Agenda for the
Regular Meeting of the
Englewood City Council
Monday, November 1, 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 October 18, 2010.

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

   a. Dave Chapman, Jim Black, and Jason Clark, from the Allen Water Treatment Plant, will be present to discuss the Bronze Environmental Achievement Award the Allen Plant recently received.

   b. Fire Marshal Ben Greene will present the 2010 Fire Prevention Poster Contest Awards followed by a brief reception in the Community Room.

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.

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. 44 — Recommendation from the Englewood Water and Sewer Board and the Utilities Department to adopt a bill for an ordinance authorizing a license for the City Ditch Crossing Agreement and a Temporary Construction Easement to the First Church of Christ, Scientist at 3701 South Logan Street for the replacement of electrical lines and installation of Bollard lights crossing over the City Ditch. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

      ii. Council Bill No. 45 — Recommendation from the Parks and Recreation Department to adopt a bill for an ordinance approving a lease agreement with Englewood Schools pertaining to the Duncan Park School Building. **STAFF SOURCE: Jerrell Black, Director of Parks and Recreation.**

   b. Approval of Ordinances on Second Reading.

      i. Council Bill No. 34, as amended, approving amendments to Title 16: Unified Development Code relating to Floodplain Regulations.

      ii. Council Bill No. 41, expanding the membership of the Alliance for Commerce in Englewood.

   c. Resolutions and Motions.

      i. Recommendation by the Finance and Administrative Services Department to approve a resolution transferring $200,000 from the Employee Benefits Fund to the General Fund. **STAFF SOURCE: Frank Gryglewicz, Director of Finance and Administrative Services.**

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

11. Ordinances, Resolutions and Motions

   a. Approval of Ordinances on First Reading.

   b. Approval of Ordinances on Second Reading.

      i. Council Bill No. 42, to adopt an emergency bill for an ordinance authorizing and approving the lease-purchase of certain equipment for City departments.

c. Resolutions and Motions.

i. Recommendation from the Englewood Water and Sewer Board and the Utilities Department to approve, by motion, a bid to line the City Ditch at Highway 285 and Clarkson Street and install a manhole. Staff recommends awarding the contract to the lowest acceptable bidder, Wildcat Civil Services, in the amount of $104,720. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

ii. Recommendation from the South Broadway Englewood Business Improvement District to approve, by motion, its 2011 Operating Plan and Proposed 2011 Budget. **STAFF SOURCE: Darren Hollingsworth, Economic Development Coordinator.**

12. General Discussion.

a. Mayor's Choice.

b. Council Members' Choice.

13. City Manager's Report.

14. City Attorney's Report.

15. Adjournment

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

- Alliance for Commerce in Englewood meeting of September 9, 2010.
- Cultural Arts Commission meeting of September 1, 2010.
- Englewood Housing Authority meeting of September 1, 2010.
- Malley Center Trust Fund meeting of June 16, 2010.
- Planning and Zoning Commission meeting of September 21 and October 5, 2010.
- Transportation Advisory Committee meeting of September 9, 2010.
- Water and Sewer Board meeting of September 21, 2010.

STATE OF COLORADO

Bill Ritter, Jr., Governor
Martha E. Rudolph, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530
Phone (303) 692-2000
TDD Line (303) 691-7700
Located in Glendale, Colorado

Laboratory Services Division
8100 Lowry Blvd.
Denver, Colorado 80230-6928
(303) 692-3090

http://www.cdphe.state.co.us

Colorado Department
of Public Health
and Environment

August 20, 2010

Jason Clark
City of Englewood - Allen Water Treatment Plant
1500 West Layton Avenue
Englewood, CO 80126

Subject: Notification of Bronze Environmental Achievement Award

Dear Mr. Clark:

I am writing to announce and congratulate City of Englewood - Allen Water Treatment Plant for being nominated and awarded a Bronze Environmental Achievement Award from the Colorado Department of Public Health and Environment (the department). The Bronze tier of the department's Environmental Leadership Program (ELP) is the entry-level tier that recognizes the voluntary and significant environmental achievements of Colorado businesses, organizations and state and local government agencies. Earlier this year, Nicole Graziano of the department nominated City of Englewood - Allen Water Treatment Plant for its sustainability achievements.

As a Bronze level member of the ELP, the department will publicly recognize the voluntary environmental achievements of City of Englewood - Allen Water Treatment Plant at the department's annual fall awards event, and throughout the next year. In addition, the program offers a number of incentives as a reward for achieving environmentally beneficial results such as use of the Bronze member logo and participation in the awards event.

Again, welcome to the Environmental Leadership Program. I encourage you to contact Lynette Myers, Administrator of the Environmental Leadership Program at (303) 692-3477 or lynette.myers@state.co.us at any time with questions you may have related to the program.

Sincerely,

Martha E. Rudolph
Executive Director

cc: Jeff Lawrence, Division of Environmental Health and Sustainability
Colorado Department of Public Health and Environment

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
November 1, 2010	9 a i	City Ditch Crossing Agreement and Temporary Construction Easement – for First Church of Christ, Scientist, 3701 South Logan Street
Initiated By:		**Staff Source:**
Utilities Department		Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

On September 8, 1998 City Council passed a Grant of City Ditch Easement for the First Church of Christ, Scientist at 3701 South Logan Street.

On October 6, 2003 City Council passed a Construction Easement and License Agreement from the First Church of Christ, Scientist to allow the City to pipe the City Ditch. The Construction and License Agreement that was passed at the same time allowed the church to install a river rock dry creek bed for landscaping purposes over the existing easement.

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at its September 21, 2010 meeting, recommended Council approval of the License – City Ditch Crossing Agreement and the Temporary Construction Agreement for the First Church of Christ, Scientist at 3701 South Logan Street.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The property located at 3701 South Logan Street is owned by the First Church of Christ, Scientist. The Church originally granted the City a 25' easement to pipe the City Ditch that runs through the front portion of their property, along South Logan Street. This agreement was mutually beneficial in that the easement allowed the City to pipe the City Ditch and improve water flow and in turn stabilize the church's front concrete porch which was being undermined by ditch seepage. The attached Construction and License Agreement will allow the First Church of Christ to install a replacement electrical line and additional electrical line for construction of four bollard lights for the front of the church facing South Logan Street.

Englewood will maintain its easement and the right to install, repair, remove, or relocate the City Ditch at any time deemed necessary. The License Agreement allows the First Church of Christ, Scientist to install and maintain the electrical lines and bollard lights for the front of the church.

The Licensee expressly assumes full and strict liability for any and all damages of every nature to person or property caused by the point or points where the Licensee performs any work in

connection with the crossing provided by the Licensee. The City reserves the right to make full use of the property necessary in the operation of the City Ditch.

Englewood's City Attorney has reviewed the agreements.

FINANCIAL IMPACT

None.

LIST OF ATTACHMENTS

September 21, 2010 Water and Sewer Board Minutes (excerpted)
Proposed Bill for an Ordinance

WATER AND SEWER BOARD
MINUTES

September 21, 2010

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

Members present:	Burns, Clark, Cassidy, Wiggins, Woodward, Habenicht
Members absent:	Higday, McCaslin
Also present:	Stewart Fonda, Director of Utilities Bill McCormick, Operations Supt – Utilities John Bock, Utilities Manager of Admin. Amy Sundine, Billing Supv. Tom Brennan, Utilities Engineer

Excerpt from Pages 5 and 6 of the September 21, 2010 Water and Sewer Board Minutes

. . . . .

6. CITY DITCH CROSSING AGREEMENT AND TEMPORARY CONSTRUCTON EASEMENT – FIRST CHURCH OF CHRIST – 3701 S. LOGAN ST.

The First Church of Christ has submitted a City Ditch Crossing Agreement and a Temporary Construction Agreement to install a replacement electrical line and an additional electrical line for construction of four bollard lights for the front of the church located at 3701 S. Logan St.

The Licensee expressly assumes full and strict liability for any and all damages and the City reserves the right to make full use of the property necessary in the operation of the City Ditch. Englewood's City Attorney has reviewed the agreements.

Mr. Burns moved

Mr. Cassidy seconded:	To recommend Council approval of the License – City Ditch Crossing Agreement and the Temporary Construction Agreement for the First Church of Christ, Scientist at 3701 S. Logan St.
Ayes:	Burns, Clark, Cassidy, Wiggins, Woodward, Habenicht, Olson, Cassidy
Nays:	None
Members absent:	Higday, McCaslin

Motion carried

. . . . .

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2010

COUNCIL BILL NO. 44
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING A "LICENSE - CITY DITCH CROSSING AGREEMENT" AND A "TEMPORARY CONSTRUCTION EASEMENT" TO FIRST CHURCH OF CHRIST, SCIENTIST FOR THE REPLACEMENT OF ELECTRICAL LINES AND INSTALLATION OF BOLLARD LIGHTS CROSSING OVER THE CITY DITCH.

WHEREAS, the Englewood City Council accepted a Grant of a City Ditch Easement from the First Church of Christ, Scientist at 3701 South Logan by the passage of Ordinance No. 61, Series of 1998 to clarify the location of the City Ditch; and

WHEREAS, Ordinance No. 61, Series of 1998 was mutually beneficial in that the easement allowed the City to pipe the City Ditch and improve water flow and in turn stabilize the church's front concrete porch which was being undermined by ditch seepage; and

WHEREAS, the First Church of Christ, Scientist wishes to install and maintain replacement electrical lines and Bollard lights over the existing license crossing the City of Englewood's Right-of-Way for the City Ditch at the approximate location of 3701 South Logan; and

WHEREAS, the License Agreement will allow the First Church of Christ, Scientist to install and maintain electrical lines and bollard lights in the existing Right-of-Way to provide access to a small portion of it's property without trespassing through adjoining property; and

WHEREAS, the City will maintain the City's Right-of-Way and the right to install, repair, remove or relocate the City Ditch at any time deemed necessary; and

WHEREAS, the First Church of Christ, Scientist assumes full and strict liability for any and all damages of every nature to persons or property caused in connection with the crossing requested by the First Church of Christ, Scientist; and

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

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended City Council approval of the License-City Ditch Crossing Agreement and Temporary Construction Easement at their September 21, 2010 meeting;

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

Section 1. The License-City Ditch Crossing Agreement and Temporary Construction Easement First Church of Christ, Scientist for the replacement of electrical lines and the addition of Bollard

lights crossing over the City Ditch, attached hereto as "Exhibit 1," is hereby accepted and approved by the Englewood City Council.

Section 2. The Director of Utilities and Chairman of the Englewood Water and Sewer Board are authorized to sign the License-City Ditch Crossing Agreement and Temporary Construction Easement for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 1st day of November, 2010.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 5th day of November, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 3rd day of November, 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 1st day of November, 2010.

_____
Loucrishia A. Ellis

EXHIBIT 1

LICENSE - CITY DITCH CROSSING AGREEMENT

THIS LICENSE AGREEMENT, made and entered into as of this _____ day of _____, 20__, by and between the CITY OF ENGLEWOOD, a municipal corporation of the State of Colorado, herein referred to as "City", and First Church of Christ, Scientist herein referred to as "Licensee".

WITNESSETH: The City without any warranty of its title or interest whatsoever, hereby authorizes Licensee, its successor, assigns, to install a 4 Ballard Lights and electrical Wiring over the City's rights-of-way for the City Ditch, described as a parcel of land situated in the Wynetka Heights Subdivision of Section 3, Township 5 South Range 68 West of the 6th P.M., County of Arapahoe, State of Colorado described as follows: A 25 FOOT WIDE DITCH, LOCATED IN LOTS 41 THROUGH 48, BLOCK 4 OF WYNETKA HEIGHTS SUBDIVISION, THE EAST RIGHT-OF-WAY BEING 16 FEET EAST OF AND THE WEST RIGHT-OF-WAY BEING 9 FEET WEST OF AND PARALLEL TO THE CENTERLINE OF SAID DITCH

The above-described parcel contains 0.102 Acres, more or less.

1. Any construction contemplated or performed under this License shall comply with and conform to standards formulated by the Director of Utilities of the City and such construction shall be performed and completed according to the plans, consisting of one sheet, a copy of which is attached hereto and made a part hereof.

2. The Licensee shall notify the City's Director of Utilities at least three (3) days prior to the time of commencement of the construction of, or any repairs made to, Licensee's Property Surrounding The City's Easement so that the City may, in its discretion, inspect such operations.

3. Within thirty (30) days from the date of the commencement of construction of said Replacement and addition of 4 Ballard Lights and Electrical Wiring the Licensee shall complete such construction, place and maintain permanent, visible markers, of a type and at such locationsas designated by the City's Director of Utilities, referring to the centerline of the installation and shall clear the crossing area of all construction debris and restore the area to its previous condition as near as may be reasonable. In the event the planing of the centerline markers and the clearing and restoration of the crossing area is not completed within the time specified, the City may complete the work at the sole expense of the Licensee.

4. The City shall have the right to maintain, install, repari, remove or relocate the City Ditch or any other of its facilities or installations within the City's rights-of-way, at any time and in such manner as the City deems necessary or convenient. The City reserves the

exclusive right to control all easements and installations. In the event the 4 Bollard Lights & Wiring should interfere with any future use of the City's rights-of-way by the City, the Licensee shall, upon request and at its sole expense, relocate, rearrange, or remove its installations so as not to interfere with any such use.

5. Any repair or replacement of any City installation made necessary, in the opinion of the City's Director of Utilities because of the construction of the 4 Bollard Lights and Electrical Wiring or other appurtenant installation thereof, shall be made at the sole expense of the Licensee.

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

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

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

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

10. Licensee, by acceptance of this License, expr4essly assumes full and strict liability for any and all damages of every nature to person or property caused by water from the ditch leaking through the ditch banks or pipeline at the point or points where the Licensee performs any work in connection with the crossing provided by this License. The Licensee assumes all responsibility for maintenance of the installation.

11. Licensee shall indemnify and save harmless the City, its officers and employees, against any and all claims, damagtes, acctions or causes of action and expenses to which it or they may be subjected by reason of said 4 Bollard Lights and Electrical Wiring being within and across and under the premises of the City or by reason of any work done or omission made by Licensee, its agents or employees, in connection with the construction, replacement, maintenance or repair of said installation.

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

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

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

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

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

CITY OF ENGLEWOOD

By: _____
Stewart H. Fonda
Director of Utilities
City of Englewood

By: _____
Chairman
Englewood Water and Sewer Board

The undersigned officer of First Church of Christ, Scientist has read the foregoing License and agrees for an on behalf of said First Church of Christ, Scientist that it will accept and will abide by all the terms and conditions thereof.

