

**Agenda for the  
Regular Meeting of the  
Englewood City Council  
Monday, August 16, 2010  
7:30 pm**



Englewood Civic Center – Council Chambers  
1000 Englewood Parkway  
Englewood, CO 80110

1. Call to Order.
2. Invocation.
3. Pledge of Allegiance.
4. Roll Call.
5. Consideration of Minutes of Previous Session.
  - a. Minutes from the Regular City Council Meeting of August 2, 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. Stewart H. Fonda, Director of Utilities, will present information on awards recently received by the Wastewater Treatment Plant.
7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)
8. Communications, Proclamations, and Appointments.
  - a. Proclamation declaring September 2010 as National Alcohol and Drug Addiction Recovery Month.

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

9. Consent Agenda Items.

a. Approval of Ordinances on First Reading.

- i. Council Bill No. 26 — Recommendation from the Public Works Department to adopt a bill for an ordinance accepting two easements on behalf of the Englewood/Littleton Wastewater Treatment Plant. **STAFF SOURCE: Dennis Stowe, Manager of the Wastewater Treatment Plant.**

b. Approval of Ordinances on Second Reading.

c. Resolutions and Motions.

- i. Recommendation from the Community Development Department to adopt a resolution supporting the Arapahoe County Enterprise Zone Expansion request. **STAFF SOURCE: Darren Hollingsworth, Economic Development Coordinator.**
- ii. Recommendation from the Community Development Department to adopt a resolution authorizing assignment of Englewood's 2010 Private Activity Bond (PAB) Allocation to the Colorado Housing and Finance Authority for home ownership programs. **STAFF SOURCE: Darren Hollingsworth, Economic Development Coordinator.**

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

11. Ordinances, Resolutions and Motions

a. Approval of Ordinances on First Reading.

- i. Council Bill No. 27 — Recommendation from the Department of Parks and Recreation to adopt a bill for an ordinance granting an easement to Public Service Company of Colorado for installation of a natural gas line and regulator station at the City of Englewood's Romans Park. **STAFF SOURCE: Dave Lee, Manager of Open Space.**
- ii. Council Bill No. 28 — Recommendation from the Department of Parks and Recreation to adopt a bill for an ordinance granting an easement to Qwest Corporation for installation of telecommunication facilities at the Broken Tee Englewood Golf Course. **STAFF SOURCE: Dave Lee, Manager of Open Space.**

- iii. Council Bill No. 29 – Recommendation from the Community Development Department to approve a bill for an ordinance authorizing the execution of two Intergovernmental Subgrantee Agreements with the 2010 Community Development Block Grant between the Arapahoe Board of County Commissioners and the City of Englewood. **STAFF SOURCE: Janet Grimmert, Housing Finance Specialist.**
- b. Approval of Ordinances on Second Reading.
- c. Resolutions and Motions.
  - i. Recommendation from the City Manager’s Office to adopt a resolution approving an addendum to the agreement with the Humane Society of South Platte Valley for animal sheltering services. **STAFF SOURCE: Michael Flaherty, Deputy City Manager.**
  - ii. Recommendation from the Parks and Recreation Department to adopt a resolution supporting the Great Outdoors Colorado grant application for Duncan Park planning funding. **STAFF SOURCE: Gary Hultberg, Recreation Manager.**
  - iii. Recommendation from the Information Technology Department to approve, by motion, an agreement for the purchase and implementation of a new City-wide phone system. Staff recommends awarding the contract to MSN Communications, Inc. through an existing State of Colorado contract in the amount of \$324,201.50. **STAFF SOURCE: Jeff Konishi, Director of the Information Technology Department.**
- 12. General Discussion.
  - a. Mayor’s Choice.
  - b. Council Members’ Choice.
- 13. City Manager’s Report.
- 14. City Attorney’s Report.
- 15. Adjournment



## PROCLAMATION

WHEREAS, recovery from substance use disorders is possible through a variety of treatment resources and recovery support programs; and

WHEREAS, thousands of people across the United States are living happy, healthy, and productive lives in recovery; and

WHEREAS, stress can contribute to substance use disorders, and finding a positive outlet for dealing with stress is crucial as people continue to face stressful situations in their lives; and

WHEREAS, nearly half of Americans reported that their stress levels had increased over the past year, with as many as 30 percent rating their stress levels as extreme (*American Psychological Association, Executive Report, October 7, 2008*); and

WHEREAS, in 2008, an estimated 23.1 million people of every age, race, ethnicity, and socio-economic status needed treatment for substance dependence or abuse in the United States (*2008 National Survey on Drug Use and Health*); and

WHEREAS, substance use disorders are a treatable, yet serious health care problem, and our community must take steps to address it; and

WHEREAS, educating our community about how substance use disorders affect all people in the community, including public safety officials, the workforce, older adults, and families, therefore is essential to combat misconceptions associated with addiction; and

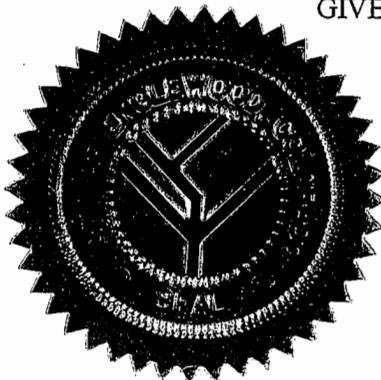
WHEREAS, to help more people enter a path of recovery, the U.S. Department of Health and Human Services, the Substance Abuse and Mental Health Services Administration, the White House Office of National Drug Control Policy, and the City of Englewood, Colorado invite all residents of Englewood to participate in National Alcohol and Drug Addiction Recovery Month (Recovery Month); and

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

### NATIONAL ALCOHOL AND DRUG ADDICTION RECOVERY MONTH

in the City of Englewood, Colorado. I urge all of our residents to **“JOIN THE VOICES FOR RECOVERY: NOW MORE THAN EVER!”** by supporting men, women and youths who are in drug and alcohol addiction treatment and recovery.

GIVEN under my hand and seal this 16<sup>th</sup> day of August, 2010.




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James K. Woodward, Mayor

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 9 a i	<b>Subject:</b> Ordinance Accepting Two WWTP Easements
<b>Initiated By:</b> Wastewater Treatment Plant		<b>Staff Source:</b> Dennis Stowe, WWTP Manager

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

On June 21, 2010, Council approved submitting a final offer of \$60,004 for the purchase of two easements from Industrial Partners, LLC.

### RECOMMENDED ACTION

Staff recommends Council adopt a bill for an ordinance accepting two easements on behalf of the Littleton/Englewood Wastewater Treatment Plant (WWTP).

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The expansion of the WWTP included the proposed installation of a storm water outfall line to the Platte River. The proposed line (actually 2-30" side-by-side concrete pipes) was designed to run north from the plant and cross Platte River Drive to the river. This alignment crosses a private parking lot in the City of Denver owned by Industrial Partners, LLC.

During our research for the proposed easement, it was discovered that an existing 84" outfall pipe from the WWTP, crossing Industrial Partners' property, did not have a recorded easement. This line was constructed in 1971, before the parking lot existed. Staff is unclear why the line was installed across private property without obtaining an easement.

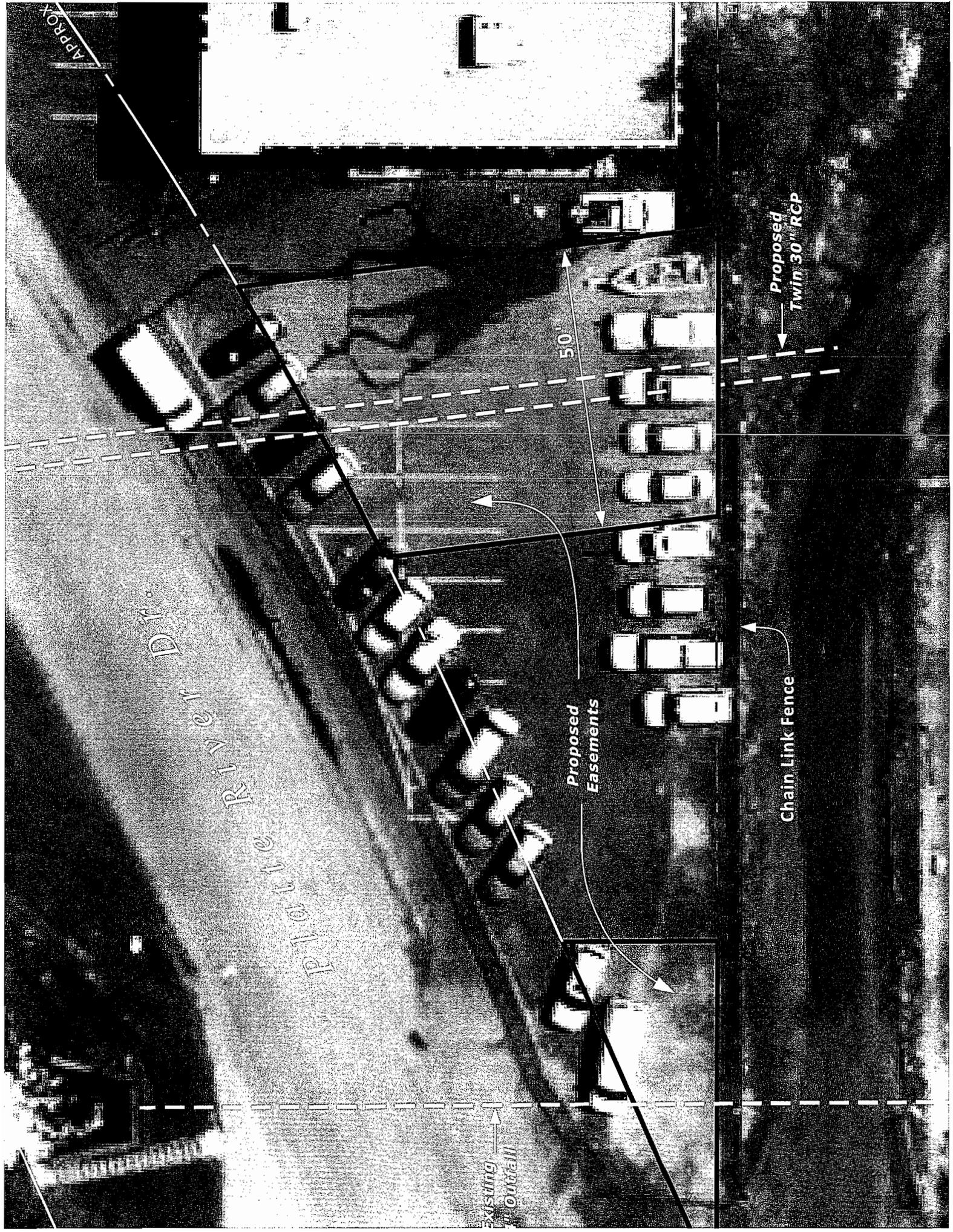
Staff ordered and obtained appraisals for the two easements and proceeded with good faith negotiations with the property owner. When it appeared that good faith negotiations had stalled, staff requested Council's authorization to present a final offer and move forward with condemnation if required. The owner has accepted the final offer.

### FINANCIAL IMPACT

All costs for the purchase of the two easements will be borne by the WWTP.

### LIST OF ATTACHMENTS

Aerial photo of locations  
Bill for an Ordinance



APPROX

Public River Dr.

50'

Proposed Easements

Proposed Twin 30" RCP

Chain Link Fence

Existing 4" Outfall

BY AUTHORITY

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

COUNCIL BILL NO. 26  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE ACCEPTING TWO EASEMENTS, A "GRANT OF STORM WATER UTILITY EASEMENT" AND A "GRANT OF WASTEWATER OUTFALL PIPELINE UTILITY EASEMENT" TO THE CITY OF ENGLEWOOD, COLORADO BY INDUSTRIAL PARTNERS LLC. ON BEHALF OF THE ENGLEWOOD/LITTLETON WASTEWATER TREATMENT PLANT (WWTP).

WHEREAS, the expansion of the Littleton/Englewood Wastewater Treatment Plant included the proposed installation of a storm water outfall line to the South Platte River; and

WHEREAS, the proposed line (two 30" side-by-side concrete pipes) was designed to run north from the WWTP and cross Platte River Drive to the South Platte River, this alignment crosses a private parking lot in the City of Denver owned by Industrial Partners, LLC; and

WHEREAS, during research for the proposed easement, it was discovered that an existing 84" outfall pipe from the WWTP which was constructed in 1971, crossing Industrial Partners property, did not have a recorded easement; and

WHEREAS, the passage of this Ordinance will accept two easements from Industrial Partners to the City, one for the Wastewater Outfall Pipeline and the second for the Storm Water Utility;

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

Section 1. The Grant of Wastewater Outfall Pipeline Utility Easement between Industrial Partners LLC and the City of Englewood, Colorado attached hereto as "Exhibit 1," is hereby accepted and approved by the Englewood City Council.

Section 2. The Grant of Storm Water Utility Easement between Industrial Partners LLC and the City of Englewood, Colorado attached hereto as "Exhibit 2," is hereby accepted and approved by the Englewood City Council.

Section 3. The Mayor is authorized to execute and the City Clerk to attest acceptance of the Grant of Wastewater Outfall Pipeline Utility Easement and the Grant of Storm Water Utility Easement for and on behalf of the City of Englewood, Colorado.

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

Published as a Bill for an Ordinance in the City's official newspaper on the 20th day of August, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 18th day of August, 2010 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 16th day of August, 2010.

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Loucrishia A. Ellis

**AFTER RECORDING RETURN TO: MICHAEL BLOOM, MICHAEL BLOOM REALTY COMPANY, 3615 BLAKE STREET, DENVER, CO 80205.**

**GRANT OF WASTEWATER OUTFALL PIPELINE UTILITY EASEMENT**

THIS GRANT of Wastewater Outfall Pipeline Utility Easement (this "Grant") is made this \_\_\_ day of \_\_\_\_\_, 2010, by INDUSTRIAL PARTNERS LLC, a Colorado limited liability company ("Grantor") as the Owners of 2625-2675 S. Santa Fe Drive, Denver, Colorado, and 2680 S. Platte River Drive, Denver, Colorado whose address is 3615 Blake Street, Denver, CO 80205 in favor of the CITY OF ENGLEWOOD ("Grantee") whose address is 1000 Englewood Parkway, Englewood, Colorado 80110.

The parties covenant and agree as follows:

1. Wastewater Outfall Pipeline Utility Easement Property. The "Wastewater Outfall Pipeline Utility Easement Property" shall mean the real property located in the County of Denver, State of Colorado, more particularly described in Exhibit "A" attached hereto consisting of 2 pages.
2. Consideration. As consideration, for this Grant, Grantee has paid the Grantor one thousand six hundred and ninety-eight dollars (\$1,698.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by Grantor.
3. Grant of Wastewater Outfall Pipeline Utility Easement. Grantor hereby grants to Grantee, its successors and assigns, a perpetual Wastewater Outfall Pipeline Utility Easement over, under, across and through the Wastewater Outfall Pipeline Utility Easement Property depicted in Exhibit "A" attached hereto, for the purpose of constructing, operating, maintaining, repairing, replacing and removing a buried (not exposed to the surface) "Wastewater Outfall Pipeline."
4. Access. Grantee shall have the perpetual, nonexclusive right of ingress and egress in, to, over, through and across the Wastewater Outfall Pipeline Utility Easement Property for any purpose necessary or desirable for the full enjoyment of the rights granted to Grantee under this Grant. Grantee's rights under this instrument are limited to uses related to the construction, operation, maintenance, repair and replacement of a buried Wastewater Outfall Pipeline (the "Permitted Use"). The foregoing grant shall not be construed to permit Grantee to use the surface of the Wastewater Outfall Pipeline Utility Easement Property or store items thereon, except as necessary and prudent for the Grantee's Permitted Use thereof, with the understanding that Grantee shall expeditiously proceed with and promptly complete all surface activities. Grantee will not unreasonably interfere with Grantor's use of the surface of the Wastewater Outfall Pipeline Utility Easement Property.
5. Restoration. Grantee agrees that after any construction, maintenance, repair, replacement or enlargement, if any is required, of the Wastewater Outfall Pipeline, Grantee shall restore the surface of the Wastewater Outfall Pipeline Utility Easement Property as nearly as possible to the grade and conditions

existing immediately prior to said construction, maintenance, repair, replacement or enlargement. Grantee agrees to restore and repair any improvements of Grantor on the Wastewater Outfall Pipeline Utility Easement Property which are damaged, modified or altered by Grantee during said construction, maintenance, repair, replacement or enlargement. Grantee will cause Grantor to be added as an additional insured on all liability insurance policies and require its contractors and subcontractors to add Grantor as an additional insured on all insurance policies related to work performed on the Wastewater Outfall Pipeline Utility Easement Property. Upon Grantor's written request, Grantee shall provide Grantor with copies of insurance certificates to confirm the foregoing coverages.

6. No Improvements. Grantor covenants and agrees not to construct, erect, place or maintain any "Improvements," as hereinafter defined, on the Wastewater Outfall Pipeline Utility Easement Property without obtaining the prior written consent of Grantee, which will not be unreasonably withheld, conditioned or delayed. "Improvements" shall mean any structure, building or landscaping other than grass or asphalt surface parking and fencing. Grantee shall have the right to remove, without any liability to Grantor, any improvements constructed, erected, placed or planted on the Wastewater Outfall Pipeline Utility Easement Property without Grantor's having obtained the prior written consent of Grantee. If such written consent is not obtained, Grantee shall not be responsible for repair or replacement of the Improvements if they are damaged during construction, maintaining, repair, replacement or enlargement.
7. Subjacent and Lateral Support. Grantor covenants and agrees that Grantee shall have the right of subjacent and lateral support on the Wastewater Outfall Pipeline Utility Easement Property to the extent necessary for the full rights granted to Grantee under this Grant.
8. Rights of Grantor. Grantor reserves the full right to the undisturbed ownership, use, and occupancy of the Wastewater Outfall Pipeline Utility Easement Property, including the right to use the surface of the Wastewater Outfall Pipeline Utility Easement Property, insofar as said ownership, use, and occupancy is consistent with and does not impair the rights granted to Grantee in this Grant. Grantor also reserves the right to subjacent and lateral support of its property adjacent to the Wastewater Outfall Pipeline Utility Easement Property.
9. Abandonment. In the event that Grantee shall abandon the rights granted to it under this Grant, all rights, title and interest hereunder of Grantee shall cease and terminate, and Grantor shall hold Wastewater Outfall Pipeline Utility Easement Property, free from the rights of Grantee so abandoned and shall own all materials and structures of Grantee so abandoned, provided that Grantee shall have a reasonable period of time after said abandonment in which to remove any or all of the Wastewater Outfall Pipeline and Appurtenances from the Wastewater Outfall Pipeline Utility Easement Property. In the event that Wastewater Outfall Pipeline Utility Easement is abandoned by Grantee, Grantor shall have the right, at its sole

option, to require Grantee to remove or neutralize any improvements constructed in the Wastewater Outfall Pipeline Utility Easement Property by Grantee.

10. Warranty of Title. Grantor warrants and represents that Grantor is the fee simple owner of the Wastewater Outfall Pipeline Utility Easement Property and that the Grantor has full right, title and authority; that this Grant is effective to grant and convey to Grantee this Wastewater Outfall Pipeline Utility Easement.
11. Binding Effect. This Grant shall extend to and be binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto. The terms, covenants, agreements and conditions in this Grant shall be construed as covenants running with the land.

IN WITNESS WHEREOF, the parties hereto have executed this Grant of Wastewater Outfall Pipeline Utility Easement the day and year first above written.

**SIGNATURES ON FOLLOWING PAGES**

GRANTOR – LANDOWNER  
Industrial Partners LLC, a Colorado limited  
liability company

STATE OF COLORADO )

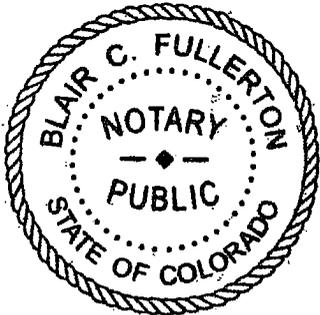
COUNTY OF Denver )

ss.

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of August, 2010, by Michael Bloom, member.

Witness my hand and seal.

My commission expires: 7/14/2012



Notary Public

My Commission Expires 07/14/2012

GRANTEE  
City of Englewood, Colorado

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

ATTEST:

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

**EXHIBIT "A"**

(Legal Description/Depiction)

UTILITY EASEMENT  
PROPERTY OWNER: INDUSTRIAL PARTNERS LLC  
3107-UTIL-2.doc  
04.03.06

SHEET 1 OF 2

A UTILITY EASEMENT, BEING A PORTION OF A PARCEL OF LAND LOCATED IN THE  
SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 61 WEST OF THE 6TH  
P.M.,  
RECORDED AT RECEPTION NO. 950096996, CITY AND COUNTY OF DENVER, STATE OF  
COLORADO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: ALL BEARINGS CONTAINED HEREIN ARE BASED UPON THE  
ASSUMPTION THAT THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 28, BEARS  
N 88°03'15" W, AND MONUMENTED AS FOLLOWS:

-THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 28 BEING A FOUND 1"  
BRASS CAP IN CONC. STAMPED C&C OF DENVER.

-THE SOUTHEAST CORNER OF SECTION 28 BEING A FOUND 1.25" ALUM. CAP LS 21971.

COMMENCING AT SAID SOUTHEAST CORNER OF SECTION 28;

THENCE N 88°03'15" W, ALONG SAID SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID  
SECTION 28 AND THE SOUTHERLY LINE SAID PARCEL OF LAND RECORDED AT RECEPTION  
NO. 950096996, A DISTANCE OF 822.95 FEET TO THE POINT OF BEGINNING;

THENCE N 88°03'15" W CONTINUING ALONG SAID SOUTHERLY LINE, A DISTANCE OF 59.74  
FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH PLATTE RIVER  
DRIVE;

THENCE N 57°45'45" E, ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID SOUTH PLATTE  
RIVER DRIVE, A DISTANCE OF 65.28 FEET;

THENCE S 01°23'12" W, A DISTANCE OF 26.74 FEET TO THE POINT OF BEGINNING;

CONTAINING 799 SQUARE FEET OR 0.018 ACRES, MORE OR LESS.

I, CHRISTOPHER H. McELVAIN, A SURVEYOR LICENSED IN THE STATE OF  
COLORADO, DO HEREBY CERTIFY THAT THE ABOVE DESCRIPTION WAS  
PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

CHRISTOPHER H. McELVAIN  
PROFESSIONAL LAND SURVEYOR  
COLORADO REGISTRATION NO. 34561  
FOR AND ON BEHALF OF JOHN ENGINEERING, INC.  
3855 WADSWORTH BYPASS #A-100 ARVADA, CO, 80003  
JES45203-107-ENCUMBRANCEMENTS\3107-UTIL-2.DOC



Handwritten signature and date: 4/13/06



**AFTER RECORDING RETURN TO: MICHAEL BLOOM, MICHAEL BLOOM  
REALTY COMPANY, 3615 BLAKE STREET, DENVER, CO 80205.**

**GRANT OF STORM WATER UTILITY EASEMENT**

THIS GRANT of Storm Water Utility Easement (this "Grant") is made this \_\_\_ day of \_\_\_\_\_, 2010, by INDUSTRIAL PARTNERS LLC, a Colorado limited liability company ("Grantor") as the Owners of 2625-2675 S. Santa Fe Drive, Denver, Colorado, and 2680 S. Platte River Drive, Denver, Colorado, whose address is 3615 Blake Street, Denver, CO 80205 in favor of the CITY OF ENGLEWOOD ("Grantee") whose address is 1000 Englewood Parkway, Englewood, Colorado 80110.

