

**Agenda for the  
Regular Meeting of the  
Englewood City Council  
Monday, September 20, 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 September 7, 2010.
6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)
8. Communications, Proclamations, and Appointments.
  - a. Email from Margaret McDermott announcing her resignation from Alliance for Commerce in Englewood.
  - b. Email from Jennifer (Enger) Quinlivan announcing her resignation from the Cultural Arts Commission.

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. 31 – Recommendation by the Utilities Department to approve a bill for an ordinance authorizing the execution of an Intergovernmental Agreement regarding Water Delivery Obligations between the City of Aurora and the City of Englewood. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**
  - b. Approval of Ordinances on Second Reading.
    - i. Council Bill No. 30, an emergency bill for an ordinance authorizing the issuance of General Obligation Refunding Bonds.
  - c. Resolutions and Motions.
    - i. Recommendation by the Utilities Department to adopt a resolution establishing fees for non-emergency after-hours service calls. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**
10. Public Hearing Items.
  - a. Public Hearing to gather input on the City's proposed Budget for 2011.
11. Ordinances, Resolutions and Motions
  - a. Approval of Ordinances on First Reading.
  - b. Approval of Ordinances on Second Reading.
  - c. Resolutions and Motions.
    - i. Recommendation by the Finance and Administrative Services Department and the City Clerk's office to adopt a resolution approving a legal publication process to allow the publication of Council bills in the City's legal newspaper by title only. **STAFF SOURCE: Frank Grylewicz, Director of Finance and Administrative Services and Loucrishia Ellis, City Clerk.**
12. General Discussion.
  - a. Mayor's Choice.

- b. Council Members' Choice.
  - i. A resolution opposing Proposition 101, Amendment 60, and Amendment 61 at the November 2, 2010 statewide General Election.
- 13. City Manager's Report.
- 14. City Attorney's Report.
  - a. Council Bill No. 32 – an Intergovernmental Agreement for a Water Common Interest Agreement.
- 15. Adjournment

## Harmonic Construction Services, Inc.

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91 E. Dartmouth Avenue  
Englewood, CO 80113

Phone: 303-991-0608  
Fax: 303-991-0611

September 8, 2010

Mr. Darren Hollingsworth  
Community Development Department  
1000 Englewood Parkway  
Englewood, CO 80110

Dear Darren:

This letter will serve as notice of my resignation effective immediately from the Alliance for Commerce in Englewood board.

I have thoroughly enjoyed my association with ACE, its members and City of Englewood officials who manage our great city.

Serving out my current term will be impossible as my father and sister are both suffering from cancer and their homes are in Texas. Lately my visits have been more frequent and often times without much advance notice.

My best wishes and continued success to all members of the ACE Board.

Sincerely,

Margaret McDermott

Cc: Julie Lonborg, Chairman

**From:** Jennifer Quinlivan  
**Sent:** Monday, September 13, 2010 3:03 PM  
**To:** Debby Severa  
**Subject:** RE: Letter of Resignation

Dear City Council and fellow Cultural Arts Commission members;

I am writing to resign my position as member of the Englewood Cultural Arts Commission.

As I became part of this Commission a few years back I was able to meet and learn about my city's government and great community benefits. I was able to serve as a founding member of the Steering Committee for the Community Garden started in the Cultural Arts Commission. I participated in the selection of student art for the annual calendar and have attended events such as the grand opening of the newly renovated Broken Tee Golf Course. All of this has meant so much to me.

As my life has taken a few changes in the last year, it has lead me to pursue new adventures and dreams into the Michigan area. I am very excited and yet sad to leave good friends and colleagues that I have gained as being a commission member. I will forever be thankful of my time as a commission member in what I have learned, how I have grown, and the forever friends I have made.

In closing I again want to say thanks and remind you, as one of my dear commission member and friend did me over the last year... "Be gentle with yourself."

I hope to keep you updated and if I ever am here again I hope to be part of Englewood's great community. Wish me luck!

Sincerely,

Jennifer Quinlivan

## COUNCIL COMMUNICATION

<b>Date:</b> September 20, 2010	<b>Agenda Item:</b> 9 a i	<b>Subject:</b> Intergovernmental Agreement with the City of Aurora Regarding Water Delivery Obligations
<b>Initiated By:</b> Utilities Department		<b>Staff Source:</b> Stewart H. Fonda, Director of Utilities

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None.

### RECOMMENDED ACTION

The Englewood Water and Sewer Board, at its July 7, 2010 meeting, recommended City Council approve an Intergovernmental Agreement between the City of Englewood and the City of Aurora regarding Water Delivery Obligations.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In the 1980s, the cities of Thornton and Westminster applied in Water Court for extra water to fill a big enlargement of Standley Lake. The extra diversions could have potentially harmed Englewood because it could have caused calls from downstream senior rights on the South Platte, and those calls would have shut down some of Englewood's senior diversions.

On October 10, 1990, a settlement agreement was made whereby the Cities of Thornton and Westminster would deliver raw water to Englewood at one or more of Englewood's points of diversion on the South Platte River. The water to be delivered varied depending on amounts diverted to Standley Lake. Deliveries were to be a minimum of 75 acre feet and a maximum of 375 acre feet. Deliveries averaged 238 acre feet per year and came from Thornton's South Park water rights. The settlement provided minimal water in drought years and maximum water in wet years. While it was a very valuable settlement, the lack of deliveries in drought years reduced the value.

The delivered water was to be reusable as consumptive use water, which could be captured and reused to extinction.

In 1998 Thornton applied in Water Court to provide the water in wet years from a 1998 right at Chatfield Reservoir. Under the application, Englewood was required to re-use the water in order to perfect Thornton's application, which was not practical. Englewood opposed the application, low key, for 11 years. During that time, Thornton did not advance the issue in Water Court. On November 21, 2003 Aurora purchased all of Thornton's water rights originally decreed in Park County. The application was included in Aurora's purchase of water rights from Thornton.

As a result of pressure on Aurora from the Water Court to proceed, and Aurora's desire to keep its consumptive use water, an agreement was reached. The essence of the agreement is as follows.

Aurora will deliver 509 acre feet of single use water every year, in both drought and wet years. In extreme drought conditions, if Aurora runs out of single use water (which is very unlikely), Aurora can provide a lesser amount of consumptive use water. In such drought conditions, Englewood can actually reuse the consumptive use water. The water will be delivered between July 1 and August 15, which will make it easy for Englewood to sell it to Centennial. This amounts to an additional 271 acre feet per year, plus the original 238 acre-foot average has been rendered reliable in a drought year.

Thus the agreement will provide water in a fixed and predictable amount during drought, fortunately during the driest summer months. The water would be quite useful to Englewood if there is a severe drought like the one experienced in 2002. Also, it would help Englewood meet its quota for delivery to Centennial.

### **FINANANCIAL IMPACT**

The market price for the 271 acre feet of additional water is approximately \$10,000 to \$20,000 per acre foot for a total amount between \$2,710,000 and \$5,420,000. The true increase in value is more than that, since the 238 acre feet previously received is made reliable in drought years. The additional deliveries to Centennial should enable the price of water sold to Centennial to ratchet up in 2013.

Englewood has long retained David Hill and his firm to represent Englewood and ensure that historical patterns of diversions are protected, and that new diversions by others are lawful and non-injurious. This favorable settlement is a product of that work.

### **LIST OF ATTACHMENTS**

Excerpt from the Water and Sewer Board Minutes of the July 7, 2010 Meeting  
Bill for Ordinance

WATER AND SEWER BOARD  
MINUTES

July 7, 2010

The meeting was called to order at 5:07 p.m.

Members present: Burns, Clark, Higday, Cassidy, Wiggins, Habenicht

Members absent: Olson, McCaslin, Woodward

Also present: Stewart Fonda, Director of Utilities  
Bill McCormick, Operations Supt.

*Excerpt from Pages 4, 5 and 6 of the July 7, 2010 Water and Sewer Board Minutes*

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5. GUEST: DAVID HILL – AGREEMENT WITH THE CITY OF AURORA  
REGARDING WATER DELIVERY OBLIGATIONS.

Mr. Hill appeared before the Board to discuss the Intergovernmental Agreement Regarding Water Delivery Obligations between the City of Englewood and the City of Aurora.

Mr. Hill explained that in the 1980's, the cities of Thornton and Westminster applied in Water Court for extra water to fill a big enlargement of Standley Lake. The extra diversions could have potentially harmed Englewood because it could have caused calls from downstream senior rights on the South Platte, and those calls would have shut down some of Englewood's senior diversions.

On October 10, 1990, a settlement agreement was made whereby the City of Thornton and Westminster would deliver raw water to Englewood at one or more of Englewood's points of diversion on the S. Platte River. The water to be delivered varied depending on amounts diverted to Standley Lake. Deliveries were to be a minimum of 75 acre feet and a maximum of 375 acre feet. Deliveries averaged 238 acre feet per year and came from Thornton's South Park water rights. The settlement provided minimal water in drought years and maximum water in wet years. While it was a very valuable settlement, the lack of deliveries in drought years reduced the value.

The delivered water was to be reusable as consumptive use water, which could be captured and reused to extinction.

In 1998 Thornton applied in Water Court to provide the water in wet years from a 1998 right at Chatfield Reservoir. Under the application, Englewood was required to re-use the water in order to perfect Thornton's application, which was not practical. Englewood opposed the application, low key, for 11 years. During that time, Thornton did not advance the issue in Water Court. On November 21, 2003 Aurora purchased all of Thornton's water rights originally decreed in Park County. The application was included in Aurora's purchase of water rights from Thornton.

As a result of pressure on Aurora from the Water Court to proceed, and Aurora's desire to keep its consumptive use water, an agreement was reached. The essence of the agreement is as follows.

Aurora will deliver 509 acre feet of single use water every year, in both drought and wet years. In extreme drought conditions, if Aurora runs out of single use water (which is very unlikely), Aurora can provide a lesser amount of consumptive use water. In such drought conditions, Englewood can actually reuse the consumptive use water. The water will be delivered between July 1 and August 15, which will make it easy for Englewood to sell it to Centennial. This amounts to an additional 271 acre feet per year, plus the original 238 acre-foot average has been rendered reliable in a drought year.

The agreement will provide water in a fixed and predictable amount during drought, fortunately during the driest summer months. The water would be quite useful to Englewood if there is a severe drought like the one experienced in 2002. Also, it would help Englewood meet its quota for delivery to Centennial.

The market price for the 271 acre feet of additional water is approximately \$10,000 to \$20,000 per acre foot for a total amount between \$2,710,000 and \$5,420,000. The true increase in value is more than that, since the 238 acre feet previously received is made reliable in drought years. The additional deliveries to Centennial should enable the price of water sold to Centennial to ratchet up in 2013.

Mr. Habenicht moved;

Mr. Burns seconded: To recommend Council approval of the Intergovernmental Agreement Regarding Water Delivery Obligations between the City of Englewood and the City of Aurora.

Ayes: Burns, Clark, Higday, Cassidy, Wiggins, Habenicht, Woodward

Nays: None

Members absent: Olson, McCaslin

Motion carried.

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BY AUTHORITY

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

COUNCIL BILL NO. 31  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE APPROVING AN "INTERGOVERNMENTAL AGREEMENT REGARDING WATER DELIVERY OBLIGATIONS" BETWEEN THE CITY OF AURORA AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, in the 1980's the cities of Thornton and Westminster applied in Water Court for extra water to fill an enlargement of Standley Lake; and

WHEREAS, the extra diversions would have harmed Englewood's downstream senior rights on the South Platte; and

WHEREAS, in 1990 a settlement agreement was entered into whereby the Cities of Thornton and Westminster would deliver raw water from Thornton's South Park water rights to Englewood at one or more of Englewood's points of diversion on the South Platte River; the water delivered varied depending on amounts diverted to Standley Lake, averaging 238 acre feet per year; and

WHEREAS, the 1990 settlement provided minimal water in drought years and maximum water in wet years, and

WHEREAS, in 1998 Thornton applied in Water Court to provide the water, in wet years, from a 1998 right at Chatfield Reservoir which required Englewood to re-use the water which was not practical; and

WHEREAS, in 2003 Aurora purchased all of Thornton's water rights originally decreed in Park County, including the rights under the 1990 Thornton settlement; and

WHEREAS, an agreement is now proposed that will provide water in a fixed and predictable amount during the driest summer months which would be useful to Englewood in the event of severe drought and help Englewood meet its quota for delivery to Centennial; and

WHEREAS, the passage of this proposed Ordinance will authorize Englewood to enter the "Intergovernmental Agreement Regarding Water Delivery Obligations;"

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

Section 1. The Intergovernmental Agreement entitled "Intergovernmental Agreement Regarding Water Delivery Obligations" is hereby accepted and approved by the Englewood City Council and is attached hereto as "Exhibit A".

Section 2. David Hill of Berg Hill Greenleaf & Rusciti is authorized to sign said Agreement for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 20th day of September, 2010.

Published as a Bill for an Ordinance in the City's official newspaper on the 24th day of September, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 22<sup>nd</sup> day of September, 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 20<sup>th</sup> day of September, 2010.

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Loucrishia A. Ellis

**INTERGOVERNMENTAL AGREEMENT REGARDING  
WATER DELIVERY OBLIGATIONS**

This Intergovernmental Agreement ("IGA") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Englewood, Colorado, a municipal corporation of the County of Arapahoe, whose address is 1000 Englewood Parkway, Englewood, CO 80110 ("Englewood"), and the City of Aurora, Colorado a municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise, ("Aurora"), whose address is 15151 E. Alameda Parkway Suite 3600, Aurora, CO 80012. Together these two entities shall be referred to herein as the "Parties."