LICENSEE:

First Church of Christ, Scientist

By: _____

Title: Maintenance Engineer

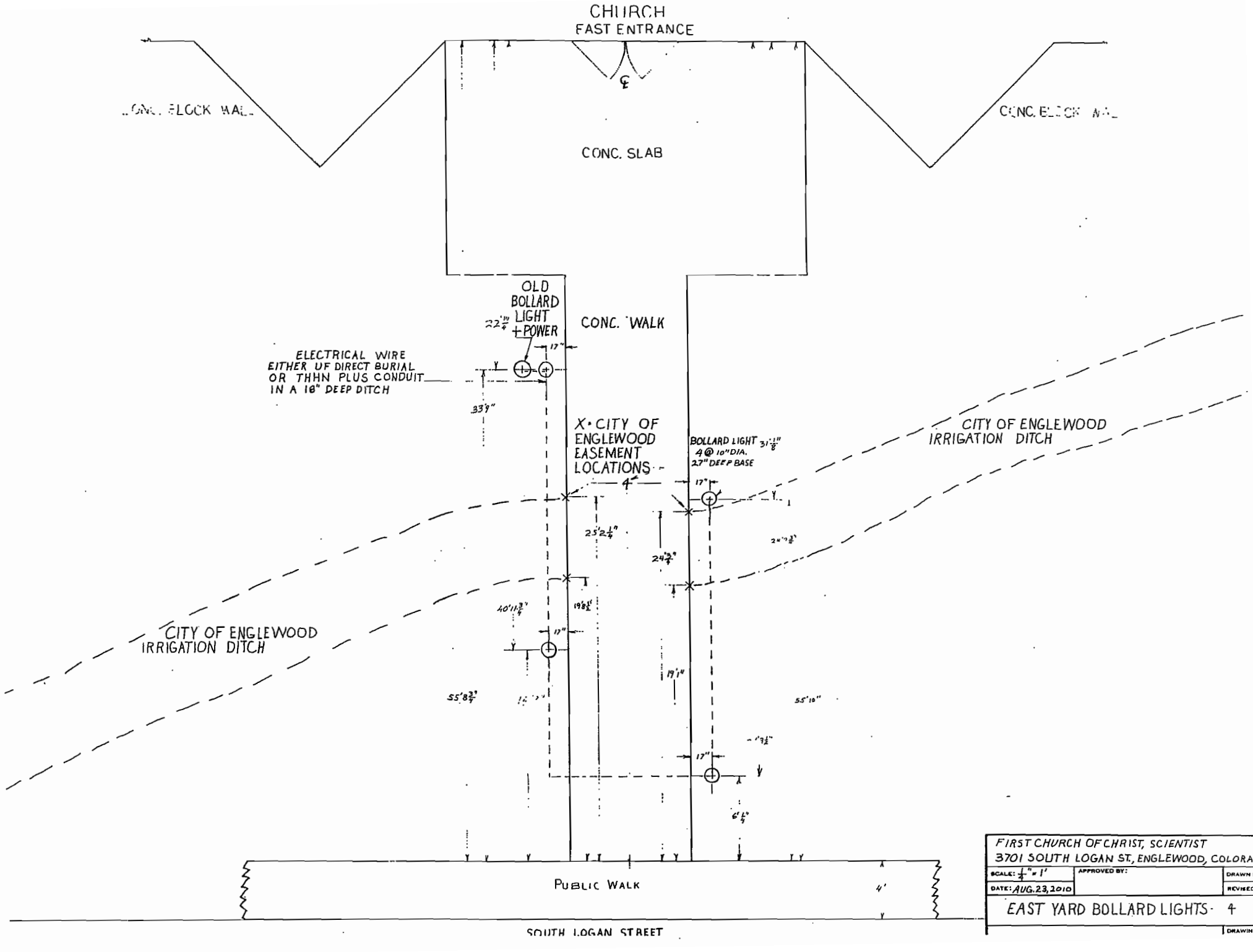
Address: 3701 S. Logan St.
Englewood, CO. 80110

Phone: _____

Notary: _____

My commission expires:

AMY J SUNDINE
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires May 29, 2014


CHURCH
EAST ENTRANCE
CONC. BLOCK WALL
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ELECTRICAL WIRE EITHER UF DIRECT BURIAL OR THHN PLUS CONDUIT IN A 18" DEEP DITCH
X - CITY OF ENGLEWOOD EASEMENT LOCATIONS
BOLLARD LIGHT 4 @ 10" DIA. 27" DEEP BASE
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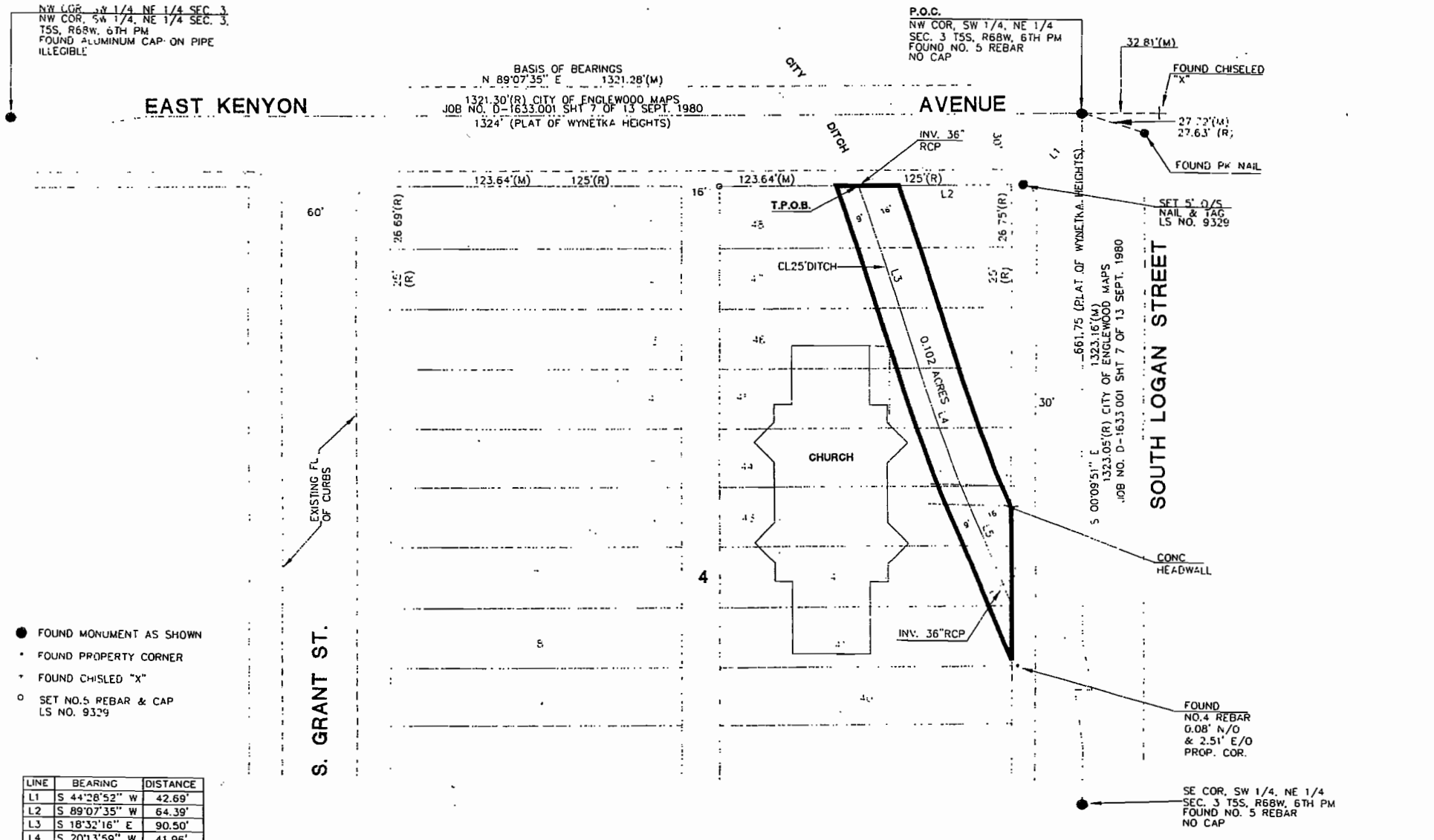
PUBLIC WALK
SOUTH LOGAN STREET
FIRST CHURCH OF CHRIST, SCIENTIST
3701 SOUTH LOGAN ST, ENGLEWOOD, COLORA
SCALE: 1/4" = 1'
APPROVED BY:
DRAWN
DATE: AUG. 23, 2010
REVISED
EAST YARD BOLLARD LIGHTS - 4
DRAWIN

LAND SURVEY PLAT

OF
A PORTION OF WYNETKA HEIGHTS SUBDIVISION
BEING A PART OF THE N 1/2 OF THE SW 1/4 OF THE NE 1/4 OF SECTION 3,
TOWNSHIP 5 SOUTH, RANGE 68 WEST, OF THE SIXTH PRINCIPAL MERIDIAN,
CITY OF ENGLEWOOD, ARAPAHOE COUNTY, STATE OF COLORADO
SHEET 2 OF 2



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- • FOUND PROPERTY CORNER
- + FOUND CHISLED "X"
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LINE	BEARING	DISTANCE
L1	S 44°28'52" W	42.69'
L2	S 89°07'35" W	64.39'
L3	S 18°32'16" E	90.50'
L4	S 20°13'59" W	41.96'
L5	S 23°16'25" W	54.67'

ROCKY MOUNTAIN CONSULTANTS, INC.
CIVIL AND ENVIRONMENTAL ENGINEERING • PLANNING
RMC
8301 E. Prentice Ave.
Suite 101
Englewood, CO 80111
(303) 741-6000

DESIGNED BY: VRI	REVISIONS		
CHECKED BY: DP	NO.	DESCRIPTION	DATE
DRAWN BY: VRI	1.	CHANGE CL ALIGN	7/14/

TEMPORARY CONSTRUCTION EASEMENT

This Temporary Construction Easement (the Temporary Easement) is entered into this ___ day of _____, 20[illegible] by and between the City of Englewood, Colorado, a municipal corporation of the state of Colorado, acting by the through its Water and Sewer Board (Grantor) and First Church of Christ, Scientist, Englewood CO, 3701 S. Logan St., Englewood, CO, 80110 (Grantee).

WHEREAS, The City of Englewood owns a right-of-way for the City Ditch, a carrier ditch (City Ditch ROW) which is located as described on Exhibit A.

WHEREAS, First Church of Christ, scientist desires to install # 4 Ballard Lights and Wiring within the City Ditch ROW pursuant to a license between the parties.

NOW, THEREFORE, In consideration of the mutual covenants of the parties, more particularly hereinafter set forth, the adequacy and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. Temporary Construction Easement. Englewood (as Grantor) hereby grants to First Church of Christ, Scientist (as Grantee), its successors, assigns, contractors, and sub-contractors, a non-exclusive temporary construction easement through, over, under and across the City Ditch ROW for the installation of # 4 Ballard Lights and Their Wiring pursuant to a license agreement (the Project).

2. Term of Easement. The Project will begin no sooner than Sept. 15, 2010 and will be completed no later than _____. Completion of the Project will be deemed to have occurred upon inspection and approval of the Project by Grantor and this Temporary Easement will be deemed to have terminated upon such completion.

3. Access. Grantee shall have the temporary non-exclusive right to enter the City Ditch ROW for any reasonable purpose necessary or prudent for the construction of the Project subject to the following restrictions: 1) normal working hours shall be consistent with CDOT construction hours, Monday through Friday and 2) the operation of equipment and heavy trucks will be permitted on the Englewood City Ditch ROW only during normal working hours.

4. Restoration. Upon completion of the Project, Grantee will perform such restoration and regrading as is necessary or prudent to restore the surface area of the City Ditch ROW to its original condition.

5. Indemnification. Grantee, to the extent permitted by the laws and constitution of the State of Colorado, hereby agrees to be liable and hold harmless the City of Englewood, its employees, tenants, and guests from any and all claims, causes of action, and liability which may occur as a result of the negligent or wrongful acts of Grantee in the construction of the Project, including the cost of defending against such claims.

6. Liability. Grantee hereby acknowledges that it understands that there is water flow in the City Ditch from April 1 to November 1 of each year and that it will assume liability for any damage to adjoining property caused by water flow resulting from damage to the City Ditch caused by the Grantee's construction activities.

7. Insurance. Grantee shall maintain in full force and effect a valid policy of insurance for the Project in the amount of $600,000.00 property coverage and $600,000.00 liability coverage. Grantee further agrees that all its employees, contractors and sub-contractors working on the Project shall be covered by adequate Workers Compensation insurance.

8. Assignment. This Temporary Construction Easement is assignable only with the written permission of Englewood, which permission will not unreasonably withheld, conditioned or delayed.

IN WITNESS WHEREOF, the parties hereto have executed this temporary construction Easement on the date and day first written above.

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

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

CITY OF ENGLEWOOD

By: _____
Stewart H. Fonda
Director of Utilities
City of Englewood

By: _____
Chairman
Englewood Water and Sewer Board

The undersigned officer of First Church of Christ, Scientist has read the foregoing License and agrees for an on behalf of said First Church of Christ, Scientist that it will accept and will abide by all the terms and conditions thereof.

LICENSEE:

First Church of Christ, Scientist

By:

Title: Maintenance Engineer

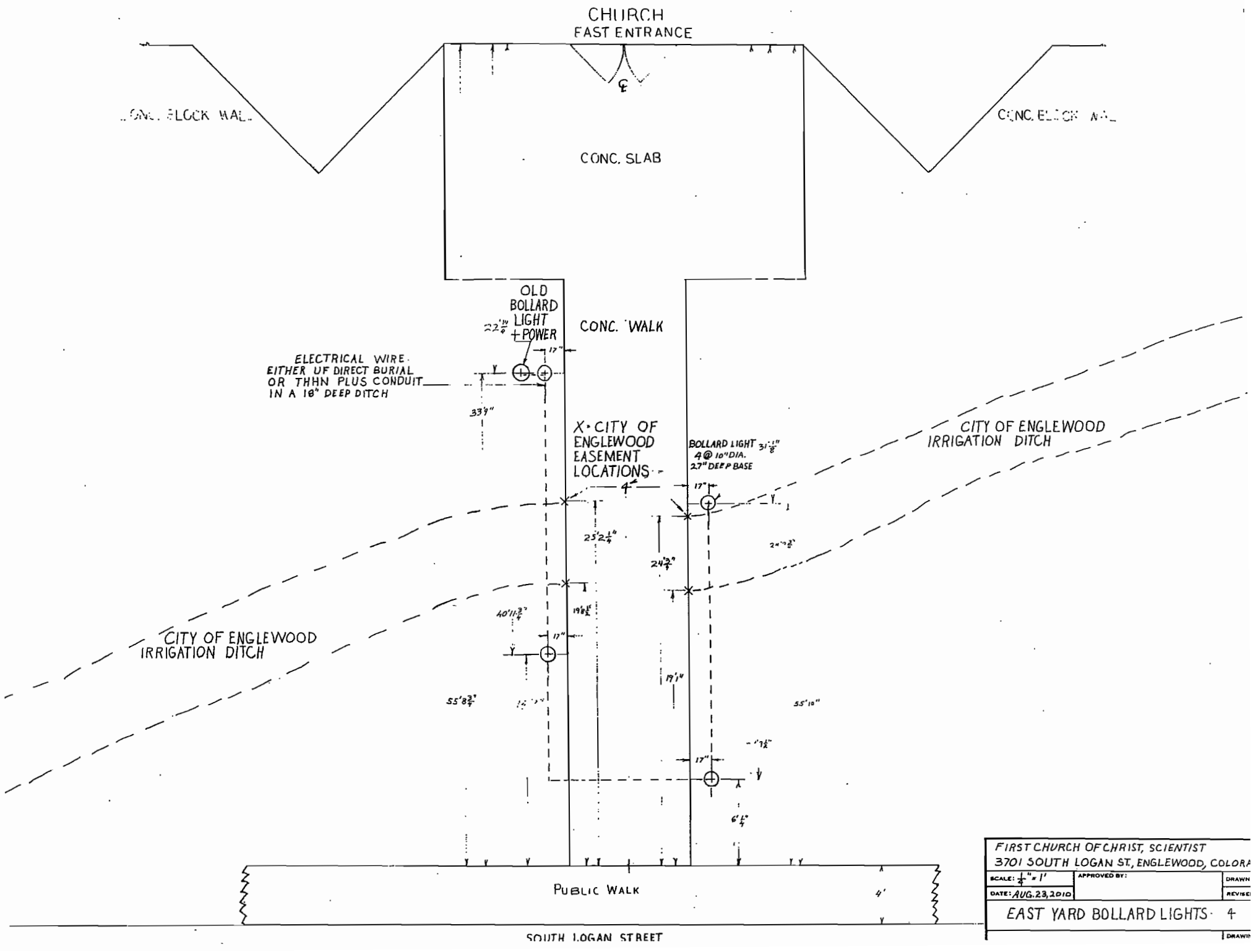
Address: 3701 S. Logan St.
Englewood, CO. 80110