The parties covenant and agree as follows:

1. Storm Water Utility Easement Property. The "Storm Water Utility Easement Property" shall mean the real property located in the County of Denver, State of Colorado, more particularly described in Exhibit "A" attached hereto consisting of 1 page.
2. Consideration. As consideration, for this Grant, Grantee has paid the Grantor seven thousand four hundred and nine dollars (\$7,409.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by Grantor.
3. Grant of Storm Water Utility Easement. Grantor hereby grants to Grantee, its successors and assigns, a perpetual Storm Water Utility Easement over, under, across and through the Storm Water Utility Easement Property, depicted in Exhibit "A" attached hereto, for the purpose of constructing, operating, maintaining, repairing, replacing and removing a buried (not exposed to surface) "Storm Water Utility Line."
4. Access. Grantee shall have the perpetual, nonexclusive right of ingress and egress in, to, over, through and across the Storm Water Utility Easement Property for any purpose necessary or desirable for the full enjoyment of the rights granted to Grantee under this Grant. Grantee's rights under this instrument are limited to uses related to the construction, operation, maintenance, repair and replacement of a buried Storm Water Utility Line (the "Permitted Use"). The foregoing grant shall not be construed to permit Grantee to use the surface of the Storm Water Utility Easement Property or store items thereon, except as necessary and prudent for the Grantee's Permitted Use thereof, with the understanding that Grantee shall expeditiously proceed with and promptly complete all surface activities. Grantee will not unreasonably interfere with Grantor's use of the surface of the Storm Water Utility Easement Property.
5. Restoration. Grantee agrees that after any construction, maintenance, repair, replacement or enlargement, if any is required, of the Storm Water Utility Line, Grantee shall restore the surface of the Storm Water Utility Easement Property as nearly as possible to the grade and conditions existing immediately prior to said construction, maintenance, repair, replacement or enlargement. Grantee agrees to

restore and repair any improvements of Grantor on the Storm Water Utility Easement Property which are damaged, modified or altered by Grantee during said construction, maintenance, repair, replacement or enlargement. Grantee will cause Grantor to be added as an additional insured on all liability insurance policies and require its contractors and subcontractors to add Grantor as an additional insured on all insurance policies related to work performed on the Storm Water Utility Easement Property. Upon Grantor's written request, Grantee shall provide Grantor with copies of insurance certificates to confirm the foregoing coverages.

6. No Improvements. Grantor covenants and agrees not to construct, erect, place or maintain any "Improvements," as hereinafter defined, on the Storm Water Utility Easement Property without obtaining the prior written consent of Grantee, which will not be unreasonably withheld, conditioned or delayed. "Improvements" shall mean any structure, building or landscaping other than grass or asphalt surface parking and fencing. Grantee shall have the right to remove, without any liability to Grantor, any improvements constructed, erected, placed or planted on the Storm Water Utility Easement Property without Grantor's having obtained the prior written consent of Grantee. If such written consent is not obtained, Grantee shall not be responsible for repair or replacement of the Improvements if they are damaged during construction, maintaining, repair, replacement or enlargement.
7. Subjacent and Lateral Support. Grantor covenants and agrees that Grantee shall have the right of subjacent and lateral support on the Storm Water Utility Easement Property to the extent necessary for the full rights granted to Grantee under this Grant.
8. Rights of Grantor. Grantor reserves the full right to the undisturbed ownership, use, and occupancy of the Storm Water Utility Easement Property, including the right to use the surface of the Storm Water Utility Easement Property, insofar as said ownership, use, and occupancy is consistent with and does not impair the rights granted to Grantee in this Grant. Grantor also reserves the right to subjacent and lateral support of its property adjacent to the Storm Water Utility Easement Property.
9. Abandonment. In the event that Grantee shall abandon the rights granted to it under this Grant, all rights, title and interest hereunder of Grantee shall cease and terminate, and Grantor shall hold Storm Water Utility Easement Property, free from the rights of Grantee so abandoned and shall own all materials and structures of Grantee so abandoned, provided that Grantee shall have a reasonable period of time after said abandonment in which to remove any or all of the Storm Water Lines and Appurtenances from the Storm Water Utility Easement Property. In the event that Storm Water Utility Easement is abandoned by Grantee, Grantor shall have the right, at its sole option, to require Grantee to remove or neutralize any improvements constructed in the Storm Water Utility Easement Property by Grantee.

10. Warranty of Title. Grantor warrants and represents that Grantor is the fee simple owner of the Storm Water Utility Easement Property and that the Grantor has full right, title and authority; that this Grant is effective to grant and convey to Grantee this Storm Water Utility Easement.
11. Binding Effect. This Grant shall extend to and be binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto. The terms, covenants, agreements and conditions in this Grant shall be construed as covenants running with the land.

IN WITNESS WHEREOF, the parties hereto have executed this Grant of Storm Water Utility Easement the day and year first above written.

**SIGNATURES ON FOLLOWING PAGES**

GRANTOR – LANDOWNER  
Industrial Partners LLC, a Colorado limited  
liability company

\_\_\_\_\_

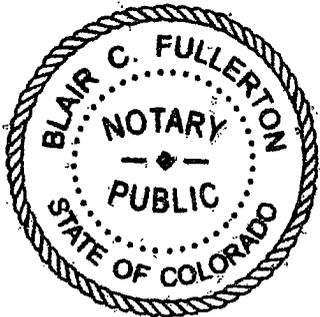
STATE OF COLORADO )  
COUNTY OF Denver ) ss.

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of August, 2010, by Michael Bloom, member.

Witness my hand and seal.

My commission expires: 7/14/2012

\_\_\_\_\_  
Notary Public



My Commission Expires 07/14/2012

GRANTEE  
City of Englewood, Colorado

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

ATTEST:

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

**EXHIBIT "A"**

(Legal Description/Depiction)



# COLORADO ENGINEERING & SURVEYING, INC.

Surveying Colorado Since 1972  
www.cepls.com

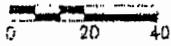
NO. 2009-1978-1  
PAGE 1 OF 1

3470 So. Sherman St., Suite 2 Englewood, Colorado 80115

PHONE: (303)761-8055

FAX: (303) 761-0841

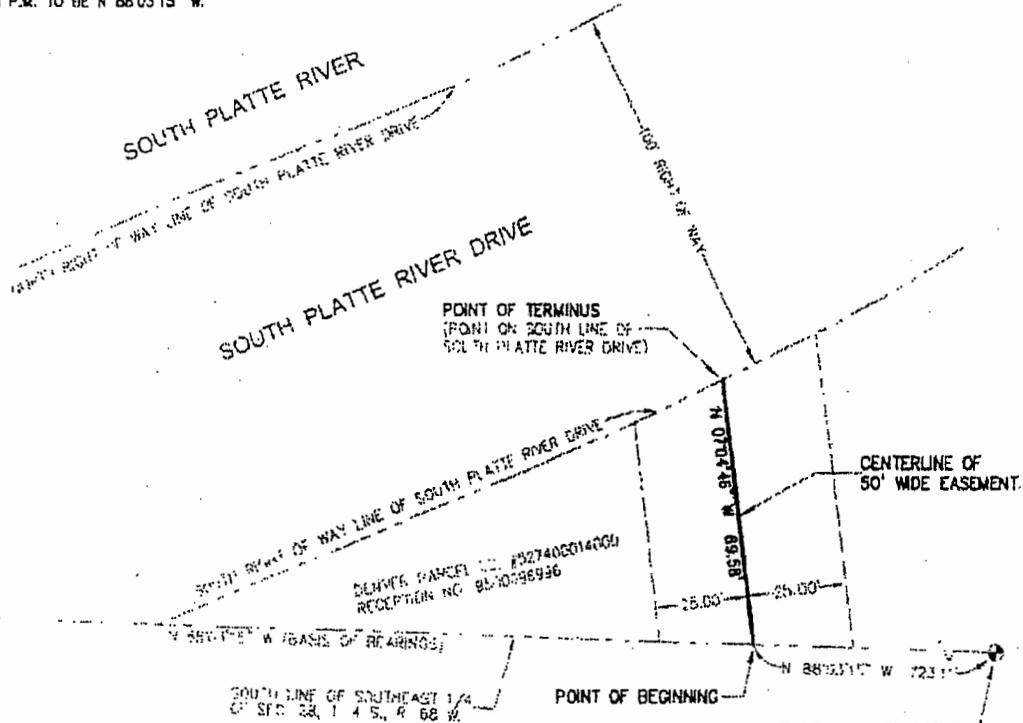
SCALE 1" = 40'



## EXHIBIT STORM WATER OUTFALL EASEMENT NO. 1

### BASIS OF BEARINGS:

ASSUMED THE SOUTH LINE OF THE SOUTHEAST 1/4  
OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 68 WEST  
OF THE 6TH P.M. TO BE N 88°03'15" W.



### LEGAL DESCRIPTION

STORM WATER OUTFALL EASEMENT NO. 1:

A STRIP OF LAND 50.00 FEET WIDE BEING LOCATED WITHIN THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PM AND ALSO BEING LOCATED WITHIN THAT PARCEL OF LAND DESCRIBED IN RECEPTION NO. 9500098996, THE CENTERLINE OF SAID STRIP BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

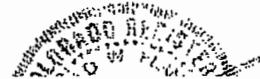
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28;  
THENCE N 88°03'15" W ALONG THE SOUTH LINE OF SAID SECTION 28, A  
DISTANCE OF 723.11 FEET TO THE POINT OF BEGINNING;  
THENCE N 07°04'46" W, A DISTANCE OF 69.58 FEET TO A POINT ON THE SOUTH  
RIGHT OF WAY LINE OF SOUTH PLATTE RIVER DRIVE, SAID POINT BEING  
THE POINT OF TERMINUS;

THE SIDELINES OF SAID 50.00 FOOT STRIP BEING SHORTENED AND  
LENGTHENED TO MEET THE SOUTH RIGHT OF WAY LINE OF SOUTH PLATTE  
RIVER DRIVE AND THE SOUTH LINE OF SOUTHEAST 1/4 OF SAID SECTION 28.

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

CONTAINING A TOTAL AREA OF 3,486.8 SQUARE FEET OR 0.0800 ACRE

COLORADO ENGINEERING & SURVEYING, INC.



Date NOVEMBER 10, 2009

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 9 c i	<b>Subject:</b> Arapahoe County Enterprise Zone - Expansion Areas
<b>Initiated By:</b> Community Development Department		<b>Staff Source:</b> Darren Hollingsworth Economic Development Coordinator

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

- City Council approved Resolution 65, Series 1990 in support of the application to the State of Colorado, which created the Arapahoe County Enterprise Zone.
- City Council discussed the expansion of the Arapahoe County Enterprise Zone at the July 26, 2010 study session.

### RECOMMENDED ACTION

The attached resolution authorizes staff to apply to the State of Colorado's Economic Development Commission and request the expansion of the Arapahoe County Enterprise Zone.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In 1990, the Cities of Englewood, Sheridan, and Littleton were granted Enterprise Zone status for a portion of the industrially and commercially zoned properties within each jurisdiction. Englewood's Community Development staff administers the Arapahoe County Enterprise Zone. The economic development benefits available through the Arapahoe County Enterprise Zone are a central component of Englewood's business retention, expansion, and attraction strategies. The State of Colorado tax credits provided by the Arapahoe County Enterprise Zone are designed to encourage investment and enhance the economic climate.

In 2009, 56 Englewood businesses claimed tax credits through the Enterprise Zone. Benefits to Englewood businesses located in the Arapahoe County Enterprise Zone total \$1,589,279 in State of Colorado tax credits. Englewood businesses reported total capital investments of over \$69 million and created 238 new jobs with an average FTE salary of \$43,130 per employee.

### Proposed Expansion Areas

The proposed Arapahoe County Enterprise Zone expansion areas are delineated on the attached map and described below:

- *Medical District Small Area Plan:* With the recent zoning change, staff recommends expanding the Enterprise Zone into this area to encourage business attraction, retention, and possible redevelopment.

- *Flood Middle School*: The site is recommended for expansion into the Enterprise Zone to encourage investment and redevelopment. The site is being marketed as a mixed-use development opportunity.
- *Centennial Shopping Center*: The shopping center owners have previously expressed an interest in redevelopment and investment, but this investment has not come to fruition. Adding this area into the enterprise zone potentially encourages development and revitalization of this property and surrounding areas.

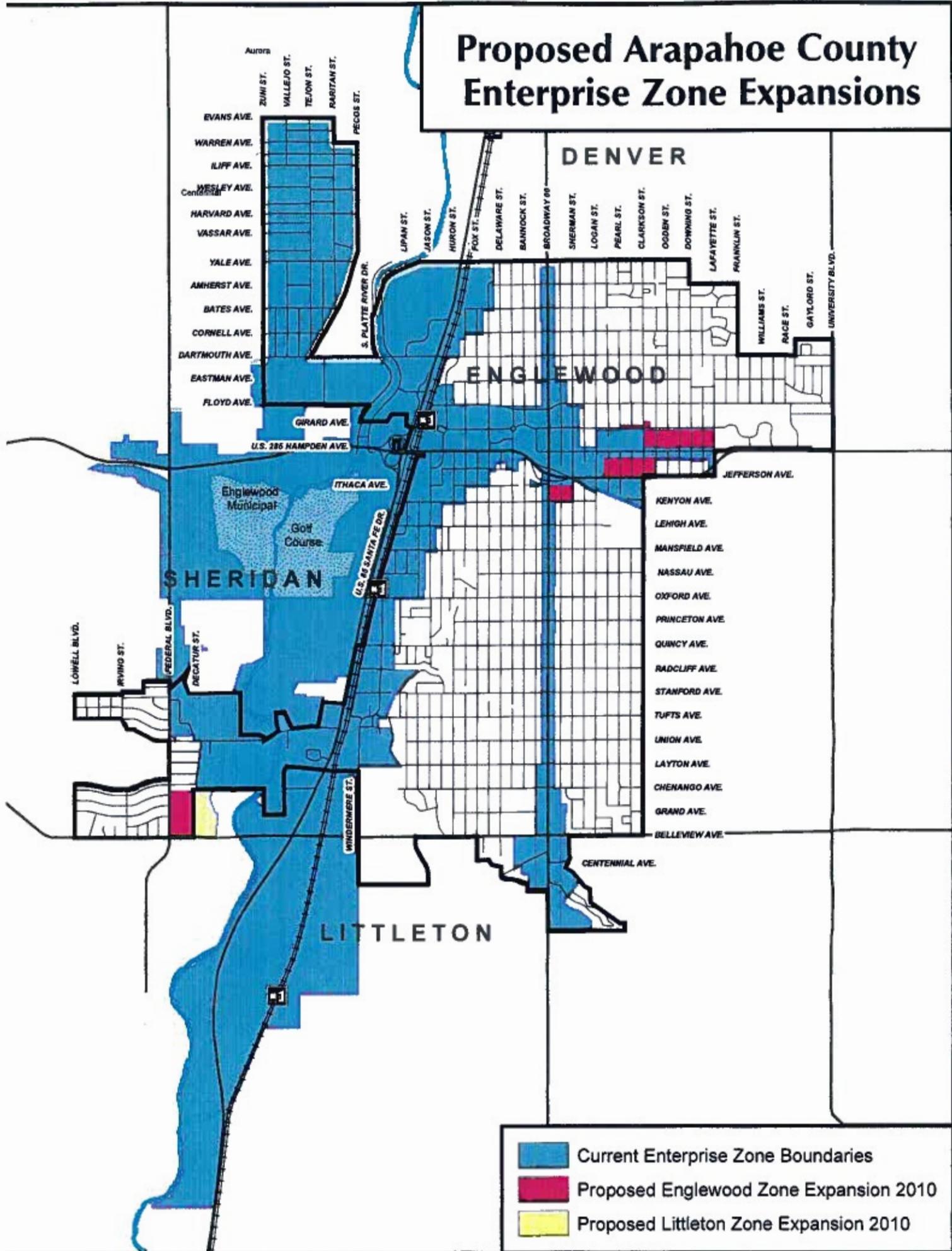
## **FINANCIAL IMPACT**

This expansion request does not require a financial commitment by the City of Englewood.

## **LIST OF ATTACHMENTS**

Map of the Proposed Arapahoe County Enterprise Expansions  
Resolution

# Proposed Arapahoe County Enterprise Zone Expansions



- Current Enterprise Zone Boundaries
- Proposed Englewood Zone Expansion 2010
- Proposed Littleton Zone Expansion 2010

RESOLUTION NO. \_\_\_\_\_  
SERIES OF 2010

A RESOLUTION SUPPORTING THE ARAPAHOE COUNTY ENTERPRISE ZONE  
EXPANSION REQUEST.

WHEREAS, the designation of an enterprise zone provides for tax incentives to promote economic development; and

WHEREAS, there are additional areas which meet the requirements and characteristics of the enterprise zone which are proposed for zone status; and

WHEREAS, the State of Colorado has made provisions for expanding existing enterprise zones; and

WHEREAS, in 1990, the Cities of Englewood, Sheridan and Littleton were granted Enterprise Zone status for a portion of the industrially and commercially zoned properties within each jurisdiction; and

WHEREAS, the Arapahoe County Enterprise Zone is a central component of Englewood's business retention, expansion and attraction strategies; and

WHEREAS, the State of Colorado tax credits provided by the Arapahoe County Enterprise Zone are designed to encourage investment and enhance the economic climate; and

WHEREAS, the proposed Arapahoe County Enterprise Zone expansion areas are described below:

*Medical District Small Area Plan:* With the recent zoning change, staff recommends expanding the Enterprise Zone into this area to encourage business attraction, retention, and possible redevelopment.

*Flood Middle School:* The site is recommended for expansion into the Enterprise Zone to encourage investment and redevelopment. The site is being marketed as a mixed-use development opportunity.

*Centennial Shopping Center:* The shopping center owners have previously expressed an interest in redevelopment and investment, but this investment has not come to fruition. Adding this area into the enterprise zone potentially encourages development and revitalization of this property and surrounding area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT IT SUPPORTS THE ENTERPRISE ZONE EXPANSION REQUEST, INCLUDING AREAS WITHIN ENGLEWOOD AND LITTLETON.

ADOPTED AND APPROVED this 16<sup>th</sup> day of August, 2010.

ATTEST:

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

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

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

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

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 9 c ii	<b>Subject:</b> 2010 Private Activity Bond Cap Allocation
<b>Initiated By:</b> Community Development Department		<b>Staff Source:</b> Darren Hollingsworth Economic Development Coordinator

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

- Council adopted Roadmap Englewood: 2003 Englewood Comprehensive Plan. The Housing element includes Objective 2-1: "encouraging home ownership."
- Council considers assigning the PAB Allocation annually.
- Council discussed the annual Private Activity Bond (PAB) assignment at the July 19, 2010 Study Session.

### RECOMMENDED ACTION

The attached resolution authorizes assignment of Englewood's 2010 Private Activity Bond (PAB) Allocation to the Colorado Housing and Finance Authority (CHFA) for home ownership programs.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The State of Colorado allocates Private Activity Bond (PAB) Cap to jurisdictions eligible to receive more than \$1 million dollars of PAB. Englewood was allocated \$1,466,595 for 2010. Englewood first became an entitlement community for an allocation in 2002. Prior to that, Englewood was eligible to apply to the State of Colorado for PAB.

From 2002 through 2009, Englewood assigned its PAB to the Colorado Housing Finance Authority for home ownership programs. Prior to 2002, Englewood applied to the State to assign its share of PAB to the Metro Mayors Caucus mortgage bond program administered by the City of Denver, which also provided home loans. The Metro Mayors Caucus program has not been able to issue home mortgage bonds due to market conditions.

The City typically does not assign the PAB until mid-year, close to the State's September 15 deadline so that the PAB may be available for an eligible local project. A PAB-eligible project has not been proposed in Englewood this year.

### FINANCIAL IMPACT

The resolution assigns Englewood's entire 2010 \$1,466,595 PAB allocation to CHFA for home ownership programs. If Council takes no action, the PAB reverts to the Colorado Department of Local Affairs for assignment to eligible State agencies.

### LIST OF ATTACHMENTS

Resolution

RESOLUTION NO. \_\_\_\_\_  
SERIES OF 2010

A RESOLUTION AUTHORIZING ASSIGNMENT TO THE COLORADO HOUSING AND FINANCE AUTHORITY OF A PRIVATE ACTIVITY BOND ALLOCATION OF THE CITY OF ENGLEWOOD, ARAPAHOE COUNTY, COLORADO PURSUANT TO THE COLORADO PRIVATE ACTIVITY BOND CEILING ALLOCATION ACT.

WHEREAS, the City of Englewood, Colorado is authorized and empowered under the laws of the State of Colorado to issue revenue bonds for the purpose of providing single-family mortgage loans to low and moderate income persons and families; and

WHEREAS, the Internal Revenue Code of 1986, as amended, restricts the amount of tax-exempt bonds which may be issued in the State to provide such mortgage loans and for certain other purposes; and

WHEREAS, pursuant to the Code, the Colorado Legislature adopted the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 24, Colorado Revised Statutes (the "Allocation Act"), providing for the allocation of the State Ceiling among the Colorado Housing and Finance Authority ("Authority") and other governmental units in the State, and further providing for the assignment of such allocations from such other governmental units to the Authority; and

WHEREAS, pursuant to an allocation under Section 24-32-1706 of the Allocation Act, the City of Englewood, Colorado has an allocation of the 2010 State Ceiling for the issuance of a specified principal amount of Private Activity Bonds prior to September 15, 2010 (the "2010 Allocation"); and

WHEREAS, the City of Englewood, Colorado has determined that the 2010 Allocation, or a portion thereof, can be utilized most efficiently by assigning it to the Authority to issue Private Activity Bonds for the purpose of providing single-family mortgage loans to low and moderate income persons and families; which assignment is to be evidenced by an Assignment of Allocation between the City of Englewood and the Authority;

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

Section 1. The assignment to the Authority for \$1,466,595 of the City of Englewood, Colorado's 2010 Allocation shall be and hereby is approved.

Section 2. The form and substance of the Assignment of Allocation are approved; provided, however, that the Englewood City Council is authorized to make such technical variations, additions or deletions in or to such Assignment of Allocation as they shall deem necessary or appropriate and not inconsistent with the approval thereof by this Resolution.