**RECITALS**

On October 10, 1990, Englewood entered into an agreement with the City of Thornton ("Thornton") and the City of Westminster ("Westminster") in settlement of certain litigation then pending in the Colorado Water Court (the "Settlement Agreement"). The litigation involved Cases Numbered 86CW397, 88CW267, 89CW129 and 89CW132, District Court, Water Division One.

The Settlement Agreement obligated Thornton, and under certain circumstances Westminster, to provide raw water to Englewood at one or more of Englewood's points of diversion on the South Platte River. As security for the performance of these obligations, Englewood acquired a profit a prendre from Thornton binding three water right priorities then owned by Thornton that historically were associated with the McDowell Ranch in Park County.

On November 21, 2003, Aurora purchased from Thornton all of Thornton's water rights originally decreed in Park County. In connection with this purchase, Aurora agreed to assume the obligation under the Settlement Agreement to deliver water to Englewood.

On December 31, 1998, Thornton initiated a conditional appropriation of water intended to meet a portion of the water delivery obligations to Englewood under the Settlement Agreement. The 1998 appropriation was included in Aurora's purchase of water rights from Thornton, and the application to adjudicate this appropriation in the Water Court for Division 1, in Case No. 98CW458 was dismissed by Aurora on April 21, 2010.

The Parties seek to simplify the existing obligations under the Settlement Agreement in a manner that is mutually beneficial.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purpose: The purpose of this IGA is to define new obligations, directly between Aurora and Englewood, which will supercede and replace the water delivery obligations created by the Settlement Agreement. This IGA constitutes Englewood's consent to the assignment of the Settlement Agreement requested by Thornton on or about April, 2003, as well as an amendment of the Settlement Agreement with respect to water delivery obligations. Except for those provisions of the Settlement Agreement which require or describe the delivery of water to Englewood, the obligations of the Settlement Agreement shall survive this amendment.
  
2. Volume: Aurora agrees to deliver to Englewood or Englewood's lessee five hundred and nine (509) acre feet per year of "single use water," which shall mean water that cannot be recaptured or reclaimed for reuse or successive use after the initial use of the water. However, in a year in which Aurora has insufficient single use water available, it may deliver three hundred thirty nine (339) acre feet of "fully consumable water," which shall mean water that may lawfully be recaptured or reclaimed for reuse or successive uses until fully consumed. Further, Aurora may deliver a combination of single use and fully consumable water, in which event the total volume of Aurora's obligation will be calculated by determining what percentage of Aurora's total delivery will be comprised of single use water and what percentage will be comprised of fully consumable water and multiplying the maximum volumes set forth above for each type of water by the respective percentage. To the extent Aurora delivers fully consumable water, Englewood or its designee shall have the right to recapture and reuse any return flows resulting from the initial or any subsequent use of such water. The water delivered by Aurora may be derived from any water right it owns or controls at the time of such delivery, provided that the water meets the legal requirements set forth herein.
  
3. Timing and Rate of Delivery: Aurora's delivery of water pursuant to this IGA will begin July 1 of each year, and will be completed by August 15 of that year. The rate of delivery will be 6 cfs except that, in any year the daily delivery rate may be increased by mutual agreement of the Parties, which will be binding only for the remainder of that year. If neither Englewood nor its designee is able to take delivery of the water during all or a portion of the time Aurora is seeking to deliver it, Aurora's obligation will nevertheless be reduced at the rate of 6 cfs, or the alternate rate agreed upon for that year. Englewood shall give Aurora twenty four hours advance notice if it is unable to begin, or to continue, taking such deliveries. Using the notice provision set forth below, the Parties may designate and revise email addresses for the communications regarding deliveries contemplated by this paragraph.
  
4. Location of Delivery: Aurora will deliver the water required by this IGA at the High Line Canal headgate, or at Chatfield Reservoir. If not diverted at the High Line Canal headgate, Englewood or its designee may divert the water through any of the ditches served by the Chatfield Reservoir Ditch Outlet Manifold, or may instruct the Water Commissioner to release the water through the Chatfield Reservoir river outlet for diversion at such downstream point as

may be selected by Englewood. It shall be the obligation of Englewood or its designee to obtain the right to use the diversion and carriage structures through which the water is actually diverted. Deliveries shall be measured at the High Line Canal headgate if diverted at that location, otherwise deliveries will be measured at the exit flume or flumes serving the City Ditch, the Nevada Ditch or the Last Chance Ditch, to the extent Englewood elects to divert the water through those structures, or at such downstream point of diversion as Englewood or its designee may employ. Englewood or its designee shall be responsible for transit losses, if any, assessed on such water if the delivery point is below the Chatfield Reservoir Ditch outlet manifolds described above.

5. Use and Storage: All water delivered by Aurora must be decreed to allow municipal uses and storage.

6. Profit a Prendre. Aurora acquired the three McDowell Ranch priorities referenced above subject to the profit a prendre previously granted in favor of Englewood. Said profit a prendre is not affected by the execution of this IGA.

7. General Provisions.

a. This writing constitutes the entire IGA between the Parties and supersedes all prior written or oral agreements, negotiations, representations, and understandings of the Parties with respect to the subject matter contained herein. However, this IGA does not modify or supersede any other previously executed agreement between these Parties, relating to matters other than those described herein.

b. This IGA may be amended, modified, changed, or terminated in whole or in part only by written agreement duly authorized and executed by the Parties hereto.

c. The Parties agree that this IGA may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including damages, as may be available according to the laws of the State of Colorado. It is specifically understood that, by executing this IGA, each party commits itself to perform pursuant to the terms hereof, and that any breach hereof resulting in any recoverable damages shall not thereby cause the termination of any obligations created by this IGA unless such termination is requested by the party not in breach hereof.

d. Venue for the trial of any action arising out of any dispute hereunder shall be in the Arapahoe County District Court.

e. This IGA is intended to describe the rights and responsibilities of and between the named Parties and is not intended to, and shall not be deemed to confer rights upon any persons or entities not named as parties, nor to limit in any way the powers and responsibilities of Aurora, Englewood or any other entity not a party hereto.

f. If any portion of this IGA is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both Parties, the remaining

portions of this IGA will remain valid and binding on the Parties. Further, the Parties will immediately enter into negotiations to restore as nearly as possible any portion of this IGA held to be invalid or unenforceable.

g. Neither Aurora nor Englewood may assign its rights or delegate its duties hereunder without the prior written consent of the other party.

h. This IGA and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns if any are allowed.

i. Waiver of breach of any of the provisions of this IGA by either party shall not constitute a continuing waiver of any subsequent breach by said party of either the same or any other provision of this IGA.

j. This IGA may be simultaneously executed in any number of counterparts, each one of which shall be deemed an original, but all of which constitute one and the same IGA.

k. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to confine, limit, or describe the scope of intent of any provision of this IGA.

l. Unless otherwise stated herein, any notices, demands, or other communications required or desired to be given under any provision of this IGA shall be given in writing, to be delivered personally, or sent by certified or registered mail, return receipt requested, postage prepaid, to the following:

To Aurora: Director of Utilities  
City of Aurora  
15151 East Alameda Parkway, Suite 3600  
Aurora, Colorado 80012

With copy to:  
Austin Hamre, Esq.  
Duncan, Ostrander & Dingess, P.C.  
3600 S. Yosemite Street, Suite 500  
Denver, Colorado 80237

To Englewood: Director of Utilities  
City of Englewood  
1000 Englewood Parkway  
Englewood, CO 80110

With copy to:  
David G. Hill, Esq.

Berg Hill Greenleaf & Ruscitti LLP  
1712 Pearl St  
Boulder, CO 80302

or as to such other addresses as either party may hereafter from time to time designate by written notice to the other party in accordance with this paragraph. Notice shall be effective upon receipt.

m. If any date for any action under this IGA falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

n. This IGA and its application shall be construed in accordance with the laws of the State of Colorado.

o. To the fullest extent permitted by law, the Parties hereto waive the right to a trial by jury in any action brought under or in any way related to this IGA.

p. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of or related to this IGA each party agrees to be responsible for its own attorneys' and other professional fees, costs and expenses associated with any such proceedings.

q. The Parties agree they drafted this IGA jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Consequently, the rule of construction to the effect that ambiguities are to be construed against the drafter shall be inapplicable in the event of any dispute as to the meaning of provisions herein.

r. The obligations of Aurora under this IGA are the sole obligations of the City of Aurora acting by and through its Utility Enterprise and, as such, shall not constitute a general obligation or other indebtedness of the City of Aurora or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of any constitutional, statutory, or charter limitation. In the event of default by Aurora or failure to meet any of its obligations under the terms of this IGA, Englewood shall have no recourse against any of the revenues of the City of Aurora except for the net revenues of the water utility system available therefore in the City of Aurora Utility Enterprise water fund, or any successor enterprise fund, remaining after payment of all expenses relating to the operation and maintenance and periodic payments on bonds, loans and other obligations of the City acting by and through its Utility Enterprise. Notwithstanding anything herein to the contrary, nothing in this IGA shall be construed as creating a lien against any revenues of the Utility Enterprise or the City.

s. Subject to the terms and conditions in this paragraph, no party to this IGA shall be liable for any delay or failure to perform under this IGA due solely to conditions or events of Force Majeure, specifically: a) acts of God, b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, c) sabotage, d) vandalism beyond

that which can be reasonably prevented, e) terrorism, f) war, and g) riots; provided that, A) the non performing party gives the other party prompt written notice describing the particulars of the occurrence of the Force Majeure; B) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event or condition; and C) the non-performing party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other party describing the actions taken to remedy the consequences of the Force Majeure event or condition. In the event of a change in municipal (or other local governmental entity), state or federal law or practice that prohibits or delays performance, the obligation to seek a remedy shall extend to making reasonable efforts to reform the IGA in a manner consistent with the change that provides the Parties substantially the same benefits as this IGA; provided, however, that no such reformation shall increase the obligations of any of the Parties. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this IGA beyond its stated term. In the event any delay or failure of performance on the part of the party claiming Force Majeure continues for an uninterrupted period of more than three hundred sixty-five (365) days from its occurrence or inception as noticed pursuant to this IGA, the Parties not claiming Force Majeure may, at any time following the end of such one year period, terminate this IGA upon written notice to the party claiming Force Majeure, without further obligation by any of the Parties.

IN WITNESS WHEREOF, the undersigned Parties have caused this IGA to be executed the day and year first written above.

**CITY OF AURORA, COLORADO,  
ACTING BY AND THROUGH ITS  
UTILITY ENTERPRISE**

\_\_\_\_\_  
Edward J. Tauer, Mayor  
ATTEST

\_\_\_\_\_  
Date

\_\_\_\_\_  
Debra A. Johnson, City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM FOR AURORA:  
Acting by and through its Utility Enterprise

\_\_\_\_\_  
Christine A. McKenney  
Assistant City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Austin Hamre  
Special Counsel

\_\_\_\_\_  
Date

STATE OF COLORADO    )  
                                  ) ss  
COUNTY OF ARAPAHOE   )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Edward J. Tauer as Mayor, and attested to by Debra A. Johnson, as City Clerk, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**SEAL**

**CITY OF ENGLEWOOD**

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

\_\_\_\_\_  
Date

ATTEST:

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

\_\_\_\_\_  
Date

APPROVED AS TO FORM FOR ENGLEWOOD:

\_\_\_\_\_  
David G. Hill  
Special Counsel to the City of Englewood

\_\_\_\_\_  
Date

**BY AUTHORITY**

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

COUNCIL BILL NO. 30  
 INTRODUCED BY COUNCIL  
 MEMBER JEFFERSON

AN ORDINANCE OF THE CITY OF ENGLEWOOD AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS, SERIES 2010, TO REFUND THE CITY'S OUTSTANDING GENERAL OBLIGATION BONDS AT A LOWER INTEREST RATE; PROVIDING THE FORM OF THE BONDS AND OTHER DETAILS IN CONNECTION THEREWITH; APPROVING DOCUMENTS RELATING TO THE BONDS AND DECLARING AN EMERGENCY.

## WITNESSETH:

WHEREAS, the City of Englewood, Colorado is a municipal corporation duly organized and operating as a home rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, pursuant to Section 106 of the Charter, the City may issue refunding bonds by ordinance, without an election, for the purpose of paying outstanding bonds of the City; and

WHEREAS, pursuant to Article X, Section 20 of the State Constitution (TABOR) refinancing bonded debt at lower interest rates does not require voter approval in advance under the terms and provisions of TABOR; and

WHEREAS, the City previously issued its "City of Englewood, Colorado, General Obligation Bonds, Series 2001" of which \$4,000,000 in aggregate principal amount mature on and after December 1, 2012, are currently outstanding and bear interest at rates between 4.60% and 5.10% per annum (the "Refunded Series 2001 Bonds"); and

WHEREAS, the Refunded Series 2001 Bonds are subject to redemption prior to maturity and the option of the City, in whole or in part, on December 1, 2011 upon payment of par plus accrued interest to the redemption date, without redemption premium; and

WHEREAS, the principal of and interest on the Refunded Series 2001 Bonds are payable at UMB Bank, n.a. (as successor in interest to American National Bank and The Bank of Cherry Creek, N.A.), in Denver, Colorado, or its successor, as paying agent; and

WHEREAS, the City previously issued its "City of Englewood, Colorado, General Obligation Bonds, Series 2002" of which \$5,630,000 in aggregate principal amount mature on and after December 1, 2012, are currently outstanding and bear interest at rates between 3.65% and 4.75% per annum (the "Refunded Series 2002 Bonds"); and

WHEREAS, the Refunded Series 2002 Bonds maturing on and after December 1, 2013 are subject to redemption prior to maturity and the option of the City, in whole or in part, on December 1, 2012 upon payment of par plus accrued interest to the redemption date, without redemption premium; and

WHEREAS, the principal of and interest on the Refunded Series 2002 Bonds are payable at UMB Bank, n.a. (as successor in interest to American National Bank and The Bank of Cherry Creek, A Division of Western National Bank), in Denver, Colorado, or its successor, as paying agent; and

WHEREAS, the Stifel, Nicolaus & Company, Incorporated, of Denver, Colorado, has presented a proposal to the City to advance refund the Refunded Series 2001 Bonds and the Refunded Series 2002 Bonds through the issuance of the City's General Obligation Refunding Bonds, Series 2010, and the Council has determined that the negotiated sale of the Bonds to said company is to the best advantage of the City; and

WHEREAS, net proceeds derived from the sale of the Bonds, together with other legally available funds of the City if necessary, will be irrevocably deposited with the Bank and placed into a special fund and trust account for the purpose only of paying the principal of and interest due and payable on the Refunded Bonds on and prior to the Call Date; and

WHEREAS, the City has received and there are available to the members of the Council, forms of the Preliminary Official Statement, the Bond Purchase Agreement, the Escrow Agreement and the Paying Agent Agreement; and

WHEREAS, the Council desires to authorize the issuance and sale of the Bonds and, as provided in Title 11, Article 57, Part 2, Colorado Revised Statutes, delegate authority to the Sale Delegate to make certain determinations regarding the Bonds to be set forth in the Sale Certificate in accordance with the provisions of this Ordinance.