Phone:

Notary:

My commission expires:

AMY J SUNDINE
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires May 29, 2014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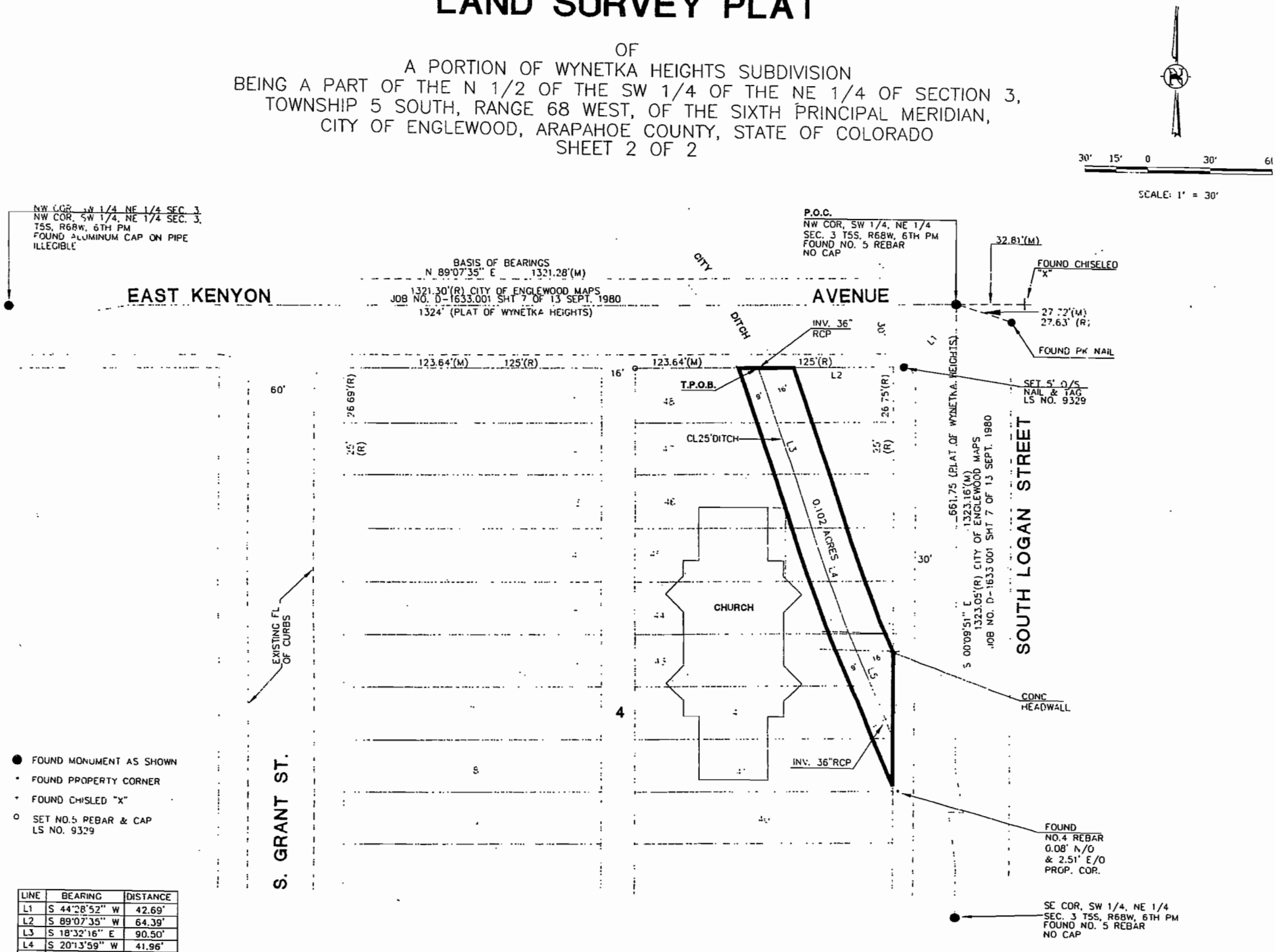

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DESIGNED BY: VRI
CHECKED BY: DP
DRAWN BY: VRI

REVISIONS		
NO.	DESCRIPTION	DATE
1.	CHANGE OL ALIGN	7/14/9

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
November 1, 2010	9 a ii	Ordinance approving a lease agreement between the City and Englewood Schools for the Duncan School Building
Initiated By:		**Staff Source:**
Parks and Recreation Commission		Jerrell Black, Director of Parks & Recreation

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Ordinance No. 35, Series of 1978 – Intergovernmental agreement between the City of Englewood and Englewood Schools for the lease of Duncan School/property for park and recreational purposes.

Council Bill No. 41, Series of 2007 authorizing a Contract for Deed for the purchase of Duncan Park located at 4846 South Pennsylvania Street between the City of Englewood and Arapahoe County School District No. 1 (Englewood Schools).

Council Bill No. 52, Series of 2007 authorizing an Intergovernmental Agreement regarding the 2007 grant of Arapahoe County Open Space between Arapahoe County and the City of Englewood, Colorado for Duncan Park Acquisition.

Council Bill No. 6, Series of 2008 authorizing an Intergovernmental Agreement regarding the 2007 grant of Great Outdoors Colorado between the State Board of the Great Outdoors Colorado Trust Fund and the City of Englewood, Colorado for Duncan Park Acquisition.

Resolution No. 75, Series 2010 supporting the Great Outdoors Colorado grant application for Duncan Park planning funding.

At the September 13, 2010 Council Study Session, Parks and Recreation Director Jerrell Black, Englewood Schools Superintendent Brian Ewert, and All Souls School Business Manager Alex Rohr discussed the potential lease agreements that would accommodate All Souls extending their lease and remaining on site until June 30, 2011.

RECOMMENDED ACTION

Staff recommends that Council adopt a bill for an ordinance approving the Lease Agreement between the City of Englewood and Englewood Schools for the Duncan School Building.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Council has authorized a three phased purchase of Duncan Park from Englewood Schools. The final payment for Parcel #3 will be completed in 2010. Redevelopment of Duncan Park, including the removal of the old school building is supported by the Parks Master Plan, adopted in 2006. The

Parks and Recreation Commission has identified redevelopment of Duncan Park as a high priority. To that end, the City of Englewood has applied for a Great Outdoors Colorado (GOCO) site specific planning grant for the Duncan property. We will be notified in December 2010 as to whether we are successful with our application. If we are approved for the grant, the approval and planning process will take a minimum of six to seven months and will not begin until January 2011.

Through a lease with Englewood Schools, All Souls Catholic School has been operating a daycare program in the Duncan School building since 1997. They are in the process of building a new facility for their program at their current campus located at Chenango Avenue and Logan Street. Their new facility will not be complete until June of 2011 and they have requested the City consider a six month lease of the Duncan School Building, January 1, 2011 through June 30, 2011. Because school facilities are regulated by the State and not by local government, code and building regulations and requirements are somewhat different. The City Attorney's Office has advised that it would be much easier for the City to lease the building to Englewood Schools and they would continue the existing lease to All Souls.

FINANCIAL IMPACT

Per the Lease Agreement, the City shall receive one-half of the amount received from the Sub Lessee, less expenses incurred by the Lessee. The City will receive $965 a month for six months, less any maintenance costs incurred by the school district.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2010

COUNCIL BILL NO. 45
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING A "LEASE AGREEMENT" BETWEEN THE CITY OF ENGLEWOOD AND SCHOOL DISTRICT NO. 1, ARAPAHOE COUNTY [ENGLEWOOD SCHOOLS] FOR THE LEASE OF THE DUNCAN SCHOOL BUILDING LOCATED AT 4800 SOUTH PENNSYLVANIA STREET.

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

WHEREAS, the Englewood City Council passed Ordinance No. 51, Series of 2007 authorizing a Contract for Deed for the purchase of Duncan Park located at 4846 South Pennsylvania Street between the City of Englewood and Arapahoe County School District No. 1 [Englewood Schools]; and

WHEREAS, the Englewood City Council authorizing an Intergovernmental Agreement regarding the 2007 grant of Arapahoe County Open Space between Arapahoe County and the City of Englewood, Colorado for Duncan Park Acquisition by the passage of Ordinance No. 8, Series 2008; and

WHEREAS, the Englewood City Council supported the Great Outdoors Colorado grant application for Duncan Park planning funding by the passage of Resolution No. 75, Series 2010; and

WHEREAS, the Englewood Parks and Recreation Director, the Englewood Schools Superintendent and All Souls School Business Manager discussed the potential lease agreements that would accommodate All Souls extending their lease and remaining on site until June 30, 2011 at the City Council Study Session in September 2010; and

WHEREAS, the passage of this Ordinance authorizes the "Lease Agreement" between the City of Englewood and School District No. 1, Arapahoe County [Englewood Schools] for the lease of the Duncan School Building located at 4800 South Pennsylvania Street to the School District.

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

Section 1. The City Council of the City of Englewood, Colorado, hereby authorizes and approves the "Lease Agreement" for the lease of Duncan School Building to School District No. 1, Arapahoe County [Englewood Schools], attached hereto as Exhibit A.

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

Introduced, read in full, and passed on first reading on the 1st day of November, 2010.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 5th day of November, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 3rd day of November, 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 1st day of November, 2010.

_____
Loucrishia A. Ellis

EXHIBIT A

LEASE AGREEMENT

THIS LEASE is entered into as of the ____ day of _____ 2010, by and between Lessor, CITY OF ENGLEWOOD, Colorado, a Colorado municipal Corporation, 1000 Englewood Parkway, Englewood, Colorado, and SCHOOL DISTRICT NO. 1, ARAPAHOE COUNTY whose address is 4101 South Bannock Street, Englewood, Colorado, ("Lessee").

WITNESSETH:

1. PREMISES: In consideration of the payment of rent and the keeping and performance of the covenants and agreements by the Lessee hereinafter set forth, the Lessor hereby leases unto Lessee the following described premises, hereafter referred to as the "Premises":

   That building situated in the City of Englewood, County of Arapahoe, State of Colorado, with an address of 4800 South Pennsylvania Street, Englewood, Colorado, and more known as the Duncan School Building.

2. LEASE TERM: Lessee's right to possession and occupancy of the Premises shall be for the following term(s):

   a) Initial Term: The initial term of this Lease shall commence on January 1, 2011 and shall run through June 30, 2011 (the "Term").
   b) Renewal Term: There shall be no renewal of this lease.
   c) Holdover: If Lessee shall remain in possession of the Premises, and continue to pay Rent without written agreement as to such possession, then Lessee shall be regarded as a tenant from month-to-month at a monthly rental, payable in advance, equal to the last monthly installment hereunder, and subject to all the terms and conditions of this Lease.
   d) Early Termination: Notwithstanding the foregoing, Lessee retains the right to terminate this Lease, provided that lessee has given Lessor not fewer than six (6) months written notice of such termination. Lessor shall correspondingly have the right to terminate this Lease upon six (6) months written notice to Lessee.

3. RENT: Rent for the Initial Term shall be one-half of the amount received from any sublessee. Any expenses incurred that are the responsibility of the Lessor under this Agreement, and resolved by the Lessee shall be deducted from the amount owed the Lessor prior to monthly payment. Supporting documentation of any such deduction shall be submitted with reduced payment.

   a) Rent Payable in Monthly Installments: Rent during the Term shall be payable in monthly installments on the 15th of each calendar month during said term (the "Rent"), such amount being payable at the office of Lessor at

1000 Englewood Parkway, Englewood, Colorado 80110, attn: Jerrell Black without notice or demand.

4. USE: The terms hereunder set forth the permitted and prohibited uses of the Premises by Lessee during the term(s) of this Lease.

   a) Permitted Use. Lessee agrees to use the Premises as a day-care center. If parents of children attending this day-care center consistently abuse the traffic patterns and parking regulations, Lessee agrees to warn the parent(s) and Lessee or sublesee will take appropriate corrective action.

   b) Prohibited Conduct on the Premises. Lessee further agrees as follows:

      (i) To use the Premises for no purpose prohibited by the laws of the United States or the State of Colorado, or the ordinances of the City of Englewood, and for no improper or questionable purpose whatsoever;

      (ii) Not to permit any disorderly conduct, noise or nuisance whatsoever about the Premises, the building in which they are located, or on the grounds, having a tendency to annoy, disturb, or interfere with the conduct of business in any portion of the building not leased or upon the grounds.

      (iii) To use the facility only for uses permitted by the zoning of the City of Englewood.

      (iv) Not to permit the Premises, or the walls or floors thereof, to be endangered by overloading, or the Premises to be used for any purpose, which would render the insurance thereon void or the insurance risk more hazardous.

5. UTILITIES: Lessor and Lessee agree as follows with respect to the provision and payment of utility services to the Premises:

   a) Lessee will pay for heat and electricity, water, sewer and janitorial service for the Premises. Lessor will provide such services continuously throughout the term of this Lease:

   b) Lessee will pay the expense of bringing telephone service and removal of said service to the Premises, and will pay for installation of its own telephone and its own telephone bills.

6. ASSIGNMENT AND SUBLETTING. Except for the existing leasehold interest of All Souls Catholic Church, Lessee agrees to sublet no part of the Premises, or to assign this Lease or any interest therein without the prior written approval of Lessor, which approval shall not be unreasonably withheld.

7. LESSOR'S RIGHT OF ENTRY. Lessee shall allow Lessor, at any reasonable hour of the day, and upon reasonable notice to Lessee, to enter onto the Premises, so long as it does not threaten the safety and welfare of Lessee's clients served on the Premises.

8. INSURANCE/INDEMNITY OBLIGATIONS. Lessor and Lessee covenant and agree as follows:

(a) Lessee Insurance. Lessee shall carry public liability insurance covering bodily injury and property damage, the bodily coverage to be not less than $500,000 per person and $5,000,000 per occurrence; and the property damage coverage to be not less than $10,000/$20,000; and to make Lessor, its directors, officers, employees and agents as additional insureds under its policy or policies of liability insurance, and to provide Lessor with a Certificate of Insurance.

(b) Lessor Insurance. Lessor shall maintain fire and physical hazard insurance on the Premises, building and grounds.

(c) Lessee will take all necessary precautions, including adoption and compliance with all reasonable and customary fire prevention and safety measures to avoid property damage and bodily injury. Lessee shall give notice to Lessor in case of destruction or substantial damage to the Premises by fire and other casualty. In the event of fire or other physical hazard damage, Lessee may terminate this lease with no further obligation.

(d) Reimbursement Obligations. Lessee agrees to reimburse Lessor for any expense incurred by it in repairing any damage to the Premises caused by Lessee, its directors, officers, employees, agents, invitees or clients. Correspondingly, Lessor agrees to reimburse Lessee or any expense incurred by it in repairing any damage to the Premises caused by Lessor, its director, officers, employees, agents, contractors or invitees.