Section 3. The Mayor and the City Clerk for the City of Englewood, Colorado are authorized to execute and deliver the Assignment of Allocation on behalf of the City of Englewood and to take such other steps or actions as may be necessary, useful or convenient to effect the aforesaid assignment in accordance with the intent of this Resolution.

Section 4. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. This Resolution shall be in full force and effect upon its passage and approval or as otherwise required by the Englewood Home Rule Charter.

ADOPTED AND APPROVED this 16th day of August, 2010.

ATTEST:

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

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

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

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

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 11 a i	<b>Subject:</b> Ordinance Granting an Easement to Public Service Company
<b>Initiated By:</b> Department of Parks and Recreation		<b>Staff Source:</b> Dave Lee, Manager of Open Space

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved a bill for an ordinance authorizing a Grant of Easement to Public Service Company for the installation of underground electrical lines on City property at 1074 West Dartmouth Avenue in October 2009.

### RECOMMENDED ACTION

Staff recommends that Council adopt a bill for an ordinance authorizing a Grant of Easement to Public Service Company of Colorado for installation of a natural gas line and regulator station located at 1800 East Floyd Avenue in Romans Park.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The natural gas line and regulator station will be located on the west property boundary of Romans Park, 1700 East Floyd Avenue. Public Service Company of Colorado (PSCCo) shall have nonexclusive rights to the easement parcel for the purposes of constructing and maintaining their equipment. PSCCo will restore the area as nearly as possible to the grade and conditions existing prior to the construction. In the event that PSCCo abandons the rights granted to it under this easement agreement, the City will assume full rights of the easement property.

### FINANCIAL IMPACT

Public Service Company of Colorado will pay the City \$500 upon execution of this grant of easement.

### LIST OF ATTACHMENTS

Bill for an Ordinance

BY AUTHORITY

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

COUNCIL BILL NO. 27  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE GRANTING AN EASEMENT TO PUBLIC SERVICE COMPANY OF COLORADO FOR INSTALLATION OF A NATURAL GAS LINE AND REGULATOR STATION AT THE CITY OF ENGLEWOOD'S ROMANS PARK.

WHEREAS, the natural gas line and regulator station will be located on the west property boundary of Romans Park, 1700 East Floyd Avenue; and

WHEREAS, the Public Service Company of Colorado shall have nonexclusive rights to the easement parcel for the purposes of constructing and maintaining their equipment; and

WHEREAS, the Public Service Company of Colorado will restore the area as nearly as possible to the grade and conditions existing prior to the construction;

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

Section 1. The "Grant of Easement – Natural Gas Lines at Englewood Romans Park, a public park" from the City of Englewood, Colorado to the Public Service Company of Colorado, attached hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

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

Introduced, read in full, and passed on first reading on the 16<sup>th</sup> day of August, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 20<sup>th</sup> day of August, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 18<sup>th</sup> day of August, 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 16th day of August, 2010.

---

Loucrishia A. Ellis

GRANT OF EASEMENT

Natural Gas Lines at Englewood Romans Park, a public park.

THIS GRANT of Easement (this "Grant") is made this \_\_\_ day of \_\_\_\_\_, 2010, by CITY OF ENGLEWOOD, a Colorado municipal corporation ("Grantor") whose address is 1000 Englewood Parkway, Englewood, Colorado 80110, to the PUBLIC SERVICE COMPANY OF COLORADO, ("Grantee) whose address is 1800 Larimer Street, Suite 1100, Denver, Colorado 80202.

The parties covenant and agree as follows:

1. Easement Property. The "Easement Property" shall mean the real property located in the County of Arapahoe, State of Colorado, in the NE ¼ of Section 5, T.5S, R68W of the 6<sup>th</sup> P.M., more particularly described on Legal Description attached hereto as Exhibit A, consisting of one ~~(1)~~<sup>(4)</sup> page(s) and incorporated herein by reference.
2. Consideration. In consideration of the sum of five hundred dollars (\$500.00), due on execution of this grant of easement.
3. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a perpetual nonexclusive easement over, under, across and through the Easement Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing, natural gas lines along with a temporary construction easement, Parcel B, and a Natural Gas Regulator Station, Parcel A, as described in Exhibit 1 consisting of four (4) pages.
4. Access. Grantee shall have the perpetual, nonexclusive right of ingress and egress in, to, over, through and across the Easement Property for any purpose necessary or desirable for the full enjoyment of the rights granted to Grantee under this Grant.
5. Restoration. Grantee agrees that after the construction, maintenance, repair, replacement, if any, for the gas line and a Natural Gas Regulator Station, Grantee shall restore the surface of the Easement Property as nearly as possible to the grade and conditions existing immediately prior to said construction, maintenance, repair, replacement, except as may be necessary to accommodate the facility. Grantee further agrees to replace any topsoil and sod removed from any cultivated or agricultural areas on the Easement Property and to remove any excess earth resulting from said construction, maintenance, repair, replacement or enlargement, at Grantee's sole cost and expense.
6. No Improvements. Grantor covenants and agrees not to construct, erect, place or plan any "Improvements," as hereinafter defined, on the Easement Property other than those described in Exhibit A without obtaining the prior written consent of Grantee. "Improvements" shall mean any structure not described in this document.

7. Subjacent and Lateral Support. Grantor covenants and agrees that Grantee shall have the right of subjacent and lateral support on the Easement Property to whatever extent is necessary or desirable for the full, complete and undisturbed enjoyment of the rights granted to Grantee under this Grant.
8. Right of Ownership. Grantor reserves the right of ownership, use, and occupancy of the Easement Property insofar as said ownership, use, and occupancy does not impair the rights granted to Grantee in this Grant.
9. Warranty of Title. Grantor warrants that Grantor has full right and lawful authority to make the grant contained herein.
10. Abandonment. In the event that Grantee shall abandon the rights granted to it under this Grant, all right, title, and interest hereunder of Grantee shall cease and terminate, and Grantor shall hold the Easement Property, as the same may then be, free from the rights of Grantee so abandoned. Failure to use the Easement for a period of two years shall constitute evidence of abandonment.
11. Binding Effect. This Grant shall extend to and be binding upon the successors and assigns of the respective parties hereto. The terms, covenants, agreements and conditions in this Grant shall be construed as covenants running with the land.

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

GRANTOR:

CITY OF ENGLEWOOD

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

ATTEST:

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

GRANTEE:

~~PUBLIC SERVICE COMPANY~~  
~~OF COLORADO~~

\_\_\_\_\_

Title: \_\_\_\_\_  
**Larry Fuller**  
**Director of Business Operations & Planning**  
Public Service Company of Colorado, a Colorado corporation

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 16 day of JULY 2010, by LARRY FULLER as DIRECTOR OF BUSINESS OPERATIONS & PLANNING for Public Service Company of Colorado.

Witness my hand and official seal:  
JAMES K. ARBUCKLE  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 10/12/2010

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_



PARCEL A

A parcel of land lying in the southeast one-quarter of Section 35, Township 4 South, Range 68 West, of the 6th Principal Meridian, County of Jefferson, State of Colorado, being a portion of that Tract of land as described in Book 2194, Page 32, Arapahoe County Records, described as follows:

The south 25 feet of the west 25 feet of said Tract.

Containing 625 square feet (0.014 acres) more or less.

An illustration for this description is attached hereto and made a part hereof.

The author of this description is Norman L. Simonson, PLS 28288, prepared on behalf of SEH, 390 Union Boulevard, Suite 630, Lakewood, CO 80228, on May 4, 2010, under Job No. 111146-8.0, for Public Service Company of Colorado, and is not to be construed as representing a monumented land survey.



Norman L. Simonson, PLS 28288

ILLUSTRATION FOR PARCEL A

SHEET 2 OF 2

S. FRANKLIN ST.

E. FLOYD AVE.

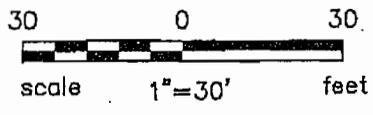
N. LINE, SW 1/4, SE 1/4

SW 1/4,  
SEC. 35,  
T4S, R68W

SE 1/4,  
SEC. 35,  
T4S, R68W

BK. 2088, PG. 180

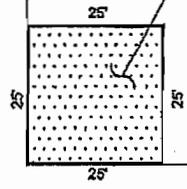
ROMANS PARK  
BK. 2194, PG. 32



W. LINE, BK. 2184, PG. 32

W. LINE, SW 1/4, SE 1/4

PARCEL A  
625 S.F. (0.014 A.C.) ML



S. LINE, BK. 2194, PG. 32

LOT 2,  
THE MARKS SUB. FLG. NO.2



390 Union Boulevard  
Suite 630  
Lakewood, Colorado 80228  
Phone: 303-988-1444  
FAX: 303-988-0994  
www.sehinc.com

S:\survey\land projects\20\_195000\111145-4-01 Floyd & Franklin@Romans Park.dwg 4/26/2010 12:11:28 PM LUT



**PARCEL B**

A 15 foot wide Easement lying in the southeast one-quarter (SE 1/4) of Section 35, Township 4 South, Range 68 West, of the 6th Principal Meridian, County of Jefferson, State of Colorado, being a portion of that Tract of land as described in Book 2194, Page 32, Arapahoe County Records, described as follows:

The west 15 feet of said Tract; EXCEPT the south 25 feet.

Containing 1,875 square feet (0.043 acres) more or less.

TOGETHER WITH a 10 foot wide Temporary Construction Easement described as follows:

The east 10 feet of the west 25 feet of said Tract; EXCEPT the south 25 feet.

An illustration for this description is attached hereto and made a part hereof.

The author of this description is Norman L. Simonson, PLS 28288, prepared on behalf of SEH, 390 Union Boulevard, Suite 630, Lakewood, CO 80228, on May 25, 2010, under Job No. 111146-8.0, for Public Service Company of Colorado, and is not to be construed as representing a monumented land survey.



Norman L. Simonson, PLS 28288

ILLUSTRATION FOR PARCEL B

SHEET 2 OF 2

S. FRANKLIN ST.

E. FLOYD AVE.

N. LINE, SW 1/4, SE 1/4

SW 1/4,  
SEC. 35,  
T4S, R68W

SE 1/4,  
SEC. 35,  
T4S, R68W

BK. 2088, PG. 180

N. LINE, BK. 2194, PG. 32

W. LINE, SW 1/4, SE 1/4

(125')

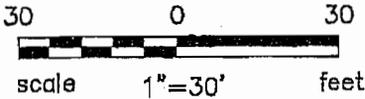
W. LINE, BK. 2194, PG. 32

(125')

TEMP. CONST. EASEMENT  
1,250 S.F. (0.029 A.C.) ML

PARCEL B  
1,875 S.F. (0.043 A.C.) ML

ROMANS PARK  
BK. 2194, PG. 32



390 Union Boulevard  
Suite 630  
Lakewood, Colorado 80228  
Phone: 303-986-1444  
FAX: 303-986-0994  
www.sehinc.com

LOT 2,  
THE MARKS SUB. FLG. NO.2

Survey and projects at: P:\SCOC\111148-8.01\Floyd & Franklin\Romans Park.Dwg 5/25/2010 8:22:07 AM NDT

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 11 a ii	<b>Subject:</b> Ordinance Granting an Easement to Qwest
<b>Initiated By:</b> Department of Parks and Recreation		<b>Staff Source:</b> Dave Lee, Manager of Open Space

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

There has been no previous Council action on this issue.

### RECOMMENDED ACTION

Staff recommends that Council adopt a bill for an ordinance authorizing a Grant of Easement to Qwest for telecommunication facilities at the Broken Tee Englewood Golf Course.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The telecommunication facilities will be located at 3712 South Clay Street. Qwest shall have nonexclusive rights to the easement parcel for the purposes of constructing and maintaining their equipment. Qwest will restore the area as nearly as possible to the grade and conditions existing prior to the construction. In the event that Qwest abandons the rights granted to it under this easement agreement, the City will assume full rights of the easement property.

### FINANCIAL IMPACT

Qwest will pay the City \$500 upon execution of this grant of easement.

### LIST OF ATTACHMENTS

Bill for an Ordinance

BY AUTHORITY

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

COUNCIL BILL NO. 28  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE GRANTING AN EASEMENT TO QWEST CORPORATION FOR  
INSTALLATION OF TELECOMMUNICATION FACILITIES LOCATED AT THE BROKEN  
TEE ENGLEWOOD GOLF COURSE.

WHEREAS, the telecommunications facilities will be located at the Broken Tee Englewood  
Golf Course; and

WHEREAS, the Qwest Corporation shall have nonexclusive rights to the easement parcel for  
the purposes of constructing and maintaining their equipment; and

WHEREAS, the Qwest Corporation will restore the area as nearly as possible to the grade and  
conditions existing prior to the construction;

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

Section 1. The “Grant of Easement – Telecommunications Facilities at the Englewood Golf  
Course, Broken Tee” from the City of Englewood, Colorado to the Qwest Corporation, attached  
hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

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

Introduced, read in full, and passed on first reading on the 16<sup>th</sup> day of August, 2010.

Published as a Bill for an Ordinance in the City’s official newspaper on the 20<sup>th</sup> day of August,  
2010.

Published as a Bill for an Ordinance on the City’s official website beginning on the 18<sup>th</sup> day of  
August, 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 16th day of August, 2010.

---

Loucrishia A. Ellis

GRANT OF EASEMENT

Telecommunications Facilities at the Englewood Golf Course, Broken Tee

THIS GRANT of Easement (this "Grant") is made this 11<sup>th</sup> day of June, 2010, by CITY OF ENGLEWOOD, a Colorado municipal corporation ("Grantor") whose address is 1000 Englewood Parkway, Englewood, Colorado 80110, to the QWEST CORPORATION, a Colorado Corporation, (K.N.A. US WEST Communications, Inc.) ("Grantee") whose address is 1801 California Street, Suite 5100, Denver, CO 80202.

The parties covenant and agree as follows:

1. Easement Property. The "Easement Property" shall mean the real property located in the County of Arapahoe, State of Colorado, in the NE ¼ of Section 5, T.5S, R68W of the 6<sup>th</sup> P.M., more particularly described on Legal Description attached hereto as Exhibit A, consisting of one (1) page and incorporated herein by reference.
2. Consideration. In consideration of the sum of five hundred dollars (\$500), due on execution of this grant of easement.
3. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a perpetual nonexclusive easement over, under, across and through the Easement Property for the purpose of constructing, operating, maintaining, repairing, replacing, modifying and removing, telecommunication facilities as described in Exhibit A.
4. Access. Grantee shall have the perpetual, nonexclusive right of ingress and egress in, to, over, through and across the Easement Property for any purpose necessary or desirable for the full enjoyment of the rights granted to Grantee under this Grant.
5. Restoration. Grantee agrees that after the construction, maintenance, repair, replacement, if any, for the telecommunication facilities, Grantee shall restore the surface of the Easement Property as nearly as possible to the grade and conditions existing immediately prior to said construction, maintenance, repair or replacement, except as may be necessary to accommodate the facility. Grantee further agrees to replace any topsoil and sod removed from any cultivated or agricultural areas on the Easement Property and to remove any excess earth resulting from said construction, maintenance, repair or replacement, at Grantee's sole cost and expense.
6. No Improvements. Grantor covenants and agrees not to construct, erect, place or plan any "Improvements," as hereinafter defined, on the Easement Property other than that described in Exhibit A, without obtaining the prior written consent of Grantee. "Improvements" shall mean any structure.

7. Subjacent and Lateral Support. Grantor covenants and agrees that Grantee shall have the right of subjacent and lateral support on the Easement Property to whatever extent is necessary or desirable for the full, complete and undisturbed enjoyment of the rights granted to Grantee under this Grant.
8. Rights of Grantor. Grantor reserves the full right to the undisturbed ownership, use, and occupancy of the Easement Property insofar as said ownership, use, and occupancy is consistent with and does not impair the rights granted to Grantee in this Grant.
9. Warranty of Title. Grantor warrants that Grantor has full right and lawful authority to make the grant contained herein.
10. Abandonment. In the event that Grantee shall abandon the rights granted to it under this Grant, all right, title, and interest hereunder of Grantee shall cease and terminate, and Grantor shall hold the Easement Property, as the same may then be, free from the rights of Grantee so abandoned. Failure to use the Easement for a period of two years shall constitute evidence of abandonment.
11. Binding Effect. This Grant shall extend to and be binding upon the successors and assigns of the respective parties hereto. The terms, covenants, agreements and conditions in this Grant shall be construed as covenants running with the land.

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

GRANTOR:

CITY OF ENGLEWOOD

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

ATTEST:

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

GRANTEE:

QWEST CORPORATION

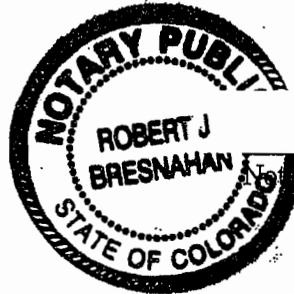
\_\_\_\_\_  
Julie McMullin, Delegate Authority

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF Denver     )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of June  
2010, by Julie McCullin as Delegate Authority for QWEST Corporation.

Witness my hand and official seal.

My Commission expires: 3/15/2014



\_\_\_\_\_  
Notary Public

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, ALSO BEING A PORTION OF LANDS DESCRIBED AT RECEPTION NO. 1605099, FILED IN THE ARAPAHOE COUNTY CLERK AND RECORDER'S OFFICE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING OF THIS DESCRIPTION IS ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF SECTION 5, ASSUMED TO BEAR S89°54'55"E A DISTANCE OF 2641.04 FEET, FROM A 3.25" ALUMINUM CAP L.S.#16109 FOUND AT THE CENTER QUARTER CORNER OF SAID SECTION 5, TO A 3.25" ALUMINUM CAP L.S.#16109 FOUND AT THE EAST QUARTER CORNER OF SAID SECTION 5;

BEGINNING AT A POINT WHICH BEARS N35°32'36"E A DISTANCE OF 2049.03 FROM SAID CENTER QUARTER CORNER;

THENCE N16°37'41"W A DISTANCE OF 18.70 FEET; THENCE N15°55'56"W A DISTANCE OF 1.42 FEET; THENCE N74°04'04"E A DISTANCE OF 10.00 FEET; THENCE S16°34'38"E A DISTANCE OF 20.00 FEET; THENCE S73°22'19"W A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING; WHEN SAID EAST QUARTER CORNER BEARS S40°56'42"E A DISTANCE OF 2212.46 FEET;

SAID PARCEL CONTAINS 201 SQUARE FEET OF LAND, MORE OR LESS.

I, THE UNDERSIGNED, A REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

CHRISTOPHER P. JULIANA, P.L.S. 31158  
FOR AND ON BEHALF OF PRECISION SURVEY & MAPPING, INC.

DATE



Precision Survey & Mapping, Inc.  
professional land surveying consultants  
1780 S. Belleire St., Suite 185, Denver, CO 80222  
Tel.(303) 753-9799 Fax(303) 753-4044

PSM JOB#: RB806	DRAWN: JAG	
SUBDIVISION OR OWNER		
<b>CITY OF ENGLEWOOD</b>		<b>QWEST CORPORATION</b>
PART OF THE NE1/4 SECTION 5, TOWNSHIP 5 SOUTH, RANGE 68 WEST	1" = 10'	1801 CALIFORNIA ST., STE. 5100
6TH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO	PAGE 2 OF 2	DENVER CO 80202
QWEST JOB# 92235CM ENGLEWOOD EXC. R.O.W.#	APRIL 15, 2010	GEO CODE 235150

LINE TABLE		
Line	Bearing	Distance
L1	N16°37'41"W	18.70'
L2	N15°55'56"W	1.42'
L3	N74°04'04"E	10.00'
L4	S16°34'38"E	20.00'
L5	S73°22'19"W	10.00'



NE1/4 SEC. 5  
T5S, R68W, 6TH P.M.

OWNER:  
CITY OF ENGLEWOOD  
RECEPTION NO. 1605099

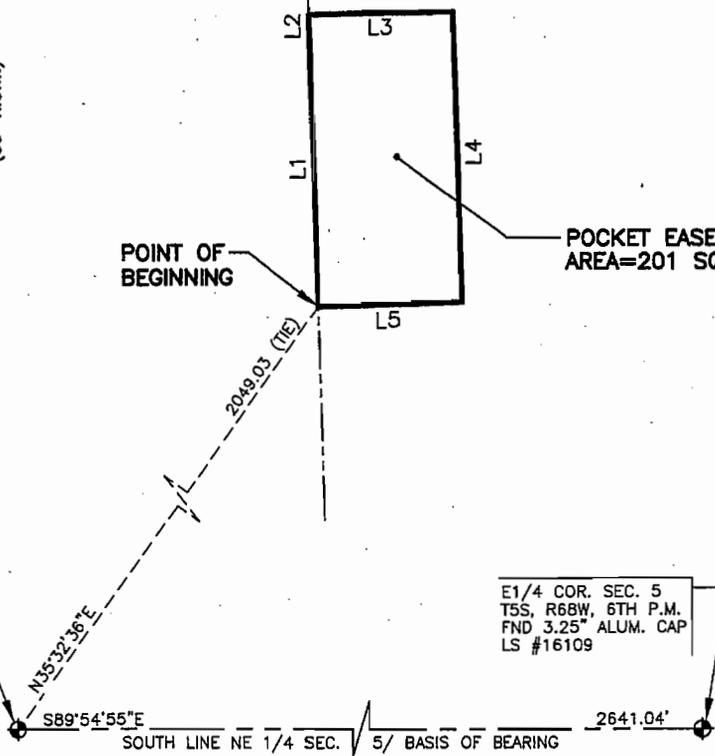
SOUTH CLAY STREET  
(50' R.O.W.)

POINT OF BEGINNING

POCKET EASEMENT  
AREA=201 SQ.FT. ±

C1/4 COR. SEC. 5  
T5S, R68W, 6TH P.M.  
FND 3.25" ALUM. CAP  
LS #16109

E1/4 COR. SEC. 5  
T5S, R68W, 6TH P.M.  
FND 3.25" ALUM. CAP  
LS #16109



SOUTH LINE NE 1/4 SEC. 5/ BASIS OF BEARING

**Precision Survey & Mapping, Inc.**  
1700 S. Belkore St., Suite 185, Denver, CO 80222  
Tel:(303) 753-9799 Fax:(303) 753-4044  
PSM JOB#: R6605 DRAWN: JAG

- 1.) PARCEL OWNERSHIP IS BASED ON THE RECORDS OF THE COUNTY ASSESSOR.
- 2.) ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS AFTER THE DATE OF THE CERTIFICATION SHOWN HEREON.
- 3.) THE ONLY PURPOSE OF THIS EXHIBIT IS TO SHOW THE LOCATION OF THE TELECOMMUNICATIONS EASEMENT(S) FOR QWEST COMMUNICATIONS.
- 4.) THIS EXHIBIT SHALL BE CONSIDERED NULL AND VOID IF ALTERED IN ANY WAY.

