Agenda for the
Regular Meeting of the
Englewood City Council
Tuesday, February 22, 2011
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 February 7, 2011.

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. Jeff Plush, Managing Director of the Colorado Rapids, will bring the Rapids' 2010 Major League Soccer Championship Cup Trophy Tour to Englewood.

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.)

- Council Response to Public Comment.

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. 5—Recommendation from the Englewood Water and Sewer Board and the Utilities Department to adopt a bill for an ordinance approving the Grant of Easement located at South Windermere Street and West Quincy Avenue. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

      ii. Council Bill No. 6—Recommendation from the Englewood Water and Sewer Board and the Utilities Department to adopt a bill for an ordinance approving the U.S. Department of Agriculture Forest Service Special Use Permit for Boreas Ditch #2. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

      iii. Council Bill No. 9—Recommendation from the Englewood Water and Sewer Board to adopt a bill for an ordinance approving the South Arapahoe Sanitation District Wastewater Connector's Agreement. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

      iv. Council Bill No. 10—Recommendation from the Englewood Water and Sewer Board to adopt a bill for an ordinance approving the Greenwood Village Sanitation District Wastewater Connector's Agreement. **STAFF SOURCE: Stewart H. Fonda, Director of Utilities.**

      v. Council Bill No. 11—Recommendation from the Finance and Administrative Department to adopt a bill for an ordinance consenting to the First Amendment to Declaration of Covenants Imposing and Implementing the River Point Public Improvement Fee. **STAFF SOURCE: Frank Gryglewicz, Director of Finance and Administrative Services.**

   b. Approval of Ordinances on Second Reading.

      i. Council Bill No. 4, authorizing the acceptance of a 2009 FEMA U.S. Department of Homeland Security Assistance to Firefighters Grant Award for the purchase and installation of an emergency backup generator for the Police/Fire building at 3615 South Elati Street and for the purchase of hazardous materials monitoring equipment.

      ii. Council Bill No. 7, authorizing an Intergovernmental Agreement with the Regional Transportation District for cost sharing for operation of the "Art" shuttle for 2011.

   c. Resolutions and Motions.

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

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.

11. Ordinances, Resolutions and Motions

    a. Approval of Ordinances on First Reading.

    b. Approval of Ordinances on Second Reading.

    c. Resolutions and Motions.

        i. Recommendation from the Englewood McLellan Reservoir Foundation to approve a resolution supporting entering into negotiations with the Benjamin Franklin Charter School, LLC. for lease of approximately 10.1 acres of Planning Area 85 near McLellan Reservoir. **STAFF SOURCE: Michael Flaherty, Englewood McLellan Reservoir Foundation Board.**

        ii. Recommendation from the Community Development Department to approve, by motion, an agreement with MV Public Transportation, Inc. for 2011 management, operation, and maintenance of the art shuttle in the amount of $261,059. **STAFF SOURCE: Harold J. Stitt, Senior Planner.**

12. General Discussion.

    a. Mayor's Choice.

        i. Registration for NLC Congressional Cities Conference in Washington, D.C. from March 12 to 16, 2011.

    b. Council Members' Choice.

13. City Manager's Report.

14. City Attorney's Report.

15. Adjournment

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
February 22, 2011	9 a i	Grant of Easement at South Windermere Street and West Quincy Avenue
Initiated By:		**Staff Source:**
Utilities Department		Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None.

RECOMMENDED ACTION

The Water and Sewer Board, at their November 9, 2010 meeting, recommended Council adopt a bill for an ordinance approving the Grant of Easement located at South Windermere Street and West Quincy Avenue.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Timothy and Nancy Baker submitted a request for a Grant of Easement to the City of Englewood for a 10' easement for a proposed City water main to service a future housing development. The existing sewer easement was not big enough to accommodate the additional water main, so an additional 10' was required. The easement will be for the infrastructure for a future housing development.

The site is located east of South Windermere Street on the south side of West Quincy Avenue.

FINANCIAL IMPACT

None.

LIST OF ATTACHMENTS

Excerpt from November 9, 2010 Water and Sewer Board Minutes
Bill for an Ordinance

WATER AND SEWER BOARD
MINUTES

November 9, 2010

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

Members present:	Cassidy, Wiggins, Woodward, Olson, Habenicht, Higday, McCaslin, Clark
Members absent:	Burns
Also present:	Stewart Fonda, Director of Utilities

Excerpt from Page 6 of the November 9, 2010 Water and Sewer Board Minutes

. . . . .