9. MAINTENANCE AND REPAIRS. The parties' respective obligations with respect to maintenance and repair of the Premises are allocated as set forth below:

a) Acceptance of Premises. Lessee accepts the Premises in "as is" condition, without warranty, express or implied, as to merchantability, title, condition, or fitness for any purpose. Lessee will not hold Lessor responsible for any defect in or changes in conditions affecting the Premises or for any damage to the Premises unless such changes or damages are due to the negligence or willful misconduct of the Lessor.

b) General Maintenance and Repair Obligations.

(i) Lessee shall remain responsible for maintaining, repairing or replacing (as needed) all structural defects and all air conditioning, heating, electrical and plumbing main distribution systems.

(ii) Lessee is responsible for maintaining the Premises and each part thereof in an attractive, good, safe and operating condition. Lessee shall keep the sidewalks leading from the building to the curbs in good and safe condition and free of ice, snow and obstructions.

(iii) Lessee shall keep the Premises free of trash, junk and debris. In the temporary keeping and the timely disposal of all waste or refuse, Lessee shall do so in a manner so as not to contribute to water or air pollution.

(iv) Lessee shall be responsible for maintaining all interior leased space as applicable to this Lease including, but not limited to, replacement of light bulbs, fluorescent lighting tubes, and ballasts for fluorescent lighting fixtures.

10. ALTERATIONS TO THE PREMISES:

a) Lessor Approval Required. Lessee will not make or permit any alterations or additions to the Premises or place any additional structures, facilities or equipment on the Premises without Lessor's prior written approval, which approval shall not be unreasonably withheld. Lessee shall submit plans for minor remodeling to the Lessor for approval. Lessor agrees to act on such request for approval within 45 days of submission of such plans.

b) No Liens. Lessee will keep the Premises free of all liens and/or claims to be placed on the Premises due to Lessee's conduct, for whatever reason, to be removed within 30 days after Lessee has knowledge of such lien.

c) Restoration Repair. Upon termination or cancellation of this Lease, Lessee shall restore or replace any portion of the Premises damaged or otherwise affected by such alterations, additions, structures, facilities, or equipment, unless such restoration repair was waived by Lessor at the time approval was given for any such addition or alteration.

d) Bond at Lessor's Option. At Lessor's option, exercisable prior to the effective date of any such alteration, addition, structures, facilities or equipment, or any time thereafter, Lessor may require the Lessee to post bond in favor of Lessor with a reputable bond company or otherwise provide security satisfactory to Lessor in an amount sufficient to cover Lessor's estimation of the costs of such restoration or repair.

11. SURRENDER OBLIGATIONS. At the expiration of the Lease, lessee will surrender and deliver up the Premises in as good order and condition as when the same were entered upon, loss by fire, inevitable accident and ordinary wear excepted. It is further agreed that at the expiration of this Lease, Lessee shall surrender and deliver up the Premises peaceably to Lessor, and if Lessee shall remain in possession after termination of this lease, Lessee shall be deemed guilty of a forcible detainer of the Premises under state law, and shall be subject to eviction and removal in accordance with Colorado statute.

12. ADDITIONAL PROVISIONS: The Lessor and Lessee further agree that:

a) Termination on Account of Damage to Premises. If the Premises become untenantable on account of damage by fire, flood or act of God, the Lessee may terminate the Lease and be released from its obligations thereunder.
b) Abandonment of Premises. If the Premises are left vacant, and any part of the Rent be unpaid, the Lessor may, without being obligated to do so and without terminating this Lease, retake possession of the Premises and rent the same for such rent and upon such terms and conditions as Lessor may think best, making such changes and repairs as may be required, giving credit for the amount of rent so received, less all expenses of such change and repairs, and the Lessee shall be liable for the balance of rent herein reserved until the expiration of the term of this Lease.
c) Remedies upon Default. If the rent above reserved, or any part thereof, shall be in arrears, or if default shall be made in any of the covenants and agreements herein contained, to be kept by Lessee, after reasonable notice of such default and an opportunity for Lessee to cure such default, it shall be lawful for Lessor to declare the term ended and to repossess the Premises in accordance with state law.
d) Insolvency. If Lessee becomes insolvent, or is declared bankrupt, Lessor may declare this Lease ended and all rights of the Lessee hereunder shall thereupon terminate.
e) Lease Amendments. Modifications to the terms of this lease shall be effective only if reduced to writing and signed by both Lessor and Lessee.
f) Applicable Law. Colorado law shall govern this Lease.
g) Counterparts. This Lease maybe executed in counterparts, all of which together shall constitute one Lease.

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

LESSOR:
CITY OF ENGLEWOOD, Colorado

Attest:

_____
City Clerk –
Loucrishia A. Ellis

By: _____
Mayor - James K. Woodward

Dated: _____

Dated: _____

LESSEE:
SCHOOL DISTRICT NO. 1
ARAPAHOE COUNTY

Attest:

_____
Secretary -
Board of Education

By: _____
President, Board of Education
4101 South Bannock Street
Englewood, Co. 80110

Dated: _____

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2010

COUNCIL BILL NO. 34
INTRODUCED BY COUNCIL MEMBER OLSON

AN ORDINANCE REPEALING TITLE 16, CHAPTER 4, "FLOODPLAIN OVERLAY DISTRICT" AND RE-ENACTING A NEW TITLE 16, CHAPTER 4, "FLOODPLAIN REGULATIONS"; AND AMENDING TITLE 16, CHAPTER 11, SECTION 2, "DEFINITION OF WORDS AND PHRASES", OF THE ENGLEWOOD MUNICIPAL CODE 2000.

WHEREAS, The Federal Emergency Management Agency (FEMA) maps special flood hazard areas across the county which are called Flood Insurance Rate Maps (FIRM) are the offical maps designating risk premium zones for flood insurance purposes; and

WHEREAS, the last major revision to FIRM maps for the City of Englewood was in 1995. More than two years ago the Colorado Water Conservation Board (CWCB), in partnership with FEMA, began a project to update and digitize all FIRMs for Arapahoe County. The project is now complete; and

WHEREAS, The City participates in the National Flood Insurance Program which evaluates the City's flood mitigation policies and regulations and the City's favorable rating allows citizens with property within the floodplain to receive approximately a ten percent (10%) reduction in flood insurance premiums; and

WHEREAS, with the adoption of new FIRM maps, FEMA is requiring updates to the Unified Development Code's floodplain regulations in order for the City to remain in the National Flood Insurance Program and provide the discounted premium option for residents;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes repealing Title 16, Chapter 4, of the Englewood Municipal Code 2000 in its entirety and re-enacting a new Title 16, Chapter 4, to read as follows:

Chapter 4 FLOODPLAIN REGULATIONS

16-4-1: Authority and Purpose.

A. *Statutory Authority.* The legislature of the State has in 31-23-301 C.R.S., as amended, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry by minimizing flood losses.

B. *Findings of Fact.*

1. The flood hazard areas of the City are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and

relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards that cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and which are inadequately anchored, elevated, floodproofed or otherwise protected from flood damage.

C. *Purpose*. It is the purpose of this Chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed to:

1. Protect human life and health;

2. Protect property and minimize damage to public facilities;

3. Minimize expenditure of public money for costly flood control projects;

4. Protect the natural areas required to convey flood flows so that they develop in a manner consistent with reasonable floodplain management;

5. Protect and preserve the water-carrying characteristics and capacities of all watercourses, including gulches, sloughs, and artificial water channels used for the conveyance of storm and floodwater;

6. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

7. Minimize prolonged business interruptions;

8. Help maintain a stable tax base by providing for the sound use and development of flood prone areas to minimize future flood blight areas; and

9. Insure that potential buyers are notified that property is in a flood hazard area.

D. *Methods of Reducing Flood Losses*. In order to accomplish its purposes, this Chapter uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

4. Control filling, grading, dredging and other development which may increase flood damage; and

5. Prevent or regulate the construction of flood barriers, including fences, which will unnaturally divert flood waters or which may increase flood hazards to other lands.

16-4-2: Jurisdiction and Applicability.

A. *Applicability.* The provisions of this Chapter shall apply to all land within the City identified as the Floodplain District and defined as:

1. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "Flood Insurance Study - Arapahoe County, Colorado, and Incorporated Areas" dated December 17, 2010, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto, and

2. The boundaries of the West Harvard Gulch Flood Hazard Area as shown on Sheets 13 and 14 in a report entitled "Flood Hazard Area Delineation, Harvard Gulch, West Harvard Gulch, and Dry Gulch" dated December 1979, prepared by Gingery Associates, Inc., and approved by the Colorado Water Conservation Board on January 30, 1980.

The above Official Flood Studies are hereby adopted by reference and declared to be a part of this Title.

A. *Basis for Establishing the Areas of Special Flood Hazard.* The City hereby establishes floodplains and floodways whose boundaries are those of the designated 100-year floodplain, special flood hazard areas and the designated floodways as are shown or tabulated in the Official Flood Studies.

B. *Compliance.* No structure or land located in the Floodplain District shall hereafter be constructed, located, extended, converted, altered or have its use changed without full compliance with the terms of this Chapter and all other applicable regulations.

1. Floodplain *Development Permit.* A Floodplain Development Permit shall be required prior to commencement of any construction or other development.

2. Certificate of Compliance.

a. No vacant land shall be occupied or used and no building shall be hereafter erected, altered, or moved on the floodplains of any watercourse, nor shall such buildings be occupied, until a certificate of compliance has been issued by the Floodplain Administrator.

b. The applicant shall submit a certification by a registered professional engineer to the Floodplain Administrator that the finished fill and building floor elevations, floodproofing measures, or other protection factors were accomplished in compliance with the provisions of this Chapter. This certification shall also state whether or not the structure contains a basement. Within ten (10) days after receipt of such certification from the applicant, the Floodplain Administrator shall issue a certificate of compliance only if the building or premises and the proposed use thereof, conform with all of the requirements of this Chapter.

C. *Abrogation and Greater Restrictions.* The regulations of this Chapter shall be construed as being supplementary to the regulations imposed on the same lands by the underlying zone classification. This Chapter is not intended to repeal, abrogate, or impair any existing easement, covenants, or deed restrictions. However, where this Chapter and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall apply.

D. *Interpretation.* In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements, shall be liberally construed in favor of the City, and shall be deemed neither to limit nor repeal any other powers granted under State statutes.

E. *Warning and Disclaimer of Liability.* The degree of flood protection intended to be provided by this Chapter is considered reasonable for regulatory purposes and is based on engineering and scientific considerations. Larger floods may occur on occasions, or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Chapter does not imply that the areas outside the areas of special flood hazards or land uses permitted within such areas will always be free from flooding or flood damages. This Chapter shall not create liability on the part of the City or any officer or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

F. *Severability.* See Section 16-1-10 EMC, "Severability".

16-4-3: Permitted Uses.

The following open uses shall be permitted within the Floodplain District to the extent that they are not prohibited in a particular area by any underlying zone district classification:

A. Agricultural uses, such as general farming and the raising of plants, flowers, and nursery stock.

B. Public and private recreational uses such as parks, swimming areas, golf courses, driving ranges, picnic grounds, fishing, and hiking and biking trails not requiring permanent or temporary structures designed for human habitation.

C. Utility facilities such as: flowage areas, transmission lines, pipelines, water monitoring devices, roadways and bridges.

D. All uses allowed by the underlying zone district classification within the Floodplain District shall be permitted as long as the use complies with conditions set forth in Subsection 16-4-7(B) EMC, " Floodplain Development Permit Criteria".

16-4-4: Similar Uses.

Uses very similar in nature to permitted uses may be allowed by the Floodplain Administrator, provided that they are consistent with the provisions of this Chapter.

16-4-5: Nonconforming Uses.

Existing nonconforming uses in the Floodplain District may be modified, altered, or repaired to incorporate floodproofing measures; but such nonconforming uses shall not be expanded.

16-4-6: Administration.

A. *Floodplain Administrator.* The City Manager or designee shall be the Floodplain Administrator and shall enforce the provisions of this Chapter and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to flood management. The Department of Public Works shall provide the Floodplain Administrator with a technical review of all applications to build within the floodplain or a drainage way prior to the issuance of a Floodplain Development Permit.

B. *Floodplain Administrator Duties and Responsibilities.* The Floodplain Administrator's duties and responsibilities shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this Chapter. For all new or substantially improved structures the Floodplain Administrator shall maintain the following information:

   a. The actual elevation (in relation to mean sea level) of the lowest floor (including basement).

   b. The actual elevation (in relation to mean sea level) to which the structure has been floodproofed.

   c. The floodproofing certifications required in Subsection 16-4-11(B) EMC "Minimum Floodproofing Criteria".

2. Review all applications within ten (10) working days for Floodplain Development Permits required by this Chapter. Such review shall:

   a. Determine whether such construction or development is located within the Floodplain District.

   b. Assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

   c. Consider the following:

      1) The danger that materials may be swept onto other lands to the injury of others.

      2) The danger to life and property due to flooding or erosion damage.

3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

4) The importance of the services provided by the proposed facility to the community.

5) The availability of alternative locations for the proposed use that is not subject to flooding or erosion damage.

6) The compatibility of the proposed use with existing and anticipated development.

7) The relationship of the proposed use to the Comprehensive Plan.

8) The safety of access to the property in times of flood for ordinary and emergency vehicles.

9) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

10) The costs of providing governmental services during and after flood such as sewer, gas, electrical, and water systems, and streets and bridges.

11) Flood barriers, including fences, which will unnaturally divert flood waters or which may increase flood hazards to other lands.

3. Review all Building Permit applications for construction or development in the Floodplain District within ten (10) working days. Approval of a building permit shall be deemed to neither limit nor repeal any other powers granted under State Statutes. Applications for building permits shall be reviewed on a case-by-case basis to:

   a. Determine if the proposed development is located in the Floodplain District.

   b. Assure the building site will be reasonably safe from flooding.

   c. Assure all necessary permits have been obtained from the Federal, State, or local governmental agencies from which prior approval is required.

   d. Assure all new construction and substantial repairs, improvements, or alterations shall be made in accordance with the minimum floodproofing criteria specified in Section 16-4-11 EMC, or elevation criteria in Subsection 16-4-7(B)(2) EMC.

4. Interpret, where needed, the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). Any person contesting the location of the boundary shall be given a reasonable opportunity to present a case to the Floodplain Administrator and to submit supporting technical evidence. The decision of the Floodplain Administrator may be appealed as provided in Section 16-4-14 EMC, "Floodplain Appeals and Variances."

5. When base flood elevation data has not been provided in accordance with Section 16-4-8 EMC, "Floodplain District Regulations" the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer this Chapter.

6. Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

7. When a regulatory floodway has not been designated, the Floodplain Administrator shall require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the City's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1) at any point within the City.

8. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, the Floodplain Administrator may approve certain development in Zones A1-30, AE, AH, on the FIRM which increases the water surface elevation of the base flood by more than one foot (1), provided that the City first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

16-4-7: Floodplain Development Permit.

A. *Floodplain Development Permit Process.*

1. Application. A Floodplain Development Permit shall be obtained before a building permit may be issued or construction or development begins on lands within the Floodplain District as identified in Subsection 16-4-2(A) EMC above. Application for a Floodplain Development Permit shall be made on forms provided by the City and may include, but is not limited to: Plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

   a. Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;

   b. Elevation (in relation to mean sea level) to which any nonresidential structure shall be floodproofed;

   c. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 16-4-11 EMC, "Minimum Floodproofing Criteria"; and

   d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

2. Decision of Floodplain Administrator to be Based on Certain Factors. The determination of the Floodplain Administrator on each Development Permit shall be based on applicable provisions of this Chapter and the following relevant factors:

   a. The danger to life and property due to flooding or erosion damage;

   b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

   c. The danger that materials may be swept onto other lands to the injury of others;

   d. The compatibility of the proposed use with existing and anticipated development;

   e. The safety of access to the property in times of flood for ordinary and emergency vehicles;

   f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

   g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

   h. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and

   i. The relationship of the proposed use to *Roadmap Englewood: 2003 Englewood Comprehensive Plan*, as amended.