SUBDIVISION OR OWNER		<b>CITY OF ENGLEWOOD</b>		<b>QWEST CORPORATION</b>	
PART OF THE NE1/4 SECTION 5, TOWNSHIP 5 SOUTH, RANGE 68 WEST		1" = 10'		1801 CALIFORNIA ST., STE. 5100	
6TH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO		PAGE 1 OF 2		DENVER CO 80202	
QWEST JOB# 92235CM ENGLEWOOD-EXC.,R.O.W.#		APRIL 15, 2010		GEO CODE 235150	

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 11 a iii	<b>Subject:</b> Intergovernmental Agreements between the City and Arapahoe County
<b>Initiated By:</b> Community Development Department		<b>Staff Source:</b> Janet Grimmatt, Housing Finance Specialist

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council passed Ordinance No. 22, Series of 2009 relating to the participation in the Urban County Entitlement Program for CDBG and HOME funds for fiscal years 2010 through 2012; and also passed Resolution No. 71, Series of 2009 supporting the submission of applications for 2010 CDBG funding.

### RECOMMENDED ACTION

Staff recommends Council approve a bill for an ordinance authorizing the execution of two Intergovernmental Subgrantee Agreements for the 2010 Arapahoe County Community Development Block Grant Program between the Arapahoe Board of County Commissioners and the City of Englewood.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Federal Community Development Block Grant (CDBG) Program provides grants to units of local government and urban counties to meet housing and community development needs. The objective of the Program is achieved through projects developed by the local government that are designed to give priority to those activities that benefit low- and moderate-income families. Funds are allocated by statutory formula to each entitlement area. Arapahoe County is an approved entitlement area. The grant funds are distributed by Arapahoe County to each participating city within the county.

For FY2010, funds were approved to support the following project:

- \$77,500 for the Energy Efficient Englewood (E3) project to provide matching grants to nine low to moderate income homeowners for energy efficiency interior and exterior home improvements; and,
- \$50,000 for the Housing Rehabilitation and Handyman Project to provide loans and grants to four low to moderate income homeowners for general home improvements.

## **FINANCIAL IMPACT**

The existing employees in Community Development are available to administer the projects and their salaries and benefits are part of the City's contribution. The City will utilize a portion of the CDBG funding from the E3 Project (est. \$3,500) and the Housing Rehabilitation Project (est. \$5,000) to partially offset the costs of those salaries and benefits.

## **LIST OF ATTACHMENTS**

Bill for an Ordinance

BY AUTHORITY

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

COUNCIL BILL NO. 29  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF TWO INTERGOVERNMENTAL SUBGRANTEE AGREEMENTS FOR 2010 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BETWEEN THE ARAPAHOE BOARD OF COUNTY COMMISSIONERS AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City Council of the City of Englewood approved the execution of an Intergovernmental Agreement between the City of Englewood and Arapahoe County by passage of Ordinance No. 22, Series of 2009, covering the City's participation in the Arapahoe County CDBG Entitlement Program for funding years 2010 through 2012; and

WHEREAS, the Englewood City Council passed Resolution 71, Series of 2009, supporting Housing and Community Development that authorized submitting an application for 2010 CDBG funding; and

WHEREAS, the Energy Efficient Englewood Project has been categorized as a housing rehabilitation activity; and

WHEREAS, the Housing Rehabilitation and Handyman Project has been categorized as a housing rehabilitation activity;

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

Section 1. The Subgrantee Agreement for 2010 Arapahoe County Community Development Block Grant – Energy Efficient Englewood (E3) Project, attached hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

Section 2. The Subgrantee Agreement for 2010 Arapahoe County Community Development Block Grant – Housing Rehabilitation and Handyman Project, attached hereto as Exhibit B, is hereby accepted and approved by the Englewood City Council.

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

Section 4. The Mayor and City Clerk are hereby authorized to sign and attest said Agreements for and on behalf of the City of Englewood, Colorado.

Section 5. The City Manager shall be authorized to further extend the subgrantee agreements for the 2010 Arapahoe County Community Development Block Grant Program as needed.

Introduced, read in full, and passed on first reading on the 16<sup>th</sup> day of August, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 20<sup>th</sup> day of August, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 18<sup>th</sup> day of August, 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 16<sup>th</sup> day of August, 2010.

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Loucrishia A. Ellis

**SUBGRANTEE AGREEMENT FOR  
ARAPAHOE COUNTY  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

**SUBGRANTEE: CITY OF ENGLEWOOD  
PROJECT NAME: ENERGY EFFICIENT ENGLEWOOD (E3)  
PROJECT NUMBER: ENHS 1012**

This Agreement is made by and between the Board of County Commissioners of the County of Arapahoe, State of Colorado, for the Community Development Block Grant Program in the Community Resources Department (hereinafter referred to as the County) and the City of Englewood (hereinafter referred to as the SubGrantee) for the conduct of a Community Development Block Grant (CDBG) Project.

**I. PURPOSE**

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and of the Community Development Block Grant (CDBG) Program under this Title is the development of viable urban communities, by providing decent housing, a suitable living environment and expanding economic opportunities, principally for low and moderate income persons.

The project by the SubGrantee known as the Energy Efficient Englewood (E3) program (Project) has been categorized as a Housing Rehabilitation project and the SubGrantee will maintain documentation with the national objective of Low/Moderate Income Housing activities.

The SubGrantee may proceed to incur costs for the Project upon receipt of an official "Notice to Proceed" from the County.

**II. WORK TO BE COMPLETED BY THE SUBGRANTEE**

The following provisions outline the scope of the work to be completed:

The SubGrantee will utilize CDBG funding to provide grants to nine (9) low to moderate income homeowners for energy efficiency interior and exterior home improvements. The intent of the project is both to improve the energy efficiency of homes that focuses on work items that qualify for federal tax credits or any other state or local rebate program, including, but not limited to Energy Star furnaces, water heaters, windows, doors, skylights, insulation, roofing, siding, evaporative coolers, and refrigerators. A maximum of \$8,000 will be granted per household and the grant requires a 20% match from the homeowner. If the homeowner does not have the required match, then the grant will be secured by a declining deed of trust recorded on the property that will be forgiven over a five year period.

**A. Payment**

It is expressly agreed and understood that the total amount to be paid by the County under this contract shall not exceed \$77,500. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with performance

criteria established in Section II-C. The parties expressly recognize that the SubGrantee is to be paid with CDBG funds received from the federal government, and that the obligation of the County to make payment to SubGrantee is contingent upon receipt of such funds. In the event that said funds, or any part thereof, are, or become, unavailable, then the County may immediately terminate or, amend this agreement. To the extent C.R.S. § 29-1-110 is applicable, any financial obligation of the County to the SubGrantee beyond the current fiscal year is also contingent upon adequate funds being appropriated, budgeted and otherwise available.

Upon expiration of this Agreement, as identified by the deadline in Section II. C. 3. below, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. These transferred funds shall revert to the County and be utilized for other purposes.

## **B. Timeline**

All Project activities will be completed, and draw requests submitted, by **April 30, 2011** unless the Subgrantee notifies the County in writing by April 15, 2011 that the project cannot be completed, and all draw requests submitted, until May, 31, 2011. In the event that the completion deadline falls on a weekend or holiday, the deadline will be considered the work day prior to the scheduled completion date. If the project requires additional time past May 31, 2011, the Agreement must be modified by mutual agreement of the County and SubGrantee.

## **C. Performance Criteria**

In accordance with the funding application submitted by the SubGrantee for the Project, the criteria listed below are to be met during the execution of the Project.

### **1. Quantifiable Goals:**

The SubGrantee will utilize CDBG funding to provide grants to nine (9) low to moderate income homeowners for energy efficiency interior and exterior home improvements. The intent of the project is both to improve the energy efficiency of homes that focuses on work items that qualify for federal tax credits or any other state or local rebate program, including, but not limited to Energy Star furnaces, water heaters, windows, doors, skylights, insulation, roofing, siding, evaporative coolers, and refrigerators. A maximum of \$8,000 will be granted per household and the grant requires a 20% match from the homeowner. If the homeowner does not have the required match, then the grant will be secured by a declining deed of trust recorded on the property that will be forgiven over a five year period.

An energy audit will be required of each home prior to the start of construction to determine the areas of greatest energy efficiency need. The energy audits will be paid through administrative funds. Construction funds will be disbursed to the homeowner as the work items are completed with reimbursement based on receipts for materials and labor expenses.

When appropriate, the SubGrantee will refer clients to the County's weatherization program for assistance, rather than provide a duplicate service. This referral will be documented and kept in the client file. In cases where appliances or systems are purchased or installed with funds covered under this grant, the appliances or systems must meet energy star standards.

All improvements funded under this grant are to be performed in accordance with applicable industry and local codes and standards, as well as the Americans with Disabilities Act.

All contractors, subcontractors and vendors paid through this grant must be checked against the federal excluded parties list to insure eligibility to receive federal funds. The SubGrantee is responsible for checking the list.

2. Community Impact:

Affordable housing – stability and housing quality

3. Quarterly Performance Standards:

September 30, 2010:

Market program, interview potential clients

December 31, 2010:

Continue to market program, interview potential clients

Provide three (3) renovation grants

March 31, 2011:

Continue to market program, interview potential clients

Provide four (4) renovation grants

April 30, 2010:

Provide two (2) renovation grants

Cumulative total of nine (9) grants

Complete all renovations funded by project

Submit final drawdown and completion report to County

**D. Reporting Requirements**

1. Project reports will be due within fifteen days following the end of each calendar year quarter (June 1 to September 30 report is due October 15; October 1 to December 31 report is due January 15; January 1 to March 31 report is due April 15; and the final completion report is due May 31) until the Project is completed.

2. The official annual audit and/or Financial Statements for the SubGrantee in which both revenues and expenditures for the CDBG Projects described herein are detailed are due annually. The last completed official annual audit report and/or Financial Statements shall be due on May 31, and for four (4) years thereafter on May 31.

**E. Labor Standards (Davis-Bacon)**

Project activities do not require compliance with federal labor standards (Davis-Bacon) as it is exempt (i.e., public service activity, single family home rehabilitation, purchase of materials, or other activity that has been determined exempt from federal labor standards).

**F. Lead Based Paint Regulations**

If the activity involves any construction, demolition, rehabilitation, or any activity related to a building, and the building was built in 1978 or prior, Lead Based Paint Laws and Regulations apply, as established in 24 CFR Parts 35 and 570.608. If the SubGrantee does not follow and document Lead Based Paint Laws and Regulation compliance, the SubGrantee will not be eligible for reimbursement.

The "Protect Your Family from Lead in Your Home" pamphlet is to be provided to all homeowners, regardless of age of housing. Verification of notification is to be maintained in client files.

**G. Environmental Review**

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by Arapahoe County of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on Arapahoe County's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review.

**H. Uniform Relocation Act (URA)**

It has been determined that no action under the Uniform Relocation Act (URA) is necessary.

**III. RESPONSIBILITIES OF THE SUBGRANTEE**

**A. Federal Compliance**

The SubGrantee shall comply with all applicable federal laws, regulations and requirements, and all provisions of the grant agreements received from the U.S. Department of Housing and Urban Development (HUD) by the County. These include but are not limited to compliance with the provisions of the Housing and Community Development Act of 1974 and all rules, regulations,

guidelines and circulars promulgated by the various federal departments, agencies, administrations and commissions relating to the CDBG Program. A listing of some of the applicable laws and regulations are as follows:

1. 24 CFR Part 570;
2. 24 CFR Parts 84 and 85;
3. Title VI of the Civil Rights Act of 1964;
4. Title VIII of the Civil Rights Act of 1968;
5. Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
6. Fair housing regulations established in the Fair Housing Act, Public Law 90-284, and Executive Order 11063;
7. Section 504 of the Rehabilitation Act of 1973;
8. Asbestos guidelines established in CPD Notice 90-44;
9. The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39;
10. Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
11. Section 3 of the Housing and Urban Development Act of 1968;
12. Non-discrimination in employment, established by Executive Order 11246;
13. Lead Based Paint regulations established in 24 CFR Parts 35 and 570.608;
14. Audit requirements established in OMB Circular A-133; and
15. Cost principles established in OMB Circulars A-87 and A-122.
16. Conflict of Interest:
  - (a) Applicability. In the procurement of property and services by participating jurisdiction, State recipients, and subrecipients, the conflict of interest provision in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.
  - (b) Conflicts prohibited. No persons described in paragraph (c) of this section who exercise or who have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may not obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
  - (c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving CDBG funds.
  - (d) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the CDBG Investment Partnership Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exemption is sought would not violate State or local law.
- (e) Factors to be considered for exemption. In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  - (2) Whether the person affected is a member of a group or class of low income persons intended to be the beneficiaries of the assisted activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
  - (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
  - (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  - (6) Any other relevant considerations.
- (f) Owners and Developers.
- (1) No owner, developer or sponsor of a project assisted with CDBG funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a CDBG-assisted affordable housing unit in a project. This provision does not apply to an individual who receives CDBG funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.
  - (2) Exceptions. Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f) (1) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the CDBG program and the effective and efficient administration of the owner's or developer's CDBG-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

- (i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provide to the group or class;
- (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;
- (iii) Whether the tenant protection requirements of Sec. 92.253 are being observed;
- (iv) Whether the affirmative marketing requirements of Sec. 92.351 are being observed and followed; and
- (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

Additionally, in accordance with 24 CFR Part 570, no employee, official, agent or consultant of the SubGrantee shall exercise any function or responsibility in which a conflict of interest, real or apparent, would arise.

17. The SubGrantee cannot engage in a federally funded contract with any entity registered in the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs.

#### **B. Non-Appropriations Clause**

The SubGrantee agrees that it will include in every contract it enters, which relies upon CDBG monies for funding, a non-appropriation clause that will protect itself, and the County from any liability or responsibility or any suit which might result from the discontinuance of CDBG funding for any reason. Because this SubGrantee Agreement involves funds from a federal grant, to the extent there is a conflict the funding provisions of this SubGrantee Agreement, the federal grant and the federal statutes control rather than the provisions of Section 24-91-103.6, C.R.S. with regard to any public work projects.

#### **C. Expenditure Restrictions**

All CDBG funds that are approved by HUD for expenditure under the County's grant agreement, including those that are identified for the SubGrantee's Projects and activities, shall be allocated to the specific projects and activities described and listed in the grant agreements. The allocated funds shall be used and expended only for the projects and activities for which the funds are identified.

#### **D. Agreement Changes**

No projects or activities, nor the amount allocated therefore, may be changed without approval by the County and acceptance of the revised Final Statement and/or Consolidated Plan by HUD, if required. Changes must be requested in writing and may not begin until a modification to this Agreement is fully executed.

#### **E. Direct Project Supervision and Administration**

The SubGrantee shall be responsible for the direct supervision and administration of its respective projects or activities. This task shall be accomplished through the use of the SubGrantee's staff, agency and employees. The SubGrantee shall be responsible for any injury to persons or damage to property resulting from the negligent acts or errors and omissions of its staff, agents and employees. Because the SubGrantee is responsible for the direct supervision and administration of its projects or activities, the County shall not be liable or responsible for cost overruns by the SubGrantee on any projects or activities. The County shall have no duty or obligation to provide any additional funding to the SubGrantee if its projects or activities cannot be completed with the funds allocated by the County to the SubGrantee. Any cost overruns shall be the sole responsibility of the SubGrantee.

1. The SubGrantee agrees that all funds allocated to it for approved projects or activities shall be used solely for the purposes approved by the County. Said funds shall not be used for any non-approved purposes.
2. The SubGrantee agrees that the funds allocated for any approved projects or activities shall be sufficient to complete said projects or activities without any additional CDBG funding.

#### **F. Indemnity**

To the extent allowed by law, the SubGrantee shall indemnify and hold harmless the County and its elected and appointed officials, officers, employees and agents from and against any and all losses, damages, liabilities, claims, suits, actions or costs, including attorneys fees, made, asserted or incurred as a result of any damage or alleged damage to person or property occasioned by the acts or omissions of SubGrantee, its officers, employees, agents, contractors or subcontractors, arising out of or in any way connected with the Project or the performance of this contract.

#### **G. Bonding and Insurance**

If the SubGrantee's projects involve construction activities, any Contractor it uses for said activities shall be required to provide and maintain, until final acceptance by the SubGrantee of all work by such Contractor, the kinds and minimum amounts of insurance as follows:

1. Comprehensive General Liability: In the amount of not less than \$1,000,000 combined single limit. Coverage to include:
  - a. Premises Operations
  - b. Products/Completed Operations
  - c. Broad Form Contractual Liability
  - d. Independent Contractors
  - e. Broad Form Property Damage
  - f. Employees as Additional Insured

- g. Personal Injury
  - h. Arapahoe County and the SubGrantee as Additional Named Insured
  - i. Waiver of Subrogation
2. Comprehensive Automobile Liability: In the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage to include:
    - a. Arapahoe County and the SubGrantee as additional Named Insured
    - b. Waiver of Subrogation
  3. Employers Liability and Workers Compensation: The Contractor shall secure and maintain employer's liability and Worker's Compensation Insurance that will protect it against any and all claims resulting from injuries to and death of workers engaged in work under any contract funded pursuant to this agreement. Coverage to include Waiver of Subrogation.
  4. All referenced insurance policies and/or certificates of insurance shall be subject to the following stipulations:
    - a. Underwriters shall have no rights of recovery subrogation against Arapahoe County or the SubGrantee; it being the intent of the parties that the insurance policies so effected shall protect the parties and be primary coverage for any and all losses covered by the described insurance.
    - b. The clause entitled "Other Insurance Provisions" contained in any policy including Arapahoe County as an additional named insured shall not apply to Arapahoe County, or the SubGrantee.
    - c. The insurance companies issuing the policy or policies shall have no recourse against Arapahoe County, or the SubGrantee for payment of any premiums due or for any assessments under any form of any policy.
    - d. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
  5. Certificate of Insurance: The Contractor shall not commence work under any contract funded pursuant to this Agreement until he has submitted to the SubGrantee, received approval thereof, certificates of insurance showing that he has complied with the foregoing insurance requirements. The SubGrantee shall also submit a copy of the Contractor's certificates of insurance to the County.
  6. Notwithstanding the provisions contained in this paragraph (H) set forth hereinabove, the County reserves the right to modify or waive said provisions for projects or activities for which these provisions would prove prohibitive. The SubGrantee understands, however, that the decision to waive or modify those provisions is fully within the discretion of the County.

In accordance with 24 CFR parts 84 and 85, the following bonding requirements shall apply to all projects exceeding the simplified acquisition threshold (currently \$100,000):

1. A bid guarantee from each bidder equivalent to 5% of the bid price;
2. A performance bond on the part of the contractor for 100% of the contract price; and
3. A payment bond on the part of the contractor for 100% of the contract price.

#### **H. Records**

The SubGrantee shall maintain a complete set of books and records documenting its use of CDBG funds and its supervision and administration of the Project. Records are to include documentation verifying Project eligibility and national objective compliance, as well as financial and other administrative aspects involved in performing the Project. The SubGrantee shall provide full access to these books and records to the County, the Secretary of HUD or his designee, the Office of Inspector General, and the General Accounting Office so that compliance with Federal laws and regulations may be confirmed. The SubGrantee further agrees to provide to the County upon request, a copy of any audit reports pertaining to the SubGrantee's financial operations during the term of this Agreement. All records pertaining to the Project are to be maintained for a minimum of five years following close-out of the Project.

#### **I. Reporting**

The SubGrantee shall file all reports and other information necessary to comply with applicable Federal laws and regulations as required by the County and HUD. This shall include providing to the County the information necessary to complete annual Performance Reports in a timely fashion.

#### **J. Timeliness**

The SubGrantee shall comply with the quarterly performance standards established in Section II-C of this Agreement. The SubGrantee understands that failure to comply with the established standards may lead to a cancellation of the Project and a loss of all unexpended funds.

#### **K. Reimbursement for Expenses**

The SubGrantee agrees that before the County can distribute any CDBG funds to it, the SubGrantee must submit to the County's Housing and Community Development Services Division documentation in the form required by that Division which properly and fully identifies the amount which the SubGrantee is requesting at that time. The County shall have ten (10) working days to review the request. Upon approval of the request, the County will distribute the requested funds to the SubGrantee as soon as possible.

#### **L. Program Income**

All program income directly derived from the Arapahoe County Community Development Block Grant Program received by the SubGrantee will be retained by the SubGrantee and will be dispersed for its approved CDBG Project activities before additional CDBG funds are requested from the County. Following completion of the SubGrantee's Arapahoe County CDBG Projects, all program income directly generated from the use of CDBG funds will be remitted to the County.

**M. Real Property**

Real property acquired in whole or in part with CDBG funds shall be utilized in accordance with the scope and goals identified in Sections I and II of this Agreement. Should the property in question be sold or otherwise disposed of, or the approved property usage discontinued, the SubGrantee shall adhere to the requirements of 24 CFR Parts 84 or 85 (as applicable) regarding the use and disposition of real property.

**N. State and County Law Compliance**

All responsibilities of the SubGrantee enumerated herein shall be subject to applicable State statutes and County ordinances, resolutions, rules, and regulations.

**O. Subcontracts**

If subcontracts are used on the Project, the SubGrantee agrees that the provisions of this Agreement shall apply to any subcontract.

**P. Suspension or Termination**

This Agreement may be immediately suspended or terminated upon written notification from the County if the SubGrantee materially fails to comply with any term of this Agreement. This Agreement may also be terminated for convenience by mutual agreement of the County and the SubGrantee.

**Q.** In the event that the Unit of General Local Government should withdraw from the County's "Urban County" designation, this Agreement shall terminate as of the termination date of the County's CDBG grant Agreement with HUD.

**R.** The SubGrantee certifies that to the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and,
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**S. Disallowance**

If it is determined by HUD or other federal agency that the expenditure, in whole or in part, for the SubGrantee's Project or activity was improper, inappropriate or ineligible for reimbursement, then the SubGrantee shall reimburse the County to the full extent of the disallowance.

**T. Verification of Lawful Presence**

The SubGrantee shall be responsible for ensuring compliance with C.R.S. Section 24-76.5-103 by verifying the lawful presence of all persons eighteen years of age or older who apply for any benefits funded in whole or in part by the grant funds that are the subject of this Agreement. SubGrantee shall verify lawful presence in the manner required by the statute, and shall provide proof of compliance upon the request of the County.

**IV. RESPONSIBILITIES OF THE COUNTY**

**A. Administrative Control**

The Parties recognize and understand that the County will be the governmental entity required to execute all grant agreements received from HUD pursuant to the County's requests for CDBG funds. Accordingly, the SubGrantee agrees that as to its projects or activities performed or conducted under any CDBG agreement, the County shall have the necessary administrative control required to meet HUD requirements.

**B. Performance and Compliance Monitoring**

The County's administrative obligations to the SubGrantee pursuant to paragraph A above shall be limited to the performance of the administrative tasks necessary to make CDBG funds available to the SubGrantee and to provide Housing and Community Development Services staff whose job it will be to monitor the various projects funded with CDBG monies to monitor compliance with applicable Federal laws and regulations.

**C. Reporting to HUD**

The County will be responsible for seeing that all necessary reports and information required of the County are filed with HUD and other applicable Federal agencies in a timely fashion.