4. GRANT OF EASEMENT FOR ENGLEWOOD ACRES.

Timothy and Nancy Baker submitted a Grant of Easement to Distinctive Builders for a 10' utilities easement to service the future Englewood Acres development. The 10' easement is to provide space for a City water main for the proposed Habitat for Humanity Development.

Mr. Burns moved;

Mr. Cassidy seconded:	To recommend Council approval of the Grant of Easement to Distinctive Builders for a 10' utilities easement for a water main at 1294 W. Quincy Ave. from Timothy and Nancy Baker.
Ayes:	Cassidy, Wiggins, Woodward, Olson, Habenicht, Higday, McCaslin, Clark, Burns
Nays:	None
Absent:	None

Motion carried.

. . . . .

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2011

COUNCIL BILL NO. 5
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE ACCEPTING A UTILITY EASEMENT, "GRANT OF EASEMENT" TO THE CITY OF ENGLEWOOD, COLORADO BY TIMOTHY AND NANCY BAKER FOR A PROPOSED CITY WATER MAIN TO SERVICE A FUTURE HOUSING DEVELOPMENT LOCATED AT SOUTH WINDERMERE STREET AND WEST QUINCY AVENUE.

WHEREAS, Timothy and Nancy Baker submitted a Grant of Easement to the City of Englewood for a 10' easement for a proposed City water main to service a future housing development; and

WHEREAS, the existing sewer easement was not large enough to accommodate the additional proposed water main and an additional 10' easement is required; and

WHEREAS, the proposed easement will be for the benefit of Distinctive Properties to construct the infrastructure for a housing development located at South Windermere Street and West Quincy Avenue; and

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended City Council approval of the Grant of Easement by Timothy and Nancy Baker at their November 10, 2010 meeting; and

WHEREAS, the passage of this Ordinance will accept the 10' easement from Timothy and Nancy Baker to the City;

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

Section 1. The Grant of Easement between Timothy and Nancy Baker to the City of Englewood, Colorado attached hereto as "Exhibit A," is hereby accepted and approved by the Englewood City Council.

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

Introduced, read in full, and passed on first reading on the 22nd day of February, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of February, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of February, 2011 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 22nd day of February, 2011.

Loucrishia A. Ellis

EXHIBIT A

GRANT OF EASEMENT

THIS GRANT of Easement (this "Grant") is made this 6th day of October, 2010, by Timothy + Nancy Baker ("Grantor") as the Owners of 1294 W. Quincy Ave., Englewood, Colorado 80110, whose address is 1294 W. Quincy Ave, Englewood, CO 80110, in favor of the CITY OF ENGLEWOOD ("Grantee") whose address is 1000 Englewood Parkway, Englewood, Colorado 80110.

The parties covenant and agree as follows:

1. Easement Property. The "Easement Property" shall mean the real property located in the County of Arapahoe, State of Colorado, more particularly described as a ten foot (10') easement, as shown on Exhibit A, attached hereto and incorporated herein by reference.

2. Consideration. As consideration, Distinctive Builders, LLC has given Grantor $12,500.00 and other good and valuable consideration, the receipt of which is hereby acknowledged by Grantor for this easement for the benefit of the City of Englewood.

3. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a perpetual easement over, under, across and through the Easement Property for the purpose of constructing, operating, maintaining, repairing, replacing, removing, improving and enlarging a water main.

4. Access. Grantee shall have the perpetual, nonexclusive right of ingress and egress in, to, over, through and across the Easement Property for any purpose necessary or desirable for the full enjoyment of the rights granted to Grantee under this Grant.

5. Restoration. Grantee agrees that after the construction, maintenance, repair, replacement or enlargement, if any, for the water main, Grantee shall restore the surface of the Easement Property as nearly as possible to the grade and conditions existing immediately prior to said construction, maintenance, repair, replacement or enlargement, except as may be necessary to accommodate the water line. Grantee further agrees to replace any topsoil removed from any cultivated or agricultural areas on the Easement Property and to remove any excess earth resulting from said construction, maintenance, repair, replacement or enlargement, at Grantee's sole cost and expense.