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

**Section 1. Definitions.** The following terms shall have the following meanings as used in this Ordinance:

*“Act”* means Part 2 of Article 57 of Title 11, Colorado Revised Statutes, or any successor statutes thereto.

*“Ballot Issue Authorization”* means the bond ballot issue approved by a majority of the City's electors at the election held November 6, 2001, and pursuant to which, in addition to other bond issues, the Refunded Bonds were issued.

*“Bank”* means UMB Bank, n.a., a national banking association duly organized and existing under the laws of the United States of America which has full and complete trust powers and is a qualified institution under the Public Deposit Protection Act of the State.

“*Bond Account*” means the account established by the provisions hereof to account for the moneys for which a separate tax levy is made, or legally available moneys are applied, to satisfy the obligations of the Bonds. The Bond Account shall be a subsidiary account of the appropriate fund or account of the City and separately accounted for by the City in accordance with the provisions hereof.

“*Bond Counsel*” means (a) as of the date of issuance of the Bonds, Kutak Rock LLP, and (b) as of any other date, Kutak Rock LLP or such other attorneys selected by the City with nationally recognized expertise in the issuance of municipal bonds.

“*Bond Insurance Policy*” means the municipal bond insurance policy issued by the Bond Insurer, if any, insuring the payment when due of the principal of and interest on the Bonds as provided therein.

“*Bond Insurer*” means entity, if any, designated in the Sale Certificate which is to issue the Bond Insurance Policy.

“*Bond Obligation*” means, as of any date, the principal amount of the Bonds Outstanding as of such date.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement, pursuant to which the City is to agree to sell and the Underwriter is to agree to purchase the Bonds at the prices and on the terms set forth therein.

“*Bonds*” and “*Series 2010 Bonds*” means the Bonds authorized by the Section hereof titled “Authorization and Purpose of Bonds.”

“*Business Day*” means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed for business.

“*Charter*” means the home rule Charter of the City.

“*Call Date*” means the date or dates on which the Refunded Bonds shall be called for optional prior redemption as established in the Sale Certificate.

“*City*” means the City of Englewood, Colorado, and any successor thereto.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Bonds or the use of proceeds thereof, unless the context clearly requires otherwise.

“*Commitment*” means that certain offer, if any, to issue the Bond Insurance Policy issued by the Bond Insurer.

“*Council*” means the City Council of the City.

“*County*” means Arapahoe County, Colorado.

“*Dated Date*” means the original dated date for the Bonds as established in the Sale Certificate.

“*Defeasance Securities*” means bills, certificates of indebtedness, notes, bonds or similar securities which are direct, non callable obligations of the United States of America or which are fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to the extent such investments are Permitted Investments.

“*DTC*” means The Depository Trust Company, New York, New York, and its successors in interest and assigns.

“*DTC Blanket Letter of Representations*” means the letter of representations from the City to DTC to induce DTC to act as securities depository for the Bonds.

“*Escrow Account*” means, in connection with the Bonds, the account established and designated as such in the section hereof entitled “Escrow Account; Payment of Refunded Bonds” to be maintained by the Bank in accordance with the Escrow Agreement and the provisions hereof.

“*Escrow Agreement*” means the Escrow Agreement dated as of the Dated Date, between the City and the Bank.

“*Event of Default*” means any of the events specified in the Section hereof titled “Events of Default.”

“*Interest Payment Date*” means each June 1 and December 1, commencing December 1, 2010, or such other dates as established in the Sale Certificate for payment of interest on the Bonds.

“*Official Statement*” means the final Official Statement relating to the Bonds.

“*Ordinance*” means this Ordinance, including any amendments or supplements hereto.

“*Outstanding*” means, as of any date, all Bonds issued and delivered by the City, except the following:

(a) any Bond cancelled by the City or the Paying Agent, or otherwise on the City’s behalf, at or before such date;

(b) any Bond held by or on behalf of the City;

(c) any Bond for the payment or the redemption of which moneys or Defeasance Securities sufficient to meet all of the payment requirements of the principal of, premium, if any, and interest on such Bond to the date of maturity or prior redemption thereof, shall have theretofore been deposited in trust for such purpose in accordance with the Section hereof titled “Defeasance”; and

(d) any lost, apparently destroyed, or wrongfully taken Bond in lieu of or in substitution for which another bond or other security shall have been executed and delivered.

“*Owner*” means the Person or Persons in whose name or names a Bond is registered on the registration books maintained by the Paying Agent pursuant hereto.

“*Paying Agent*” means the Bank and its successors in interest or assigns approved by the City.

“*Paying Agent Agreement*” means an agreement between the City and the Paying Agent concerning the duties and obligations of the Paying Agent with respect to the Bonds.

“*Permitted Investments*” means any investment in which funds of the City may be invested under the Charter and the laws of the State at the time of such investment.

“*Person*” means a corporation, firm, other body corporate, partnership, association or individual and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

“*Preliminary Official Statement*” means the Preliminary Official Statement prepared in connection with the sale and issuance of the Bonds.

“*Principal Payment Date*” means December 1, or such other date or dates of each year as established in the Sale Certificate for payment of principal of the Bonds.

“*Record Date*” means, if the Interest Payment Date is on the first day of the month, the fifteenth day of the month immediately preceding the month (whether or not such day is a Business Day) in which such Interest Payment Date occurs and, if the Interest Payment Date is on the fifteenth day of the month, the first day of the month (whether or not such day is a Business Day) in which such Interest Payment Date occurs.

“*Refunded Bond Requirements*” means the principal and interest due in connection with the Refunded Series 2001 Bonds and the Refunded Series 2002 Bonds until paid and cancelled in accordance with their terms or called for redemption, paid and cancelled on the Call Date.

“*Refunded Bond Ordinance*” means the ordinance or ordinances of the City authorizing the issuance of the Refunded Bonds.

“*Refunded Bonds*” means the Refunded Series 2001 Bonds and the Refunded Series 2002 Bonds, as later determined by the Sale Delegate and identified in the Sale Certificate as the Refunded Bonds.

“*Refunded Bonds Paying Agent*” means UMB Bank, n.a. (as successor in interest to American National Bank and The Bank of Cherry Creek, N.A. and The Bank of Cherry Creek, a division of Western National Bank), in Denver, Colorado, as paying agent for the Refunded Bonds, or any successor thereto.

“*Refunded Series 2001 Bonds*” means the City of Englewood General Obligation Bonds, Series 2001, maturing on and after December 1, 2012.

“*Refunded Series 2002 Bonds*” means the City of Englewood General Obligation Bonds, Series 2002, maturing on and after December 1, 2012.

“*Refunding Project*” means the advance refunding of the Refunded Bonds and the payment of the costs of issuance of the Bonds.

“*Sale Certificate*” means the certificate executed by the Sale Delegate under the authority delegated pursuant to this Ordinance, including but not limited to the Sections hereof titled “Bond Details,” “Redemption of Bonds Prior to Maturity”, “Escrow Account; Payment of Refunded Bonds,” “Approval of Related Documents” and “Bond Insurance Determination” which set forth, among other things, the rate of interest on the Bonds, the conditions on which and the prices at which the Bonds may be redeemed before maturity, the price at which the Bonds will be sold, the Dated Date, the amount of principal maturing in any particular year, the dates on which principal and interest will be paid, the Refunded Bonds to be included in the Refunding Project, the Call Date for the Refunded Bonds, whether or not the Bonds will be secured by the Bond Insurance Policy and the terms of any agreement with the Bond Insurer if a Commitment is accepted regarding the Bonds.

“*Sale Delegate*” means the Director of Finance and Administrative Services of the City or, in the event such person is unavailable, the City Manager.

“*State*” means the State of Colorado.

“*Tax Letter of Instructions*” means the Tax Letter of Instructions, dated the date on which the Bonds are originally issued and delivered to the City by Bond Counsel, as such instructions may be superseded or amended in accordance with their terms.

“*Underwriter*” means Stifel, Nicolaus & Company, Incorporated, of Denver, Colorado.

**Section 2. Authorization and Purpose of Bonds.** Pursuant to and in accordance with the Act and the Charter, the City hereby authorizes, and directs that there shall be issued, the “City of Englewood, Colorado, General Obligation Refunding Bonds, Series 2010” for the purpose of providing funds for the Refunding Project. The caption for the Bonds also shall include “Series 2010 Bonds” or “Series 2011 Bonds” depending on the actual date of issuance of the Bonds

**Section 3. Bond Details.**

(a) ***Registered Form, Denominations, Dated Date and Numbering.*** The Bonds shall be issued in fully registered form, shall be dated as of the Dated Date, and shall be registered in the names of the Persons identified in the registration books maintained by the Paying Agent pursuant hereto. The Bonds shall be issued in denominations of \$5,000 in principal amount or any integral multiple thereof. The Bonds shall be consecutively numbered, beginning with the number one, preceded by the letter “R.”

(b) ***Maturity Dates, Principal Amounts and Interest Rates.*** The Bonds shall mature on the Principal Payment Date of the years and in the principal amounts, and shall bear interest at the rates per annum (calculated based on a 360-day year of twelve 30-day months) set forth in the Sale Certificate.

(c) ***Accrual and Dates of Payment of Interest.*** Interest on the Bonds shall accrue at the rates set forth in the Sale Certificate from the later of the Dated Date or the latest Interest Payment Date (or in the case of defaulted interest, the latest date) to which interest has been paid in full and shall be payable on each Interest Payment Date.

(d) ***Delegation for Sales Certificate.*** The Council hereby delegates to the Sale Delegate for a period of six months from the date of adoption of this Ordinance the following (which shall be set forth in the Sale Certificate for the Bonds):

(i) the Dated Date of the Bonds;

(ii) the Principal Payment Date;

(iii) the Interest Payment Date;

(iv) the aggregate principal amount of the Bonds;

(v) the price at which the Bonds will be sold pursuant to the Bond Purchase Agreement;

(vi) the amount of principal of the Bonds maturing in any particular year and the respective interest rates borne by the Bonds;

(vii) the Bonds which may be redeemed at the option of the District, the dates upon which such optional redemption may occur, and the prices at which such Bonds may be optionally redeemed; and

(viii) the principal amounts, if any, of Bonds subject to mandatory sinking fund redemption and the years in which such Bonds will be subject to such redemption.

(e) ***Sale Parameters.*** The authority delegated to the Sale Delegate by this Section shall be subject to the following parameters:

(i) the aggregate principal amount of the Bonds shall not exceed \$10,750,000;

(ii) the final maturity of the Bonds shall be no later than December 31, 2025;

(iii) the net effective interest rate on the Bonds shall not exceed 3.75%;

(iv) the maximum annual debt service on the Bonds, when combined with the annual debt service for other outstanding general obligation bonds issued pursuant to, or representing general obligation bonds refunding bonds issued pursuant to, the Ballot Issue Authorization shall not exceed \$1,300,000; and

(v) the present value savings as a percentage of the aggregate principal amount of the Refunded Bonds shall be at least three percent (3%) computed based upon the arbitrage yield for such series of Bonds to the date of delivery of the Bonds, assuming semi-annual compounding.

(f) ***Manner and Form of Payment.*** Principal of each Bond shall be payable to the Owner thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent in the city identified in the definition of Paying Agent in the Section hereof titled "Definitions" or at such other office of the Paying Agent designated by the Paying Agent for such purpose. Interest on each Bond shall be payable by check or draft of the Paying Agent mailed on each Interest Payment Date to the Owner thereof as of the close of business on the corresponding Record Date; provided that interest payable to any Owner may be paid by any other means agreed to by such Owner and the Paying Agent that does not require the City to make moneys available to the Paying Agent earlier than otherwise required hereunder or increase the costs borne by the City hereunder. All payments of the principal of and interest on the Bonds shall be made in lawful money of the United States of America.

(g) ***Book-Entry Registration.*** Notwithstanding any other provision hereof, the Bonds shall be delivered only in book entry form registered in the name of Cede & Co., as nominee of DTC, acting as securities depository of the Bonds and principal of and interest on the Bonds shall be paid by wire transfer to DTC; provided, however, if at any time the Paying Agent determines, and notifies the City of its determination, that DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository for the Bonds, the Paying Agent may, at its discretion, either (i) designate a substitute securities depository for DTC and reregister the Bonds as directed by such substitute securities depository; or (ii) terminate the book entry registration system and reregister the Bonds in the names of the beneficial owners thereof provided to it by DTC. Neither the City nor the Paying Agent shall have any liability to DTC, Cede & Co., any substitute securities depository, any Person in whose name the Bonds are reregistered at the direction of any substitute securities depository, any beneficial owner of the Bonds or any other Person for (A) any determination made by the Paying Agent pursuant to the proviso at the end of the immediately preceding sentence or (B) any action taken to implement such determination and the procedures related thereto that is taken pursuant to any direction of or in reliance on any information provided by DTC, Cede & Co., any substitute securities depository or any Person in whose name the Bonds are reregistered.