**V. EXTENT OF THE AGREEMENT**

This agreement, including any documents attached as exhibits which are hereby incorporated herein by reference, represents the entire and integrated agreement between the County, and SubGrantee and supersedes all prior negotiations, representations or agreements, either written or oral. Any

amendments to this agreement must be in writing and signed by both the County, and SubGrantee. If any portion of this agreement is found by a court of competent jurisdiction to be void and/or unenforceable, it is the intent of the parties that the remaining portions of this agreement shall be of full force and effect.

## VI. NOTICES

Notices to be provided under this Agreement shall be given in writing and either delivered by hand or deposited in the United States mail with sufficient postage to the addresses set forth:

To the County:       Arapahoe County Attorney  
                          5334 S. Prince Street  
                          Littleton, CO 80166

and

Arapahoe County Housing and Community Development Services  
1690 W. Littleton Blvd., #300  
Littleton, CO 80120-2069

To the SubGrantee:   City of Englewood  
                          1000 Englewood Parkway  
                          Englewood, CO 80110

In Witness Whereof, the Parties have caused this Agreement to be duly executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010.

SubGrantee: City of Englewood

\_\_\_\_\_  
Signature James K. Woodward

\_\_\_\_\_  
Title Mayor

Board of County Commissioners  
Arapahoe County, Colorado

\_\_\_\_\_  
Don Klemme on behalf of the Board of County Commissioners  
Pursuant to Resolution #100140

## PROJECT BUDGET

<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>
<b>Project Activities (specify by line item)</b>	<b>Estimated Total Cost of Activity</b>	<b>CDBG Funds</b>	<b>Other Funds Committed</b>
Project administration, including personnel costs, Lead Based Paint testing costs, and Energy Audit costs	\$36,000	\$5,500	\$30,500
Grants for Energy Efficiency	\$90,000	\$72,000	\$18,000
<b>TOTAL:</b>	\$126,000	\$77,500	\$48,500

**SUBGRANTEE AGREEMENT FOR  
ARAPAHOE COUNTY  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

**SUBGRANTEE: CITY OF ENGLEWOOD  
PROJECT NAME: HOUSING REHABILITATION AND HANDYMAN PROJECT  
PROJECT NUMBER: ENHS 1013**

This Agreement is made by and between the Board of County Commissioners of the County of Arapahoe, State of Colorado, for the Community Development Block Grant Program in the Community Resources Department (hereinafter referred to as the County) and the City of Englewood (hereinafter referred to as the SubGrantee) for the conduct of a Community Development Block Grant (CDBG) Project.

**I. PURPOSE**

The primary objective of Title I of the Housing and Community Development Act of 1974, as amended, and of the Community Development Block Grant (CDBG) Program under this Title is the development of viable urban communities, by providing decent housing, a suitable living environment and expanding economic opportunities, principally for low and moderate income persons.

The project by the SubGrantee known as the Housing Rehabilitation and Handyman Project (Project) has been categorized as a Housing Rehabilitation project and the SubGrantee will maintain documentation with the national objective of Low/Moderate Income Housing activities.

The SubGrantee may proceed to incur costs for the Project upon receipt of an official "Notice to Proceed" from the County.

**II. WORK TO BE COMPLETED BY THE SUBGRANTEE**

The following provisions outline the scope of the work to be completed:

The SubGrantee will utilize CDBG funding to provide four (4) low interest loans and/or grants to low to moderate income homeowners for home improvements within the City of Englewood. The project provides loans up to \$24,999 at varying interest rates depending upon the household income. The project is designed to address: life threatening or safety problems; handicapped retrofitting; energy conservation measures; elimination of potential code problems; and general property improvements. Improvements may include, but are not limited to repairs and replacement of furnaces, water heaters, roofs, gutters, windows, doors, sidewalks, plumbing, electrical, wheelchair ramps, and HVAC work.

The project will also include a Handyman Project which will provide grants to low to moderate income homeowners within the City of Englewood, including mobile homeowners, for minor handyman repairs not to exceed \$1,000 per one-year period. Minor handyman repairs may include, but are not limited to, window repair and replacement, plumbing leaks, weatherstripping, gutter repair, furnace repair, accessibility fixture installation and repair, minor electrical work, and minor roof repairs.

**A. Payment**

It is expressly agreed and understood that the total amount to be paid by the County under this contract shall not exceed \$50,000. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with performance criteria established in Section II-C. The parties expressly recognize that the SubGrantee is to be paid with CDBG funds received from the federal government, and that the obligation of the County to make payment to SubGrantee is contingent upon receipt of such funds. In the event that said funds, or any part thereof, are, or become, unavailable, then the County may immediately terminate or, amend this agreement. To the extent C.R.S. § 29-1-110 is applicable, any financial obligation of the County to the SubGrantee beyond the current fiscal year is also contingent upon adequate funds being appropriated, budgeted and otherwise available.

Upon expiration of this Agreement, as identified by the deadline in Section II. C. 3. below, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. These transferred funds shall revert to the County and be utilized for other purposes.

**B. Timeline**

All Project activities will be completed, and draw requests submitted, by **April 30, 2011** unless the Subgrantee notifies the County in writing by April 15, 2011 that the project cannot be completed, and all draw requests submitted, until May, 31, 2011. In the event that the completion deadline falls on a weekend or holiday, the deadline will be considered the work day prior to the scheduled completion date. If the project requires additional time past May 31, 2011, the Agreement must be modified by mutual agreement of the County and SubGrantee.

**C. Performance Criteria**

In accordance with the funding application submitted by the SubGrantee for the Project, the criteria listed below are to be met during the execution of the Project.

1. Quantifiable Goals:

The SubGrantee will utilize CDBG funding to provide four (4) low interest loans and/or grants to low to moderate income homeowners for home improvements. The project provides loans up to \$24,999 at varying interest rates depending upon the household income. The project is designed to address: life threatening or safety problems; handicapped retrofitting; energy conservation measures; elimination of potential code problems; and general property improvements. Improvements may include, but are not limited to repairs and replacement of furnaces, water heaters, roofs, gutters, windows, doors, sidewalks, plumbing, electrical, wheelchair ramps, and HVAC work.

The project will also include a Handyman Project which will provide grants to low to moderate income homeowners within the City of Englewood, including mobile homeowners, for minor handyman repairs not to exceed \$1,000 per one-year period. Minor handyman repairs may include, but are not limited to, window repair and replacement, plumbing leaks, weatherstripping, gutter repair, furnace repair, accessibility fixture installation and repair, minor electrical work, and minor roof repairs.

When appropriate, the SubGrantee will refer clients to the County's weatherization program for assistance, rather than provide a duplicate service. This referral will be documented and kept in the client file. In cases where appliances or systems are purchased or installed with funds covered under this project, the appliances or systems must meet energy star standards.

All improvements funded under this project are to be performed in accordance with applicable industry and local codes and standards, as well as the Americans with Disabilities Act.

All contractors, subcontractors and vendors paid through this project must be checked against the federal excluded parties list to insure eligibility to receive federal funds. The SubGrantee is responsible for checking the list.

2. Community Impact:

Affordable housing – stability and housing quality

3. Quarterly Performance Standards:

September 30, 2010:

Market project, interview potential clients, construction assessment

December 31, 2010:

Continue to market project, interview potential clients, construction assessment  
Provide one (1) rehabilitation loans/grants

March 31, 2011:

Continue to market project, interview potential clients, construction assessment  
Provide two (2) rehabilitation loans/grants

April 30, 2010:

Provide one (1) rehabilitation loans/grants  
Cumulative total of four (4) rehabilitation loans/grants  
Complete all rehabilitations funded by project  
Submit final drawdown and completion report to County

**D. Reporting Requirements**

1. Project reports will be due within fifteen days following the end of each calendar year quarter (June 1 to September 30 report is due October 15; October 1 to December 31 report is due January 15; January 1 to March 31 report is due April 15; and the final completion report is due May 31) until the Project is completed.
2. The official annual audit and/or Financial Statements for the SubGrantee in which both revenues and expenditures for the CDBG Projects described herein are detailed are due annually. The last completed official annual audit report and/or Financial Statements shall be due on May 31, and for four (4) years thereafter on May 31.
3. The SubGrantee shall report quarterly, and annually, all program income generated by activities carried out with CDBG funds. The SubGrantee shall report annually program income balances (cash on hand).

**E. Labor Standards (Davis-Bacon)**

Project activities do not require compliance with federal labor standards (Davis-Bacon) as it is exempt (i.e., public service activity, single family home rehabilitation, purchase of materials, or other activity that has been determined exempt from federal labor standards).

**F. Lead Based Paint Regulations**

If the activity involves any construction, demolition, rehabilitation, or any activity related to a building, and the building was built in 1978 or prior, Lead Based Paint Laws and Regulations apply, as established in 24 CFR Parts 35 and 570.608. If the SubGrantee does not follow and document Lead Based Paint Laws and Regulation compliance, the SubGrantee will not be eligible for reimbursement.

The "Protect Your Family from Lead in Your Home" pamphlet is to be provided to all homeowners, regardless of age of housing. Verification of notification is to be maintained in client files.

**G. Environmental Review**

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by Arapahoe County of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on Arapahoe County's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review.

**H. Uniform Relocation Act (URA)**

It has been determined that no action under the Uniform Relocation Act (URA) is necessary.

### **III. RESPONSIBILITIES OF THE SUBGRANTEE**

#### **A. Federal Compliance**

The SubGrantee shall comply with all applicable federal laws, regulations and requirements, and all provisions of the grant agreements received from the U.S. Department of Housing and Urban Development (HUD) by the County. These include but are not limited to compliance with the provisions of the Housing and Community Development Act of 1974 and all rules, regulations, guidelines and circulars promulgated by the various federal departments, agencies, administrations and commissions relating to the CDBG Program. A listing of some of the applicable laws and regulations are as follows:

1. 24 CFR Part 570;
2. 24 CFR Parts 84 and 85;
3. Title VI of the Civil Rights Act of 1964;
4. Title VIII of the Civil Rights Act of 1968;
5. Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
6. Fair housing regulations established in the Fair Housing Act, Public Law 90-284, and Executive Order 11063;
7. Section 504 of the Rehabilitation Act of 1973;
8. Asbestos guidelines established in CPD Notice 90-44;
9. The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39;
10. Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
11. Section 3 of the Housing and Urban Development Act of 1968;
12. Non-discrimination in employment, established by Executive Order 11246;
13. Lead Based Paint regulations established in 24 CFR Parts 35 and 570.608;
14. Audit requirements established in OMB Circular A-133; and
15. Cost principles established in OMB Circulars A-87 and A-122.
16. Conflict of Interest:
  - (a) Applicability. In the procurement of property and services by participating jurisdiction, State recipients, and subrecipients, the conflict of interest provision in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.
  - (b) Conflicts prohibited. No persons described in paragraph (c) of this section who exercise or who have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may not obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

- (c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving CDBG funds.
- (d) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the CDBG Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:
  - (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exemption is sought would not violate State or local law.
- (e) Factors to be considered for exemption. In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
  - (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  - (2) Whether the person affected is a member of a group or class of low income persons intended to be the beneficiaries of the assisted activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
  - (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
  - (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  - (6) Any other relevant considerations.
- (f) Owners and Developers.
  - (1) No owner, developer or sponsor of a project assisted with CDBG funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a CDBG-assisted affordable housing unit in a project. This provision does not apply to an individual who receives CDBG funds to acquire or rehabilitate his or her

principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

- (2) Exceptions. Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f) (1) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the CDBG program and the effective and efficient administration of the owner's or developer's CDBG-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:
- (i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provide to the group or class;
  - (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;
  - (iii) Whether the tenant protection requirements of Sec. 92.253 are being observed;
  - (iv) Whether the affirmative marketing requirements of Sec. 92.351 are being observed and followed; and
  - (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

Additionally, in accordance with 24 CFR Part 570, no employee, official, agent or consultant of the SubGrantee shall exercise any function or responsibility in which a conflict of interest, real or apparent, would arise.

17. The SubGrantee cannot engage in a federally funded contract with any entity registered in the Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs.

## **B. Non-Appropriations Clause**

The SubGrantee agrees that it will include in every contract it enters, which relies upon CDBG monies for funding, a non-appropriation clause that will protect itself, and the County from any liability or responsibility or any suit which might result from the discontinuance of CDBG funding for any reason. Because this SubGrantee Agreement involves funds from a federal grant, to the extent there is a conflict the funding provisions of this SubGrantee Agreement, the federal grant and the federal statutes control rather than the provisions of Section 24-91-103.6, C.R.S. with regard to any public work projects.

## **C. Expenditure Restrictions**

All CDBG funds that are approved by HUD for expenditure under the County's grant agreement, including those that are identified for the SubGrantee's Projects and activities, shall be allocated to the specific projects and activities described and listed in the grant agreements. The allocated funds shall be used and expended only for the projects and activities for which the funds are identified.

**D. Agreement Changes**

No projects or activities, nor the amount allocated therefore, may be changed without approval by the County and acceptance of the revised Final Statement and/or Consolidated Plan by HUD, if required. Changes must be requested in writing and may not begin until a modification to this Agreement is fully executed.

**E. Direct Project Supervision and Administration**

The SubGrantee shall be responsible for the direct supervision and administration of its respective projects or activities. This task shall be accomplished through the use of the SubGrantee's staff, agency and employees. The SubGrantee shall be responsible for any injury to persons or damage to property resulting from the negligent acts or errors and omissions of its staff, agents and employees. Because the SubGrantee is responsible for the direct supervision and administration of its projects or activities, the County shall not be liable or responsible for cost overruns by the SubGrantee on any projects or activities. The County shall have no duty or obligation to provide any additional funding to the SubGrantee if its projects or activities cannot be completed with the funds allocated by the County to the SubGrantee. Any cost overruns shall be the sole responsibility of the SubGrantee.

1. The SubGrantee agrees that all funds allocated to it for approved projects or activities shall be used solely for the purposes approved by the County. Said funds shall not be used for any non-approved purposes.
2. The SubGrantee agrees that the funds allocated for any approved projects or activities shall be sufficient to complete said projects or activities without any additional CDBG funding.

**F. Indemnity**

To the extent allowed by law, the SubGrantee shall indemnify and hold harmless the County and its elected and appointed officials, officers, employees and agents from and against any and all losses, damages, liabilities, claims, suits, actions or costs, including attorneys fees, made, asserted or incurred as a result of any damage or alleged damage to person or property occasioned by the acts or omissions of SubGrantee, its officers, employees, agents, contractors or subcontractors, arising out of or in any way connected with the Project or the performance of this contract.

**G. Bonding and Insurance**

If the SubGrantee's projects involve construction activities, any Contractor it uses for said activities shall be required to provide and maintain, until final acceptance by the SubGrantee of all work by such Contractor, the kinds and minimum amounts of insurance as follows:

1. Comprehensive General Liability: In the amount of not less than \$1,000,000 combined single limit. Coverage to include:
  - a. Premises Operations
  - b. Products/Completed Operations
  - c. Broad Form Contractual Liability
  - d. Independent Contractors
  - e. Broad Form Property Damage
  - f. Employees as Additional Insured
  - g. Personal Injury
  - h. Arapahoe County and the SubGrantee as Additional Named Insured
  - i. Waiver of Subrogation
2. Comprehensive Automobile Liability: In the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage to include:
  - a. Arapahoe County and the SubGrantee as additional Named Insured
  - b. Waiver of Subrogation
3. Employers Liability and Workers Compensation: The Contractor shall secure and maintain employer's liability and Worker's Compensation Insurance that will protect it against any and all claims resulting from injuries to and death of workers engaged in work under any contract funded pursuant to this agreement. Coverage to include Waiver of Subrogation.
4. All referenced insurance policies and/or certificates of insurance shall be subject to the following stipulations:
  - a. Underwriters shall have no rights of recovery subrogation against Arapahoe County or the SubGrantee; it being the intent of the parties that the insurance policies so effected shall protect the parties and be primary coverage for any and all losses covered by the described insurance.
  - b. The clause entitled "Other Insurance Provisions" contained in any policy including Arapahoe County as an additional named insured shall not apply to Arapahoe County, or the SubGrantee.
  - c. The insurance companies issuing the policy or policies shall have no recourse against Arapahoe County, or the SubGrantee for payment of any premiums due or for any assessments under any form of any policy.
  - d. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
5. Certificate of Insurance: The Contractor shall not commence work under any contract funded pursuant to this Agreement until he has submitted to the SubGrantee, received approval thereof, certificates of insurance showing that he has

complied with the foregoing insurance requirements. The SubGrantee shall also submit a copy of the Contractor's certificates of insurance to the County.

6. Notwithstanding the provisions contained in this paragraph (H) set forth hereinabove, the County reserves the right to modify or waive said provisions for projects or activities for which these provisions would prove prohibitive. The SubGrantee understands, however, that the decision to waive or modify those provisions is fully within the discretion of the County.

In accordance with 24 CFR parts 84 and 85, the following bonding requirements shall apply to all projects exceeding the simplified acquisition threshold (currently \$100,000):

1. A bid guarantee from each bidder equivalent to 5% of the bid price;
2. A performance bond on the part of the contractor for 100% of the contract price; and
3. A payment bond on the part of the contractor for 100% of the contract price.

#### **H. Records**

The SubGrantee shall maintain a complete set of books and records documenting its use of CDBG funds and its supervision and administration of the Project. Records are to include documentation verifying Project eligibility and national objective compliance, as well as financial and other administrative aspects involved in performing the Project. The SubGrantee shall provide full access to these books and records to the County, the Secretary of HUD or his designee, the Office of Inspector General, and the General Accounting Office so that compliance with Federal laws and regulations may be confirmed. The SubGrantee further agrees to provide to the County upon request, a copy of any audit reports pertaining to the SubGrantee's financial operations during the term of this Agreement. All records pertaining to the Project are to be maintained for a minimum of five years following close-out of the Project.

#### **I. Reporting**

The SubGrantee shall file all reports and other information necessary to comply with applicable Federal laws and regulations as required by the County and HUD. This shall include providing to the County the information necessary to complete annual Performance Reports in a timely fashion.

#### **J. Timeliness**

The SubGrantee shall comply with the quarterly performance standards established in Section II-C of this Agreement. The SubGrantee understands that failure to comply with the established standards may lead to a cancellation of the Project and a loss of all unexpended funds.

#### **K. Reimbursement for Expenses**

The SubGrantee agrees that before the County can distribute any CDBG funds to it, the SubGrantee must submit to the County's Housing and Community Development Services Division

documentation in the form required by that Division which properly and fully identifies the amount which the SubGrantee is requesting at that time. The County shall have ten (10) working days to review the request. Upon approval of the request, the County will distribute the requested funds to the SubGrantee as soon as possible.

**L. Program Income**

All program income directly derived from the Arapahoe County Community Development Block Grant Program received by the SubGrantee will be retained by the SubGrantee and will be dispersed for its approved CDBG Project activities before additional CDBG funds are requested from the County. If the project ceases to exist, all program income and any outstanding loans directly generated from the use of CDBG funds will be remitted to the County. The agreement shall remain in effect during any period that the SubGrantee has control over CDBG funds, including program income.

**M. Real Property**

Real property acquired in whole or in part with CDBG funds shall be utilized in accordance with the scope and goals identified in Sections I and II of this Agreement. Should the property in question be sold or otherwise disposed of, or the approved property usage discontinued, the SubGrantee shall adhere to the requirements of 24 CFR Parts 84 or 85 (as applicable) regarding the use and disposition of real property.

**N. State and County Law Compliance**

All responsibilities of the SubGrantee enumerated herein shall be subject to applicable State statutes and County ordinances, resolutions, rules, and regulations.

**O. Subcontracts**

If subcontracts are used on the Project, the SubGrantee agrees that the provisions of this Agreement shall apply to any subcontract.

**P. Suspension or Termination**

This Agreement may be immediately suspended or terminated upon written notification from the County if the SubGrantee materially fails to comply with any term of this Agreement. This Agreement may also be terminated for convenience by mutual agreement of the County and the SubGrantee.

**Q.** In the event that the Unit of General Local Government should withdraw from the County's "Urban County" designation, this Agreement shall terminate as of the termination date of the County's CDBG grant Agreement with HUD.

**R.** The SubGrantee certifies that to the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and,
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**S. Disallowance**

If it is determined by HUD or other federal agency that the expenditure, in whole or in part, for the SubGrantee's Project or activity was improper, inappropriate or ineligible for reimbursement, then the SubGrantee shall reimburse the County to the full extent of the disallowance.

**T. Verification of Lawful Presence**

The SubGrantee shall be responsible for ensuring compliance with C.R.S. Section 24-76.5-103 by verifying the lawful presence of all persons eighteen years of age or older who apply for any benefits funded in whole or in part by the grant funds that are the subject of this Agreement. SubGrantee shall verify lawful presence in the manner required by the statute, and shall provide proof of compliance upon the request of the County.

**IV. RESPONSIBILITIES OF THE COUNTY**

**A. Administrative Control**

The Parties recognize and understand that the County will be the governmental entity required to execute all grant agreements received from HUD pursuant to the County's requests for CDBG funds. Accordingly, the SubGrantee agrees that as to its projects or activities performed or conducted under any CDBG agreement, the County shall have the necessary administrative control required to meet HUD requirements.

**B. Performance and Compliance Monitoring**

The County's administrative obligations to the SubGrantee pursuant to paragraph A above shall be limited to the performance of the administrative tasks necessary to make CDBG funds available to

the SubGrantee and to provide Housing and Community Development Services staff whose job it will be to monitor the various projects funded with CDBG monies to monitor compliance with applicable Federal laws and regulations.

**C. Reporting to HUD**

The County will be responsible for seeing that all necessary reports and information required of the County are filed with HUD and other applicable Federal agencies in a timely fashion.

**V. EXTENT OF THE AGREEMENT**

This agreement, including any documents attached as exhibits which are hereby incorporated herein by reference, represents the entire and integrated agreement between the County, and SubGrantee and supersedes all prior negotiations, representations or agreements, either written or oral. Any amendments to this agreement must be in writing and signed by both the County, and SubGrantee. If any portion of this agreement is found by a court of competent jurisdiction to be void and/or unenforceable, it is the intent of the parties that the remaining portions of this agreement shall be of full force and effect.

**VI. NOTICES**

Notices to be provided under this Agreement shall be given in writing and either delivered by hand or deposited in the United States mail with sufficient postage to the addresses set forth:

To the County:           Arapahoe County Attorney  
                                  5334 S. Prince Street  
                                  Littleton, CO 80166

and

                                  Arapahoe County Housing and Community Development Services  
                                  1690 W. Littleton Blvd., #300  
                                  Littleton, CO 80120-2069

To the SubGrantee:    City of Englewood  
                                  1000 Englewood Parkway  
                                  Englewood, CO 80110

In Witness Whereof, the Parties have caused this Agreement to be duly executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010.

