in accordance with §§9(B) and 9(C) of the Grant.

6.4. Records. Grantee shall maintain records in accordance with §9 of the Grant.

6.5. Reporting.

6.5.1. Quarterly Financial Status and Progress Reports. The project(s) approved in this Grant are to be completed on or before the termination date stated in §5(A) of the Grant Agreement. Grantee shall submit quarterly financial status and programmatic progress reports for each project identified in this agreement using the Standard Federal Financial Status Report (SF 425) and the Standard Federal Progress and Performance Narrative Report (SF-PPR), or other forms provided by the Department. One of each with original signatures shall be submitted in accordance with the schedule below:

Report Period	Due Date
January – March	April 20
April – June	July 20
July – September	October 20
October – December	January 20

6.5.2. Final Reports. Grantee shall submit a final financial status and progress report that provides final financial reconciliation and a final cumulative grant/project accomplishments report within 45 days of the end of the project/grant period. No obligations of funds can remain on the final report. The final reports may substitute for the quarterly reports for the final quarter of the grant period. If all projects are completed before the end of the grant period, the final report may be submitted at any time before its final due date. No further reports will be due after the Department has received, and sent notice of acceptance of the final grant report.

6.6. Required Documentation. Sufficient detail shall be provided with reimbursement requests to demonstrate that expenses are allowable and appropriate as detailed in the subsections below herein. Grantees must retain all procurement and payment documentation on site for inspection. This shall include, but not be limited to, purchase orders, receiving documents, invoices, vouchers, equipment/services identification, and time and effort reports.

6.6.1. Equipment or tangible goods. Requests for reimbursement for tangible personal property with a purchase price of less than \$5,000 per item should include the invoice number, description of item purchased (e.g. NOAA weather radios), and the location and number of items, or copies of the paid invoices may be submitted. For equipment items with a purchase price of or exceeding \$5,000, and a useful life of more than one year, the Grantee must provide a copy of the paid invoice and include a unique identifying number. This number can be the manufacturer’s serial number or, if the Grantee has its own existing inventory numbering system, that number may be used. The location of the equipment must also be provided. In addition to ongoing tracking requirements, Grantee shall ensure that tangible goods with per item cost of \$500 or more and equipment with per unit cost of \$5,000 or more are prominently marked as follows: *"Purchased with funds provided by the FEMA"*

6.6.2. Services. Grantees shall include contract/purchase order number(s) or employee names, the date(s) the services were provided, the nature of the services, and the hourly contract or salary rates, or monthly salary and any fringe benefits rates.

6.7. Procurement. Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantee should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:

6.7.1. Sole Source. Any sole source transaction in excess of \$100,000 must be approved in advance by the Department.

6.7.2. Conduct. Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee must be alert to organizational conflicts of

interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement must be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection must be submitted in writing to, and be approved by the authorized Grantee official.

- 6.7.3. Debarment.** Grantee shall verify that the Contractor is not debarred from participation in state and federal programs. Sub-grantees should review contractor debarment information on <http://www.epls.gov>.
- 6.7.4. Funding Disclosure.** When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subgrantees shall: (a) state the percentage of the total cost of the program or project which will be financed with grant money; (b) state the grant program name and dollar amount of state or federal funds for the project or program; and (c) use the phrase "*This project was supported by the Colorado Department of Local Affairs, Division of Emergency Management.*"
- 6.7.5. Approved Purchases.** Grantee shall verify that all purchases are listed in §1.1 above. Equipment purchases, if any, shall be for items listed in the Approved Equipment List (A.E.L) for the grant period on the Responder Knowledge Base (RKB), at <https://www.rkb.us>
- 6.7.6. Assignment of Rights/Duties/Equipment.** Grantee shall ensure that no rights or duties exercised under this Grant, or equipment purchased with Grant Funds having a purchase value of \$5,000 or more are assigned without the prior written consent of the Department.