#### **Section 4. Redemption of Bonds Prior to Maturity.**

(a) ***Optional Redemption.*** The Bonds shall be subject to redemption at the option of the City, in whole or in part, and if in part in such order of maturities as the City

shall determine and by lot within a maturity on such dates as set forth in the Sale Certificate. The Council hereby delegates to the Sale Delegate the authority to determine the dates on which the Bonds shall be subject to optional redemption and the redemption price or prices at which such redemption may be made.

(b) ***Mandatory Sinking Fund Redemption.*** All or any principal amount of the Bonds may be subject to mandatory sinking fund redemption by lot on the Principal Payment Date of the years and in the principal amounts specified in the Sale Certificate, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date. The Council hereby delegates to the Sale Delegate the authority to determine the principal amounts and dates on which the Bonds shall be subject to mandatory sinking fund redemption.

(c) ***Redemption Procedures.*** Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the City by sending a copy of such notice by first class, postage prepaid mail, not more than 60 days nor less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with this Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

## **Section 5. Security for the Bonds.**

(a) ***General Obligations.*** The Bonds shall be general obligations of the City and the full faith and credit of the City are pledged for the punctual payment of the principal of and interest on the Bonds. The Bonds shall not constitute a debt or indebtedness of the County, the State or any political subdivision of the State other than the City.

(b) ***Levy of Ad Valorem Taxes.*** For the purpose of paying the principal of and interest on the Bonds when due, respectively, the Council shall annually determine and certify to the Board of County Commissioners of the County, a rate of levy for general ad valorem taxes, without limitation as to rate or amount, on all of the taxable property in the City, sufficient to pay the principal of and interest on the Bonds when due, respectively, whether at maturity or upon earlier redemption.

(c) ***Application of Proceeds of Ad Valorem Taxes.*** The general ad valorem taxes levied pursuant to subsection (b) of this Section, when collected, shall be deposited in the Bond Account and shall be applied solely to the payment of the principal of and

interest on the Bonds and for no other purpose until the Bonds, including principal and interest, are fully paid, satisfied and discharged.

(d) ***Appropriation and Budgeting of Proceeds of Ad Valorem Taxes.*** Moneys received from the general ad valorem taxes levied pursuant to subsection (b) of this Section in an amount sufficient to pay the principal of and interest on the Bonds when due, respectively, are hereby appropriated for that purpose, and all amounts required to pay the principal of and interest on the Bonds due, respectively, in each year shall be included in the annual budget and appropriation ordinance to be adopted and passed by the Council for such year.

(e) ***Use or Advance of Other Legally Available Moneys.*** Nothing herein shall be interpreted to prohibit or limit the ability of the City to use legally available moneys other than the proceeds of the general ad valorem taxes covenanted to be levied pursuant to the Bond Ordinance to pay all or any portion of the principal of or interest on the Bonds. If and to the extent such other legally available moneys are used to pay the principal of or interest on the Bonds, the City may, but shall not be required to, (i) reduce the amount of taxes levied for such purpose pursuant to subsection (b) of this Section or (ii) use proceeds of taxes levied pursuant to subsection (b) of this Section to reimburse the fund or account from which such other legally available moneys are withdrawn for the amount withdrawn from such fund or account to pay the principal of or interest on the Bonds. If the City selects alternative (ii) in the immediately preceding sentence, the taxes levied pursuant to subsection (b) of this Section shall include amounts sufficient to fund the reimbursement.

(f) ***Certification to County Commissioners.*** It is hereby declared that, if the City does not otherwise determine and certify to the Board of County Commissioners of the County a rate of levy for general ad valorem property taxes as required by subsection (b) of this Section, the foregoing provisions of this Section shall constitute a certificate from the Council to the Board of County Commissioners of the County showing the aggregate amount of ad valorem taxes to be levied by the Board of County Commissioners of the County from time to time, as required by law, for the purpose of paying the principal of and interest on the Bonds when due.

(g) ***Deposit of Moneys to Pay Bonds with, and Payment of Bonds by Paying Agent.*** No later than three Business Days immediately preceding each date on which a payment of principal of or interest on the Bonds is due, the City, from moneys in the Bond Account, shall deposit moneys with the Paying Agent in an amount sufficient to pay the principal of and interest on the Bonds due on such date. The Paying Agent shall use the moneys so deposited with it to pay the principal of and interest on the Bonds when due.

**Section 6. Form of Bonds.** The Bonds shall be in substantially the form set forth in Appendix A hereto with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the City executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). All covenants, statements, representations and agreements contained in the Bonds are hereby

approved and adopted as the covenants, statements, representations and agreements of the City. Although attached as appendices for the convenience of the reader, Appendix A is an integral part of this Ordinance and are incorporated herein as if set forth in full in the body of this Ordinance.

**Section 7. Execution of Bonds.** The Bonds shall be executed in the name and on behalf of the City with the manual or facsimile signature of the Mayor, shall bear a manual or facsimile of the seal of the City and shall be attested by the manual or facsimile signature of the City Clerk of the Council, all of whom are hereby authorized and directed to prepare and execute the Bonds in accordance with the requirements hereof. Should any officer whose manual or facsimile signature appears on the Bonds cease to be such officer before delivery of any Bond, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes. When the Bonds have been duly executed, the officers of the City are authorized to, and shall, deliver the Bonds to the Paying Agent for authentication. No Bond shall be secured by or titled to the benefit of this Ordinance, or shall be valid or obligatory for any purpose, unless the certificate of authentication of the Paying Agent has been manually executed by an authorized signatory of the Paying Agent. The executed certificate of authentication of the Paying Agent upon any Bond shall be conclusive evidence, and the only competent evidence, that such Bond has been properly authenticated and delivered hereunder.

**Section 8. Registration of Bonds in Registration Books Maintained by Paying Agent.** The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of Bonds shall be recorded. The person in whose name any Bond shall be registered on such registration book shall be deemed to be the absolute owner thereof for all purposes, whether or not payment on any Bond shall be overdue, and neither the City nor the Paying Agent shall be affected by any notice or other information to the contrary.

**Section 9. Transfer and Exchange of Bonds.** The Bonds may be transferred or exchanged at the principal office of the Paying Agent in the city identified in the definition of Paying Agent in the Section hereof titled "Definitions" or at such other office of the Paying Agent designated by the Paying Agent for such purpose for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity and interest rate, upon payment by the transferee of a reasonable transfer fee established by the Paying Agent, together with any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith. Upon surrender for transfer of any Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the City shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Bond. Notwithstanding any other provision hereof, the Paying Agent shall not be required to transfer any Bond (i) which is scheduled to be redeemed in whole or in part between the Business Day immediately preceding the mailing of the notice of redemption and the redemption date or (ii) between the Record Date for any Interest Payment Date and such Interest Payment Date.

**Section 10. Replacement of Lost, Destroyed or Stolen Bonds.** If any Bond shall become lost, apparently destroyed, stolen or wrongfully taken, it may be replaced in the form and tenor of the lost, destroyed, stolen or taken Bond and the City shall execute and the Paying Agent shall authenticate and deliver a replacement Bond upon the Owner furnishing, to the satisfaction

of the Paying Agent: (a) proof of ownership (which shall be shown by the registration books of the Paying Agent), (b) proof of loss, destruction or theft, (c) an indemnity to the City and the Paying Agent with respect to the Bond lost, destroyed or taken, and (d) payment of the cost of preparing and executing the new Bond.

**Section 11. Creation of Bond Account; Funding of Refunding Project.**

(a) *Creation of Bond Account.* There is hereby established the Bond Account. The foregoing account shall be maintained by the City in accordance with the provisions of this Ordinance.

(b) *Funding of Refunding Project.* Upon payment to the City of the purchase price of the Bonds in accordance with the Bond Purchase Agreement, the Bonds shall be delivered to, or as directed by, the Underwriter and the proceeds received by the City from the sale of the Bonds, together with legally available moneys of the City available for such purpose, shall be applied as a supplemental appropriation by the City for the payment of the costs of issuance of the Bonds and to the Escrow Account for payment of the Refunded Bond Requirements in accordance with the report of a certified public accountant as required by the provisions hereof.

**Section 12. Escrow Account; Payment of Refunded Bonds.**

(a) *Establishment and Maintenance of Escrow Account.* There is hereby established a special account designated as the "Refunding Series 2010 Bonds Escrow Account," which shall be maintained in accordance with the provisions hereof and of the Escrow Agreement. The Escrow Account shall be maintained in an amount at the time of the initial deposits therein and at all times subsequently at least sufficient, together with the known minimum yield to be derived from the initial investment and any temporary reinvestment of the deposits therein or any part thereof in Defeasance Securities to pay the Refunded Bond Requirements. Except as may be otherwise provided in the Escrow Agreement, the City shall have no right or title to the moneys credited to or held in the Escrow Account, and such title shall be and is hereby transferred to the Bank in trust for the payment of the Refunded Bond Requirements pursuant to the Escrow Agreement. Moneys shall be withdrawn by the Bank from the Escrow Account on the Call Date to permit the payment without default of the Refunded Bond Requirements. If for any reason the amount in the Escrow Account shall at any time be insufficient for the purpose hereof, the City shall forthwith from the first moneys available therefor deposit in such account such additional moneys as shall be necessary to permit the payment in full of the Refunded Bond Requirements. The Council hereby delegates to the Sale Delegate the authority to determine the Refunded Bonds to be included in the Refunding Project.

(b) *Call of Refunded Bonds.* Subject to the issuance of the Bonds, the Council does hereby declare its intent to exercise on behalf of and in the name of the City its option to redeem or pay and cancel all of the Refunded Bonds on the Call Date, which is the earliest date or dates on which the Refunded Bonds can be called and redeemed. The Council hereby authorizes the Sale Delegate determine the Call Date and to

irrevocably instruct the Bank to give or cause to be given a notice of refunding, defeasance and redemption of the Refunded Bonds.

**Section 13. Investments.** Proceeds of the Bonds delivered to the City pursuant to the Section hereof titled "Creation of Accounts; Initial Credits to Accounts," moneys on deposit in the Bond Account and any moneys held by the Paying Agent with respect to the Bonds shall be invested in Permitted Investments, provided that the investment of such moneys shall be subject to any applicable restrictions set forth in the Tax Letter of Instructions and in the "Tax Compliance Certificate" or similar certificate delivered by the City in connection with the issuance of the Bonds that describes the City's expectations regarding the use and investment of proceeds of the Bonds.

**Section 14. Various Findings, Determinations, Declarations and Covenants.** The Council, having been fully informed of and having considered all the pertinent facts and circumstances, hereby finds, determines, declares and covenants with the Owners of the Bonds that:

(a) it is in the best interest of the City and its residents that the Bonds be authorized, sold, issued and delivered at the time, in the manner and for the purposes provided in this Ordinance;

(b) the issuance of the Bonds will not cause the City to exceed its debt limit under applicable State law;

(c) the DTC Blanket Letter of Representations entered into with DTC will govern the book entry registration system for the Bonds; and

(d) the issuance of the Bonds and all procedures undertaken incident thereto are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Charter, the Colorado Constitution and laws of the State.

**Section 15. Federal Income Tax Covenants.** For purposes of ensuring that the interest on the Bonds is and remains excluded from gross income for federal income tax purposes, the City hereby covenants that:

(a) ***Prohibited Actions.*** The City will not use or permit the use of any proceeds of the Bonds or any other funds of the City from whatever source derived, directly or indirectly, to acquire any securities or obligations and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, or would otherwise cause the interest on any Bond to be includible in gross income for federal income tax purposes.

(b) ***Affirmative Actions.*** The City will at all times do and perform all acts permitted by law that are necessary in order to assure that interest paid by the City on the Bonds shall not be includible in gross income for federal income tax purposes under the Code or any other valid provision of law. In particular, but without limitation, the City represents, warrants and covenants to comply with the following rules unless it receives an opinion of Bond Counsel stating that such compliance is not necessary: (i) gross

proceeds of the Bonds will not be used in a manner that will cause the Bonds to be considered “private activity bonds” within the meaning of the Code; (ii) the Bonds are not and will not become directly or indirectly “federally guaranteed”; and (iii) the City will timely file an Internal Revenue Service Form 8038-G with respect to the Bonds, which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

(c) ***Tax Letter of Instructions.*** The City will comply with the Tax Letter of Instructions delivered to it on the date of issuance of the Bonds, including but not limited by the provisions of the Tax Letter of Instructions regarding the application and investment of Bond proceeds, the calculations, the deposits, the disbursements, the investments and the retention of records described in the Tax Letter of Instructions; provided that, in the event the Tax Letter of Instructions are superseded or amended by new Tax Letter of Instructions drafted by, and accompanied by an opinion of, Bond Counsel stating that the use of the new Tax Letter of Instructions will not cause the interest on the Bonds to become includible in gross income for federal income tax purposes, the City will thereafter comply with the new Tax Letter of Instructions.

(d) ***Designation of Bonds as Qualified Tax Exempt Obligations.*** The City hereby designates the Bonds as qualified tax exempt obligations within the meaning of Section 265(b)(3) of the Code. The City covenants that the aggregate face amount of all tax exempt governmental obligations defined in Section 141 of the Code or qualified 501(c)(3) bonds defined in Section 145 of the Code issued by the City, together with governmental entities which derive their issuing authority from the City or are subject to substantial control by the City, are not expected to be more than \$30,000,000 during calendar year 2010. The City recognizes that such tax exempt obligations include notes, leases, loans and warrants, as well as bonds. The City further recognizes that any bank, thrift institution or other financial institution that owns the Bonds will rely on the City’s designation of the Bonds as qualified tax exempt obligations for the purpose of avoiding the loss of 100% of any otherwise available interest deduction attributable to such institution’s tax exempt holdings.