3. Floodplain Administrator Decisions on Permits for Public Facilities or Utility Development in a Floodway. Subject to Section 16-4-10 EMC, "Development in Floodways," the Floodplain Administrator shall act on an application for public facilities or utility development in a floodway within thirty (30) days from receiving the application.

4. Conditions Attached to Development Permits. Upon consideration of the factors listed above and the purposes of this Chapter, the Floodplain Administrator shall attach such conditions, in addition to those required by the Floodplain Development Permit, as are necessary to further the purposes of this Chapter. Such conditions may include specifications for, without limitation because of, specific enumeration, modification of waste disposal methods and facilities, landscaping, period of operation, operational controls, sureties, deed restriction, and adequate floodproofing.

B. *Floodplain Development Permit Criteria.*

1. Structures Accessory to Open Uses. Structures accessory to open uses permitted in Section 16-4-3 EMC, "Permitted Uses," whether temporary or permanent, may be permitted only upon a determination by the Floodplain Administrator that:

   a. Structures will not be designed for human habitation.

b. Structures will have low flood damage potential.

c. The structure or structures, if permitted, will be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters.

1) Whenever possible, structures will be constructed with the longitudinal axis parallel to the direction of flow of floodwaters.

2) So far as is practicable, structures will be placed so that their longitudinal axis are approximately on the same line as those of adjoining structures.

3) Structures will be firmly anchored to prevent the structure or building from floating away and thus threatening to further restrict bridge openings and other restricted sections of the stream or river.

4) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

5) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

6) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

2. Other Structures, Temporary or Permanent, to be Occupied by People. Other structures, whether temporary or permanent, which are to be occupied by people, may be permitted only upon a finding by the Floodplain Administrator that:

a. Such structures shall comply with Section 16-4-7 EMC, "Floodplain Development Permit Process;" and Section 16-4-11 EMC, "Minimum Floodproofing Criteria."

b. The lowest floor, including the basement, of any structure to be erected, constructed, reconstructed, or moved on or within the Floodplain District, shall be constructed at or above a point one foot (1) above the 100-year flood elevation for the particular area and the fill shall extend at such elevation at least fifteen feet (15') beyond the limits of any structure or building erected thereon.

c. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure and to withstand hydrodynamic loads.

3. Fills or Deposition of Materials. Fills or deposition of materials may be permitted only upon a finding by the Floodplain Administrator that:

a. Any fill or deposition of materials will comply with applicable sections of Chapter 16-6 EMC, "Development Standards."

b. The fill or deposition of materials will have some beneficial purpose and the amount thereof will not be greater than is necessary to achieve that purpose, as demonstrated by a plan submitted by the owner showing the final dimensions of the proposed fill or other material and the use to which the filled land will be put.

c. The fill or deposition of materials does not encroach on that portion of the floodplain, which would have significant and perceptible flow during the flood, and which for that reason would help convey the floodwaters.

d. The fill or other materials will be protected against erosion by riprap, strong vegetative cover, or bulkheading.

4. Storage or Processing of Materials. The storage or processing of materials that are buoyant, flammable, explosive, or in time of flooding, could be injurious to human, animal or plant life, shall be above the flood protection elevation for the particular area or floodproofed in compliance with Section 16-4-11 EMC, "Minimum Floodproofing Criteria." Solid waste disposal facilities, such as salvage yards or areas for the dumping of refuse or the storage of non-operable vehicles, shall not be permitted.

16-4-8: Floodplain Regulations.

The following regulations shall apply to all uses within the Floodplain District, notwithstanding that such uses may be specifically permitted under the terms of this Chapter.

A. The flood protection elevation or height shall correspond to a point one foot (1) above the elevation or "flood profile" shown on or attached to the FIRM.

B. No floodplain uses shall adversely affect the efficiency of, or unduly restrict the capacity of any channel, any tributary to any main stream, drainage ditch, or any other drainage facility or systems; nor shall any watercourse be altered or restricted unless the flood-carrying capacity of the watercourse shall be maintained.

C. *General Standards.* In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,

7. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. *Specific Standards.* In all areas of special flood hazards where base flood elevation data has been provided as set forth in 16-4-2(B) 16-4-6(B)(5) or 16-4-13(D) of this Chapter, the following provisions are required:

1. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Section 16-4-13 EMC, "Subdivision Plats" is satisfied.

2. Nonresidential Construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

3. Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot (1) above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

4. Manufactured Homes.

a. Zones A1-30, AH and AE: All manufactured homes, those substantially improved, or those having incurred "substantial damage" as a result of a flood, on sites in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

This subsection shall apply in an expansion to an existing manufactured home park or in an existing manufactured home park where the repair, reconstruction, or improvement of the streets, utilities and pads equals or exceeds fifty percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced.

b. Zones A1-30, AH and AE: Manufactured homes, in an existing manufactured home park, not subject to the provisions of 4.a above shall be elevated so that either:

1) The lowest floor of the manufactured home is at or above the base flood elevation, or

2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches (36") in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

c. Zone A: Manufactured homes shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes shall be elevated and anchored to resist flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces. Any additions to the manufactured home shall be similarly anchored.

5. Recreational Vehicles. Recreational vehicles placed on sites within Zones A1-30, AH, and AE shall either:

a. Be on the site for fewer than one hundred eighty (180) consecutive days,

b. Be fully licensed and ready for highway use, or

c. Meet the permit requirements of Subsection 16-4-7(B) above and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this Subsection. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

E. Standards for Areas of Shallow Flooding (AO/AH Zones). Located within the areas of special flood hazard established in Subsection 16-4-2(A) EMC are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet (1–3) where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. Residential structures: All new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet (2) if no depth number is specified).

2. Non-residential structures: All new construction and substantial improvements shall:

   a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM (at least two feet (2) if no depth number is specified), or;

   b. Together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Subsection are satisfied.

4. Within Zones AH or AO adequate drainage paths around structures on slopes shall be required to guide flood waters around and away from proposed structures.

16-4-9: Undesignated Floodways.

Until a regulatory floodway is designated, it must be demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot (1) at any point within the City, before any new construction, substantial improvements or other development, including fill, is permitted within Zones A1–30 and A–AE as shown on the FIRM.

16-4-10: Development in Floodways.

Located within areas of special flood hazard established in Subsection 16-4-2.A EMC, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris, potential projectiles, and erosion potential, the following provisions shall apply to public facilities or utilities only:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless it has been demonstrated through hydrologic and hydraulic analyses performed by a registered professional engineer in accordance with standard engineering practice that the proposed encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. If subsection A, above, is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Section.

1. The Floodplain Administrator shall act on an application in the manner above described within thirty (30) days from receiving the application.

16-4-11: Minimum Floodproofing Criteria.

A. All new construction and substantial improvements of nonresidential structures within zones A-AE on the FIRM that do not have the lowest floor, including basement, elevated to or above the base flood level shall be floodproofed. All floodproofed structures, together with attendant utility and sanitary facilities, shall be so designed that below the base flood level, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The Floodplain Administrator shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood protection elevation for the particular area.

B. Floodproofing measures include the following:

1. Anchorage to resist flotation and lateral movement.

2. Installation of watertight doors, bulkheads and shutters.

3. Reinforcement of walls to resist water pressures.

4. Use of waterproof paints, membranes, or mortars to reduce seepage of water through walls.

5. Addition of mass or weight to structures to resist flotation.

6. Installation of pumps to lower water levels in structures.

7. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

8. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into the floodwaters.

9. Pumping facilities for subsurface drainage systems for buildings to relieve external foundation wall and basement floor pressures.

10. Construction to resist rupture or collapse caused by water pressure or floating debris.

11. Cutoff valves on sewer lines or the elimination of gravity flow basement drains.

12. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

C. Where a nonresidential structure is intended to be made watertight below the base flood level.

1. A registered professional engineer shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of Section 16-4-7 EMC, "Floodplain Development Permit."

16-4-12: Floodplain District Amendments.

The boundaries of the Floodplain District shall be subject to periodic review and shall be amended in the manner provided by law, to conform to any revised, corrected or additional hydrological data available from Federal, State or regional agencies or from a consulting engineer retained by the City.

16-4-13: Subdivision Plats.

A. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be designed to minimize flood damage.

B. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

C. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood damage.

D. Base flood elevation data shall be provided for subdivision proposals and other proposed developments including the placement of manufactured home parks and subdivisions that contain at least fifty (50) lots or five (5) acres, whichever is less.

16-4-14: Floodplain Appeals and Variances.

A. *General.* The Planning Commission shall hear and decide appeals and requests for variances from the requirements of this Chapter.

1. Appeals and floodplain variance requests shall be processed pursuant to the general zoning appeals and variances requirements of 16-2-18 EMC, "Appeals" and 16-2-16 EMC, "Variances", respectively.

2. Those aggrieved by the final decision of the Commission may appeal such decision by appropriate legal action to a court of record having jurisdiction. Such appeal shall be filed no more than thirty (30) days from the date of the Commission's final decision.

B. *Appeals.* The Commission shall hear and decide appeals only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.

C. *Variances.*

1. Any applicant to whom a variance is granted to build the lowest floor elevation below the base flood elevation shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Section.

3. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant items 1 - 10 in Subsection 16-4-6(B)(2)(c) of this Chapter have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

4. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

5. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

6. In passing upon a Floodplain Variance application, the Commission shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this Title.

7. Criteria for Considering a Floodplain Variance. The Commission shall grant a Floodplain Variance only upon a showing of good and sufficient cause and determination that:

   a. The variance is the minimum necessary, considering the flood hazard, to afford relief;

   b. Failure to grant the Floodplain Variance would result in exceptional hardship to the applicant; and

   c. The granting of a Floodplain Variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws.

   Upon consideration of the above and the intent of this Chapter, the Commission may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Chapter.

16-4-15: Enforcement.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without being in full compliance with the terms of this Chapter and other applicable regulations. Enforcement of the provisions of this Chapter shall be pursuant to Section 16-10 EMC, "Enforcement and Penalties".

16-4-16: Floodplain Definitions.

The following definitions pertain specifically to Section 16-4 EMC, "Floodplain Regulations" and are intended to be used only in the regulation of special flood hazard areas as identified in this Chapter. For the purposes of floodplain regulation, these definitions supersede the same terms as defined in 16-11-2:EMC Definition of Word, Term, and Phrases of this Title.

Area of Shallow Flooding: A designated AO, AH, or VO zone on the City's Flood Insurance Rate Map (FIRM) with a one percent (1%) chance or greater annual chance of flooding to an average depth of one to three feet (1-3) where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard: The land in the floodplain within the City of Englewood subject to a one percent (1%) or greater chance of flooding in any given year.

Base Flood: A flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Basement: Any area of a building having its floor sub-grade (below ground level) on all sides.

Development: Any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated Building: For insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing Construction: For the purposes of determining flood insurance rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Expansion to an Existing Manufactured Home Park or Subdivision: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood (or Flooding): A general and temporary condition of partial or complete inundation of normally dry land areas from:

(A) The overflow of inland or tidal waters, and/or

(B) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Damage Potential: The susceptibility of a specific land use at a particular location to damage by flooding, and the potential of the specific land use to increase off-site flooding or flood related damages.

Flood Fringe Area: That portion of the flood hazard area outside of the floodway based on the total area inundated during the regulatory base flood plus twenty-five percent (25%) of the regulatory base flood discharge.

Flood Hazard Area: The floodplain consisting of the floodway and the flood fringe area.

Flood Insurance Rate Map (FIRM): The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the City of Englewood.

Flood Insurance Study: The official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

Flood Profile: A graph or longitudinal profile showing the relationship of the water surface elevation of a flood event to location along a stream or river.

Flood Protection Elevation: An elevation one foot (1) above the elevation of "flood profile" of the 100-year flood under existing channel and floodplain conditions. It is one foot (1) above the elevation of the flood for the Floodplain District as shown on the Official Zoning Map in the office of the Community Development Department.

Floodplain: The relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water which has been or may be covered temporarily by floodwater. For administrative purposes, the floodplain may be defined as the area that would be inundated by the "standard project flood" (Corps of Engineers) or the "maximum probable flood".

Floodplain District: That portion of the floodplain subject to inundation by the 100-year flood. Its width is determined by the 100-year flood. Its length or reach is determined by natural bounds such as a lake, or by political or legal bounds. This equals the intermediate regional flood as defined by the Corps of Engineers.

Floodplain Management: The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain regulations.

Floodprone Area: Any land area susceptible to being inundated by water from any source (see definition of flooding).

Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures, primarily for the reduction or elimination of flood damage to lands, water, and sanitary facilities, structures, and their contents.

Floodway: The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot (1).

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure: Any structure that is:

(A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(C) Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(D) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior; or

(2) Directly by the Secretary of the Interior in states without approved programs.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 60.3 of the National Flood Insurance Program regulations.

Manufactured Home: A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Manufactured Home Park or Subdivision, Existing: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain regulations adopted by the City.

Manufactured Home Park or Subdivision, New: Means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

Mean Sea Level: For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1988 or other datum, to which base flood elevations shown on the City's Flood Insurance Rate Map are referenced.

National Flood Insurance Program (NFIP): A Federal program that authorizes the sale of federally subsidized flood insurance in participating communities.

Natural Drainage: The pattern of surface and storm water drainage from a particular site before the construction or installation of improvements or prior to any regrading.

New Construction: For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain regulation adopted by the City and includes any subsequent improvements to such structures.

Recreational Vehicle: A vehicle which is:

(A) Built on a single chassis;

(B) 400 square feet or less when measured at the largest horizontal projections;

(C) Designed to be self-propelled or permanently towable by a light duty truck; and

(D) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of Construction: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: A walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent (50%) of the market value of the structure before the damage occurred.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent (50%) of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(A) Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions, or

(B) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Violation: The failure of a structure or other development to be fully compliant with the City's floodplain regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in NFIP Standards Sections 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5),as amended, is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation: The height, in relation to the National American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplain.

Watercourse: A channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir, or lake in which storm runoff and floodwater flows either regularly or infrequently. This includes major drainageways for carrying urban storm runoff.

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 16, Chapter 11, Section 2 - "*Definition of Words, Terms, and Phrases*" of the Englewood Municipal Code 2000 by inserting in alphabetical order; the following definitions:

[Editor's note: these definitions are inserted or deleted from this section in alphabetical order, the remaining definitions in this section are not affected and are not included.]

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

~~*Area of Special Flood Hazard:* The land in the floodplain within the City of Englewood that is subject to a one percent (1%) or greater chance of flooding in any given year.~~

~~*Base Flood Level:* See definition of "Flood, Regulatory Base".~~

Basement: An area below the first floor, having part, but no more than one-half (1/2) of its height above grade, and with a floor to ceiling height of not less than seven feet (7'). This term shall not include "garden level".

Basement (for floodplain purposes): See 16-4-11 EMC: Floodplain Definitions.

~~*Critical Feature:* An integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.~~

Development: Any man-made change to improved or unimproved real estate, including the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; and any use or extension of the use of land.