COUNCIL COMMUNICATION

Date: July 19, 2010	Agenda Item: 11 c i	Subject: Resolution establishing the City of Englewood Green Community Program
Initiated By: City Manager's Office		Staff Source: Michael Flaherty, Deputy City Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has expressed strong interest in promoting energy efficiency, and alternative and renewable energy. In 2008, staff initiated efforts to address energy efficiency and to develop a plan for implementation of "Green City" initiatives. To that end, City Council approved a Memorandum of Understanding (MOU) with the Governor's Energy Office (GEO) on October 20, 2008. On May 4, 2009, City Council approved, by Resolution #38 of 2009, selection of Ameresco, Inc. as the City's Energy Service Company. On June 1, 2009, Council approved by motion an agreement with Ameresco for performance of a Technical Energy Audit (TEA.) On November 16, 2009, Council approved Amendment #1 to the TEA to provide for the investigation, design, development, and implementation of photovoltaic (solar) systems at various City facilities. The Energy Audit Report was discussed at the March 8, 2010 City Council Study Session and City Council approved an Energy Performance Contract with Ameresco on June 21, 2010.

RECOMMENDED ACTION

Staff seeks Council approval for a resolution establishing and describing the City of Englewood's Green Community Program to ensure compliance with Internal Revenue Service requirements pertaining to the issuance of Qualified Energy Conservation Bonds.

BACKGROUND

As a result of the Technical Energy Audit conducted on City of Englewood facilities earlier this year and the subsequent Energy Performance Contract approved by Council, it was necessary to ensure that a funding mechanism was in place for the planned energy conservation measures. We applied for and were granted a volume cap allocation for the issuance of "Qualified Energy Conservation Bonds (QECBs) from the Governor's Energy Office (GEO). The allocation provides a federal subsidy for a significant portion of the interest costs associated with the lease/purchase agreement of the equipment identified as part of our energy conservation measures. City Council granted approval on first reading of the QECBs on July 6 and is scheduled to consider the matter on second reading on July 19 (see agenda item 9 b iv).

We have been advised by our bond counsel that it is necessary to approve a resolution establishing a "Green Community Program" to ensure that we are in compliance with Internal Revenue Service (IRS) guidelines related to Qualified Energy Conservation Bonds.

The proposed resolution lays out the goals and objectives of the City's planned energy conservation measures and addresses the requirements contained in the Energy Performance Contract.

FINANCIAL IMPACT

There is no cost associated with the adoption of this resolution. It is important to note, however, the potential financial implications if the QECBs are not specifically identified as part of a Green Community Program. According to bond attorney Tom Peltz, if the City was subject to an IRS audit and could not prove to the IRS' satisfaction that the bonds are being used for a qualified energy purpose, there is a possibility that we could lose the aforementioned federal subsidy.

LIST OF ATTACHMENTS

E-mail from Bond Attorney Thomas Peltz
Proposed Resolution

Subject: FW: Engelwood "Green Community Program"
Attachments: City of Englewood Green Community Program Resolution 2010.doc

-----Original Message-----

From: Peltz, Thomas M. [mailto:tpeltz@englewoodco.gov]
Sent: Monday, July 12, 2010 4:30 PM
To: Frank Gryglewicz
Cc: Dan Brotzman
Subject: Engelwood "Green Community Program"

Frank, as I indicated on my voicemail, the proceeds from QECB's must be spent for a qualified energy purpose, which for the City would include capital expenditures either for (1) reducing energy consumption in publically owned buildings by at least 20% (on a building-by-building basis) or (2) implementing a "green community program". Because the risk of (1) would fall on the City (i.e., if we could not evidence (1) to the satisfaction of the IRS in an audit, the City would loose the subsidy, it would be prudent to identify the project as part of a "Green Community Program". The attached resolution would be necessary to establish such a program. Is it possible to have this included on the upcoming agenda?

#####

ANY FEDERAL TAX ADVICE CONTAINED IN THIS MESSAGE SHOULD NOT BE USED OR REFERRED TO IN THE PROMOTING, MARKETING OR RECOMMENDING OF ANY ENTITY, INVESTMENT PLAN OR ARRANGEMENT, AND SUCH ADVICE IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY A TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE.

#####

This E-mail message is confidential, is intended only for the named recipient(s) above and may contain information that is privileged, attorney work product or otherwise protected by applicable law. If you have received this message in error, please notify the sender at 402-346-6000 and delete this E-mail message.

Thank you.

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RESOLUTION NO. _____
SERIES OF 2010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO
ESTABLISHING AND DESCRIBING THE CITY OF ENGLEWOOD GREEN COMMUNITY
PROGRAM AND PROVIDING OTHER MATTERS RELATING THERETO.