SubGrantee: City of Englewood

\_\_\_\_\_  
Signature James K. Woodward

\_\_\_\_\_  
Title Mayor

Board of County Commissioners  
Arapahoe County, Colorado

\_\_\_\_\_  
Don Klemme on behalf of the Board of County Commissioners  
Pursuant to Resolution #100140

## PROJECT BUDGET

<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>
<b>Project Activities (specify by line item)</b>	<b>Estimated Total Cost of Activity</b>	<b>CDBG Funds</b>	<b>Other Funds Committed</b>
Project administration, including personnel costs, Lead Based Paint testing costs	\$50,000	\$5,000	\$45,000
Rehabilitation and handyman loans/grants	\$70,000	\$45,000	\$25,000
<b>TOTAL:</b>	<b>\$120,000</b>	<b>\$50,000</b>	<b>\$70,000</b>

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 11 c i	<b>Subject:</b> Resolution approving an addendum to the agreement with the Humane Society of South Platte Valley for animal sheltering services
<b>Initiated By:</b> City Manager's Office		<b>Staff Source:</b> Michael Flaherty, Deputy City Manager

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council approved an agreement with the Humane Society of South Platte Valley (HSSPV) on November 2, 2009. Nick Fisher, Chief Executive Office, HSSPV presented a request to City Council for supplemental funding during the Council Study Session of July 12, 2010.

### RECOMMENDED ACTION

Staff recommends approval of this resolution authorizing an addendum to the agreement with the Humane Society of South Platte Valley for animal sheltering services.

### BACKGROUND, ANALYSIS AND ALTERNATIVES IDENTIFIED

The proposed agreement addendum provides supplemental funding of \$25,000 for animal sheltering services for 2010. HSSPV agrees to refund the City 50% of any 2011 net income in excess of \$25,000, before depreciation, up to the total amount of \$25,000. HSSPV has previously agreed to cap the City's fee for services at \$50,000/year for five years. In addition, the Code Enforcement budget has been relieved of over \$25,000 of annual expenses due to the closure and demolition of the former City owned animal shelter.

### FINANCIAL IMPACT

\$25,000 on a one-time basis, to be paid from the City's General Fund contingency. The financial impact will be minimized by the refund provision of the addendum, assuming HSSPV achieves sufficient revenues in 2011.

### LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. \_\_\_\_\_  
SERIES OF 2010

A RESOLUTION APPROVING AN ADDENDUM TO THE AGREEMENT WITH THE HUMANE SOCIETY OF SOUTH PLATTE VALLEY FOR ANIMAL SHELTERING SERVICES.

WHEREAS, the Englewood City Council approved an agreement for animal sheltering services between the City and the Humane Society of South Platte Valley (HSSPV) by the passage of Resolutions No. 80 and 81, Series 2009; and

WHEREAS, the HSSPV has requested supplemental funding of \$25,000 for animal sheltering services; and

WHEREAS, the proposed agreement addendum provides supplemental funding of \$25,000 for animal sheltering services for 2010; and

WHEREAS, the HSSPV agrees to refund the City of Englewood 50% of any 2011 net income in excess of \$25,000, before depreciation, up to the total amount of \$25,000; and

WHEREAS, the passage of this Resolution approves an Addendum to the Agreement with the Humane Society of South Platte Valley for animal sheltering services;

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

Section 1. The "Addendum to Agreement for Animal Sheltering Services" between the Humane Society of the South Platte Valley, Inc. and the City, attached hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

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

ADOPTED AND APPROVED this 16th day of August, 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

**ADDENDUM TO AGREEMENT FOR ANIMAL SHELTERING SERVICES**

This Addendum is to the Agreement for Animal Sheltering Services between the City of Englewood ("City") and the Humane Society of the South Platte Valley, Inc. (the "Society"), authorized by Resolutions No. 80 and No. 81, Series of 2009.

The City agrees to provide an additional \$25,000 to the Society for the Services to provide animal sheltering as described herein.

The Society agrees to refund the City 50% of any 2011 net income, in excess of \$25,000, before depreciation, up to the \$25,000 provided by this Addendum.

The individuals executing this Addendum to the Agreement for Animal Sheltering Services represent that they are expressly authorized to enter into this Addendum on behalf of the City and the Society and bind their respective entities.

Agreed to the \_\_\_\_\_ day of August, 2010.

CITY OF ENGLEWOOD

HUMANE SOCIETY OF THE SOUTH PLATTE VALLEY, INC.

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

\_\_\_\_\_  
Chief Executive Officer

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 11 c ii	<b>Subject:</b> Resolution supporting the City's Great Outdoors Colorado (GOCO) grant application for Duncan Park planning
<b>Initiated By:</b> Department of Parks and Recreation		<b>Staff Source:</b> Gary Hultberg, Recreation Manager

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

- Ordinance No. 35, Series of 1978 – Intergovernmental Agreement between the City of Englewood and Englewood Schools for the lease of Duncan School/property for park and recreational purposes.
- Council Bill No. 41, Series of 2007 authorizing a Contract for Deed for the purchase of Duncan Park located at 4846 South Pennsylvania Street between the City of Englewood and Arapahoe County School District No. 1 (Englewood Schools)
- Council Bill No. 52 Series of 2007 authorizing an Intergovernmental Agreement regarding the 2007 grant of Arapahoe County Open Space between Arapahoe County and the City of Englewood, Colorado for Duncan Park Acquisition
- Council Bill No. 6, Series of 2008 authorizing an Intergovernmental Agreement regarding the 2007 grant of Great Outdoors Colorado between the State Board of the Great Outdoors Colorado Trust Fund and the City of Englewood, Colorado for Duncan Park Acquisition
- Council Bill No. 52, Ordinance No. 50, Series of 2009 in support of the City's GOCO grant application for Duncan Park development.

### RECOMMENDED ACTION

Staff recommends that Council approve the attached resolution supporting the City's grant application to GOCO for a site-specific planning grant for Duncan Park.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Council has authorized a three-phased purchase of Duncan Park from Englewood Schools. The final payment for Parcel #3 will be completed in 2010. Redevelopment of Duncan Park, including the removal of the old school building is supported by the Parks Master Plan, adopted 2006. The Parks and Recreation Commission has identified redevelopment of Duncan Park as a high priority. The City was unsuccessful in its grant applications to GOCO and Arapahoe County for planning and development funding for Duncan Park in 2009. Both agencies recommended that the City would likely be more successful in subsequent grant requests if Duncan had a site-specific park development plan in place rather than requesting planning and development funding together. The estimated cost of a Duncan Park plan is \$140,000. The maximum grant award for GOCO Planning grants is \$75,000 with a required City match of 25% or \$25,000.

## **FINANCIAL IMPACT**

The City's GOCO grant application will request \$75,000 in grant funds with a required City minimum match of 25% - \$25,000, to be funded from Conservation Trust Funds (lottery) and \$40,000 from Arapahoe County Open Space Grant Matching Funds (share back funds) which are presently budgeted.

## **LIST OF ATTACHMENTS**

Resolution – GOCO planning grant application support.

RESOLUTION NO. \_\_\_\_\_  
SERIES OF 2010

A RESOLUTION SUPPORTING THE GREAT OUTDOORS COLORADO (GOCO) GRANT APPLICATION FOR DUNCAN PARK PLANNING FUNDING.

WHEREAS, the City Council of the City of Englewood authorized an intergovernmental agreement between the City and Englewood Schools for the lease of Duncan School property for park and recreational purposes, with the passage of Ordinance No. 35, Series of 1978; and

WHEREAS, the City of Englewood has maintained and operated Duncan Park as a community park for over thirty years through a lease agreement with Englewood Schools and the park is considered a valuable and irreplaceable part of the Englewood park system; and

WHEREAS, Duncan Park is the only Park located in the southeast quadrant of the City of Englewood; and

WHEREAS, in 2006 the Arapahoe School District No. 1 (Englewood School District) voted to sell the Duncan Park property; and

WHEREAS, the Englewood City Council passage of Ordinance No. 42, Series of 2007 authorized a Contract for the purchase of Duncan Park located at 4848 South Pennsylvania by the City; and

WHEREAS, the Englewood City Council passage of Ordinance No. 8, Series of 2008 authorized an intergovernmental Agreement regarding the 2007 Grant of Great Outdoors Colorado (GOCO) Grant for the acquisition of Duncan Park; and

WHEREAS, the Englewood City Council passage of Ordinance No. 50, Series of 2009 supported the City's GOCO grant application for Duncan Park development; and

WHEREAS, the Englewood City Council acknowledges that the grant application includes matching funds which Englewood is solely responsible to provide if a grant is awarded; and

WHEREAS, the matching funds have been appropriated in the 2010 Budget and authorized for expenditure necessary to meet the terms and obligations of any Grant awarded; and

WHEREAS, the passage of this Resolution supports the City's grant application for \$75,000 to Great Outdoors Colorado for Duncan Park planning funding.

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 supports the Great Outdoors Colorado grant application for funding for Duncan Park planning and has appropriated matching funds in the 2010 Budget necessary to meet the terms and obligations of any Grant awarded.

ADOPTED AND APPROVED this 16th day of August, 2010.

ATTEST:

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

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

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

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

## COUNCIL COMMUNICATION

<b>Date:</b> August 16, 2010	<b>Agenda Item:</b> 11 c iii	<b>Subject:</b> Purchase replacement for City-wide phone system
<b>Initiated By:</b> Information Technology		<b>Staff Source:</b> Jeff Konishi, Director Information Technology

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approval for the purchase and implementation of a City-wide phone system as a replacement for the existing phone system.

### RECOMMENDED ACTION

Staff recommends that Council approve, by motion, an agreement with MSN Communications, Inc., through an existing State of Colorado contract for the purchase and implementation of a new City-wide phone system in the amount of \$324,201.50.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In order to maintain the current level of phone service, we recommend that the existing Avaya phone system be replaced. This project did exist in 2009; however, it did not move forward because of the poor economy and the City's budget cuts, so as a short-term solution, we upgraded our existing phone system at the sites that had the greatest risk of failure. Unfortunately, even with this upgrade, we are still experiencing poor phone call quality, having sporadic problems, and the risk of the entire phone system failing still exists. Based on these and the following concerns, replacing the phone system would lessen the risks that the City is currently facing.

- The existing phone system is 15 years old and we currently do not have a disaster recovery plan in place. Most research shows that the average life of a phone system is approximately 7 years.
- Currently, the replacement parts are only available as used or refurbished parts; no new replacements parts are being manufactured.
- We upgraded our existing phone service at Malley, Pirates Cove, and the Fox Building this year and have experienced poor phone quality and numerous problems since implementation.

Since all City departments will be affected by phone service, or the lack of phone service in the case of a failure, our recommendation to help eliminate these risks is to purchase and replace the phone system based on new Voice over Internet Protocol technology (VoIP).

In our research to find the right replacement solution, we examined several different phone systems and narrowed the field to three products. Then we did an in-depth research analysis on these three

products, which included talking with the vendor representatives, bringing the product in-house as a working demo, and talking with other municipalities that have implemented these products. That analysis concluded that Cisco VoIP was the best choice for the City based on cost, call quality and reliability, and best fit for the City – technologically and functionally.

After the product choice was made, we posted an RFP for a vendor that would help in most aspects of implementing the Cisco VoIP phone system. This vendor partner would help in creating an accurate budget for both hardware and professional services, as well as create and execute a project plan to help identify the necessary steps for a successful implementation, help in the discovery of current system components, assist in all aspects of installation, configuration, and deployment, and then provide knowledge transfer of system management to key City staff.

We received two responses from the RFP and both responses were vendors that have an existing contract with the State of Colorado to provide a negotiated price for any Cisco product purchase. Since both vendors have these contracts in place, prices from either would have been similar; however, we chose to pursue the response from MSN Communications, Inc. based on their solution presented in the RFP and expertise in this field.

#### **FINANCIAL IMPACT**

The financial impact for the City will be \$324,201.50 of which \$54,228 would be charged to Waste Water Treatment Plant, \$19,825 would be charged to Water and Sewer funds, \$16,327 would be charged to the Golf fund, and \$17,500 in annual maintenance will be immediately expensed with City Council's future approval. The remaining amount of \$216,321 will be leased for three years.

In addition, there will be an approximate annual savings of \$12,000 due to the reduced annual maintenance cost and the reduced number of phone lines that will be required.

#### **LIST OF ATTACHMENTS**

System Procurement Agreement  
MSN Communications, Inc – Statement of Work

## SYSTEM PROCUREMENT AGREEMENT

**THIS SYSTEM PROCUREMENT AGREEMENT** (the "Agreement"), dated August 3rd , 2010 (the "Effective Date"), is between **MSN Communications**, an **Englewood, CO** based Corporation ("Vendor"), and **THE CITY OF ENGLEWOOD, COLORADO**, a Colorado municipal corporation ("City"). City and Vendor may be referred to individually as a "Party" and collectively as the "Parties".

### WITNESSETH:

**WHEREAS**, City wishes to obtain Citywide VoIP System (as further described in this Agreement, the "VoIP System");

**WHEREAS**, Vendor is in the business of providing, installing, implementing and supporting such systems;

**WHEREAS**, City has considered the recommendations and proposals of Vendor regarding the implementation of a VoIP System which will satisfy City's requirements as set forth herein; and

**WHEREAS**, in accordance with City's purchasing ordinance, City has selected Vendor to provide, install, implement and support the **VoIP System** for City;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and other good and valuable consideration received and to be received, Vendor and City agree as follows:

### ARTICLE I. AGREEMENT, TERM, AND DEFINITIONS

**1.1 Agreement and Term.** The Parties agree that the terms and conditions of this Agreement apply to the purchase and sale of the VoIP System and the provision of Services to City by Vendor. The term of this Agreement commences on the Effective Date and the Agreement shall continue to be in effect until terminated by either Party as set forth in this Agreement.

**1.2 Certain Definitions.** The following definitions apply to this Agreement:

(a) "Acceptance Date" means the date on which the VoIP System is accepted by City, as indicated by execution of the Certificate of Completion.

(b) "Acceptance Tests Specifications" means the specifications set forth in the SOW for determining if the VoIP System satisfies the Acceptance Tests.

(c) "Acceptance Tests" means the manner and means of acceptance testing of the VoIP System and the Services, as described in the SOW.

(d) "Applicable Laws" means all laws, ordinances, rules, regulations, orders, interpretations, requirements, standards, codes, resolutions, licenses, permits, judgments, decrees, injunctions, writs and orders of any court, arbitrator, or governmental (federal, national, state, municipal, local or other, having jurisdiction over a Party and the location where a particular element of the Services is performed or where any part of the Equipment is situated) agency, body, instrumentality or authority that are applicable to any or all of the Parties, the Site, the Services or the terms of this Agreement, including all environmental and hazardous materials laws which are applicable to the Site or the Equipment and which are at any time applicable to performing the Services.

(e) "Certificate of Completion" means a written certificate, signed by authorized representatives of City and Vendor, stating that (1) the VoIP System has been completely delivered, assembled, installed, and tested at the Site in accordance with this Agreement, (2) as so assembled and installed, the VoIP System meets the Acceptance Tests, and (3) the VoIP System conforms in all material respects to the Specifications.

(f) "Defect" means any failure of the VoIP System to operate in material conformity with the Specifications.

(g) "Documentation" means user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the VoIP System or used in conjunction with the Services, whether distributed in print, magnetic, electronic, or video format, in effect as of the date (1) the VoIP System is accepted by City, or (2) the Service is provided to City.

(h) "Employee" means those employees, agents, subcontractors, consultants, and representatives of Vendor provided or to be provided by Vendor to perform Services pursuant to this Agreement.

(i) "Equipment" collectively means all items sold and/or installed and materials necessary for the manufacture, supply and installation of the VoIP System, all of which are to be supplied by Vendor under this Agreement.

(j) "Services" includes, but is not limited to, installation, integration, education, acceptance testing, support, maintenance, development, warranty, and time and materials services, provided or to be provided by Vendor pursuant to this Agreement.

(k) "Site" refers to the Englewood Civic Center, 1000 Englewood, Colorado 80110 and each of the 14 City facilities where phone service will be replaced to satisfy the terms of this Agreement.

(l) "Specifications" means the functional, performance, operational, compatibility, and other specifications or characteristics of the VoIP System described in this

Agreement, the Request for Proposal, the Proposal, the applicable Documentation and such other specifications or characteristics of the VoIP System agreed upon in writing by the parties.

(m) "VoIP System" means the Hardware and Software to meet the Specifications.

(n) "Warranty Period" means a period of one (1) year from the Acceptance Date, as indicated by the date of execution of the Certificate of Completion by both Parties.

(o) Statement of Work (SOW) means delivery of system components, services, and the associated schedule for implementation, testing and training.

## ARTICLE II. STATEMENT OF WORK

**2.1 Statement of Work.** Vendor shall supply the VoIP System, Documentation and Services, all in accordance with the terms of this Agreement and the Specifications, within the time frames specified in the SOW.

**2.2 Acceptance Testing.** Following installation of the VoIP System by Vendor, City shall conduct the Acceptance Tests in order to confirm that the VoIP System, as assembled and installed at the Site, satisfies the Acceptance Test Specifications in all material respects. If, in the discretion of City, the VoIP System does not meet the requirements of the Acceptance Test Specifications, City may (1) permit Vendor to repair or replace the VoIP System so that the same meets the Acceptance Test Specifications in all material respects, all at no additional expense to City, or (2) return the VoIP System to Vendor, at Vendor's expense and without liability to City, and any amounts paid by City for the VoIP System shall be promptly refunded by Vendor to City. Upon satisfactory completion of the Acceptance Tests, Vendor and City shall execute a Certificate of Completion.

**2.3 Acceptance.** City shall be deemed to have accepted the VoIP System only upon City's execution and delivery of the Certificate of Completion. Acceptance of the VoIP System does not waive any warranty or other rights provided in this Agreement for the VoIP System or Services.

**2.4 Inspection.** Payment for any part or parts of the VoIP System provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Vendor of its obligations under this Agreement. City may inspect the components of the VoIP System when delivered and reject upon notification to Vendor any and all the VoIP System which does not conform to the Specifications or other requirements of this Agreement. Components of the VoIP System which are rejected shall be promptly corrected, repaired, or replaced by Vendor in accordance with Vendor's warranty obligations under Article VI, such that the VoIP System conforms to the Specifications and the other requirements of this Agreement. If City receives components of the VoIP System with defects or non-conformities not reasonably apparent on inspection, then City reserves the right to require prompt correction, repair, or replacement by Vendor in accordance with Vendor's warranty obligations under Article VIII following the discovery of such defect or nonconformity.

**2.5 City Obligations.** City, at its expense, agrees to prepare the Site in accordance with the applicable Site Support Requirements. In the interest of initiating and actualizing a cost conscious telephony migration, City will assist in any and all implementation activities to reduce Vendor's professional service time. Vendor agrees to provide to City, at no additional charge, reasonable consultation and assistance regarding Site planning and preparation as may be necessary to enable City to prepare the Site as specified in the Site Support Requirements. An authorized Vendor site preparation engineer will review and approve the Site prior to delivery and installation of the VoIP System at the Site, in order to confirm that the Site has been prepared by City in accordance with the Site Support Requirements. If Vendor's site preparation engineer finds that the Site has not been so prepared, Vendor will notify City in writing in what respects the Site fails to conform to the Site Support Requirements. City will promptly correct any non-conformity. Vendor shall be responsible for all costs and expenses attributable to alterations or modifications to the Site necessitated by incomplete or erroneous Site Support Requirements or advice provided to City by Vendor, unless such advice was reasonable and appropriate at the time it was given.

**2.6 Problems.** Vendor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Vendor's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

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

### **ARTICLE III. EQUIPMENT**

**3.1 Shipment of Equipment.** Vendor shall ship the Equipment in such manner so as to assure the delivery of the Equipment to the Site on or before the delivery date specified in the SOW (the "Delivery Date"). Upon notice to Vendor delivered at least ten (10) days prior to the Delivery Date, City may delay the shipment of the Equipment for a period of up to ninety (90) days. In the event City so notifies Vendor, the Equipment shall be stored by Vendor until City designates a new Delivery Date. The Equipment shall be shipped by Vendor Carriage and Insurance Paid (CIP under INCOTERMS 2005) so that the Equipment will be delivered by the Delivery Date to the Site. For the purposes of this Agreement, delivery of the VoIP System shall be deemed to have occurred when the last of the components of the VoIP System (provided such components conform to the Specifications and requirements of this Agreement) has been delivered to the Site as evidenced by a bill of lading signed by the carrier ("Delivery"); provided that Delivery shall not have occurred if any Equipment not delivered delays the installation and safe operation of the VoIP System. Except as otherwise specifically agreed upon by City in writing, City shall not be required to accept early shipment of any Equipment if such shipment would result in delivery of any portion of such Equipment earlier than ten (10) days prior to the Delivery Date for such Equipment.

**3.2 Risk of Loss.** Vendor shall retain all risk of loss or damage to the Equipment until the Equipment is delivered to the Site. Risk of loss or damage to the Equipment shall pass to and vest in City upon arrival of the Equipment at the Site. City shall be responsible for all risk of physical loss or damage to the VoIP System (except loss or damage due to the fault or negligence of Vendor), following delivery of the VoIP System to a secure location provided by City at the Site.

**3.3 Passage of Title.** Title to the Equipment shall vest in City on the Acceptance Date, and Vendor shall promptly execute and deliver to City written documentation which shall be effective to confirm in City good and marketable title to the Equipment being purchased, free and clear of all obligations, mortgages, liens, pledges, custodianship, security interests, or any other encumbrances, claims, or charges of any kind whatsoever.

#### **ARTICLE IV. ALTERATIONS AND CANCELLATION**

**4.1 Alterations and Changes.** Changes and alterations in the plans or quantities, or details of installation of the VoIP System may be necessary or desirable during the course of performance under this Agreement. City reserves the right, without impairing Vendor, to require additional Services, to omit, cancel or eliminate Agreement items, to alter details of installation, and to make other changes and alterations as necessary or desirable, in City's judgment, to satisfactorily complete the project contemplated by this Agreement. Vendor shall perform such changed, additional, increased, decreased, varied or altered Services as part of the Services to be performed under this Agreement upon written notice to that effect from City, and performance thereof shall not invalidate this Agreement. If the character of the Services or the unit costs thereof are changed as a result of a change request by City, compensation for such Services will be made on such basis as may have been agreed to in writing in advance of the performance of such additional or revised Services, or in the case no such agreement have been made, a fair and equitable allowance shall be made with respect to compensation due Vendor. Except as may be otherwise provided in this Agreement, no payment for extras will be made unless such extras and the compensation to be paid therefore have been authorized in writing by the City Project Manager.

**4.2 Delays.** In the event of a delay in delivery of all or any portion of the VoIP System, or in the event of a delay in the performance of Services, which is not excused in this Agreement, City may cancel without charge all or any portion of the VoIP System or Services for which delivery or performance has been so delayed. If, in City's opinion, the delivered portion of the VoIP System is not operable without the remaining undelivered portion of the VoIP System, City may, at Vendor's expense, return any delivered portion of the VoIP System to Vendor. City shall not be liable for any expenses incurred by Vendor for canceled, undelivered, or returned portions of the VoIP System. City shall receive a refund of all amounts paid to Vendor with respect to the canceled and/or returned portion of the VoIP System and Services.