Development (for floodplain purposes): see 16-4-16 EMC: Floodplain Definitions.

Manufactured Home Park or Subdivision, Existing (for floodplain purposes): See 16-4-16EMC: Floodplain Definitions.

~~*Expansion to an Existing Manufactured Home Park:* The preparation of additional manufactured home spaces or the construction of facilities for servicing the manufactured home space on which the manufactured homes are to be affixed, including the installation of utilities, final site grading or pouring of concrete pads or the construction of streets.~~

~~*Flood, Base:* The flood having a one percent (1%) chance of being equaled or exceeded in any given year.~~

~~*Flood Damage Potential:* The susceptibility of a specific land use at a particular location to damage by flooding, and the potential of the specific land use to increase off site flooding or flood related damages.~~

~~*Flood, Fringe Area:* That portion of the flood hazard area outside of the floodway based on the total area inundated during the regulatory base flood plus twenty five percent (25%) of the regulatory base flood discharge.~~

~~*Flood Hazard Area:* The floodplain consisting of the floodway and the flood fringe area.~~

~~*Flood Hazard Design Elevation:* The highest elevation, expressed in feet above sea level, of the level of floodwaters that delineates the flood fringe area.~~

~~*Flood Insurance Rate Map (FIRM):* The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the City of Englewood.~~

~~*Flood Insurance Study:* The official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary floodway map, and the water surface elevation of the base flood.~~

~~*Flood* or *Flooding:* A general and temporary condition of partial or complete inundation of normally dry land areas from:~~

~~(A) The overflow of inland or tidal waters, and/or~~

~~(B) The unusual and rapid accumulation or runoff of surface waters from any source.~~

~~*Floodplain:* The relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other body of standing water which has been or may be covered temporarily by floodwater. For~~

~~administrative purposes, the floodplain may be defined as the area that would be inundated by the "standard project flood" (Corps of Engineers) or the "maximum probable flood".~~

~~*Floodplain District:* That portion of the floodplain subject to inundation by the 100 year flood. Its width is determined by the 100 year flood. Its length or reach is determined by natural bounds such as a lake, or by political or legal bounds. This equals the intermediate regional flood as defined by the Corps of Engineers.~~

~~*Flood Profile:* A graph or longitudinal profile showing the relationship of the water surface elevation of a flood event to location along a stream or river.~~

~~*Flood Protection Elevation:* An elevation one (1) foot above the elevation of "flood profile" of the 100 year flood under existing channel and floodplain conditions. It is one (1) foot above the elevation of the flood for the Floodplain District as shown on the Official Zoning Map in the office of the Community Development Department.~~

~~*Flood, Regulatory Base:* A flood having a one percent (1%) chance of being equaled or exceeded in any given year.~~

~~*Flood Stage:* The height or elevation of a flood as referred to some datum. It is also commonly used to refer to the elevation at which a stream will overtop its normal stage banks.~~

~~*Floodproofing:* Any combination of structural and nonstructural additions, changes, or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water, and sanitary facilities, structures, and contents of buildings.~~

~~*Floodway:* The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.~~

Garden Level: An area below the first floor, having at least one-half (1/2) of its height above grade.

Historic Building: A building or structure designated by Council, that is worthy of rehabilitation, restoration, and preservation because of its cultural, architectural and/or historical significance to the City.

Historic Structure (for Floodplain purposes): See 16-4-16 EMC: Floodplain Definitions.

~~*Lowest Floor:* The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Title.~~

Manufactured Home (for floodplain purposes): See 16-4-16 EMC: Floodplain Definitions.

Manufactured Home Park or Subdivision, Existing: (for Floodplain purposes): See 16-4-16 EMC: Floodplain Definitions.

~~*Mean Sea Level:* For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.~~

~~*National Flood Insurance Program:* A Federal program that authorizes the sale of federally subsidized flood insurance in communities where such flood insurance is not available privately.~~

~~*Natural Drainage Flow:* The pattern of surface and storm water drainage from a particular site before the construction or installation of improvements or prior to any regrading.~~

New Construction: Structures for which the "start of construction" commenced on or after the effective date of this Title.

New Construction (for floodplain purposes): See 16-4-1 EMC: Floodplain Definitions.

Recreational Vehicle: A vehicular-type, portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

Recreational Vehicle (for floodplain purposes): See 16-4-16 EMC: Floodplain Definitions.

Structure: Anything constructed or erected that requires location upon or under the ground or attached to something having location upon or under the ground.

Structure (for floodplain purposes): See 16-4-16 EMC: Floodplain Definitions.

Substantial Damage (for floodplain purposes): See 16-4-16 EMC: Floodplain Definitions.

Substantial Improvement (for floodplain purposes): See 16-4-16 EMC: Floodplain Definitions.

~~*Thalweg:* The line of the fastest flow along the course of a river. This usually crosses and recrosses the stream channel.~~

Violation: Generally, the failure of a land use, building, structure, or other development to be fully compliant with this Title's requirements.

~~Specifically, for purposes of Chapter 16-4 EMC (Floodplain Overlay District), "violation" means the failure of a land use, building, structure, or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in NFIP Standards Sections 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.~~

Violation (for floodplain purposes): See 16-4-16 EMC: Floodplain Definitions.

~~*Water Surface Elevation:* The height, in relation to the National Geodetic Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.~~

~~*Watercourse:* A channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir, or lake in which storm runoff and floodwater flows either regularly or infrequently. This includes major drainageways for carrying urban storm runoff.~~

Section 3. Attached hereto and incorporated herein by reference are:

1. Flood Insurance Study – Arapahoe County, Colorado, and Incorporated Areas Volumes 1-4.

2. Flood Insurance Rate Maps (FIRM) Index Sheets 1 and 2.

3. Flood Insurance Rate Maps (FIRM) Panels 0142K, 0143K, 0144K, 0161K, 0163K, 0164K, 0431K, 0432K, and 0451K.

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

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

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

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

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

Introduced, read in full, amended and passed as amended on first reading on the 4th day of October, 2010.

Published by Title as an amended Bill for an Ordinance in the City's official newspaper on the 8th day of October, 2010.

Published as an amended Bill for an Ordinance on the City's official website beginning on the 6th day of October, 2010 for thirty (30) days.

A Public Hearing was held on October 18th, 2010.

Read by title and passed on final reading on the 1st day of November, 2010.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2010, on the 5th day of November, 2010.

Published by title on the City's official website beginning on the 3rd day of November, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2010

COUNCIL BILL NO. 41
INTRODUCED BY COUNCIL
MEMBER JEFFERSON

AN ORDINANCE AMENDING TITLE 2, CHAPTER 11, SECTION 2, OF THE ENGLEWOOD MUNICIPAL CODE 2000 INCREASING THE NUMBER OF MEMBERS OF THE ALLIANCE FOR COMMERCE IN ENGLEWOOD (ACE).

WHEREAS, the Alliance For Commerce in Englewood Committee was established by the Englewood City Council with the passage of Ordinance No. 5, Series of 2001; and

WHEREAS, the Alliance For Commerce in Englewood Committee advises the Englewood City Council, focusing on the creation of an environment in which existing business can thrive and new business can prosper; and

WHEREAS, in order to encourage parties from all areas of the City, City Council wishes to increase the membership of ACE to nine members; and

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

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

2-11-2: Composition and Membership.

ACE will be comprised of ~~seven (7)~~ nine (9) members appointed by City Council.

Business ownership and/or management and commercial property ownership and/or management shall be a requirement for membership without regard to residency. A diverse group of representation is desirable and may come from retail, office and industrial sectors, including at least one (1) member from the Greater Englewood Chamber of Commerce membership. The City Council shall make appointments to fill vacancies for unexpired terms. Council shall consider input as to potential appointees from staff, ACE and the Greater Englewood Chamber of Commerce.

Section 2. Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. Penalty. The Penalty Provision of Section 1-4-1 EMC shall apply to each and every violation of this Ordinance.

Introduced, read in full, and passed on first reading on the 18th day of October, 2010.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of October, 2010.

Published as a Bill for an Ordinance on the City's official website beginning on the 20th day of October, 2010 for thirty (30) days.

Read by title and passed on final reading on the 1st day of November, 2010.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2010, on the 5th day of November, 2010.

Published by title on the City's official website beginning on the 3rd day of November, 2010 for thirty (30) days.

_____
James K. Woodward, Mayor

ATTEST:

_____
Loucrishia A. Ellis, City Clerk

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

_____
Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
November 1, 2010	9 c i	A Resolution Transferring $200,000 from the Employee Benefits Fund to the General Fund

Initiated By:	Staff Source:
Department of Finance and Administrative Services	Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

This subject was discussed during the 2011 Budget process. City Council and staff began the 2011 budget process at the April 19, 2010 Study Session. Council and staff met again at the August 2, August 16, and August 30, 2010 Study Sessions. Staff provided Council with an update on final changes to the budget on September 6, 2010 prior to printing the proposed budget. City Council received the 2011 Proposed Budget on September 13, 2010. A public hearing regarding the proposed 2011 Budget was held on September 20, 2010. The operating budgets and Multiple Year Capital Plan for all City departments and funds was reviewed at the Budget Retreat held September 25, 2010.

City Council approved the 2011 budget, appropriation, and mill levy ordinances on final reading on October 18, 2010.

City Council agreed to transfer (in fiscal year 2010), $200,000 of funds not immediately needed in the Employee Benefits Fund to the General Fund to help offset lower than anticipated revenue growth and maintain the General Fund's reserves.

RECOMMENDED ACTION

Staff recommends City Council approve the attached resolution transferring $200,000 from the Employee Benefits Fund to the General Fund.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

City Council discussed and determined that funds not needed immediately in the Employee Benefits Fund could be transferred to the General Fund in 2010.

The following illustrates the transfer and use of funds:

EMPLOYEE BENEFITS FUND

SOURCE OF FUNDS:	
Funds Available	$200,000
USE OF FUNDS:	
Transfer to the General Fund	$200,000

GENERAL FUND

SOURCE OF FUNDS:

Transfer in from the Employee Benefits Fund	$200,000

USE OF FUNDS:

Unreserved/Undesignated Fund Balance	$200,000

FINANCIAL IMPACT

This action will transfer funds from the Employee Benefits Fund not immediately needed to the General Fund. This will increase the General Fund's reserves while reducing those of the Employee Benefits Fund.

LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. _____
SERIES OF 2010

A RESOLUTION TRANSFERRING FUNDS FROM EMPLOYEE BENEFITS FUND TO THE GENERAL FUND.

WHEREAS, the City Council of the City of Englewood, Colorado received the 2011 Budget on September 13, 2010; and

WHEREAS, a Public Hearing regarding the 2011 Budget was held on September 13, 2010; and

WHEREAS, the City Council approved the 2011 Budget, the Appropriations and the Mill Levy Ordinances on October 18, 2010; and

WHEREAS, the City Council of the City of Englewood, Colorado has determined that funds not needed immediately in the Employee Benefits Fund could be transferred to the General Fund in 2010;

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 authorizes the transfer of funds from the Employee Benefits Fund to the General Fund as follows:

EMPLOYEE BENEFITS FUND

SOURCE OF FUNDS:	
Funds Available	$200,000
USE OF FUNDS:	
Transfer to the General Fund	$200,000

GENERAL FUND

SOURCE OF FUNDS:	
Transfer in from the Employee Benefits Fund	$200,000
USE OF FUNDS:	
Unreserved/Undesignated Fund Balance	$200,000

Section 2. The City Council of the City of Englewood, Colorado authorizes the transfer of funds from the Employee Benefits Fund to the General Fund as follows:

Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2010 Budget for the City of Englewood.

ADOPTED AND APPROVED this 1st day of November, 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. 42
INTRODUCED BY COUNCIL MEMBER PENN

AN ORDINANCE OF THE CITY OF ENGLEWOOD AUTHORIZING AND APPROVING THE LEASE-PURCHASE OF CERTAIN EQUIPMENT FOR CITY DEPARTMENTS; PROVIDING DETAILS IN CONNECTION WITH THE LEASE-PURCHASE TRANSACTION; AND DECLARING AN EMERGENCY.

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

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

WHEREAS, the Council has determined that it is necessary to acquire (i) phone equipment and software to replace the existing phone system which is technically and functionally obsolete, (ii) deicing equipment to reduce current time and labor required for snow removal, to reduce the use of sand and salts currently used for such purposes and to keep City streets clear of ice and snow, and (iii) security cameras for deterrent and crime solving purposes (collectively, the "Equipment"), and

WHEREAS, pursuant to Section 31-15-101 of the Colorado Revised Statutes, the City has the power to lease-purchase personal property and the Council desires to spread the cost of acquiring the Equipment over a period not to exceed five years; and

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

WHEREAS, pursuant to the Master Lease, the details of the transactions are more fully set forth in Schedules and Leases as defined in the Master Lease (the "Lease Agreements"), and the financial obligation of the City under the Lease Agreements shall constitute currently budgeted expenditures of the City; and

WHEREAS, the Council is desirous of authorizing and directing the transaction described above on an emergency basis for the reasons set forth below;

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

Section 1. Approval of Lease Purchase Terms. The City Council hereby approves the lease-purchase of the Equipment for the amount not to exceed $550,000, with annual payments not to exceed $165,000 over annual terms which shall not extend beyond December 31, 2016. The City Council hereby delegates to the Mayor, or in the absence thereof, the Mayor Pro Tem, the authority to determine the net effective rate for the lease-purchases, which rate shall not be in excess of 5.0% per annum and the final amounts of the Lease Agreements.

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

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

Section 4. Declarations and Findings. The City Council hereby determines and declares that the respective rental payments under the Lease Agreements (the "Rental Payments") represent the fair value of the use of the respective Equipment, and that the Purchase Price (as defined in the Lease Agreements) represents the fair purchase price of the respective Equipment. The City Council hereby determines and declares that the Rental Payments do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to appropriate moneys to make payments under the Lease Agreements or to exercise its option to purchase the Equipment pursuant to the Lease Agreements. In making such determinations, the City Council has given consideration to the current market value of the Equipment, the cost of acquiring the Equipment, the option of the City to purchase the Equipment, and the expected eventual vesting of full title to the Equipment in the City. The City Council hereby determines and declares that the duration of the Lease Agreements, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Equipment.

Section 5. Bank-Qualified Determination. The City hereby designates the respective Lease Agreements as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

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

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

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

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

Section 10. Emergency Declaration and Effective Date. There is urgency in the purchase of the Equipment for reasons which include, but are not limited to, City snow removal preparedness, avoiding significant issues if the City's current phone system becomes inoperable and the crime deterrent effect of security cameras. Additionally, Stifel, Nicolaus & Company, Incorporated has advised the City that interest rates continue to be at historic lows and could change at any time. For such stated reasons, this Ordinance is declared to be necessary for the immediate preservation of public property, health, peace, or safety, and an emergency is declared to exist. This Ordinance shall be effective immediately upon final passage and be published within seven days after publication following final passage.

Introduced, read in full as an Emergency Bill for an Ordinance and passed on first reading on the 18th day of October, 2010.

Published by Title as an Emergency Bill for an Ordinance in the City's official newspaper on the 22nd day of October, 2010.

Published as an Emergency Bill for an Ordinance on the City's official website beginning on the 20th day of October, 2010 for thirty (30) days.

Read by title as an Emergency Ordinance and passed on final reading on the 1st day of November, 2010.

Published by title as an Emergency Ordinance in the City's official newspaper as Ordinance No. ___, Series of 2010, on the 5th day of November, 2010.