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

WHEREAS, Section 301(a) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 added Section 54D (as amended by Section 1112 of the American Recovery and Reinvestment Act of 2009, "Section 54D") to the Internal Revenue Code of 1986, as amended (as amended, the "Code"), to authorize states and political subdivisions to issue qualified energy conservation bonds ("QECBs") for one or more Qualified Conservation Purposes (as defined in Section 54D); and

WHEREAS, among such Qualified Conservation Purposes are "capital expenditures incurred for purposes of ... implementing green community programs (including the use of loans, grants, or other repayment mechanisms to implement such programs)" (as used herein, "Green Community Programs"); and

WHEREAS, the City desires to establish a Green Community Program (as further described herein, the "City of Englewood Green Community Program"), to be financed in part with the proceeds of QECBs to be issued by the City; and

WHEREAS, the aim of the City of Englewood Green Community Program is to lower the electrical, natural gas and water usage in various public buildings of the City and create costs savings to the City; and

WHEREAS, this Resolution is being adopted to provide an initial description of the City of Englewood Green Community Program and to set forth certain projects to be included therein.

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

Section 1. Establishment of City of Englewood Green Community Program. The City hereby establishes the City of Englewood Green Community Program as a Green Community Program within the meaning of Section 54D. The City of Englewood Green Community Program shall include, but not be limited to, improvements to various public buildings of the City that are to lower the electrical, natural gas and water usage in such buildings and create cost savings to the City, as guaranteed in the Energy Performance Contract (the "EPC") between the City and Ameresco, Inc. (the "Contractor") pursuant to which the Contractor is to sell, install and service certain energy efficiency equipment of a specified type of class and provide other services, all as specified in the EPC.

Section 2. Future Additions to Program. The projects and programs listed in Section 1 hereof are not intended to represent an exhaustive description of the potential projects and programs to be included in the City of Englewood Green Community Program. The City Council of the City (the "Council") intends and expects that additional projects and programs will be added to the City of Englewood Green Community Program by future resolutions of the Council as such projects and programs are developed.

Section 3. Confirmation of Prior Acts. All actions not inconsistent with the provisions of this Resolution heretofore taken by the members of the Council and the officers and employees of the City are hereby ratified, approved and confirmed.

Section 4. Repealer. All prior acts, orders or resolutions, or parts thereof, by the City in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

Section 5. Severability. If any section, paragraph, clause or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution, it being the intention that the various parts hereof are severable.

ADOPTED AND APPROVED this 19th day of July, 2010.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis, City Clerk

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. 25
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE EXTENDING AN EXISTING TEMPORARY SUSPENSION OR MORATORIUM ON THE ESTABLISHMENT OF NEW MEDICAL MARIJUANA DISPENSING AND GROWING USES UNTIL JULY 1, 2011.

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

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

WHEREAS, staff will need sufficient time to review and coordinate the provisions relating to medical marijuana dispensing and growing uses in the Code; and

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

WHEREAS, the moratorium passed August 17, 2009 and extended until October 19, 2010 stops the establishment of new businesses; and

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

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

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

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

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

WHEREAS, the Colorado State Legislature has decided to also address this issue by the passage of House Bill 1284 of the 2010 Session and the City Council finds that the revisions to the City’s Unified Development Code must be coordinated with the requirements of the Colorado Statutes as well as the Constitution; and

WHEREAS, the City Council finds that this extension of the existing moratorium or temporary suspension of the establishment of all new medical marijuana dispensing and growing uses is necessary to implement the revisions to the Unified Development Code consistent with the State Statutes;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT AN EXISTING TEMPORARY SUSPENSION OR MORATORIUM ON THE ESTABLISHMENT OF NEW MARIJUANA DISPENSING AND GROWING USES UNTIL JULY 1, 2011.

Section 1. By reason of the fact that the Englewood Unified Development Code does not adequately define or limit medical marijuana dispensing and growing uses and for the immediate preservation of the public property, health, peace and safety.

Section 2. Said moratorium or temporary suspension shall be for any medical marijuana dispensing and growing uses within the City of Englewood not in operation by August 17, 2009.

Section 3. The City Council directs City staff to develop appropriate recommendations to Council, within the moratorium period, to be consistent with this Ordinance and to provide for an updating of the Unified Development Code relating to medical marijuana dispensing and growing uses.

Section 4. The City Council finds the provisions of this Ordinance are temporary in nature and are intended to be replaced by subsequent legislative enactment so that the moratorium or temporary suspension as specified in this ordinance shall terminate on July 1, 2011.

Introduced, read in full, and passed on first reading on the 19th day of July, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 23rd day of July, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of July, 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 19th day of July, 2010.