6. No Improvements. Grantor covenants and agrees not to construct, erect, place or plan any "Improvements," as hereinafter defined, on the Easement Property without obtaining the prior written consent of Grantee. "Improvements" shall mean any structure, building, planting, or trees other than shrubbery or other small plants and a grass type lawn or asphalt parking surface. Grantee shall have the right to remove, without any liability to Grantee, any improvements constructed, erected, placed or planted on the Easement Property without Grantor's having obtained the prior written consent of Grantee. If such prior written consent is not obtained, Grantee shall not be responsible for repair or replacement of the Improvements if they are damaged during construction, maintaining, repair, replacement or enlargement.

7. Subjacent and Lateral Support. Grantor covenants and agrees that Grantee shall have the right of subjacent and lateral support on the Easement Property to whatever extent is necessary or desirable for the full, complete and undisturbed enjoyment of the rights granted to Grantee under this Grant.

8. Rights of Grantor. Grantor reserves the full right to the undisturbed ownership, use, and occupancy of the Easement Property insofar as said ownership, use, and occupancy is consistent with and does not impair the rights granted to Grantee in this Grant.

9. Abandonment. In the event that Grantee shall abandon the rights granted to it under this Grant, all rights, title and interest hereunder of Grantee shall cease and terminate, and Grantor shall hold Easement Property, as the same may then be, free from the rights of Grantee so abandoned and shall own all materials and structures of Grantee so abandoned, provided that Grantee shall have a reasonable period of time after said abandonment in which to remove any or all Lines and Appurtenances from the Easement Property. In the event that Easement is abandoned by Grantee, Grantor shall have the right, at its sole option, to require Grantee to remove or neutralize any improvements constructed in the Easement by Grantee.

10. Warranty of Title. Grantor warrants and represents that Grantor is the owner of the Easement Property and that Grantor has full right, title and authority, to grant and convey to Grantee the Easement. Grantor further covenants and agrees to indemnify, defend and hold Grantee harmless from and against any adverse claim to the title to the Easement Property by all and every person or persons lawfully claiming or to claim the whole or any part thereof.

11. Binding Effect. This Grant shall extend to and be binding upon the heirs, personal representatives, successors and assigns of the respective parties hereto. The terms, covenants, agreements and conditions in this Grant shall be construed as covenants running with the land

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

GRANTORS:

TIMOTHY BAKER

Nancy E. Baker

STATE OF COLORADO)
) ss.
COUNTY OF Arapahoe)

Acknowledged before me this 16th day of October, 2010, by Timothy Baker & Nancy Baker as the Owners of 4292 W. Quincy Ave, Englewood, Colorado 80110.

BRIDGET K. DUGGAN
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 07/03/2014

My Commission expires: 7-3-2014

Notary Public

EXHIBIT

SHEET 1 OF 2

LEGAL DESCRIPTION

A STRIP OF LAND BEING TEN (10) FEET IN WIDTH LYING IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 9, TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF ENGLEWOOD, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WEST QUINCY AVENUE, SAID POINT ALSO BEING THE NORTHWESTERLY CORNER OF ENGLEWOOD ESTATES AS RECORDED UNDER RECEPTION NO. B4205364 OF THE RECORDS OF THE ARAPAHOE COUNTY CLERK AND RECORDER, FROM WHENCE THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 9 BEARS NORTH 85°06'46" EAST, A DISTANCE OF 332.23 FEET AND CONSIDERING THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 9 TO BEAR SOUTH 89°42'23" EAST WITH ALL BEARINGS CONTAINED HEREIN BEING RELATIVE THERETO;

THENCE SOUTH 89°42'23" EAST, ALONG THE NORTHERLY LINE OF SAID ENGLEWOOD ESTATES AND SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 20.00 FEET TO THE **POINT OF BEGINNING;**

THENCE CONTINUING SOUTH 89°42'23" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 00°28'16" WEST, A DISTANCE OF 76.50 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 6 OF SAID ENGLEWOOD ESTATES;

THENCE ALONG THE BOUNDARY OF SAID ENGLEWOOD ESTATES THE FOLLOWING TWO (2) COURSES:

1. NORTH 89°42'23" WEST, A DISTANCE OF 10.00 FEET;

2. NORTH 00°28'16" EAST, A DISTANCE OF 76.50 FEET TO THE **POINT OF BEGINNING,**

CONTAINING A CALCULATED AREA OF 765 SQUARE FEET OR 0.018 ACRE, MORE OR LESS.