#### **ARTICLE V. SERVICES**

**5.1 Education Services.** Within the time frames set forth in the SOW, Vendor shall provide the end user and systems administrator training in accordance with the provisions set forth in the SOW.

**5.2 Support Services.** Post implementation, City would like to retain Vendor for regular support and maintenance on the newly installed VoIP System. After system acceptance, the support Services set forth in Schedule 5.2 for the VoIP System shall be provided by Vendor to City for a period of one year.

**5.3 Time and Material Services.**

(a) City may issue to Vendor written purchase orders identifying additional Services City desires to obtain from Vendor. Each purchase order may include other terms and conditions applicable to the Services ordered; such other terms shall be consistent with the terms and conditions of this Agreement, or shall be necessary to place a purchase order, such as: (1) a price and milestone payment schedule, (2) a project performance schedule, including the appropriate work steps and phases, (3) specifications or characteristics of the developed products or Services to be performed, and (4) functional and detailed design specifications, and (5) acceptance criteria for the deliverables.

(b) Vendor shall promptly accept purchase orders by providing to City a written or an oral acceptance of such purchase order, or by commencing performance pursuant to such purchase order. Vendor shall accept purchase orders which do not establish new or conflicting terms and conditions from those set forth in this Agreement. Vendor shall also accept purchase orders incorporating terms and conditions which have been separately agreed upon in writing by the parties.

(c) Vendor may reject a purchase order for Services or any alteration to a purchase order for Services which increases the Services required or advances the delivery date for said Services provided a Statement of Work has not previously been agreed to by the parties.

(d) Vendor may reject a purchase order which does not meet the conditions described in subsection (b) or (c) above by promptly providing to City a written explanation of the reasons for such rejection. Vendor shall accept an alteration to the originally issued purchase order if such alteration remedies the items set forth in Vendor's written rejection.

(e) City may issue an alteration to a purchase order in order to, without limitation, (1) change a location for delivery, (2) modify the quantity or type of Services to be delivered or performed, (3) implement any change or modification as required by or permitted in this Agreement, or (4) correct typographical or clerical errors.

**5.4 Services in General.** In connection with the performance of any Services pursuant to this Agreement:

(a) Unless a specific number of Employees is set forth in the governing purchase order, Vendor warrants it will provide sufficient Employees to complete the Services

ordered within the applicable time frames established pursuant to this Agreement or as set forth in a purchase order. Furthermore, Vendor shall, at its expense, supply all tools, equipment and other materials necessary to perform the Services contemplated in this Agreement.

(b) Vendor warrants that Employees shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

(c) Employees performing Services in the United States must be United States citizens or lawfully admitted in the United States for permanent residence or lawfully admitted in the United States holding a visa authorizing the performance of Services on behalf of Vendor. Vendor shall not discriminate against any Employee, applicant for employment, or any member of the public because of race, color, religion, sex, national origin or any other class protected by federal, state or local employment discrimination laws. Vendor shall adhere to affirmative action guidelines in selecting employees and shall ensure that employees are treated equally during employment, without regard to their race, color, religion, sex, national origin or any other class protected by federal, state or local employment discrimination laws. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(d) Vendor warrants that all Employees utilized by Vendor in performing Services are under a written obligation to Vendor requiring the Employee to maintain the confidentiality of information of City.

(e) Vendor shall require Employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each Employee providing Services to undergo a background investigation, including, but not limited to a criminal records and fingerprint check. Vendor shall promptly replace any Employee found to be unacceptable to City, in its discretion, on the basis of the results of a background investigation.

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

(g) During the course of performance of Services, City may, for any or no reason, request replacement of an Employee or a proposed Employee. In such event, Vendor shall, within five (5) working days of receipt of such request from City, provide a substitute Employee of sufficient skill, knowledge, and training to perform the applicable Services. If, within the first thirty (30) days after an Employee's commencement of Services, City notifies Vendor (1) such Employee's level of performance is unacceptable, (2) such Employee has failed

to perform as required, or (3) such Employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then City shall not be required to pay for Services provided by such Employee during such period and Vendor shall refund to City all amounts paid for such Employee's Services. If City requests replacement of an Employee for the above-referenced reasons after such thirty (30) day time period, or at any time for a reason other than the reasons indicated above, City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Vendor for such Employee's Services after the date of City's requested replacement of such Employee.

(h) Vendor shall establish and shall retain, for a period of three (3) years following the performance of time and materials Services, records which adequately substantiate the applicability and accuracy of Charges for such Services and related expenses to City. Upon receipt of reasonable advance notice from City, Vendor shall produce such records for audit by City.

(i) Vendor and City each agree to appoint a qualified staff member or members, at no additional charge, to function as overall Project Manager(s). The Vendor Project Manager and the City Project Manager will act as the principal points of interface between the Parties.

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

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

## **ARTICLE VI. WARRANTIES, INDEMNITIES, AND LIABILITIES**

**6.1 Warranty.** Vendor represents and warrants that:

(a) Vendor has full right and authority to perform its obligations under this Agreement.

(b) Neither Vendor nor any director, employee or agent of Vendor or its subcontractors or vendors shall, without prior written notification thereof to City, enter into any business relationship with any employee or agent of City unless such person is acting for and on behalf of City.

(c) The Equipment, at the Acceptance Date, will be new and free from Defects in material and workmanship

(d) City shall obtain good and marketable title to the Equipment, free from any lien or encumbrance.

(e) City shall be entitled to use the VoIP System without disturbance.

(f) The VoIP System and the design thereof shall not contain preprogrammed preventative routines or similar devices which prevent City from exercising the rights set forth in this Agreement or from utilizing the VoIP System for the purposes for which it was designed.

(g) The accepted VoIP System shall function properly under ordinary use and operate in conformance with the Specifications.

(h) Based on Vendor's discovery of City's existing telephony system which are to be replaced by the VoIP System, and the demonstrations, conversations, correspondence, and the Request for Proposal documents, Vendor has gained a good understanding of City's requirements pertaining to a permits tracking system. Based on this in-depth understanding and combining it with Vendor's knowledge and experience with other municipal organizations, Vendor warrants that the proposed system has been sized to meet City's current needs and accommodate growth in the near future.

(i) The VoIP System does not infringe on any intellectual property rights of any third party.

This agreement shall include Vendor support and maintenance for the first year of VoIP System operation. Vendor warrants that the VoIP System will operate as expected by Englewood and will provide warranty Service to City at no additional cost, including all Services or replacement products or product media necessary to enable Vendor to comply with the warranties set forth in this Agreement. Vendor shall pass through to City any manufacturers' warranties which Vendor receives on the VoIP System and, at City's request, Vendor shall enforce such warranties on City's behalf.

**6.2 Proprietary Rights Indemnification.** Vendor represents and warrants that (1) no element of the VoIP System and/or methodology provided under this Agreement is the subject of any litigation ("Litigation"), and (2) Vendor has all right, title, ownership interest, and/or marketing rights necessary to provide the VoIP System and/or methodology to City and that each License, the VoIP System and/or methodology, and their sale, license, and use hereunder do not and shall not directly or indirectly violate or infringe upon any copyright, patent, trade secret, or other proprietary or intellectual property right of any third party or contribute to such violation or infringement ("Infringement"). Vendor shall indemnify and hold City and all end users and their respective successors, officers, employees, and agents harmless from and against any and all actions, claims, losses, damages, liabilities, awards, costs, and

expenses (including legal fees) resulting from or arising out of any Litigation, any breach or claimed breach of the foregoing warranties, or which is based on a claim of an Infringement and Vendor shall defend and settle, at its expense, all suits or proceedings arising there from. City shall inform Vendor of any such suit or proceeding against City and shall have the right to participate in the defense of any such suit or proceeding at its expense and through counsel of its choosing. Vendor shall notify City of any actions, claims, or suits against Vendor based on an alleged Infringement of any Party's intellectual property rights in and to the VoIP System and/or methodology. In the event an injunction is sought or obtained against use of the VoIP System and/or methodology or in City's opinion is likely to be sought or obtained, Vendor shall promptly, at its option and expense, either (i) procure for City its end users the right to continue to use the infringing portion(s) of the VoIP System and/or methodology as set forth in this Agreement, or (ii) replace or modify the infringing portions of the VoIP System and/or methodology to make its use non-infringing while being capable of performing the same function without degradation of performance.

**6.3 Indemnification.** In the event any act or omission of Vendor or its employees, servants, agents, or representatives causes or results in (1) damage to or destruction of property of City or third parties, and/or (2) death or injury to persons including, but not limited to, employees or invitees of City, then Vendor shall indemnify, defend, and hold City, its agents and employees harmless from and against any and all claims, actions, damages, demands, liabilities, costs, and expenses, including reasonable attorneys' fees and expenses, resulting there from. Vendor shall pay or reimburse City promptly for all such damage, destruction, death, or injury.

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

**6.5 Insurance.** Vendor shall, at Vendor's sole expense, maintain the following insurance:

(a) Commercial General Liability Insurance including contractual coverage:  
The limits of this insurance for bodily injury and property damage combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000

(b) Business Automobile Liability Insurance: Should the performance of this Agreement involve the use of automobiles, Vendor shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Vendor shall maintain limits of at least \$2,000,000 per occurrence for bodily injury and property damage combined.

(c) **Workers' Compensation Insurance:** Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverage is elective in that state.

(d) **Employers Liability Insurance:** Such insurance shall provide limits of not less than \$500,000 per occurrence.

(e) **Professional Liability/Errors and Omissions Insurance** covering acts, errors and omissions arising out of Vendor's operations or Services in an amount not less than \$2,000,000 per occurrence

The insurance specified in (a) and (b) above shall: (1) name City, its officers, employees and agents as additional insureds, and, (2) provide that such insurance is primary coverage with respect to all insureds and additional insureds.

The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. City may require higher limits or other types of insurance coverage(s) as necessary and appropriate.

Vendor shall provide at City's request certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Vendor shall require all insurers to provide City with a thirty (30) day advanced written notice of any cancellation, non-renewal or material change in any of the policies maintained in accordance with this Agreement.

**6.6 Survival of Article VI.** The provisions of this Article VIII shall survive the term or termination of this Agreement for any reason.

## **ARTICLE VII. PAYMENTS TO VENDOR**

**7.1 Contract Price.** The total price for the purchase of the VoIP System, including but not limited to the purchase of the Equipment, and the provision of the Documentation and Services (exclusive of periodic maintenance and support Service payments and other time and material Service payments which are to be made in consideration of the performance of maintenance and support and time and material Services) is a fixed price of Three Hundred and Twenty-Four Thousand, Two-Hundred and one and ½ Dollars (\$324,201.50) (the "Contract Price"). Charges, prices, and fees ("Charges") and discounts, if any, for maintenance and support Services and time and material Services are as set forth in Schedule 7.1, in a purchase order, or as otherwise agreed upon by the parties, unless modified as set forth in this Agreement. Upon City's request, Vendor shall provide to City copies of records which substantiate that City has received the Charges and discounts to which City is entitled to under this Agreement. Except as expressly provided in this Agreement, Vendor and City shall each bear all of its own expenses arising from performance of its obligations under this Agreement, including (without limitation) expenses relating to personnel, facilities, utilities, Equipment, supplies, clerical and the like.

**7.2 Payment; Invoicing.**

(a) City shall make payments of the Contract Price to Vendor in the amounts and at the times specified in the Statement of Work (SOW). With respect to all other payments which are due from City to Vendor hereunder, any undisputed sum due to Vendor pursuant to this Agreement shall be payable within forty five (45) days after receipt by City of a correct invoice therefore from Vendor. Periodic payments, if any, due to Vendor pursuant to this Agreement shall be invoiced at the beginning of the period to which they apply. Payment for any other Services shall be invoiced as agreed upon by the parties or, in the absence of an agreement, upon completion of such Services.

(b) A "correct" invoice shall contain (1) Vendor's name and invoice date, (2) the specific purchase order number if applicable, (3) description including serial number as applicable, price, and quantity of the Services actually delivered or rendered, (4) credits (if applicable), (5) name (where applicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent, and (6) other substantiating documentation or information as may reasonably be required by City from time to time. A correct invoice must be submitted to the appropriate invoice address listed on the applicable purchase order.

### **7.3 Taxes.**

(a) City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be included in quoted prices. City shall not be obligated to pay or reimburse Vendor for any taxes attributable to the sale of any VoIP System or Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Vendor.

(b) Upon written notification by City and subsequent verification by Vendor, Vendor shall reimburse or credit, as applicable, City in a timely manner, for any and all taxes erroneously paid by City.

(c) City shall provide Vendor with, and Vendor shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

**7.4 Modifications to Charges.** Where a change in an established Charge for any of the Services set forth in Schedule 7.1 is provided for in this Agreement, Vendor shall give to City at least ninety (90) days' prior written notice of such change.

(a) Any increase in a Charge shall not occur during the first twelve (12) months of this Agreement, during the term of the applicable purchase order or during the specified period for performance of Services, whichever period is longer. Thereafter, any increase in a Charge shall (1) not occur unless a minimum of twelve (12) months has elapsed since the effective date of the previously established Charge, and (2) not exceed five percent (5%) of such Charge.

(b) All purchase orders issued by City prior to the end of the required notice period will be honored at the then current Charges so long as the scheduled delivery date of the Services is within ninety (90) days after the effective date of the increase.

## **ARTICLE VIII. TERMINATION**

**8.1 Termination for Convenience.** City may terminate this Agreement, or any part hereof, for its sole convenience by giving written notice of termination to Vendor. Upon Vendor's receipt of such notice, Vendor shall, unless otherwise specified in the notice, immediately stop all work hereunder and, to the extent permitted under each applicable subcontract or agreement, give prompt written notice to suppliers and subcontractors to cease all related work. Vendor shall be paid the price specified herein for all non-defective work performed hereunder as of the date of City's termination notice, such payment to be made within thirty (30) business days after Vendor delivers such work to City, in its then current form, free and clear of all liens. Except for costs necessary to implement City's termination directive, Vendor shall not be paid for any work done after receipt of such notice, for any costs incurred by Vendor's suppliers or subcontractors after receipt of City's termination notice, or for work which Vendor could reasonably have avoided. Notwithstanding the foregoing, in no event shall the aggregate changes to be paid by City under this Section exceed the unpaid portion of the contract price.

**8.2 Termination for Cause.** Except as provided below by the Section of this Agreement titled "Termination for Non-Payment," in the event that either Party materially or repeatedly defaults in the performance of any of its duties or obligations set forth in this Agreement, and such default is not substantially cured within thirty (30) days after written notice is given to the defaulting Party specifying the default, then the Party not in default may, by giving written notice thereof to the defaulting Party, terminate this Agreement or the applicable License relating to such default as of a date specified in such notice of termination.

**8.3 Termination for Insolvency or Bankruptcy.** Either Party may immediately terminate this Agreement by giving written notice to the other Party in the event of (1) the liquidation or insolvency of the other Party, (2) the appointment of a receiver or similar officer for the other Party, (3) an assignment by the other Party for the benefit of all or substantially all of its creditors, (4) entry by the other Party into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, or (5) the filing of a meritorious petition in bankruptcy by or against the other Party under any bankruptcy or debtors' law for its relief or reorganization.

**8.4 Termination for Non-Payment.** Vendor may terminate this Agreement or a License granted hereunder if City fails to pay when due any undisputed amounts due and such failure continues for a period of sixty (60) days after the last day payment is due, so long as Vendor gives City written notice of the expiration date of the aforementioned sixty (60) day period at least thirty (30) days prior to the expiration date.

**8.5 Termination for Non-Appropriation.** The parties understand and acknowledge that each Party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The

Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of Customer are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period ending upon the next succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City and other Applicable Law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

**8.6 Rights Upon Termination.** Unless specifically terminated as set forth in this Article, all Licenses (and City's right to use the Vendor Software in accordance with such Licenses) and purchase orders which require performance or extend beyond the term of this Agreement shall, at City's option, be so performed and extended and shall continue to be subject to the terms and conditions of this Agreement

## **ARTICLE IX. MISCELLANEOUS**

**9.1 Binding Nature, Assignment, and Subcontracting.** This Agreement shall be binding on the parties and their respective successors in interest and assigns, but Vendor shall not have the power to assign this Agreement or subcontract performance of any Services without the prior written consent of City. If Vendor subcontracts or delegates any of its duties or obligations of performance in this Agreement or in a purchase order to any third party, with the consent of the City, Vendor shall remain fully responsible for complete performance of all of Vendor's obligations set forth in this Agreement or in such purchase order and for any such third party's compliance with the non-disclosure and confidentiality provisions set forth in this Agreement.

**9.2 Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties.

**9.3 Headings.** The Article and Section headings used in this Agreement are for reference and convenience only and shall not enter into the interpretation hereof.

**9.4 Relationship of Parties.** Vendor is performing pursuant to this Agreement only as an independent contractor. Vendor has the sole obligation to supervise, manage, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between Vendor and City. Vendor shall not act or attempt to act or represent itself, directly or by implication, as an agent of City or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, City.

**9.5 Confidentiality.** Vendor acknowledges that in the course of performance of its obligations pursuant to this Agreement, Vendor may obtain confidential and/or proprietary

information of City or its residents or contractors. "Confidential Information" includes: information relating to development plans, costs, finances, equipment configurations, data, access or security codes or procedures utilized or acquired; personnel information; resident information; contractor information; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; and any copies of the prior categories or excerpts included in other materials created by Vendor. Vendor hereby agrees that all Confidential Information communicated to it by City, its agents or employees, whether before or after the Effective Date, shall be and was received in strict confidence, shall be used only for purposes of this Agreement, and shall not be disclosed by Vendor, its agents or employees without the prior written consent of City. This provision shall not apply to Confidential Information which is (1) already known by Vendor without an obligation of confidentiality, (2) publicly known or becomes publicly known through no unauthorized act of Vendor, (3) rightfully received from a third party (other than a City employee or agent) without obligation of confidentiality, (4) disclosed without similar restrictions by City to a third party, (5) approved by City for disclosure, or (6) required to be disclosed pursuant to a requirement of a governmental agency or law so long as Vendor provides City with timely prior written notice of such requirement. Except with respect to Vendor Software, which shall be governed by the Section of this Agreement titled "Non-Disclosure," information received by City from Vendor shall only be considered proprietary and/or confidential after a separate agreement in the form of Exhibit C, attached hereto, has been executed by a duly authorized representative of each Party for the specific purpose of disclosing such information. The provisions of this Section shall survive the term or termination of this Agreement for any reason.

**9.6 Media Releases.** Except for any announcement intended solely for internal distribution by Vendor or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Vendor, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Vendor or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of City, shall be coordinated with and approved in writing by City prior to the release thereof. Vendor shall not represent directly or indirectly that any Vendor Software or Service provided by Vendor to City has been approved or endorsed by City or include the name, trade mark, or symbol of City on a list of Vendor's customers without City's express written consent.

**9.7 Labor.** Vendor shall comply with any labor jurisdictions applicable to Vendor's performance pursuant to this Agreement and shall cooperate with City in resolving any disputes resulting from any jurisdictional or labor claims or stoppages. Upon request by Vendor, City shall provide to Vendor clarification and guidelines regarding relationships with labor and Vendor's responsibilities with respect thereto.

**9.8 Notices; Project Managers.**

(a) Wherever one Party is required or permitted to give notice to the other pursuant to this Agreement, such notice shall be deemed given when delivered in hand, when mailed by registered or certified mail, return receipt requested, postage prepaid, when sent by a

third party courier service where receipt is verified by the receiving Party's acknowledgment, or sent by facsimile (provided that any notice sent by facsimile shall be confirmed by written notice dispatched by mail or courier service as provided above within three (3) days following facsimile transmittal), and addressed as follows:

In the case of City:

Andréa Aragon  
1000 Englewood Pkwy  
Englewood, Colorado 80110  
Fax: (303) 783-6896

With a copy to:

Office of the City Attorney  
1000 Englewood Pkwy  
Englewood, Colorado 80110  
Fax: 303.783.6892  
Attn: City Attorney

In the case of Vendor:

Darcy Hannapel  
20 Inverness Place East  
Englewood, CO 80112  
Fax: (303) 347-8335

With Copy to:

Jeff Pointer  
20 Inverness Place East  
Englewood, CO 80112  
Fax: (303) 643-6795

Either Party may from time to time change its address for notification purposes by giving the other Party written notice of the new address and the date upon which it will become effective; first class, postage prepaid, mail shall be acceptable for provision of change of address notices.

(b) Project Managers shall be as follows:

In the case of the City: Andréa Aragon

In the case of Vendor: Darcy Hannapel

**9.9 Severability.** If, but only to the extent that, any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Agreement is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

**9.10 Waiver.** Any waiver of this Agreement or of any covenant, condition, or agreement to be performed by a Party under this Agreement shall (1) only be valid if the waiver is in writing and signed by an authorized representative of the Party against which such waiver is sought to be enforced, and (2) apply only to the specific covenant, condition or agreement to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

**9.11 Remedies.** All remedies set forth in this Agreement, or available by law or equity shall be cumulative and not alternative, and may be enforced concurrently or from time to time.

**9.12 Survival of Terms.** Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement which (1) the parties have expressly agreed shall survive any such termination or expiration, or (2) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

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

**9.14 GOVERNING LAW AND VENUE.** THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. RATHER THESE RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY THE LAWS, OTHER THAN CHOICE OF LAW RULES, OF THE STATE OF COLORADO. VENUE FOR ANY ACTION ARISING UNDER THIS AGREEMENT OR FOR ENFORCEMENT OF THIS AGREEMENT SHALL BE IN THE APPROPRIATE COURT FOR ARAPPAHOE COUNTY, COLORADO.

**9.15 Discrepancy and Omissions.** If anything necessary for the clear understanding of the Services has been omitted from the Agreement specifications or it appears that various instructions are in conflict, Vendor shall secure written instructions from City's project director

before proceeding with the performance of the Services affected by such omissions or discrepancies.

**9.16 Entire Agreement.** This Agreement constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Agreement which are not fully expressed in the Agreement. This Agreement shall not be amended except by a written agreement signed by both parties. All exhibits, documents, and schedules referenced in this Agreement or attached to this Agreement, and each purchase order are an integral part of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and any such exhibits, documents, or schedules, the terms of this Agreement shall be controlling unless otherwise stated or agreed. Any other terms or conditions included in any shrink-wrap license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the parties shall not be incorporated in this Agreement or be binding upon the parties unless the parties expressly agree in writing or unless otherwise provided for in this Agreement.

**IN WITNESS WHEREOF,** Vendor and City acknowledge that each of the provisions of this Agreement were expressly agreed to and have each caused this Agreement to be signed and delivered by its duly authorized officer or representative as of the Effective Date.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF ENGLEWOOD, COLORADO**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

MSN Communications

Vice President

## STATEMENT OF WORK (SOW)

*See Statement of Work For City of Englewood Cisco Unified Communications City Wide Deployment.*

### SCHEDULE 5.2

#### SYSTEM SUPPORT AND MAINTENANCE

1. Obligations. Maintenance of and support for the VoIP System as required in connection with this Agreement shall be provided to City in accordance with the provisions of this Schedule 5.2.