Published by title as an Emergency Ordinance on the City's official website beginning on the 3rd day of November, 2010 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
November 1, 2010	11 c i	Lining the City Ditch at 285 and Clarkson Street
Initiated By:		**Staff Source:**
Utilities Department		Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None.

RECOMMENDED ACTION

At its September 21, 2010 meeting, the Englewood Water and Sewer Board recommended Council approve, by motion, the bid for lining the City Ditch at Highway 285 and Clarkson Street and installation of a manhole.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The City Ditch pipe from the existing culvert at Highway 285 (Hampden) and South Clarkson Street was inspected and found to be deteriorated and collapsing. Methods considered are cured-in-place pipe, slip lined steel, PVC, HCPE or centrifugally cast fiberglass reinforced polymer mortar pipe or spiral-wound PVC liner. The culvert transitions from CMP to a smaller diameter, 36" concrete pipe. A new manhole will be installed at the transition and approximately 86' of the concrete pipe will also be lined to get out of the Clarkson Street right-of-way.

The Utilities Department requested quotes to line or rehab 260' feet of 48" corrugated metal pipe and 86' of RCP pipe and the installation of a new 5' manhole.

FINANCIAL IMPACT

Three bids were received:

Wildcat Civil Services	$104,720
W.S.U. Inc.	$114,010
Mainlining Service Inc.	$153,500

Tom Brennan, the Utilities Department's Engineer, reviewed the bids and recommends Wildcat Civil Services as the lowest acceptable bid in the amount of $104,720.

The Utilities Department budgeted $200,000 in the 2011 Budget for City Ditch projects. This money was allocated under #09-03-61262.

LIST OF ATTACHMENTS

September 21, 2010 Water and Sewer Board Minutes (excerpt)
Bid Proposal

WATER AND SEWER BOARD
MINUTES

September 21, 2010

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

Members present:	Burns, Clark, Cassidy, Wiggins, Woodward, Habenicht
Members absent:	Higday, McCaslin
Also present:	Stewart Fonda, Director of Utilities Bill McCormick, Operations Supt – Utilities John Bock, Utilities Manager of Admin. Amy Sundine, Billing Supv. Tom Brennan, Utilities Engineer

Excerpt from Page 7 of the September 21, 2010 Water and Sewer Board Minutes

. . . . .

11. CITY DITCH LINING AT US 285 AND S. CLARKSON ST.

Bill McCormick was present to discuss the City Ditch pipe at Hwy. 285 and S. Clarkson Street that was inspected and found to be deteriorated and collapsing. Methods considered were cured-in-place pipe, slip lined steel, PVC, HCPE or centrifugally cast fiberglass reinforced polymer mortar pipe or spiral-wound PVC liner.

Three bids were received. Tom Brennan, Utilities Engineer, reviewed the bids and recommended Wildcat Civil Services as the lowest acceptable bid in the amount of $104,720.00 for the CIPP product and a new manhole to be installed at the transition site where it changes from 48" to 36" pipe.

Mr. Habenicht moved;

Mr. Clark seconded:	To recommend Council approval of the bid for lining the City Ditch at Hwy. 285 and S. Clarkson Street and a manhole.
Ayes:	Burns, Clark, Cassidy, Wiggins, Woodward, Habenicht, Olson, Cassidy
Nays:	None
Members absent:	Higday, McCaslin

Motion carried.

. . . . .

WILDCAT CIVIL SERVICES

A Division of Wildcat Construction Company, Inc.
7915 Cherrywood Loop
Kiowa, CO 80117

Office: 303-646-1200 Fax: 303-646-1522

PROPOSAL

September 20, 2010

Mr. Bill McCormick
City of Eglewood Utility Department
1000 Englewood Parkway
Englewood, CO 80110

Project: Irrigation and Storm Sewer Line
US 285 and South Clarkson Street

Wildcat Civil Services will furnish all labor, materials and equipment to complete the following contract items related to cured-in-place pipe, for the price(s) indicated below, all in accordance with ASTM F-1216:

Description and Prices

Item	Description		Quantity	Units	Unit Price	Extension
36" AND 48" Pipe Installed in one inversion						
1	36" and 48" Cured in Place Pipe		346	LF	$220.00	$76,120.00
2	New Manhole on the West side of Clarkson Street		1	EA	$12,100.00	$12,100.00
3	Mobilization		1	LS	$4,500.00	$4,500.00
4	Cleaning		1	LS	$10,000.00	$10,000.00
					TOTAL	**$102,720.00**
Traffic and Street Occupancy Permits						
1	All Permits		1	LS	$2,000.00	$2,000.00
					TOTAL	**$2,000.00**
					TOTAL PROJECT	**$104,720.00**

Notes: The terms and conditions of this proposal are listed on the following page.

Wildcat Civil Services
A Division of Wildcat Construction Co., Inc.

Accepted by: _____

Roger Beers
Vice President

Date: _____

Attachment: Proposal Particulars

QUOTATION PARTICULARS

This document is an attachment to, and fully a part of, the basic quotation.

Wildcat Civil Services (hereinafter referred to as WCS) **include** the following as a part of the price(s) stated:

- Certificate of insurance with standard coverage's
- Mobilization and demobilization
- CIVILINER related public relations
- Cleaning and preparation of pipe sections to be lined with CIVILINER
  - Cleaning to be completed in November of 2010
- Pre-construction video and service connection identification
- CIVILINER wet-out, installation, curing and finishing
  - Installation of the Cured in Place Pipe to completed after January 1, 2011
- Post construction video inspection and "As-Built" video tape
- Traffic Control
- A one year warranty on materials and workmanship

The following are **not included** in the price(s) stated herein. If required they could either be provided at a negotiated additional price or be furnished by others at no cost to WCS:

- Sales or other applicable taxes. If any taxes apply to this project, WCS shall be furnished a PROJECT SPECIFIC tax exemption certificate before the notice to proceed is issued
- Special insurance coverage, permits, fees or licenses
- Any cost of water and/or water meter usage
- Excavation of soil for any cause, such as point repairs, bypass pumping related, etc.
- Manhole improvement, modification, or replacement
- Protruding service tap cutting or modification
- Easements or other access related costs
- Disposal site for debris from pipe cleaning
- Removal, handling and/or disposal of hazardous or toxic materials

Terms:
- Quantities are estimated, unit prices apply to actual footages
- All prices are tied unless otherwise noted
- Partial monthly payments may be requested
- Final payment due to WCS within thirty days of completion of the project
- Prices stated are in effect for thirty days and may be extended at the sole option of WCS

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
November 1, 2010	11 c ii	Approval of South Broadway Englewood Business Improvement District Operating Plan and proposed 2011 Budget

Initiated By:	Staff Source:
South Broadway Englewood Business Improvement District	Darren Hollingsworth, Community Development Economic Development Coordinator

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council approved Ordinance No. 29, Series of 2006 establishing the South Broadway Englewood Business Improvement District (BID).

RECOMMENDED ACTION

Approve, by motion, the South Broadway Englewood Business Improvement District Operating Plan and proposed 2011 Budget.

In accordance with State Statute, the South Broadway Englewood Business Improvement District submitted, on September 27, 2010, its Operating Plan and proposed 2011 Budget to the Englewood City Clerk for Council's approval.

[CRS § 31-25-1211..."The district shall file an operating plan and its proposed budget for the next fiscal year with the clerk of the municipality no later than September 30 of each year. The municipality shall approve or disapprove the operating plan and budget within thirty days after receipt of such operating plan and budget and all requested documentation relating thereto, but not later than December 5 of the year in which such documents are filed.]

FINANCIAL IMPACT

None

LIST OF ATTACHMENTS

South Broadway Englewood Business Improvement District Operating Plan and Proposed 2011 Budget

BROADWAY SHOPPING DISTRICT AT ENGLEWOOD

3476 S. Broadway
Englewood, CO 80113
303.781.1382

BOARD OF DIRECTORS

PRESIDENT
TED VASILAS
TED'S CLOTHIERS
3476 S. BROADWAY 80113
303.781.1382

VICE PRESIDENT
BOB LAUGHLIN
ACOUSTIC MUSIC REVIVAL
3445 S. BROADWAY 80113
303.744.1737

SECRETARY
VICKI SKIGEN
PAWNBANK
2815 S. BROADWAY 80113
720.280.5092

TREASURER
BRIAN A HART
FRAME DE ART II
3065 S. BROADWAY 80113
303.722.1525

MEMBERS

RICK REESE
DRESS FOR LESS CLOTHIERS
3045 S. BROADWAY 80113
303.761.0560

BRYAN REID
EDWARDS TOBACCO SHOP
3439 S. BROADWAY 80113
303.781.7662

GARY OXMAN
WAGNER'S
3400 S. BROADWAY 80113
303.789.4206

RECEIVED
CITY OF ENGLEWOOD, CO
SEP 27 2010
OFFICE OF
THE CITY CLERK

September 23, 2010

Dear Englewood City Council:

Pursuant to State of Colorado Statutes 31-25-1211, the South Broadway Englewood Business Improvement District (SBEBID) is forwarding its approved 2011 Budget and Operating Plan. These documents were approved by the SBEBID Board of Directors at a meeting on Wednesday, September 22, 2010. There are no changes to the Operating Plan for 2011.

Our South Broadway Englewood Business Improvement District had a successful and a productive year. We have developed and launched our new website (http://www.ShoptheBob.com), designed and produced new banners for the utility poles, as well as gateway signage. We look forward to working with Council at an upcoming study session to discuss and share further details on all of the above items. All are designed to complement one another and publicize the new branding for the SBEBID –"B.O.B." Best on Broadway.. The BID is now a member of the Denver Tourism Board – and our area will be designated as Historic Downtown Englewood, and be one of the 11 neighborhoods within the Denver Metro area that will be "on the map".

We thank City Council, as well as the Englewood City Staff for the tremendous support and cooperation we continue to receive from you. We value our working relationship, and look forward to making even more progress in promoting our district and the City of Englewood as a whole in the coming year.

Sincerely,

Ted Vasilas, President

SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT

SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT
2011 BUDGET MESSAGE

DISTRICT SERVICES:

The District will be providing improvements and services, which may include the following:

A. Marketing, Promotions and Image Enhancement
   Public relations to project a positive image of the South Broadway corridor.
   Collaborative advertising among South Broadway businesses.
   Production and packaging of marketing materials including South Broadway map, directory and website.
   A newsletter and other BID communications.
   Market research and stakeholder surveys
   Special events including themed events, historical events and ongoing events programming.

B. Enhanced Safety and Maintenance
   Enhanced safety patrols
   Improved communication with City of Englewood Police Dept.
   Video Monitoring
   Community and Business Watch Programs
   Graffiti Clean-up
   Sidewalk Power Washing

C. Special Projects
   Banners
   Gateways
   Signage
   Public Art
   Cosmetic Improvements
   Other projects as appropriate

BASIS OF ACCOUNTING

The basis of accounting utilized in the preparation of the 2011 Budget for the District is the cash basis method. The District's 2011 Budget includes projected revenues and expenditures for its general operating fund.

IMPORTANT FEATURES OF THE BUDGET

The 2011 Budget does not result in a violation of any applicable property tax or fiscal year spending limitations. Emergency reserves have been provided in 2011 (3% of the District's fiscal year spending excluding bonded debt service).

A. General Operating Fund/Expenditures: Paid for out of the District's General Fund, these expenses include general administrative costs, insurance, professional and other fees, as well as other miscellaneous costs.

The District currently does not anticipate seeking the approval of the District's Electors for the authorization and issuance of any general obligation debt.

B. Emergency Fund/Expenditures: The emergency fund for fiscal year 2011 will be equal to 3% of the District's fiscal year spending, excluding those expenditures for bonded debt services, spending from gifts, federal funds, collections from another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

ANTICIPATED PROJECTS:

The District anticipates work in the areas of marketing, maintenance and safety, and special projects to include banners, gateways, signage, public art and cosmetic improvements within the District boundaries in 2011.

SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT
OPERATION BUDGET/WORK PROGRAM
2011

REVENUE	
BID ASSESSMENTS	**$100,000**
Interest, Sponsorships	
Other income	**$10,000**
Total	**$110,000**
EXPENDITURES	
Marketing	**$50,000**
Options Include	
Public Relations	
Media	
Marketing Materials	
(Web Site, Map, Directory)	
Market Research	
BID ratepayer communications	
(Newsletter, Blast Faxes, Emails)	
Special Events	
Maintenance & Safety	**$15,000**
Options Include	
Enhanced Safety Patrols	
Video Monitoring	
Community and Business Watch Programs	
Graffiti Cleanup	
Sidewalk Maintenance, Power Washing	
Special Projects	**$30,000**
Options Include	
New Pole for Gateway Banner	
Flowers	
Signage	
Public Art	
Cosmetic Improvement/Grants	
Lights	
Legal/Accounting	**$5,000**
TOTAL EXPENDITURES	**$100,000**
Operating Reserve (5%)	**$5,000**
Capital Reserve (5%)	**$5,000**
Total Reserves	**$10,000**
TOTAL	**$110,000**

CERTIFIED COPY OF RESOLUTION TO ADOPT 2011 BUDGET
SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT

COMES NOW, the Secretary of the South Broadway Englewood Business Improvement District, and certifies that at a special meeting of the Board of Directors of the District, held Wednesday, the 22nd day of September, 2010, at 8:30 a.m., at Acoustic Music Revival, 3445 S. Broadway, Englewood, Colorado, the following Resolution was adopted by the affirmative vote of a majority of the Board of Directors, to-wit:

A RESOLUTION SUMMARIZING REVENUES AND EXPENDITURES FOR THE DISTRICT'S GENERAL OPERATING FUND, ADOPTING A BUDGET IMPOSING SPECIAL ASSESSMENTS FOR THE YEAR 2011 TO HELP DEFRAY THE COSTS OF GOVERNMENT, AND APPROPRIATING SUMS OF MONEY TO THE GENERAL FUND IN THE AMOUNTS AND FOR THE PURPOSES SET FORTH HERIN FOR THE SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT, CITY OF ENGLEWOOD, ARAPAHOE COUNTY, COLORADO, FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY, 2011, AND ENDING ON THE LAST DAY OF DECEMBER, 2011.

WHEREAS, the Board of Directors of the South Broadway Englewood Business Improvement District has authorized its consultants to prepare and submit A proposed budget to said governing body at the proper time: and

WHEREAS, the proposed budget has been submitted to the Board of Directors of the District for its consideration; and

WHEREAS, at an election held on November 7, 2006, the District has Eliminated the revenue and expenditure limitations imposed on governmental Entities by Article X, Section 20 of the Colorado Constitution and Article and Section 29-1-301, C.R.S., as amended.

NOW, THEREFORE, BE IT RESOLVE DBY THE BOARD OF DIRECTORS OF THE SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT OF THE CITY OF ENGLEWOOD, ARAPAHOE COUNTY, COLORADO:

Section 1. 2011 Budget Revenues. That the estimated revenues for the General fund as more specifically set out in the budget attached hereto are accepted and approved.

Section 2. 2011 Budget Expenditures. That the estimated expenditures for the general fund as more specifically set out in the budget Attached hereto are accepted and approved.

Section 3. Adoption of Budget for 2011. That the budget as submitted, and attached hereto and incorporated herein by this reference, and

if amended, then as amended, is hereby approved and adopted as the budget of the South Broadway Englewood Business Improvement District for calendar year 2011.

Section 5. Designation of Ending fund Balances as Reserves. That Pursuant to Const. Colo. Article X, Section 20, the December 31, 2010 ending fund balance to the General Fund, the exact amount to be determined as part of the audit of the December 31, 2010 financial statements, is designated as a general reserve for future contingencies.