**Section 16. Defeasance.** Any Bond shall not be deemed to be Outstanding hereunder if it shall have been paid and cancelled or if Defeasance Securities shall have been deposited in trust for the payment thereof (whether upon or prior to the maturity of such Bond, but if such Bond is to be paid prior to maturity, the City shall have given the Paying Agent irrevocable directions to give notice of redemption as required by this Ordinance, or such notice shall have been given in accordance with this Ordinance). In computing the amount of the deposit described above, the City may include the maturing principal of and interest to be earned on the Defeasance Securities. If less than all the Bonds are to be defeased pursuant to this Section, the City, in its sole discretion, may select which of the Bonds shall be defeased.

Notwithstanding anything herein to the contrary, in the event that the Bond Insurance Policy is issued and principal and/or interest due on the Bonds is paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the City, and all covenants, agreements and other obligations of the City to the Owners shall continue to exist and shall run

to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

**Section 17. Events of Default.** Each of the following events constitutes an Event of Default:

(a) ***Nonpayment of Principal or Interest.*** Failure to make any payment of principal of or interest on the Bonds when due.

(b) ***Breach or Nonperformance of Duties.*** Breach by the City of any material covenant set forth herein or failure by the City to perform any material duty imposed on it hereunder and continuation of such breach or failure for a period of 60 days after receipt by the City Attorney of written notice thereof from the Paying Agent or from the Owners of at least 10% of the aggregate amount of the Bond Obligation, provided that such 60-day period shall be extended so long as the City has commenced and continues a good faith effort to remedy such breach or failure.

(c) ***Bankruptcy or Receivership.*** An order of decree by a court of competent jurisdiction declaring the City bankrupt under federal bankruptcy law or appointing a receiver of all or any material portion of the City's assets or revenues is entered with the consent or acquiescence of the City or is entered without the consent or acquiescence of the City but is not vacated, discharged or stayed within 30 days after it is entered.

**Section 18. Remedies for Events of Default.**

(a) ***Remedies.*** Upon the occurrence and continuance of any Event of Default, the Owners of not less than 25% of the aggregate amount of the Bond Obligation, including, without limitation, a trustee or trustees therefor may proceed against the City to protect and to enforce the rights of the any Owners under this Ordinance by mandamus, injunction or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction: (i) for the payment of interest on any installment of principal of any Bond that was not paid when due at the interest rate borne by such Bond; (ii) for the specific performance of any covenant contained herein; (iii) to enjoin any act that may be unlawful or in violation of any right of any Owner of any Bond; (iv) for any other proper legal or equitable remedy; or (v) any combination of such remedies or as otherwise may be authorized by applicable law; provided, however, that acceleration of any amount not yet due on the Bonds according to their terms shall not be an available remedy. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of Bonds then Outstanding.

(b) ***Failure To Pursue Remedies Not a Release; Rights Cumulative.*** The failure of any Owner of any Outstanding Bond to proceed in accordance with subsection (a) of this Section shall not relieve the City of any liability for failure to perform or carry out its duties under this Ordinance. Each right or privilege of any such Owner (or trustee therefor) is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege of such Owner.

(c) ***Bond Insurer Third-Party Beneficiary; Right To Control Remedies.*** In the event that the Bond Insurance Policy is issued and to the extent that this Ordinance confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Ordinance, the Bond Insurer is hereby explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder. Upon the occurrence and continuance of an Event of Default, so long as it is not in default of its obligations under the Bond Insurance Policy, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners under this Ordinance and pursuant to State law.

#### **Section 19. Amendment of Ordinance.**

(a) ***Amendments Permitted Without Notice to or Consent of Owners.*** The City may, without the consent of or notice to the Owners of the Bonds, adopt one or more ordinances amending or supplementing this Ordinance (which ordinances shall thereafter become a part hereof) for any one or more or all of the following purposes:

(i) to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision of this Ordinance;

(ii) to subject to this Ordinance or pledge to the payment of the Bonds additional revenues, properties or collateral;

(iii) to institute or terminate a book entry registration system for the Bonds or to facilitate the designation of a substitute securities depository with respect to such a system;

(iv) to maintain the then existing or to secure a higher rating of the Bonds by any nationally recognized securities rating agency; or

(v) to make any other change that does not materially adversely affect the Owners of the Bonds.

(b) ***Amendments Requiring Notice to and Consent of Owners.*** Except for amendments permitted by subsection (a) of this Section, this Ordinance may only be amended (i) by a ordinance of the City amending or supplementing this Ordinance (which, after the consents required therefor, shall become a part hereof); and (ii) with the written consent of the Owners of at least 66-2/3% of the Bond Obligation; provided that any amendment that makes any of the following changes with respect to any Bond shall not be effective without the written consent of the Owner of such Bond: (A) a change in the maturity of such Bond; (B) a reduction of the interest rate on such Bond; (C) a change in the terms of redemption of such Bond; (D) a delay in the payment of principal of or interest on such Bond; (E) a reduction of the Bond Obligation the consent of the Owners of which is required for an amendment to this Ordinance; or (F) the establishment of a priority or preference for the payment of any amount due with respect to any other Bond over such Bond.

(c) ***Procedure for Notifying and Obtaining Consent of Owners.*** Whenever the consent of an Owner or Owners of Bonds is required under subsection (b) of this Section, the City shall mail a notice to such Owner or Owners at their addresses as set forth in the registration books maintained by the Paying Agent and to the Underwriter, which notice shall briefly describe the proposed amendment and state that a copy of the amendment is on file in the office of the City for inspection. Any consent of any Owner of any Bond obtained with respect to an amendment shall be in writing and shall be final and not subject to withdrawal, rescission or modification for a period of 60 days after it is delivered to the City unless another time period is stated for such purpose in the notice mailed pursuant to this subsection.

(d) ***Consent of the Bond Insurer in Addition to Consent of Owners.*** In the event that the Bond Insurance Policy is issued, the Bond Insurer's consent shall be required in addition to the consent of Owners, when required, for the following purposes: (i) execution and delivery of any supplemental Ordinance or any amendment, supplement or change to or modification of this Ordinance; (ii) removal of the Paying Agent and selection and appointment of a successor; and (iii) initiation or approval of any action not described in clause (i) or (ii) above which requires the consent of Owners.

**Section 20. Appointment and Duties of Paying Agent.** The Paying Agent identified in the Section hereof titled "Definitions" is hereby appointed as paying agent, registrar and authenticating agent for the Bonds unless and until the City removes it as such and appoints a successor Paying Agent, in which event such successor shall automatically succeed to the duties of the Paying Agent hereunder and its predecessor shall immediately turn over all its records regarding the Bonds to such successor. The Paying Agent shall agree to perform all duties and to take all actions assigned to it hereunder in accordance with the terms hereof.

**Section 21. Approval of Related Documents.** The Council hereby ratifies and approves the distribution and use in connection with the offering of the Bonds of the Preliminary Official Statement relating to the Bonds; authorizes and directs the preparation of, and authorizes and directs the execution by the Mayor of an Official Statement for use in connection with the sale of the Bonds in substantially the form of the Preliminary Official Statement, with such changes therein, if any, not inconsistent herewith, as are approved by the Mayor (whose signature thereon shall constitute conclusive evidence of such approval); and for a period of six months following the adoption of this Ordinance, the Sale Delegate is authorized to execute the Commitment, if any, the Sale Certificate and the Bond Purchase Agreement. The appropriate officers and officials of the City are hereby authorized and directed to execute an undertaking to facilitate compliance with Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12, the Paying Agent Agreement, the Escrow Agreement, a "Tax Compliance Certificate" or similar certificate describing the City's expectations regarding the use and investment of proceeds of the Bonds and other moneys, an Internal Revenue Service Form 8038-G with respect to the Bonds and all other documents and certificates necessary or desirable to effectuate the issuance or administration of the Bonds, the investment of proceeds of the Bonds and the transactions contemplated hereby.

**Section 22. Bond Insurance Determination.** The Council hereby delegates to the Sale Delegate the authority to determine whether or not the Bonds will be secured by the Bond

Insurance Policy and the terms of any agreement with the Bond Insurer if a Commitment is accepted regarding the Bonds. Such determination shall be made by the Sale Delegate on a basis of whether or not an interest cost savings can be realized by the City through the issuance of the Bond Insurance Policy when compared to the premium to be paid to the Bond Insurer for the issuance of the Bond Insurance Policy.

**Section 23. Events Occurring on Days That Are Not Business Days.** Except as otherwise specifically provided herein with respect to a particular payment, event or action, if any payment to be made hereunder or any event or action to occur hereunder which, but for this Section, is to be made or is to occur on a day that is not a Business Day, such payment, event or action shall instead be made or occur on the next succeeding day that is a Business Day with the same effect as if it was made or occurred on the date on which it was originally scheduled to be made or occur.

**Section 24. Limitation of Actions.** In accordance with Section 11-57-212, Colorado Revised Statutes, no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization of the Bonds more than 30 days after the authorization of such securities.

**Section 25. Ordinance is Contract with Owners of Bonds and Irrepealable.** After the Bonds have been issued, this Ordinance shall be and remain a contract between the City and the Owners of the Bonds and shall be and remain irrepealable until all amounts due with respect to the Bonds shall be fully paid, satisfied and discharged and all other obligations of the City with respect to the Bonds shall have been satisfied in the manner provided herein.

**Section 26. Headings.** The headings to the various sections and subsections to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance and shall not be used in any manner to interpret this Ordinance.

**Section 27. Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

**Section 28. Repeal of Inconsistent Ordinances, Resolutions, Bylaws, Rules and Orders.** All ordinances, resolutions, bylaws, rules and orders, or parts thereof, that are inconsistent with or in conflict with this Ordinance, are hereby repealed to the extent of such inconsistency or conflict.

**Section 29. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance, the Act or the Charter) by the Council or by the officers and employees of the City directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 30. Emergency Declaration and Effective Date.** The Council has been advised that in order for the City to secure the low interest rates currently present in the market and avoid a possible increase in such rates, it is necessary to issue the Bonds as soon as possible. Therefore, for said reason, the Council declares that this ordinance is necessary for the immediate preservation of public property, health, peace, or safety and an emergency exists. This Ordinance shall be effective immediately upon final passage and be published within seven days after publication following final passage

Introduced, read in full, amended and passed as an Emergency Bill for an Ordinance on first reading on the 7<sup>th</sup> day of September, 2010.

Published as amended as an Emergency Bill for an Ordinance in the City's official newspaper on the 17<sup>th</sup> day of September, 2010.

Published as amended as an Emergency Bill for an Ordinance on the City's official website beginning on the 8<sup>th</sup> day of September, 2010 for thirty (30) days.

Read by title and passed on final reading as an Emergency Ordinance on the 20<sup>th</sup> day of September, 2010.

Published by title as an Emergency Ordinance in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2010, on the 24<sup>th</sup> day of September, 2010.

Published by title as an Emergency Ordinance on the City's official website beginning on the 22<sup>nd</sup> day of September, 2010 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

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

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Loucrishia A. Ellis

**THE ATTACHED EXHIBIT A WILL NOT BE EXECUTED UNTIL  
FINAL APPROVAL OF ORDINANCE .**

## APPENDIX A

## FORM OF BOND

UNITED STATES OF AMERICA  
STATE OF COLORADOCITY OF ENGLEWOOD, COLORADO  
GENERAL OBLIGATION REFUNDING BOND  
SERIES 2010

No. R \_\_\_\_ \$ \_\_\_\_\_

Interest Rate	Maturity Date	Original Dated Date	CUSIP
_____%			293065__

REGISTERED OWNER: Cede & Co.  
Tax Identification Number: 13-2555119

PRINCIPAL SUM: \*\*DOLLARS\*\*

The City of Englewood, Colorado, a duly organized and validly existing home-rule municipality of the State of Colorado, for value received, hereby promises to pay to the order of the registered owner named above, or registered assigns, the principal sum stated above on the maturity date stated above, with interest on such principal sum from the original dated date stated above at the interest rate per annum stated above (calculated based on a 360-day year of twelve 30-day months), payable on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_. Capitalized terms used but not defined in this bond shall have the meaning assigned to them in the Ordinance of the City authorizing the issuance of the Bonds.

The principal of and interest on this bond is payable to the registered owner hereof upon presentation and surrender of this bond at the principal operations office of UMB Bank, n.a., as paying agent, in Denver, Colorado, or at such other office of the Paying Agent designated by the Paying Agent for such purpose. Interest on this bond is payable by check or draft of the Paying Agent mailed on the Interest Payment Date to the registered owner hereof as of the [fifteenth day of the month immediately preceding] [first day of] the month (whether or not such day is a Business Day) in which the Interest Payment Date occurs; provided that, interest payable to the registered owner of this bond may be paid by any other means agreed to by such registered owner and the Paying Agent that does not require the City to make moneys available to the Paying Agent earlier than otherwise required under the Ordinance or increase the costs borne by the City under the Ordinance; provided further, that, so long as Cede & Co. is the registered owner of this bond, the principal of and interest on this bond shall be paid by wire transfer to Cede & Co. Any payment of principal of or interest on this bond that is due on a day that is not a Business Day shall be made on the next succeeding day that is a Business Day with the same effect as if made on the day on which it was originally scheduled to be made. All payments of

principal of and interest on this bond shall be made in lawful money of the United States of America.