2. MSN warrants out Professional Services for 30 days post project acceptance. If a configuration is wrong or out of scope MSN will resolve the issue.

3. Any bugs, patches, etc. identified by Cisco that are out of MSN's control will be addressed via Smartnet.

4. MSN will provide phone Support Services for 30 days post acceptance of the implementation. Support will not only be related to deficiencies with the implementation, but to address issues such as assisting with changes, clarifying configurations, etc. Support will be provided 8:00 a.m. – 5:00 p.m, local time, Monday through Friday.

5. The City will have one year of 7x24x365 access to Cisco Technical Support to assist with any problems that may arise.

**SCHEDULE 7.1**

**FEES AND CHARGES**

*See attached Sales Quote 122896 for details of fees and charges for City of Englewood Cisco Unified Communications City Wide Deployment.*

## EXHIBIT C

### NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT, dated 8/03/2010, is between THE CITY OF ENGLEWOOD, COLORADO, a Colorado municipal corporation ("City") and MSN Communications ("Vendor").

#### WITNESSETH:

**WHEREAS**, Vendor may provide information to City in connection with the business purposes described in Schedule A, attached hereto, (the "Business Purpose") and Vendor desires City to keep certain of such information confidential; and

**WHEREAS**, in consideration of the disclosure of such information to City, City is willing to keep such information confidential in accordance with the terms and conditions set forth in this Non-Disclosure Agreement;

**NOW, THEREFORE**, City and Vendor hereby agree as follows:

**1. Information.** As used herein, "Information" shall mean both (i) written information received by City from Vendor which is marked or identified as confidential, and (ii) oral or visual information identified as confidential at the time of disclosure which is summarized in writing and provided to City by Vendor in such written form promptly after such oral or visual disclosure.

**2. Confidentiality.** City may use Information received under this Non-Disclosure Agreement, and may provide such Information to its employees and contractors for their use, only in connection with the Business Purpose. City agrees that, subject to the requirements of the Colorado Open Records Act, CRS Section 24-72-101 et. seq., for a period of two (2) year from receipt of Information, City will treat the Information with the same degree of care and confidentiality which City provides for similar information belonging to City which City does not wish disclosed to the public, but not less than reasonable care. The foregoing shall not prevent City from disclosing Information which is (i) already known by City without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of City, (iii) rightfully received from a third party without obligation of confidentiality, (iv) independently developed by City without use of the Information, (v) disclosed without similar restrictions by Vendor to a third party, (vi) approved by Vendor for disclosure, or (vii) required to be disclosed pursuant to a requirement of a governmental agency or law so long as City provides Vendor with timely prior written notice of such requirement.

**3. Return of Information.** Upon completion of the Business Purpose and upon the written request of Vendor, City shall return all copies of the Information to Vendor or certify in writing that all copies of the Information have been destroyed. City may return the Information, or any part thereof, to Vendor at any time.

**4. Disclaimer of Warranty and Limitation of Liability.** Vendor makes no warranty, express or implied, with respect to the Information. Neither party shall be liable to the other hereunder for amounts representing loss of profits, loss of business, or indirect, consequential, exemplary, or punitive damages of the other party in connection with the provision or use of the Information hereunder.

**5. No Further Rights.** Nothing contained in this Non-Disclosure Agreement shall be construed as granting or conferring any rights by license or otherwise in the Information except as provided hereunder.

**6. No Commitment.** The parties expressly agree that the provision of Information under this Non-Disclosure Agreement and discussions held in connection with the Business Purpose shall not prevent City from pursuing similar discussions with third parties or obligate City to continue discussions with Vendor or to take, continue or forego any action relating to the Business Purpose. Any estimates or forecasts provided by City to Vendor shall not constitute commitments.

**7. Media Releases.** All media releases and public announcements or disclosures by Vendor relating to this Non-Disclosure Agreement, its subject matter or the Business Purpose shall be coordinated with and approved by City in writing prior to the release thereof.

**8. Miscellaneous.** Any notices required by this Non-Disclosure Agreement shall be given in hand or sent by first class mail to the applicable address set forth in Schedule A. The parties agree that this Non-Disclosure Agreement and any attachments hereto (i) are the complete and exclusive statement between the parties with respect to the protection of the confidentiality of the Information, (ii) supersede all related discussions and other communications between the parties, (iii) may only be modified in writing by authorized representatives of the parties, and (iv) SHALL BE GOVERNED BY THE LAWS, OTHER THAN CHOICE OF LAW RULES, OF THE STATE OF COLORADO.

IN WITNESS WHEREOF, City and Vendor have each caused this Non-Disclosure Agreement to be signed and delivered by its duly authorized officer or representative, all as of the date first set forth above.

**CITY OF ENGLEWOOD, COLORADO**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

MSN Communications

By. \_\_\_\_  
Title: Vice President

**SCHEDULE A**

**BUSINESS PURPOSE AND NOTICES**

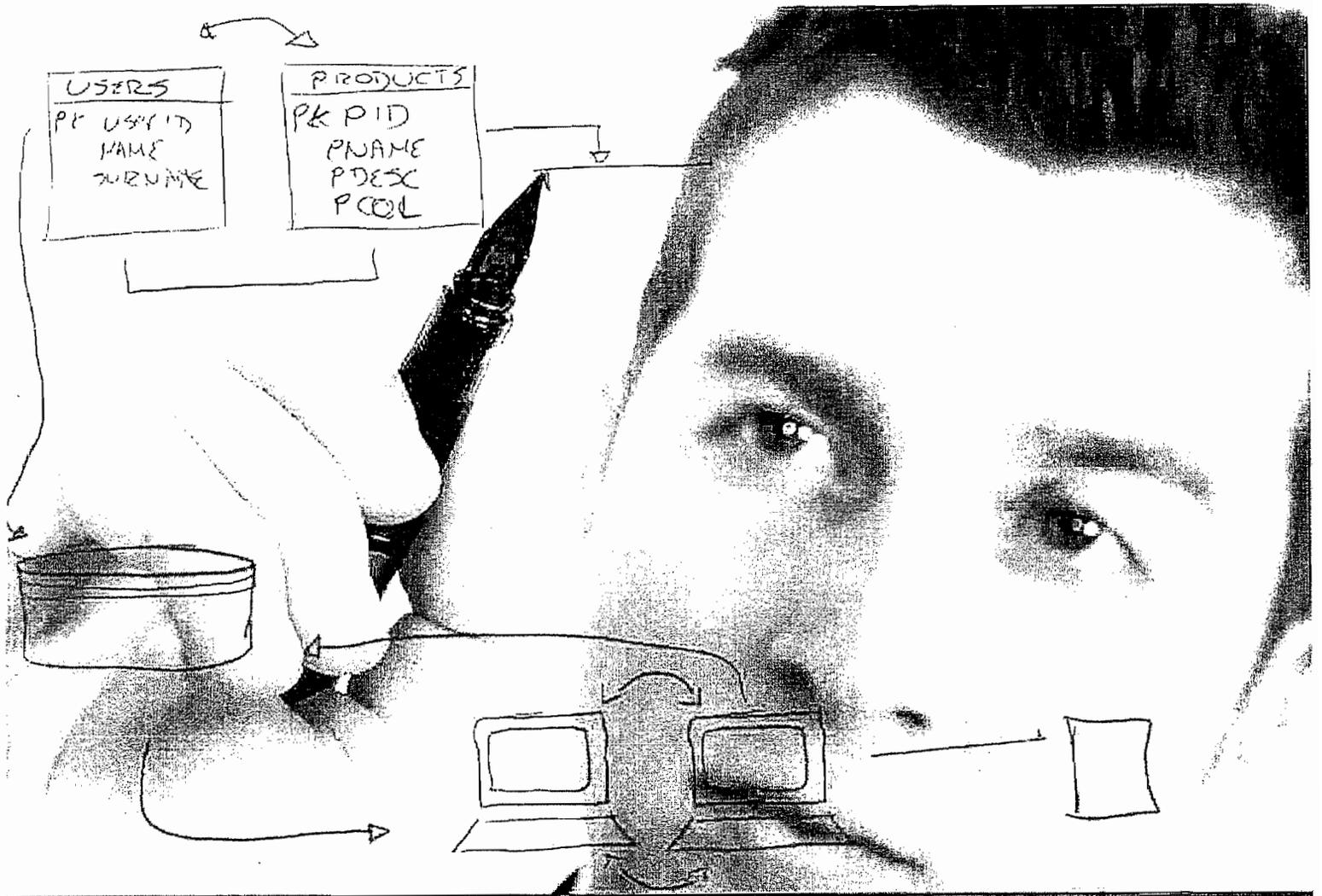
Business Purpose:

Addresses for Notices:

City:

With a copy to:

Vendor:



# Statement of Work For City of Englewood

Cisco Unified Communications City Wide  
Deployment

8/04/2010

**msn**  
communications, inc

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**PROFESSIONAL SERVICES  
STATEMENT OF WORK  
Fixed Price Project**

<b>Customer:</b>	<b>City of Englewood</b>
<b>Account Manager:</b>	<b>Jeff Pointer</b>
<b>Author of SOW:</b>	<b>Bill Herwig</b>
<b>Project:</b>	<b>Cisco Unified Communications City Wide Deployment</b>
<b>Date:</b>	<b>8/04/2010</b>

**NOTE: This Statement of Work is valid for 60 days.**

**Objective Statement**

The objective of this project is to provide a scalable VoIP solution that duplicates the features and functionality of the City's current solution.

**1.0 PROJECT OVERVIEW**

Customer authorizes MSN Communications ("MSN") to perform the following:

The City of Englewood has asked that MSN Communications consult with them to design a best practice solution to support the voice services for the City of Englewood employee's city wide. MSN has in turn proposed a solution that will provide a redundant, reliable, and scalable Cisco voice solution to be deployed at 12 facilities with 18 physical building locations across the City of Englewood properties. The following is a list of the locations planned to be migrated to the new Cisco Unified Communications platforms:

- Civic Center
- Safety (includes main building, Jefferson Fire Station, and Fox Street building)
- WWTP (include main building plus 3 outlying buildings)
- Service Center (main building plus Building 11)
- Golf Course
- Golf Maintenance
- Acoma
- Tejon
- Recreation Center
- Malley
- Pirates Cove
- Allen

The Civic Center will be the primary location and will house the following applications to provide voice services for the City of Englewood employees and 18 locations.

- One Cisco Unified Call Manager with the other server housed at a different location
- Unity Connection Voicemail solution
- Voice gateway routers for integration to the Avaya PBX and QSIG integration

The additional seventeen locations will support a combination of:

- Cisco IP phones
- Cisco SRST (Survivable Remote Site Telephony) routers
  - Local trunking support
  - Analog FXS support for Faxes, modems and POTS phones
  - 911 services
  - SRST support

During the first phase of the Cisco Unified Communications platforms two Cisco voice gateway routers will be installed to support On Net calling between the Avaya and the Cisco phone users. Cisco users will also use the PSTN access connected to the Avaya for inbound and outbound calling through the attached two Cisco voice gateways. Once all Avaya users are migrated to the Cisco voice platforms the PSTN access will be moved to the Cisco Voice gateways located at the Civic Center and the Avaya will be turned down.

Two Cisco Call Manager servers will be deployed to support redundancy of the application. A Publisher and a Subscriber will be installed with Call Manager software to act as a redundant pair. Unity Connection Voicemail will be installed on a single server in a non redundant solution. Redundancy can be added at a later time if the City of Englewood decides that the voicemail is a critical component to doing business.

Overhead paging will be supported with an integration using an FXS port off of one of the Cisco Voice gateway routers at required sites.

Analog connectivity will be provided with either VG224 analog gateways or with modules installed in the routers at each location.

WAN connectivity is in place today and is a combination of MPLS and T-1 connectivity.

MSN engineers will be responsible for all installation, configuration and testing of the planned 18 site deployment. Knowledge transfer and documentation will be provided to the staff at City of Englewood throughout the deployment to help facilitate their education and skill sets in regards to the Cisco Unified Communications applications for future installs and troubleshooting.

## **2.0 DELIVERABLES**

In addition to the services being performed as described above MSN will also provide:

- MSN will deploy the Cisco Unified Communications Call Managers on the Cisco Unified Computing System. Features and programming include but are not limited to:
  - Dial plans
  - Class of Service parameters
  - Route plans
  - Least Cost Routing plans
  - Phone parameters
  - Partitions and regions
  - Voicemail access and mailbox parameters
- MSN will set Quality of Service parameters on the LAN and WAN to meet best practice guidelines to support voice and data across the same LAN and WAN architectures

- The 17 remote locations will be checked for SRST failover in case of a WAN failure to validate users will still be able to make and receive calls and dial 911 for emergency services.
- Failover of Cisco Call Manager Publisher and Subscriber servers will be tested and verified
- Voice gateway's will be set up to support On Net dialing between the Cisco and Avaya PBX.
- MSN will train the trainers that will pass on additional training to the users that will adapt the new Unity Connection voicemail solution.
- MSN will test and validate fax sending and receiving and modem connectivity.
- Overhead paging will be tested using an FXS port. If a FXO port is required for the integration to the paging amplifier a change order will need to be issued to purchase the proper FXO card.

See Attachment A for Acceptance of Deliverables

### **3.0 PROJECT MANAGEMENT**

The assigned Project Manager will serve as a single point of contact for the project stakeholders and will implement management methodologies such as monitoring, controlling, reporting, risk management, quality control management and communication.

### **4.0 ANTICIPATED START AND END DATE**

Upon signature of this statement of work, Customer and MSN will mutually determine project start and end dates.

MSN services will be performed during normal business hours of 8 am to 5 PM local time, Monday through Friday, excluding MSN holiday (See attachment E for list of MSN holidays), except as noted otherwise in this Statement of Work.

### **5.0 CUSTOMER RESPONSIBILITIES**

Under this agreement, Customer agrees to:

- Englewood will provide a list of all extensions that will migrate to the new Unity Connection voicemail solution in a .CSV file or file type requested from the MSN engineer. Englewood will work with MSN to determine maintenance windows for user migration.
- Englewood will work with MSN engineer to coordinate proper programming on the Avaya to perform the voice gateway QSIG integration.
- Assign a Customer representative to facilitate communications, coordinate any required Change Order Requests, and perform Deliverable Material Acceptance.
- Provide site contact name and site access information (directions, building access and hours) for each site
- Schedule any and all foreseen service disruptions at times agreed upon by both MSN and customer to minimize impact on customer business operations
- Provide physical access, passwords, access codes or security devices necessary to perform the Scope of Services.
- All cabling not supplied by MSN is the responsibility of the customer. MSN will work with the customer to assess cabling requirements. City will be responsible for any remediation regarding cabling. Any equipment required for this installation that is not covered by the SOW must be installed and configured by the customer. MSN will work with the customer to assess additional equipment requirements. City will be responsible for any remediation regarding

additional equipment. Customer will be responsible for providing all circuit order information and turn-up contacts on all circuits to be activated by MSN, if this service is requested and applicable.

- Customer will ensure compliance with any national or local safety and building regulations or similar requirements affecting installation.
- Customer will work with MSN in a timely fashion to complete Project task, test, acceptance and project sign off.
- Customer will adhere to procedures as defined in the following Attachments:
  - See Attachment A for Deliverable Material Acceptance Procedure
  - See Attachment B for Escalation Procedures
  - See Attachment C for Risk and Issue Management Procedures
  - See Attachment D for Engagement Change Control Procedures
  - See Attachment E for MSN Holidays for 2010

## **6.0 PRICING**

Total Services Charges: **\$98,200**

Travel and expenses are included.

## **7.0 PAYMENT**

All Payment terms are net 30.

Charges for Implementation Phases will be invoiced on the following Schedule:

- 30% of Project will be invoiced upon the initiation of implementation services.
- 30% of Project will be invoiced upon completion of 50% of Project (as mutually agreed upon between City and MSN)
- 40% of Project will be invoiced upon –acceptance of Project

Note that the payment schedule above applies to charges related to project implementation. Charges related to equipment purchases (see attached quote) will be invoiced at the time of delivery to the City.

## **8.0 CHANGE MANAGEMENT**

It may become necessary to amend this Agreement for reasons including, but not limited to, the following:

- Customer changes the Scope of Services, schedule or business requirements specifications for the services,
- Non-availability of resources which are beyond either party's control; and/or, Environmental or architectural impediments not previously identified.

In the event either party desires to change this agreement the following procedures will apply:

- The party requesting the change will deliver a Change Order Request document (Attached) to the other party. The Change Order Request will describe the nature of the change; the

reason for the change and the effect the change will have on the agreement, which may include changes to the deliverables, and the schedule.

If both parties agree to implement the Change Order Request, authorized representatives of the parties will sign the Change Order Request, indicating the acceptance of the changes by both parties.

Upon execution of the Change Order Request, said Change Order Request will be incorporated into, and made a part of, this Agreement.

**9.0 AGREEMENT**

MSN and Customer hereby agree that this Statement of Work and the Terms and Conditions referenced in the original project RFP constitute the entire agreement between both parties.

Agreed to:

MSN Communications, Inc.

City of Englewood

By: \_\_\_\_\_  
Name: Clifton Wisner  
Title: Solution mgr  
Date: 8/4/10

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



communications inc

**10.0 CHANGE ORDER REQUEST**

**PURPOSE**

The purpose of this document is to identify changes in the Scope of Services to be performed by MSN Communications as defined in the approved Agreement between MSN Communications and Customer, dated: \_\_\_\_\_.

**Description of Change Requested  
And Additional Work including Cost Estimate:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CHARGES**

Services Charges for Change Order: \$ \_\_\_\_\_

Actual travel and living expenses, if applicable, will be invoiced separately.

Estimated Expenses for Change Order: \$ \_\_\_\_\_

Customer PO # for Change Request: \_\_\_\_\_

**MSN Communications, Inc.**

**City of Englewood**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**ATTACHMENT A**

**Deliverable Materials Acceptance Procedure**

Except for status reports and engagement plan, each work product identified as a "Deliverable" will be reviewed and accepted in accordance with the following procedure:

- One (1) electronic draft of the Deliverable will be submitted to the Customer. It is the Customer's responsibility to make and distribute additional copies to any other reviewers.
- Within five (5) business days the Customer will either accept the Deliverable Material or provide the designated MSN Account Manager a written list of objections, if any. The designated MSN Account Manager will consider Customer's objections within the context of MSN's Engagement Deliverables and the Scope and Roles and Responsibilities. Revisions agreed to by MSN will be applied within five (5) business days, and the updated final version will be resubmitted to the Customer at which time the Deliverable will be deemed accepted.

Customer's objections that are not agreed to by the designated MSN Account Manager will be managed in accordance with Engagement Change Control Procedures. If resolution is required to a conflict arising from Customer's objection to a Deliverable Material, Customer and the designated MSN Team will follow the procedure specified in Escalation Procedures.

## **ATTACHMENT B**

### Escalation Procedure

The following procedure will be followed if resolution is required to a conflict arising during the performance of this SOW:

When a conflict arises between Customer and MSN, the team member(s) will first strive to work out the problem internally.

- Level 1: If the project team cannot resolve the conflict within two (2) working days, the assigned Customer Representative and the MSN Team will meet to resolve the issue.
- Level 2: If the conflict is not resolved within three (3) working days after being escalated to Level 1, the Customer Executive Sponsor will meet with the MSN Engagement Manager to resolve the issue.
- Level 3: If the conflict remains unresolved after Level 2 intervention, resolution will be addressed in accordance with Project Change Control Procedures or termination of this SOW under the terms of the Agreement.
- During any conflict resolution, MSN agrees to provide services relating to items not in dispute, to the extent practicable pending resolution of the conflict. Customer agrees to pay invoices per the Agreement.

## **ATTACHMENT C**

### **Risk & Issue Management Procedures**

MSN and Customer will work together to address issues as specified in engagement management documentation (controls). Engagement issues must be addressed in a timely manner. The issues and risks raised during the course of the engagement will be identified as Minor, Moderate, or Major depending on the severity of the issue per the definition stated below.

The following are the definitions of the issue severities:

- **Minor:** Issues that need resolution but that do not immediately impact the progress of the engagement. A due date will be assigned to the issue and it will be raised to the next level of urgency if the due date is not met.
- **Moderate:** Issues that have an impact on the engagement progress, but are not impacting the overall timeline yet. Issues identified as "Moderate", will be addressed in a 48-72 hour time frame (excluding weekends and holidays).
- **Major:** Issues that will impact key engagement milestones if not resolved immediately. Issues identified as "Major" will be addressed in a 24-36 hour time frame.

Failure to resolve issues in a timely fashion may have an impact on the engagement schedule and/or cost and will be handled through the Change Control Process. To the extent MSN is delayed in the completion of a deliverable, the parties shall confer in a timely manner about the impact on the project and take equitable corrective measures. In defining "equitable corrective measures" both parties will take into account the potential cost overruns incurred by a party because of a delay caused by the other party notwithstanding the cost overruns to the delaying party. Such increased costs include time during which either party's consultants are underutilized because of delays caused by the other party.

## **ATTACHMENT D**

### **ENGAGEMENT CHANGE CONTROL PROCEDURE**

The following sections describe the Engagement Change Control Procedure as established by Customer and MSN.

#### **Conditions Necessitating Change Orders**

Circumstances that will necessitate a Change Order Request include, but are not necessarily limited to:

- 1 Customer's or other third parties' failing to meet their performance or delivery commitments
- 2 A significant Customer business event that impacts the scope of the program (e.g., a significant acquisition or divestiture); or
- 3 Customer's directive to include new scope beyond what has been specified in this statement of work.

In these cases, MSN will work with Customer to minimize the impact of the change(s) but may nevertheless expect such circumstances to impact both our level of effort and our schedule and thus give rise to change order requests.

All Change Order Requests to and from MSN will be routed through the designated Customer Network Manager using the Project Change Control Procedure as established in this appendix.

The following process will be followed if a change to this SOW is required:

- 1 A Change Order Request will be the vehicle for communicating change. The Change Order must describe the change; the rationale for the change and the effect the change will have on the engagement.
- 2 The designated Representative of the requesting party will review the proposed change and determine whether to submit the request to the other party.
- 3 Customer and MSN will review the proposed change and recommend it for further investigation or reject it. The investigation will determine the effect that the implementation of the Change Order Request will have on pricing, schedule, and other terms and conditions of the Agreement.
- 4 A written Change Order Request must be signed by authorized representatives from both parties to authorize implementation of the investigated changes. Until a change is agreed in writing, both parties will continue to act in accordance with the latest agreed upon version of the SOW.

**ATTACHMENT E**

**MSN HOLIDAYS FOR 2010**

Below is a list of scheduled holidays for MSN personnel;

Should one of the holidays below fall on a weekend, MSN will generally observe the nearest business day as a holiday:

New Years Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Day after Thanksgiving  
Christmas Day