Loucrishia A. Ellis

RESOLUTION NO. _____
SERIES OF 2010

A RESOLUTION RECOMMENDING TO THE CITY MANAGER OF THE CITY OF ENGLEWOOD, COLORADO AN EXTENSION OF THE EXISTING SUSPENSION OR MORATORIUM ON THE ENFORCEMENT OF SELECT PROVISIONS OF THE ENGLEWOOD MUNICIPAL CODE 2000, THE SIGN CODE, PERTAINING TO BANNERS AND PORTABLE SIGNS; THE DISCRETIONARY APPROVAL PROCESS BY THE CITY MANAGER OR DESIGNEE FOR SIGNS UNDER 16-6-13(3)(b) AND 16-6-13(4) E.M.C.; AND THE PROVISIONS PERTAINING TO WALL MURALS FOR A PERIOD OF SIX MONTHS UNTIL FEBRUARY 1, 2011.

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

WHEREAS, the Colorado Court of Appeals has found the requirement for City Manager review and approval of certain types of signs is unconstitutional; and

WHEREAS, instead of special review and approval those signs listed in 16-6-13(3)(b), murals will continue to be reviewed as a regular sign permit and subject to the review times specified for all other signs; and

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

WHEREAS, it has been brought to Council's attention that some businesses in Englewood feel the Unified Development Code does not adequately address the use of banners and portable signs in relation to the remainder of the Sign Code; and

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

WHEREAS, City Council has deemed it necessary to coordinate the review of the Unified Development Code and found it appropriate to temporarily suspend enforcement of select provisions of the sign Code review by the staff and City Council by the passage of Resolution No. 76, Series of 2009; Resolution No. 3, Series of 2010; Resolution No. 28, Series of 2010 and Resolution No. 32, Series of 2010; and

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

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

WHEREAS, the City Council finds that an additional six month moratorium or temporary suspension of the enforcement of certain provisions of the Englewood Municipal Code 2000 pertaining to wall murals; banners and portable signs and the discretionary approval process is necessary to implement and begin review of the Unified Development Code; and

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

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

Section 1. the City Council of the City of Englewood, Colorado recommends the City Manager establish a moratorium or temporary suspension on the enforcement of the Englewood Municipal Code 2000 pertaining to banners and portable signs; the discretionary approval process by the City Manager or Designee for signs under 16-6-13(3)(b) and 16-6-13(4) E.M.C.; and the provisions pertaining to wall murals through February 1, 2011.

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

Section 3. The City Council finds the provisions of this Resolution are temporary in nature and are intended to be replaced by subsequent legislative enactment so that the moratorium or temporary suspension as specified in this Resolution should terminate on February 1, 2011.

ADOPTED AND APPROVED this 19th day of July, 2010.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis, City Clerk



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Declaration of Service

WHEREAS America has a proud tradition of service and volunteerism that dates back to the colonial era and today can be found in communities across the fifty states;

WHEREAS the bipartisan Edward M. Kennedy Serve America Act, signed into law by President Barack Obama on April 21, 2009 builds on this tradition, encouraging all Americans to serve their communities in new ways;

WHEREAS cities, home to many of the nation's most persistent challenges, are positioned to bring new leadership, facilitation, and innovation to the service movement;

WHEREAS the current need for public-spirited residents to help address increased hardship resulting from the global financial and housing crises is clear;

WHEREAS service enriches the lives of Americans of all ages, and each new generation of young Americans must be engaged to tackle emerging challenges;

NOW, THEREFORE, we resolve to develop a coalition of mayors from cities large and small to work together to harness and focus the energies of our citizens. Cities of Service coalition members will support efforts to increase service opportunities in our cities by:

Developing a comprehensive service plan and a coordinated strategy focused on matching volunteers and established community partners to the areas of greatest local need;

Working with other mayors and elected officials to advance strategies and best practices that accelerate the service movement and produce measurable results;

Encouraging other mayors to join this national effort to engage our citizens; and

Ensuring that the voice of cities is heard in federal legislative, policy, and program discussions related to service, which will help the country achieve the ambitious goals of the Serve America Act.



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MEMBERS

- Fresno, CA
- Grand Prairie, TX
- Grand Rapids, MI
- Harrisburg, PA
- Hattiesburg, MS
- Honolulu, HI
- Houston, TX
- Irvine, CA
- Jackson, MS
- Jacksonville, FL