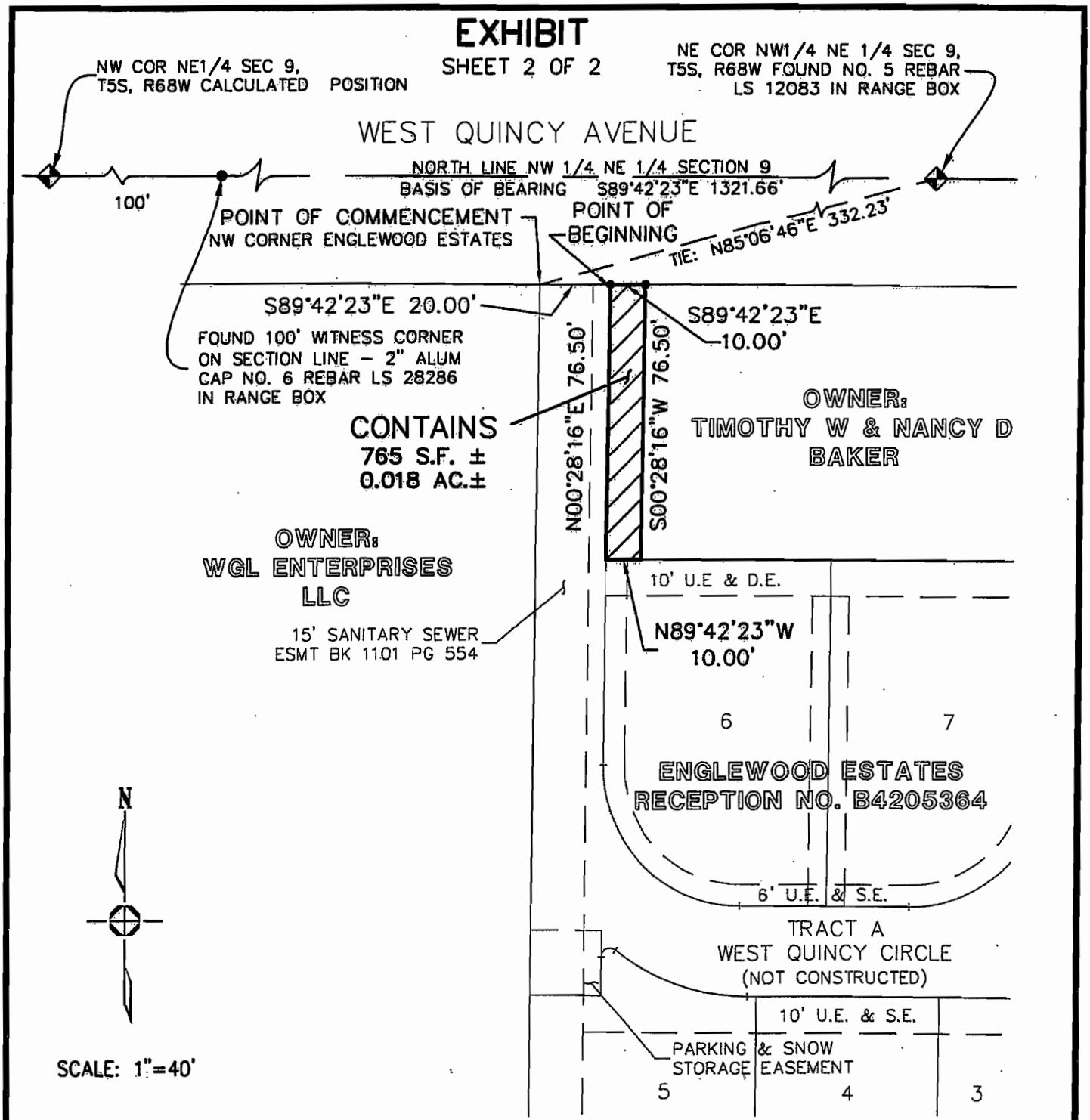
I, WILLIAM F. HESSELBACH JR., A SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE ABOVE LEGAL DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CHECKING.