This bond is part of an issue of general obligation refunding bonds of the City designated the City of Englewood, Colorado, General Obligation Refunding Bonds, Series 2010, issued in the principal amount of \$ \_\_\_\_\_ (the "Bonds"). The Bonds have been issued pursuant to, under the authority of, and in full conformity with, the Charter, the Constitution and the laws of the State, including, in particular, Part 2 of Article 57 of Title 11, Colorado Revised Statutes (collectively, the "Act"); and pursuant to a ordinance adopted by the City Council of the City. THE ORDINANCE CONSTITUTES THE CONTRACT BETWEEN THE REGISTERED OWNER OF THIS BOND AND THE CITY. THIS BOND IS ONLY EVIDENCE OF SUCH CONTRACT AND, AS SUCH, IS SUBJECT IN ALL RESPECTS TO THE TERMS OF THE ORDINANCE, WHICH SUPERSEDES ANY INCONSISTENT STATEMENT IN THIS BOND.

The Bonds have been issued by the City for the purpose of providing funds for the Refunding Project described in the Ordinance. The Bonds are general obligations of the City and the full faith and credit of the City are pledged for the punctual payment of the principal of and interest on the Bonds. For the purpose of paying the principal of and interest on the Bonds when due, respectively, the Council in the Ordinance has covenanted annually, to the extent legally available moneys are not otherwise applied, to determine and certify to the Board of County Commissioners of Arapahoe County, a rate of levy for general ad valorem taxes, without limitation as to rate or amount, on all of the taxable property in the City, sufficient to pay the principal of and interest on the Bonds when due, respectively, whether at maturity or upon earlier redemption.

[The redemption provisions from Section 4 of the Ordinance and the Sale Certificate shall be set forth herein.]

Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the City by sending a copy of such notice by first class, postage prepaid mail, not more than 60 days nor less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with the Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of Bonds shall be recorded. The person in whose name this bond shall be registered on such registration books shall be deemed to be the absolute owner hereof for all purposes, whether

or not payment on this bond shall be overdue, and neither the City nor the Paying Agent shall be affected by any notice or other information to the contrary.

This bond may be transferred or exchanged at the principal office of the Paying Agent in Denver, Colorado, or at such other office of the Paying Agent designated by the Paying Agent for such purpose for a like aggregate principal amount of Bonds of other authorized denominations (\$5,000 or any integral multiple thereof) of the same maturity and interest rate, upon payment by the transferee of a reasonable transfer fee established by the Paying Agent, together with any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith. Upon surrender for transfer of any Bond duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the City shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Bond. Notwithstanding any other provision of the Ordinance, the Paying Agent shall not be required to transfer any Bond (a) which is scheduled to be redeemed in whole or in part between the Business Day immediately preceding the mailing of the notice of redemption and the redemption date; or (b) between the Record Date for any Interest Payment Date and such Interest Payment Date.

The Ordinance may be amended or supplemented from time to time with or without the consent of the registered owners of the Bonds as provided in the Ordinance.

It is hereby certified that all conditions, acts and things required by the Charter, the Constitution and laws of the State, including the Act, and the ordinances of the City, to exist, to happen and to be performed, precedent to and in the issuance of this bond, exist, have happened and have been performed, and that neither this bond nor the other bonds of the issue of which this bond is a part exceed any limitations prescribed by the Charter, the Constitution or laws of the State, including the Act, or the ordinances of the City.

This bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the Paying Agent shall have signed the certificate of authentication hereon.

IN WITNESS WHEREOF, the City Council of the City has caused this bond to be executed with the signature of its Mayor and attested by the signature of its City Clerk, and has caused the seal of the City to be impressed or imprinted hereon, all as of the date set forth below.

[CITY SEAL]

THE CITY OF ENGLEWOOD

By \_\_\_\_\_  
Mayor

Attest:

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

**CERTIFICATE OF AUTHENTICATION**

This bond is one of the bonds of the issue described in the within mentioned Ordinance.

Dated: \_\_\_\_\_

UMB BANK, N.A., as Paying Agent

By \_\_\_\_\_  
Authorized Signatory

**STATEMENT OF INSURANCE**

[Statement of bond insurance required by the Commitment, if any.]

**APPROVING LEGAL OPINION**

Set forth below is a true copy of the approving legal opinion of Kutak Rock LLP, delivered on the date on which the Bonds were originally issued:

[The form of legal opinion of Bond Counsel shall be set forth here.]

I, the undersigned City Clerk of the City of Englewood, Colorado, do hereby certify that the foregoing approving opinion of Kutak Rock LLP, Denver, Colorado, is a true and complete copy of a manually executed and dated copy thereof on file in the official records of the City.

By (facsimile signature) \_\_\_\_\_  
City Clerk

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

---

(Please print or typewrite name and address of Transferee)  
(Tax Identification or Social Security No.)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

---

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

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Signature(s) must be guaranteed by a national bank or trust company or by a brokerage firm having a membership in one of the major stock exchanges.

TRANSFER FEE MAY BE REQUIRED

## COUNCIL COMMUNICATION

<b>Date:</b> September 20, 2010	<b>Agenda Item:</b> 9 c i	<b>Subject:</b> Non-Emergency After-Hours Service Call Charges
<b>Initiated By:</b> Utilities Department		<b>Staff Source:</b> Stewart H. Fonda, Director of Utilities

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None.

### RECOMMENDED ACTION

The Englewood Water and Sewer Board, at its July 7, 2010 meeting, recommended Council adopt a resolution approving the charges for non-emergency after-hours service calls.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Utilities Department has no fees in place to recover expenses when customers request an on-call, after-hours employee to respond to a non-emergency situation. Administration staff encourages customers to have the service performed during regular business hours, but periodically the customer insists on an evening or weekend appointment.

Utilities technicians have been called out after hours for non-emergency situations such as routine plumbing repairs, locating curb stops or turning on a service that was turned off for non-payment. The proposed charges would apply to non-emergency calls only, not situations that can cause damage from water or sewer lines.

The Board has authority pursuant to Amendment XX of the Colorado Constitution and 31-35-501 et sq. C.R.S., but there is no reference to the charge for after-hours calls in the ordinances.

The attached form has been approved by the City Attorney's office.

### FINANCIAL IMPACT

A fee of \$150 for the first hour and \$75 per hour after would be billed to the property for non-emergency, after-hours Utilities Department service calls. The resident requesting the service call would have to sign an "Acknowledgement of After-Hours Service Call Charge" form before services are rendered.

## **LIST OF ATTACHMENTS**

Excerpt from the Water and Sewer Board Minutes of the July 7, 2010 Meeting  
Acknowledgement of After-Hours Service Call Charge Form  
Resolution

WATER AND SEWER BOARD  
MINUTES

July 7, 2010

The meeting was called to order at 5:07 p.m.

Members present: Burns, Clark, Higday, Cassidy, Wiggins, Habenicht

Members absent: Olson, McCaslin, Woodward

Also present: Stewart Fonda, Director of Utilities  
Bill McCormick, Operations Supt.,

*Excerpt from Page 6 of the July 7, 2010 Water and Sewer Board Minutes*

.....

7. NON-EMERGENCY AFTER HOURS SERVICE CALL CHARGES.

The Utilities Department currently has no fees in place to recover expenses when customers request an on-call, after hours employee to respond to a non-emergency situation. Staff encourages customers to have services performed during regular business hours, but periodically the customer will insist on an evening or weekend appointment, for example routine plumbing repairs or locating curb stops. The proposed charges would apply to non-emergency calls only, and not situations that can result in damages from water or sewer lines.

A fee of \$150 for the first hour and \$75 per hour thereafter would be billed to the property for a non-emergency, after hours Utilities Department service call. The resident requesting the service call would be required to sign an "Acknowledgement of After Hours Service Call Charge" form before services are rendered.

Mr. Burns moved;

Mr. Habenicht seconded: To recommend Council approval of the charges for non-emergency after hours service calls of \$150 for the first hour and \$75 per hour thereafter.

Ayes: Burns, Clark, Higday, Cassidy, Wiggins, Habenicht, Woodward

Nays: None

Members absent: Olson, McCaslin

Motion carried.

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City of Englewood Water and Sewer Department



ACKNOWLEDGEMENT AND  
AUTHORIZATION FOR AFTER HOURS  
SERVICE CALL CHARGE

I \_\_\_\_\_ the owner or occupant of \_\_\_\_\_, Englewood, Colorado, am the person legally responsible for the water and sewer bills at this address. I understand and agree that:

- 1) I have contacted the City of Englewood's Water and Sewer Department for the purpose of having their personnel come to my house during non-business hours, business hours being 8:00 AM to 4:30 PM, Monday through Friday, holidays excluded.
- 2) The purpose for my call is not an emergency. I could have the Water and Sewer Department personnel come to my home during normal business hours, but it is more convenient for me to have them come during non-business hours.
- 3) I understand that there is a charge of \$150.00 (one hundred fifty dollars) for the first hour, and \$75.00 (seventy five dollars) per hour thereafter for a non-emergency, after business hours visit to my home.
- 4) I agree to pay these charges, which will be added to my regular water bill as a special charge.

\_\_\_\_\_

Owner or Occupant

\_\_\_\_\_

Date

Nature or reason for the after hours, non-emergency call:

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

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

A RESOLUTION ESTABLISHING FEES TO RECOVER EXPENSES FOR  
NON-EMERGENCY AFTER- HOURS SERVICE CALL SERVICES.

WHEREAS, the Englewood Home Rule Charter, Section 123, requires City Council to set rates for services provided by City owned utilities; and

WHEREAS, the City of Englewood Utilities Department has no fees in place to recover expenses when customers request an on-call, after-hours employee to respond to a non-emergency situation; and

WHEREAS, Utilities Department technicians have been called out after-hours for non-emergency situations such as routine plumbing repairs, locating curb stops or turning on a service that was turned off for non-payment; and

WHEREAS, the proposed non-emergency after-hours service call fees would not apply to situations where the City determines there may be damage from water or sewer lines; and

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended approval of Non-Emergency After-Hours Service Call Charges at the July 7, 2010 meeting;

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

Section 1. The City Council of the City of Englewood, Colorado hereby establishes fees for Non-Emergency After-Hours Service Call Charges, as follows:

Non-emergency, after-hours utilities department service calls . . . \$150.00 for the 1<sup>st</sup> hour  
After the 1<sup>st</sup> hour . . . . . \$ 75.00/hr.

These fees would be billed to the property for non-emergency, after-hours, utilities department Service calls.

Residents requesting the non-emergency after hours service call would be required to sign an "Acknowledgement And Authorization For After-Hours Service Call Charge" Form before services are rendered.

ADOPTED AND APPROVED this 20th day of September, 2010.

ATTEST:

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

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

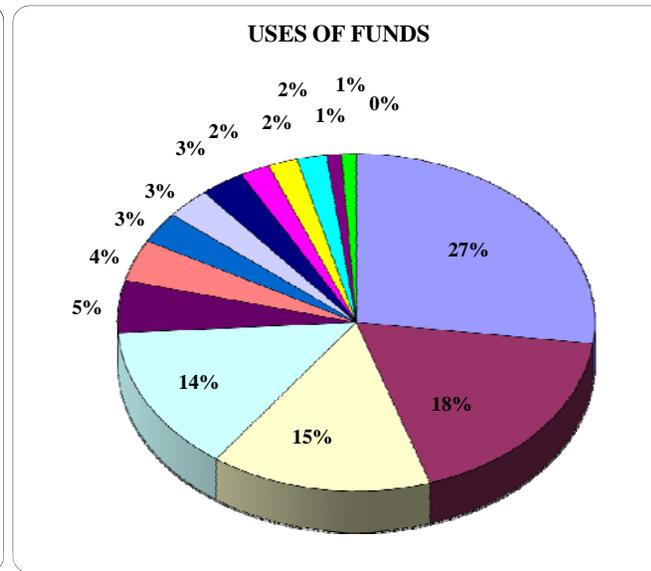
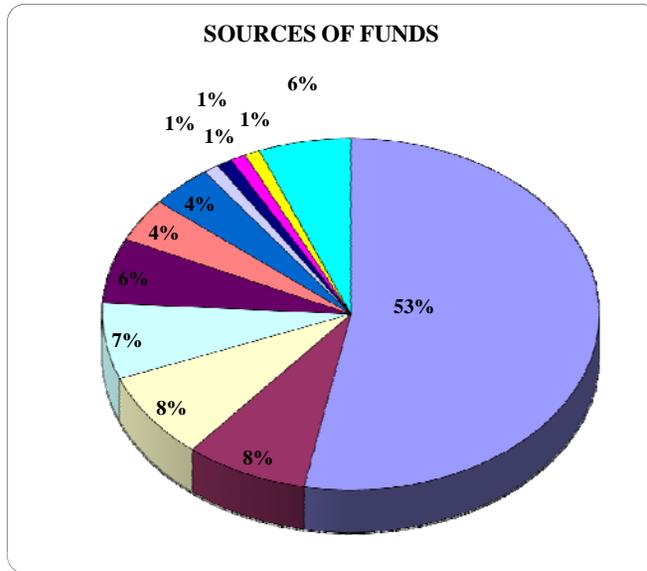
I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. \_\_\_\_\_, Series of 2010.