Section 6. Property Tax and Fiscal Year Spending Limits. That, being fully informed, the Board finds that the foregoing budget does not result in a violation of any applicable fiscal year spending limitation.

Section 7. Certification. That the District is not authorized to levy any ad valorem property taxes, and therefore shall be deemed to certify a zero mill levy to the Board of County Commissioners of Arapahoe County, Colorado, during all years that the District shall remain in existence, unless a levy of ad valorem property taxes for debt or general operating purposes is approved by eligible electors within the District in a future year.

Section 8. Appropriations. That the amounts set forth as expenditures and balances remaining, as specifically allocated in the budget attached hereto, are hereby appropriated for the purposes stated and no other.

The foregoing is a true and accurate copy of the action taken by the governing body of the South Broadway Englewood Business Improvement District.

SOUTH BROADWAY ENGLEWOOD
BUSINESS IMPROVEMENT DISTRICT

Secretary

(SEAL)

SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT OPERATING PLAN AND BUDGET

I. SUMMARY

The South Broadway Englewood Business Improvement District (BID) is a special assessment district designed to improve the economic vitality and overall commercial appeal of the South Broadway corridor in Englewood. The BID will provide programming and benefits to businesses and commercial properties that will include marketing, promotions, enhanced safety and maintenance. BID services will be *in addition* to services currently provided by the City of Englewood. BIDs help improve image, increase sales, occupancies and property values and attract new customers and businesses in commercial districts and downtowns throughout Colorado and the country. Here are the main characteristics of the South Broadway Englewood BID:

Name: South Broadway Englewood Business Improvement District (BID).

Proposed Boundaries: The proposed South Broadway Englewood BID boundary generally encompasses the commercial properties facing the South Broadway corridor from Yale to Highway 285. ***A map of the BID boundary is attached for reference.***

BID Programs: The BID can perform the following kinds of functions within the following general categories (final BID programming will be determined by the BID board):

Marketing, Promotions and Image Enhancement:

- Public relations to project a positive image of the South Broadway corridor
- Collaborative advertising among South Broadway businesses
- Production and packaging of marketing materials including South Broadway map, directory and web site
- Newsletter and other district communications
- Market research & stakeholder surveys
- Special Events including themed, historical events and ongoing events programming

Enhanced Safety & Maintenance

- Enhanced safety patrols
- More effective communication with Police
- Video monitoring
- Community and business watch programs
- Graffiti cleanup
- Sidewalk power washing

Special Projects

- Banners
- Gateways
- Signage
- Public art
- Cosmetic improvements
- Other projects as appropriate

Budget: Total proposed budget for the first year of operation (2007) will be approximately $100,000.

Special Assessments: Funding for BID services will be raised through a special assessment that will be based upon a combination of commercial land area and first floor commercial building square footage.

Methodology: In order to allocate the costs of the services and improvements to be furnished by the BID in a way that most closely reflects its benefits, the BID will collect a special assessment based upon commercial land area and first floor square footage. There are approximately 1.1 million square feet of commercial land and about 440,000 square feet of commercial first floor building within the proposed BID boundaries. Per Colorado state law, any property that is within the BID boundary and is classified for assessment by the county assessor as residential or agricultural is not subject to the revenue raising powers of the BID and therefore will not be assessed by the BID.

Assessment: Below is a table outlining the assessment based on square foot of lot and square foot of building:

Rate per SF of lot	.029
Rate per SF of first floor building	.152

Term: A term of ten (10) years is recommended for the South Broadway Englewood BID.

City Services: A base level of services agreement between the BID and the City of Englewood will outline the City's current level of services in the BID area, as the City will maintain its existing services. BID services will be *in addition to* any City services currently provided downtown.

District Formation: The formation of a BID in Colorado requires submission of petitions from owners of real and personal property representing more than 50% of total acreage and assessed value within the district, a public hearing and a City Council ordinance forming the BID.

Financial Approval: In order to allow for a BID assessment, a majority of qualified electors within the proposed district who actually vote must approve the assessment in an election to be held in November 2006.

Governance: The BID will be managed by a Board of Directors consisting of five (5) to seven (7) members, all of whom shall be voting members and BID ratepayers. One additional seat (in addition to the 5-7 voting members) shall be reserved for an ex-officio member that shall be a representative of the City of Englewood. The board will determine annual BID priorities and oversee ongoing management of BID programs. The board shall consist of a majority of real property owners, shall equitably represent geographic areas of the BID and a variety of size and type of property and businesses.

A slate of board nominees shall be submitted by a nominating committee to City Council for approval. City Council may, at its discretion, decline to appoint the slate of nominees but if it does so it shall return the entire slate to the nominating committee which shall submit another slate of nominees for consideration by City Council.

Dissolution: The BID may be dissolved if property owners representing more than 50% of total acreage and assessed value within the District submit petitions to dissolve it, or if the BID fails to submit an operating budget to City Council for two successive years.

II. WHY FORM A BID?

There are several reasons why now is the right time to form a Business Improvement District along the South Broadway corridor in Englewood:

- **Increase Sales, Occupancies and Property Values**: More than 1,000 BIDs have been formed throughout North America and are acknowledged as a critical ingredient in commercial area revitalization. BIDs are proven to work by funding improvements and services that enhance the overall vitality of a business district. Success is measured by higher occupancies, sales and property values. Nationally, the BID renewal rate is 99%.

- **Strengthen the South Broadway Corridor's Competitiveness in the Regional Marketplace:** The BID supports a results-oriented set of programs that will produce both short-term and long-term tangible improvements. These improvements and services will help accelerate efforts to attract and retain consumers, visitors, new businesses and investment to South Broadway.

- **Create a Reliable Source of Funding for South Broadway:** A BID will provide a reliable, multi-year source of funding to ensure these programs can continue to showcase and benefit the South Broadway corridor.

- **Leverage Positive Changes along the South Broadway corridor:** There are exciting changes in Englewood– with new businesses and investment creating an eclectic and exciting business mix. The BID will help to ensure that the benefits of the new investment and energy will be spread throughout the South Broadway corridor.

- **Broaden Private Sector Control and Accountability:** The South Broadway Englewood BID will be governed by a board of district property and business owners. Annual BID work plans and budgets will be developed by the board, ensuring that the BID will be directly accountable to those who pay an assessment. New programs will be subject to private sector performance standards and controls.

- **Create a Unified Voice for the South Broadway Corridor in Englewood:** A BID will help broaden the foundation for developing a viable and unified private sector voice for the South Broadway corridor. A BID will unify and enhance the current merchant association efforts, and act as an advocate for the healthy growth and development of the entire BID area.

III. PROCESS TO CREATE THE BID OPERATING PLAN

The Plan for creating a BID along South Broadway in Englewood is the result of a community process in which more than 100 Englewood area property and business owners have participated between the fall of 2005 and the spring of 2006. The City of Englewood, at the behest of a group of merchant and property owners, retained the consulting firm of Progressive Urban Management Associates (P.U.M.A.) to help determine the feasibility of forming a BID. Key steps of the process included:

- **BID Steering Committee**: To guide the consultant team and test the viability of the BID concept, a Steering Committee composed of district property owners and business owners was created. Steering Committee members include: Ted Vasilas, Jon Cook, Doug Cohn, Beth Minnick, Bob Voth, Rick Reese, Brian Verbeck, Steve Schalk and Bob Laughlin.

- **One-On-One Meetings with Key Property Owners**: A series of one-on-one meetings were held with business and property owners in the BID study area to determine their willingness to support a BID.

- **Stakeholder Focus Groups**: To involve property and business owners in the design and development of the plan, two stakeholder focus groups were held in November, 2005. The focus groups included a survey designed to assess service priorities and whether there was an appetite to support various BID improvements and activities.

- **Direct Mail Survey**: A direct mail survey was sent to property owners within the Englewood BID study area in November, 2005. Fifty-five (55) surveys were returned providing additional input for the design of the BID work plan.

- **Plan Review Workshops/Final Plan**: The draft BID work plan and budget were reviewed by the BID Steering Committee and then presented to property and business owners in two workshops held in early February, 2006. Input from the workshops and Steering Committee led to the completion of the final plan.

Top community priorities that emerged from nearly 100 surveys completed by participants in one-on-one meetings and focus groups and respondents to the mail survey included:

- Marketing, Promotions & Image Enhancement
- Enhanced Maintenance
- Enhanced Safety

IV. SOUTH BROADWAY ENGLEWOOD BID OPERATING PLAN

As determined by area property and business owners, the top priorities for improvements and activities within the BID study area include:

- Marketing and promotions to increase the South Broadway corridor's image as a destination and increase the consumer draw to the corridor.
- Enhanced maintenance and safety programs to address nuisance crimes to create a more attractive, safe and appealing area.

The following narrative provides recommendations for the first operating year of the BID. The Board may amend program activities in subsequent years within the general categories authorized by state law and in the approved annual operating plan and budget. Final programs and budgets will be subject to the annual review and approval of the BID Board of Directors.

BID PROGRAMS

***Marketing and Promotions*:** Initiatives are recommended to enhance the overall image and marketability of the South Broadway corridor to attract a wide array of consumers and promote South Broadway shops, restaurants, night clubs and other attractions. The BID Board of Directors will set annual priorities for marketing projects. Options include:

- ***Public relations*** to raise regional awareness of the South Broadway corridor and its unique restaurants, shops, and attractions.
- ***Map and Directory*** to help consumers find their way around the corridor and to locate specific venues.
- ***Collaborative Marketing*** among the various merchants and vendors along the corridor in order to leverage marketing funds and resources.
- ***South Broadway website*** that maintains current information on area businesses, special events and contact information for South Broadway Englewood BID personnel and services
- ***Market research*** to better understand who is shopping along the corridor and what shops, services, restaurants and events are gaining the biggest consumer draw.
- ***Communications*** including the publication of a periodic newsletter and annual stakeholder surveys to determine the overall satisfaction with and effectiveness of BID programs.
- ***Special Events*** that bring focus and attention to the corridor are encouraged to continue and expand.

Enhanced Maintenance and Safety Programs are recommended to improve the overall image, safety and appeal of the South Broadway corridor including:

- Enhanced safety patrols
- More effective communication with Police
- Video monitoring
- Community and business watch programs
- Graffiti cleanup
- Sidewalk power washing

Special Projects to enhance the sense of place and esthetic quality of the South Broadway corridor include:

- Banners
- Gateways
- Signage
- Public art
- Cosmetic improvements

V. BID BUDGET

The proposed annual BID budget is approximately $100,000, to be raised through a combination of special assessment on commercial lot and building (first floor only) located within the boundaries of the BID.

The budget includes provisions for defraying the costs of collecting the special assessments and other expenses normally associated with special assessment processes.

Bonds: The BID shall be authorized to issue bonds at the discretion of, and in such amounts as may be determined by, the BID Board of Directors, and subject further to the approval of a majority of BID electors at an election called for the purpose of authorizing such bonds.

Fees and Charges: Although the current budget and operating plan do not contemplate imposing rates and charges for services furnished or performed, the BID shall be authorized to impose and collect reasonable fees and charges for specific services as determined by the BID Board of Directors. There are no plans to impose any additional fees and charges beyond the annual BID assessment at this time.

VI. ASSESSMENT METHODOLOGY

Under Colorado statutes, Business Improvement Districts can generate revenues through several methods, including charges for services rendered by the district, fees, taxes, special assessments, or a combination of any of these. In order to allocate the costs of the services to be furnished by the BID in a way that most closely reflects the benefits conferred upon the businesses and commercial properties in the BID, the BID shall be authorized to determine, impose and collect special assessments based upon both commercial lot and first floor commercial building square footage.

The ***special assessment methodology*** is intended to equitably address the intended benefits to South Broadway based upon real property characteristics to achieve the following:

BID services will improve overall image and marketability of properties throughout the entire area of the BID, leading to increased occupancies and values. Land square footage is utilized as an assessment variable to distribute the anticipated benefit to property resulting from these services. One-third of the projected BID budget is allocated to land.

First floor building square footage is assessed at a higher rate than land. The first floor of real property is expected to benefit from image enhancement activities that increase occupancies and sales, particularly from retail related uses. Two-thirds of the projected BID budget is allocated to the first floor of real property.

Second floor and higher building square footage is omitted from the special assessment because these spaces do not provide the same level of economic return as first floor spaces and are less likely to be occupied by retail related uses.

The following assessment rates apply to South Broadway Englewood properties based upon a database that has been assembled by the City of Englewood utilizing data supplied by the Arapahoe County Assessor and GIS technology. Estimated assessment rates on real property for the first operating year of the BID are:

	Per sq.ft. of Lot	Per sq.ft. of main floor of building
South Broadway Commercial Properties	$.029	$.152

Annual Adjustments: In order to provide adequate funding for the costs of providing its services and improvements in the future, the BID shall be authorized to increase the rates of assessment set forth above not more than five percent (5%) each year, on a cumulative basis. The assessment will be

collected by the ***Englewood City Treasurer*** pursuant to an agreement to be entered into by between the BID and Treasurer's Office.

VII. BID GOVERNANCE AND PROGRAM MANAGEMENT

Governance: The BID will be managed by a Board of Directors consisting of five (5) to seven (7) members, all of whom shall be voting members and BID ratepayers. One additional seat (in addition to the 5-7 voting members) shall be reserved for an ex-officio member who shall be a representative of the City of Englewood. The board will determine annual BID priorities and oversee ongoing management of BID programs. The board shall consist of a majority of real property owners, shall equitably represent geographic areas of the BID and a variety of size and type of property and businesses.

A slate of board nominees shall be submitted by a nominating committee to City Council for approval. City Council may, at its discretion, decline to appoint the slate of nominees but if it does so it shall return the entire slate to the nominating committee which shall submit another slate of nominees for consideration by City Council.

The BID board will have the following responsibilities:

- Prepare and file the annual BID budget in accordance with state legal requirements and ensure compliance with other state laws.
- Provide direction and coordination in carrying out BID funded improvements and services.

Program Management: In order to manage and implement BID programs, the BID Board of Directors may engage professional staff support in a variety of ways, including:

- Employing marketing and events, maintenance or security professionals as full or part-time staff members
- Contracting for specific services with private firms

The board will make final decisions regarding the operation and daily management of BID services upon its formation.

VIII. CITY SERVICES

A base level of services agreement between the BID and the City of Englewood will outline the City's current level of services along the South Broadway corridor. BID services will be *in addition to* any City services currently provided in the BID boundary.

IX. TERM

The BID will sunset ten years after it begins operations in 2007 (at the end of 2016), unless extended beyond such term by petitions meeting the requirements of state law for organization of a new business improvement district, and such extension is approved by the City Council.

SAMPLE FIRST YEAR BID OPERATING BUDGET
-2007-

Revenue

BID Assessments	$100,000
Interest, sponsorships Other income	$ 10,000
Total	**$110,000**

Expenditures

Marketing **$50,000**

Options include:

- Public relations
- Marketing materials (web site, map, directory)
- Market research
- BID ratepayer communications (newsletter blast faxes, emails)
- Special events

Maintenance & Safety **$25,000**

Options include:

- Enhanced safety patrols
- Video monitoring
- Community and business watch programs
- Graffiti cleanup
- Sidewalk maintenance, power washing

Special Projects **$25,000**

Options Include:

- Banners
- Gateways
- Signage
- Public art
- Cosmetic improvements

Total Expenditures	**$100,000**
Operating Reserve (5%)	$5,000
Capital Reserve (5%)	$5,000
Total Reserves	**$10,000**
TOTAL	***$110,000***