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

# City of Englewood, Colorado

## 2011 Proposed Budget

### General Fund



General Fund Sources	\$	%
<u>Revenue</u>		
Sales & Use Taxes	\$ 21,216,000	53%
Charges for Services	3,336,962	8%
Property Tax	3,017,000	8%
Franchise Fees	2,650,851	7%
Cultural & Recreation Program Fees	2,587,653	6%
Fines & Forfeitures	1,509,150	4%
Intergovernmental Revenue	1,459,564	4%
Specific Ownership & Cigarette Taxes	440,000	1%
Licenses & Permits	575,100	1%
Other	431,825	1%
Interest	200,000	1%
Total Revenue	37,424,105	
Other Financing Sources	2,519,204	6%
<b>Total Sources of Funds</b>	<b>\$ 39,943,309</b>	<b>100%</b>

General Fund Uses	\$	%
<u>Expenditure</u>		
Police Services	\$ 10,587,026	27%
Fire Services	7,465,775	18%
Parks & Recreation Services	5,969,515	15%
Public Works	5,498,891	14%
Debt Service	2,075,204	5%
Finance & Administrative Services	1,550,906	4%
Community Development	1,344,556	3%
Information Technology	1,338,543	3%
Library Services	1,256,520	3%
Municipal Court	999,105	2%
City Attorney's Office	762,518	2%
City Manager's Office	664,732	2%
Human Resources	481,102	1%
Legislation-City Council & Boards	357,380	1%
Contingencies	90,000	0%
Total Expenditure	40,441,773	
Other Financing Uses	-	
<b>Total Uses of Funds</b>	<b>\$ 40,441,773</b>	<b>100%</b>

<b>Net Sources (Uses) of Funds</b>	<b>\$ (498,464)</b>
Estimated Fund Balance - January 1, 2011	8,130,814
Estimated Fund Balance Before Reserves	7,632,350
<b>Reserves</b>	<b>(4,181,979)</b>
Estimated <u>Unreserved</u> Fund Balance - December 31, 2011	<u>\$ 3,450,371</u>



## GOVERNMENTAL FUND TYPES

**General Fund** is the operating fund of the City. It is used to account for all financial resources except for those required to be accounted in another fund.

<b>General Fund</b>	<b>8,130,814</b>	<b>39,943,309</b>	<b>40,441,773</b>	<b>7,632,350</b>
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**Special Revenue Funds** account for the proceeds of specific revenue sources that are legally restricted to expenditure for specified purposes.

Conservation Trust	276,856	327,000	484,000	119,856
<b>Community Development</b>	-	<b>290,000</b>	<b>290,000</b>	-
Donor's	71,633	89,000	131,200	29,433
<b>Malley Center Trust</b>	<b>257,432</b>	<b>20,000</b>	<b>50,000</b>	<b>227,432</b>
Parks and Recreation Trust	450,943	25,000	30,000	445,943
<b>Open Space</b>	<b>248,345</b>	<b>645,000</b>	<b>523,305</b>	<b>370,040</b>

**Debt Service Fund** accounts for the accumulation and payment of long-term debt principal and interest other than long-term debt accounted for in enterprise funds.

<b>General Obligation Bond Fund</b>	<b>8,670</b>	<b>1,094,000</b>	<b>1,089,748</b>	<b>12,922</b>
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**Capital Project Funds** account for financial resources to be used for the acquisition and/or construction of major capital facilities (other than those financed by proprietary funds or special revenue funds).

Public Improvement	496,666	1,608,000	2,095,815	8,851
<b>Capital Projects</b>	<b>112,366</b>	<b>547,500</b>	<b>651,039</b>	<b>8,827</b>

## PROPRIETARY FUND TYPES

**Enterprise Funds** account for operations financed and operated in a manner similar to private business enterprises.

Water	5,127,886	8,317,628	9,283,804	4,161,710
<b>Sewer</b>	<b>3,664,959</b>	<b>14,892,073</b>	<b>17,269,772</b>	<b>1,287,260</b>
Storm Drainage	701,887	342,927	358,981	685,833
<b>Golf Course</b>	<b>443,829</b>	<b>2,270,223</b>	<b>2,256,636</b>	<b>457,416</b>
Concrete Utility	260,760	711,200	695,171	276,789
<b>Housing Rehabilitation</b>	<b>933,430</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>933,430</b>

**Internal Service Funds** account for the financing of goods or services provided by one department or agency to other departments or agencies of the government, and to other governmental units, on a cost reimbursement basis.

Central Services	179,046	358,900	479,767	58,179
<b>ServiCenter</b>	<b>728,847</b>	<b>2,128,371</b>	<b>2,095,308</b>	<b>761,910</b>
Capital Equipment Replacement	896,357	800,992	796,232	901,117
<b>Risk Management</b>	<b>1,011,911</b>	<b>1,445,271</b>	<b>1,855,159</b>	<b>602,023</b>
Employee Benefits Fund	154,571	5,337,426	5,445,737	46,260

## COUNCIL COMMUNICATION

<b>Date:</b> September 20, 2010	<b>Agenda Item:</b> 11 c i	<b>Subject:</b> Resolution Allowing Publication of Council Bills in the Legal Newspaper by Title Only
<b>Initiated By:</b> Finance and Administrative Services Department  City Clerk's Office		<b>Staff Source:</b> Frank Gryglewicz, Director of Finance and Administrative Services Loucrishia Ellis, City Clerk

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

On January 5, 1998 City Council designated the *Englewood Herald* as the legal newspaper for the City of Englewood until modified by the City.

At the February 4, 2008 City Council Study Session, Council discussed the issue of allowing publication of legal notices by publishing on the City's official website or publishing in the newspaper designated by City Council as the City's official newspaper.

On June 16, 2008, Ordinance No. 24, Series of 2008 was approved amending the Englewood Municipal Code 2000 to allow the publication of legal notices by either publishing on the City of Englewood's official website or publishing in the newspaper designated by City Council as the City's official newspaper.

At the August 16, 2010 City Council Study Session, this was discussed and City Council gave tentative approval to allow publication of council bills in the legal newspaper by title only.

### RECOMMENDED ACTION

Recommendation to adopt a resolution approving a legal publication process to allow the publication of council bills in the City's legal newspaper by title only.

The Englewood Home Rule Charter Article V § 40 states that "upon introduction, the bill shall be published by reference or in full as Council may determine".

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Due to the City's current budget situation, we are seeking permission to publish council bills in the *Englewood Herald* by title only.

Our current practice is to publish council bills in their entirety unless we have a large attachment. In that instance, the council bill indicates that, pursuant to the Charter, a copy of the attachment shall not be published because of its size and a copy is available in the City Clerk's Office. We will continue that practice for all legals published on the City's official website.

**FINANCIAL IMPACT**

\$25,000 reduction in the City Clerk's 2011 Budget.

**LIST OF ATTACHMENTS**

Proposed Resolution

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

A RESOLUTION ADOPTING A LEGAL PUBLICATION PROCESS TO ALLOW THE PUBLICATION OF COUNCIL BILLS, IN THE LEGAL NEWSPAPER, BY TITLE ONLY WHILE CONTINUING TO PUBLISH THEM IN FULL ON THE CITY OF ENGLEWOOD'S OFFICIAL WEBSITE.

WHEREAS, the Englewood City Council understands that more and more citizens are receiving information through the World Wide Web; and

WHEREAS, the provisions of this Resolution provide for the greatest dissemination of information regarding matters of public concern to the citizens of Englewood, Colorado;

WHEREAS, Ordinance No. 24, Series of 2008 provides that whenever publication shall be required by the Charter, the Colorado Statutes, or ordinances, such publication shall be made by publishing on the City's official website or by publication in the newspaper designated by the City Council as the City's official newspaper.

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

Section 1. The City Council of the City of Englewood, Colorado hereby approves a legal publication process to allow the publication of Council Bills, in the legal newspaper, by title only while continuing to publish in full on the City of Englewood's official website.

ADOPTED AND APPROVED this 20th day of September, 2010.

ATTEST:

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

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

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

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

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

A RESOLUTION OPPOSING PROPOSITION 101, AMENDMENT 60, AND AMENDMENT 61 AT THE NOVEMBER 2, 2010 STATEWIDE GENERAL ELECTION.

WHEREAS, State voters will have the opportunity at the November 2, 2010 Statewide General Election to protect the fiscal health of local government by defeating Proposition 101, Amendment 60, and Amendment 61; and

WHEREAS, during this current economic downturn, the City of Englewood has imposed employee furloughs; eliminated important City positions; has cut back on parks maintenance and community programs; and deferred capital construction and other community development activities; and

WHEREAS, these measures individually and collectively, significantly reduce or otherwise restrict both State and local revenues in a number of different ways including but not limited to: property taxes, specific ownership taxes, telecommunication taxes, State income taxes, State-shared revenues to assist municipalities with local street and transit improvements, and other State grants and loans to help local governments; and

WHEREAS, the ability to finance long-term capital improvements like water and wastewater treatment plants, recreational projects, fire stations, and other public facilities are dramatically impaired by the restrictions on debt financing as proposed by Amendment 61; and

WHEREAS, the following services and programs in the City of Englewood would be limited or curtailed because of the numerous restrictions and revenue reductions proposed by these three measures; street and park maintenance; hours of service in our library, municipal court and parks and recreation programs; police and fire community services; and overall responsiveness of City services; and

WHEREAS, the City of Englewood is concerned about the impact these three measures will have on our ability to work effectively with other local governments in the form of intergovernmental agreements such as mutual aid agreements for police and fire; and

WHEREAS, the three measures will adversely affect our long term relations with the Regional Transportation District regarding our redevelopment efforts at Englewood City Center and in the construction of improvements at the City's McLellan Reservoir property. Also, these amendments will have a severe impact on the City's planned improvements to the Business Improvement District, South Broadway and the City's Medical District; and

WHEREAS, a number of prominent individuals, newspapers, and organizations including our own Colorado Municipal League are voicing opposition to these measures because they are not in the best interests of Colorado and of local communities; and

WHEREAS, provisions of State law allow the City of Englewood to put forth this Resolution as a statement of opposition to the measures known as Proposition 101, Amendment 60, and Amendment 61:

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 opposes Proposition 101, Amendment 60 and Amendment 61 and urges our citizens to vote against all three ballot measures.

ADOPTED AND APPROVED this 20th day of September, 2010.

ATTEST:

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

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

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

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

## BY AUTHORITY

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

COUNCIL BILL NO. 32  
 INTRODUCED BY COUNCIL  
 MEMBER \_\_\_\_\_

## A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT ENTITLED "COMMON INTEREST AND CONFIDENTIAL AGREEMENT" BETWEEN CITY OF AURORA, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE ("AURORA WATER"), THE CITY OF ENGLEWOOD, ("ENGLEWOOD"), THE CENTRAL COLORADO WATER CONSERVANCY DISTRICT ("CENTRAL"), PUBLIC SERVICE COMPANY OF COLORADO ("PUBLIC SERVICE"), THE CITY OF GREELEY, THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT ("NORTHERN"), THE CITY AND COUNTY OF DENVER ("DENVER WATER"), THE CITY AND COUNTY OF BROOMFIELD ("BROOMFIELD"), THE COLORADO DIVISION OF WILDLIFE AND THE COLORADO WILDLIFE COMMISSION ("DIVISION OF WILDLIFE"), THE STATE BOARD OF LAND COMMISSIONERS ("STATE LAND BOARD"), THE BIJOU IRRIGATION COMPANY ("BIJOU COMPANY") AND THE BIJOU IRRIGATION DISTRICT ("BIJOU DISTRICT") AND THEIR RESPECTIVE COUNSEL, (COLLECTIVELY THE "PARTIES") IN CONNECTION WITH WATER COURT DIVISION 1 CASE NOS. 02CW404 AND 03CW442, WHICH CONSIST OF VARIOUS CLAIMS ORIGINALLY PLEADED IN CASE NOS. 02CW105, 03CW442, 04CW356, 04CW362 AND 04CW365 (THE "WATER MATTERS").

WHEREAS, in the Water Court cases above described, the Applicants seek certain changes of water rights, exchanges, and additional diversions from the South Platte River which will be injurious to Englewood's water rights; and

WHEREAS, the Parties above named share a common interest in the claims asserted in the Water Matters as owners of vested water rights and/or interests in vested water rights that may be adversely affected by the outcome of the Water Matters; and

WHEREAS, in light of and in order to further that common interest, the Parties believe that they will mutually benefit from an exchange of information and ongoing coordination with respect to all matters and issues raised by the Water Matters; and

WHEREAS, the Parties therefore desire and agree to coordinate and prepare legal strategy and engineering analyses, and to engage in coordinated discovery, trial preparation and other matters related to the prosecution and outcome of the Water Matters; and

WHEREAS, the passage of this proposed Ordinance will authorize Englewood to enter into the above-described Common Interest and Confidentiality Agreement, which will enable Englewood's legal counsel to share strategies and information with the other parties named above concerning the Water Court cases described above;

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

Section 1. The Intergovernmental Agreement entitled “Common Interest And Confidential Agreement” is hereby accepted and approved by the Englewood City Council and is attached hereto as “Exhibit A”.

Section 2. The David Hill of Berg Hill Greenleaf & Rusciti for the City of Englewood is authorized to sign said Agreement for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 20th day of September, 2010.

Published as a Bill for an Ordinance in the City’s official newspaper on the 24<sup>th</sup> day of September, 2010.

Published as a Bill for an Ordinance on the City’s official website beginning on the 22nd day of September, 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 20th day of September, 2010.

---

Loucrishia A. Ellis

## COMMON INTEREST AND CONFIDENTIALITY AGREEMENT

This Joint Defense Agreement ("Agreement"), entered into and effective as of April 2, 2010, sets forth the understanding of the City of Aurora, Colorado, a Colorado municipal corporation of the Counties of Adams, Arapahoe and Douglas acting by and through its Utility Enterprise ("Aurora Water"), the City of Englewood, a Colorado municipal corporation ("Englewood"), the Central Colorado Water Conservancy District ("Central"), and Public Service Company of Colorado ("Public Service"), the City of Greeley, acting by and through its Water and Sewer Board ("Greeley"), the Northern Colorado Water Conservancy District ("Northern"), the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water"), the City and County of Broomfield ("Broomfield"), the Colorado Division of Wildlife and the Colorado Wildlife Commission, by and through the Attorney General ("Division of Wildlife"), the State Board of Land Commissioners ("State Land Board"), the Bijou Irrigation Company ("Bijou Company"), and the Bijou Irrigation District ("Bijou District") and their respective counsel, (collectively the "Parties"), in connection with Water Court Division 1 Case Nos. 02CW404 and 03CW442, which consist of various claims originally pleaded in Case Nos. 02CW105, 03CW442, 04CW356, 04CW362, and 04CW365 ( the "Water Matters").

### Statement of Common Interest

The Parties share a common interest in the claims asserted in the Water Matters as owners of vested water rights and/or interests in vested water rights that may be adversely affected by the outcome of the Water Matters. In light of and in order to further that common interest, the Parties believe that they will mutually benefit from an exchange of information and ongoing coordination with respect to all matters and issues raised by the Water Matters. The Parties therefore desire and agree to coordinate and prepare legal strategy and engineering analyses, and to engage in coordinated discovery, trial preparation and other matters related to the prosecution and outcome of the Water Matters.

### Common Interest Materials, Confidentiality

The Parties may make available to each other privileged information, both verbally and in writing, including notes, documents, memoranda, and research ("Common Interest Materials"), relating to the respective representations of Parties in connection with the Water Matters. The Common Interest Materials may reflect and incorporate confidential communications made by the Parties to their counsel, and by their counsel to them, and are protected by the attorney/client privilege from disclosure, and therefore are intended to be insulated from exposure beyond the confines of the Parties (the "Common Interest Privilege"). See e.g. *Matter of Grand Jury Subpoena Duces Tecum*, dated November 16, 1974, 406 F.Supp. 381 (S.D.N.Y. 1975). In addition, the Common Interest Materials are protected from disclosure as a result of the attorney work-product doctrine or other applicable privileges. See e.g. *Tranmirra Products Corp. v. Monsanto Chemical Corp.*, 26 F.R.D. 572 (S.D.N.Y. 1960).

The Parties are making the Common Interest Materials available to each other because the Parties intend to cooperate to reduce expenses, improve efficiencies, increase communications, and reduce the likelihood of potential liabilities of the Parties and any other party who may, in the future, become involved in the Water Matters. Because of the privileged nature of the Common Interest Materials, those materials will be shared among the Parties with the express understanding that the Parties shall not communicate the contents thereof to others, because the exchange of Common Interest Materials is not made for the purpose of allowing unlimited publication or use, but in confidence, for the limited and restricted purpose of assisting the Parties in advancing the Water Matters to a successful conclusion.

The Parties understand that the purpose of this Agreement is to facilitate common interest representation by increasing the information flow between the Parties. The Parties recognize, however, that under some circumstances, information known to one Party may not be shared with the other Parties to the Agreement.

Nothing in this Agreement is intended as, shall constitute, or shall be interpreted, construed or used as evidence of an admission by a Party of any wrongdoing, liability or fault (including comparative or proportionate fault), a waiver of any privilege, claim, right or defense, estoppel, or an admission as to any matter of law or fact, either as between the Parties or with respect to any person or entity not a party to this Agreement provided, however, that any Party shall be entitled to use this Agreement to enforce its terms.

If any person or entity not a part to this Agreement requests or demands, by subpoena or otherwise, any Common Interest Materials from any Party or from any Party's agent, employee, consultant, or representative, such Party shall: (1) immediately notify the other Parties, and (2) assert the Common Interest Privilege with respect to the requested Common Interest Materials. Each Party and each Party's respective counsel shall take all steps necessary to assert all applicable rights and privileges with respect to such Common Interest Materials and shall cooperate fully with the other Parties in any judicial proceedings related to the disclosure of the Common Interest Materials.

The intent of this Agreement is to preserve any privilege applicable to the Common Interest Materials while pursuing the Parties' common interest and to keep all Common Interest Materials confidential to the maximum extent allowed by law. A Party's disclosure of Common Interest Materials exchanged pursuant to this Agreement shall not be deemed a waiver by the other Parties of their right to assert a claim of the Common Interest Privilege and attorney/client or work-product privilege with respect to any Common Interest Materials.

This Agreement shall be binding upon each Party even after the Water Matters are decided or resolved, whether by settlement, judgment, dismissal, or otherwise as to that respective Party.

This Agreement, its terms, the fact of its execution and all discussions among the Parties, their attorneys, officers, directors, agents, consultants, representatives, and

employees with regard to the Agreement, are themselves subject to the attorney/client and work-product privileges, and each Party agrees that the Common Interest Privilege and any privilege shall be asserted in response to any subpoena or request for the production of the Agreement or in response to any inquiry as to its terms, the fact of its execution, or discussions relating to it.

This Agreement confirms a verbal agreement previously reached between the Parties. All previous privileged communications, and all Common Interest Materials previously exchanged, between the Parties and their respective attorneys, officers, directors, agents, employees, consultants, and representatives, are subject to this Agreement.

Neither the execution nor the performance of this Agreement shall result in the inability of any party to this Agreement to use any data contributed by it to the effort, any raw data generated under this Agreement, or any expert opinion which has been disclosed to other parties in this or other litigation, in other ongoing or subsequent litigation.

### **Termination and Withdrawal**

Any Party may withdraw from this Agreement by giving written notice to every other Party of its election to withdraw.

Any Party that withdraws from this Agreement, together with such Party's respective counsel, remains subject to all confidentiality provisions herein as they pertain to information theretofore received, but not as to subsequent information.

In the event a Party reaches a settlement with one or more of the Applicants in the Water Matters (the "Settling Party"), the remaining Parties to this Agreement may employ or continue to employ the Settling Party's engineering experts and utilize their previously developed analyses and reports which were developed in conjunction with the Water Matters and exchanged pursuant to this Agreement.

### **Miscellaneous**

Each Party understands and acknowledges that it is represented only by its attorneys in this matter, that while an attorney representing any other Party has a duty to preserve the confidences disclosed to him or her pursuant to this Agreement, the attorneys representing any other Party will be acting only as attorneys for that other Party and will owe a duty of loyalty to their respective client only. Each Party will pay for the services of its respective attorneys, but nothing herein shall void any subsequent agreement between the Parties, if any, to indemnify any other Party for attorneys' fees and costs or share in such fees and costs.

Each Party understands that the Parties may now or in the future have some adverse interests and that the sharing of some confidences pursuant to this Agreement may lead to potential conflicts of interest of the various attorneys in the future. The Parties do not intend that this Agreement or the exchange of Common Interest Materials shall be used to support the future disqualification of their respective attorneys and agree

that they will not move for disqualification of attorneys in the Water Matters or any other cases on account of the exchange of Common Interest Materials pursuant to this Agreement and waive any conflicts arising from the sharing of such confidences.

Colorado law shall control the interpretation and enforcement of this Agreement. This Agreement may be enforced in the District Court for Water Division One in Weld County, Colorado by a temporary restraining order and injunction in the event of a breach or anticipatory breach. The parties accept jurisdiction and venue in that court. Any modification to this Agreement shall be in writing and signed by all Parties.

This Agreement shall be binding upon the successors and assigns of the Parties and their respective counsel.

Nothing in this Agreement shall be deemed to create a partnership, joint venture, and/or principal and agent relationship between the Parties and/or their respective counsel.

The headings contained in this Agreement are for convenience of reference only and are not intended to limit the scope or affect the interpretation of this Agreement.

If any provision of this Agreement is deemed invalid or unenforceable, the balance of the Agreement shall remain in full force and effect.

This Agreement constitutes the entire current understanding of the Parties and their respective counsel with respect to its subject matter and supersedes any previous oral or written agreements relating to the subject matter of this Agreement.

The Parties acknowledge that this Agreement is the result of joint negotiations among the Parties, and agree that this Agreement shall not be construed or interpreted against any Party on the grounds of sole or primary authorship.

This Agreement is executed by the Parties and by their respective counsel, who also sign on behalf of themselves. This Agreement may be executed in counterparts each of which shall be deemed an original.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement effective on the date set forth above.

*[Signature Pages Follow]*

**PARTIES**

**AURORA WATER**

CITY OF AURORA, COLORADO,  
A COLORADO HOME RULE MUNICIPAL CORPORATION  
OF THE COUNTIES OF ADAMS, ARAPAHOE AND DOUGLAS,  
ACTING BY AND THROUGH ITS UTILITY ENTERPRISE

\_\_\_\_\_  
Edward J. Tauer, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Debra A. Johnson, City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM FOR AURORA:

\_\_\_\_\_  
Steve Sims, Special Water Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Christine McKenney, Assistant City Attorney

\_\_\_\_\_  
Date

STATE OF COLORADO     )  
  ) ss  
COUNTY OF ARAPAHOE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by Edward J. Tauer as Mayor, and attested to by Debra A. Johnson, as City Clerk, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

*[signatures of Parties continue on following page]*



**CENTRAL**

CENTRAL COLORADO WATER CONSERVANCY DISTRICT

[ADDRESS]  
[ADDRESS]  
[ADDRESS]

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

ATTEST:

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

APPROVED AS TO FORM FOR CENTRAL:

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

STATE OF COLORADO     )  
  ) ss  
COUNTY OF ARAPAHOE    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as \_\_\_\_\_, and attested to by \_\_\_\_\_, as \_\_\_\_\_, acting on behalf of the Central Colorado Water Conservancy District.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

*[signatures of Parties continue on following page]*

**PUBLIC SERVICE**

PUBLIC SERVICE COMPANY OF COLORADO,  
A COLORADO CORPORATION

[ADDRESS]  
[ADDRESS]  
[ADDRESS]

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

ATTEST:

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

APPROVED AS TO FORM FOR PUBLIC SERVICE:

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

STATE OF COLORADO     )  
  ) ss  
COUNTY OF ARAPAHOE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as \_\_\_\_\_, and attested to by \_\_\_\_\_, as \_\_\_\_\_, acting on behalf of Public Service Company of Colorado.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

*[signatures of Parties continue on following page]*

**GREELEY**

CITY OF GREELEY, COLORADO,  
ACTING BY AND THROUGH ITS WATER AND SEWER BOARD

[ADDRESS]  
[ADDRESS]  
[ADDRESS]

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

ATTEST:

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

APPROVED AS TO FORM FOR GREELEY:

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

STATE OF COLORADO    )  
                                  ) ss  
COUNTY OF ARAPAHOE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as \_\_\_\_\_, and attested to by \_\_\_\_\_, as \_\_\_\_\_, acting on behalf of the City of Greeley, Colorado, acting by and through its Water and Sewer Board.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

*[signatures of Parties continue on following page]*









**STATE LAND BOARD**

**THE STATE BOARD OF LAND COMMISSIONERS**

[ADDRESS]  
[ADDRESS]  
[ADDRESS]

\_\_\_\_\_  
[name, title] [date]

ATTEST:

\_\_\_\_\_  
[name, title] [date]

APPROVED AS TO FORM FOR STATE LAND BOARD:

\_\_\_\_\_  
[name, title] [date]

STATE OF COLORADO     )  
  ) ss  
COUNTY OF ARAPAHOE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as \_\_\_\_\_, and attested to by \_\_\_\_\_, as \_\_\_\_\_, acting on behalf of the State Board of Land Commissioners.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)



**BIJOU IRRIGATION DISTRICT**

[ADDRESS]  
[ADDRESS]  
[ADDRESS]

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

ATTEST:

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

APPROVED AS TO FORM FOR BIJOU IRRIGATION DISTRICT:

\_\_\_\_\_  
[name, title]

\_\_\_\_\_  
[date]

STATE OF COLORADO     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2010, by \_\_\_\_\_ as \_\_\_\_\_, and attested to by \_\_\_\_\_, as \_\_\_\_\_, acting on behalf of the Bijou Irrigation District.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**COUNSEL**

Dated: \_\_\_\_\_

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP  
410 Seventeenth Street, Suite 2200  
Denver, CO 80202

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Steven O. Sims, Esq.  
Adam P. DeVoe, Esq.  
Bret A. Fox, Esq.  
Counsel for Aurora Water

Dated: \_\_\_\_\_

BERG HILL GREENLEAF &  
RUSCITTI LLP  
1712 Pearl Street  
Boulder, CO 80302

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David G. Hill, Esq.  
Jon N. Banashek, Esq.  
Heidi C. Potter, Esq.  
Counsel for Englewood

Dated: \_\_\_\_\_

LIND LAWRENCE & OTTENHOFF, LLP  
355 Eastman Park Drive, Suite 200  
Windsor, CO 80550

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Bradley C. Grasmick, Esq.  
Counsel for Central

Dated: \_\_\_\_\_

BALCOMB & GREEN, P.C.  
818 Colorado Avenue  
Glenwood Springs, CO 81602

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David C. Hallford, Esq.  
Sara M. Dunn, Esq.  
Counsel for Public Service

Dated: \_\_\_\_\_

FIRM  
ADDRESS1  
ADDRESS2

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ATTORNEY1, Esq.  
Counsel for Greeley

Dated: \_\_\_\_\_

FIRM  
ADDRESS1  
ADDRESS2

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ATTORNEY1, Esq.  
Counsel for Northern

Dated: \_\_\_\_\_

FIRM  
ADDRESS1  
ADDRESS2

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ATTORNEY1, Esq.  
Counsel for Denver Water

Dated: \_\_\_\_\_

FIRM  
ADDRESS1  
ADDRESS2

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ATTORNEY1, Esq.  
Counsel for Broomfield

Dated: \_\_\_\_\_

FIRM  
ADDRESS1  
ADDRESS2

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ATTORNEY1, Esq.  
Counsel for Division of Wildlife

Dated: \_\_\_\_\_

FIRM  
ADDRESS1  
ADDRESS2

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ATTORNEY1, Esq.  
Counsel for State Land Board

Dated: \_\_\_\_\_

FIRM  
ADDRESS1  
ADDRESS2

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ATTORNEY1, Esq.  
Counsel for Bijou Irrigation Company

Dated: \_\_\_\_\_

FIRM  
ADDRESS1  
ADDRESS2

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ATTORNEY1, Esq.  
Counsel for Bijou Irrigation District

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