WILLIAM F. HESSELBACH JR., P.L.S. 25369 DATE
FOR AND ON BEHALF OF
CARROLL & LANGE-MANHARD

CARROLL & LANGE-MANHARD
A MANHARD CONSULTING COMPANY
Professional Engineers & Land Surveyors
7442 South Tucson Way, Suite 190-A Centennial, Colorado 80112 (303) 708-0500

EXHIBIT

SHEET 2 OF 2



● – INDICATES A CHANGE IN COURSE ONLY.

THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

CARROLL & LANGE-MANHARD
A MANHARD CONSULTING COMPANY
Professional Engineers & Land Surveyors
7442 South Tucson Way, Suite 190-A Centennial, Colorado 80112 (303) 708-0500

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
February 22, 2011	9 a ii	USDA Special Use Permit for Boreas Ditch #2
Initiated By:		**Staff Source:**
Utilities Department		Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None.

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at their November 9, 2010 meeting, recommended Council adopt a bill for an ordinance approving the U.S. Department of Agriculture Forest Service Special Use Permit for Boreas Ditch #2.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Municipalities or collective organizations apply for special use permits to use Forest Service land for ditches, wells, roads and communication sites used for a common good.

The U.S. Department of Agriculture – Forest Service submitted a Special Use Permit for the continued operation and maintenance of the Boreas Ditch #2. This allows the Boreas Ditch #2 to cross the White River Forest in the Dillon Ranger District. The existing 30-year permit has expired and this permit would be for an additional 30 years.

FINANCIAL IMPACT

An annual fee of $210.92 is assessed for a 25' right-of-way for 1.48 miles.

LIST OF ATTACHMENTS

Excerpt from November 9, 2010 Water and Sewer Board Minutes
Bill for Ordinance

WATER AND SEWER BOARD
MINUTES

November 9, 2010

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

Members present:	Cassidy, Wiggins, Woodward, Olson, Habenicht, Higday, McCaslin, Clark
Members absent:	Burns
Also present:	Stewart Fonda, Director of Utilities

Excerpt from Page 2 of the November 9, 2010 Water and Sewer Board Minutes

. . . . .

2. BOREAS PASS DITCH

The U.S. Department of Agriculture – Forest Service, submitted a Special Use Permit for the continued operation and maintenance of the Boreas Ditch #2. This allows the Boreas Ditch #2 to cross the White River Forest in the Dillon Ranger District. The existing 30-year permit has expired and this permit would be for an additional 30 years. An annual fee of $210.92 is assessed for a 25' right-of-way for 1.48 miles. Englewood received approximately 250 acre feet of raw water per year from this ditch. The City Attorney's office reviewed and approved the Special Use Permit. A modification to the Forest Service indemnity clause was added by the City Attorney and accepted by the Forest Service.

Mr. Habenicht moved;

Mr. Higday seconded:	To recommend Council approval of the U.S. Department of Agriculture Forest Service Special Use Permit for Boreas Ditch #2.
Ayes:	Cassidy, Wiggins, Woodward, Olson, Habenicht, Higday, McCaslin, Burns, Clark
Nays:	None
Absent:	None

Motion carried.

. . . . .

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2011

COUNCIL BILL NO. 6
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT ENTITLED U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE, SPECIAL USE PERMIT AUTHORITY: FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED OCTOBER 21, 1976 (REF.:FSH 2709.11, SECTION 41.53) BETWEEN THE U.S. DEPARTMENT OF AGRICULTURE AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, municipalities or collective organizations apply for special use permits to use U.S. Forest Service land for ditches, wells, roads and communication sites used for a common good; and

WHEREAS, the U.S. Department of Agriculture – Forest Service submitted a Special Use Permit for the continued operation and maintenance of the Boreas Ditch #2; and

WHEREAS, the existing 30-year permit has expired and this special use permit allows the Boreas Ditch #2 to cross the White River Forest in the Dillon Ranger District for an additional 30 years; and

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended City Council approval of the U.S. Department of Agriculture Forest Service Special Use Permit for the Boreas Ditch at their November 10, 2010 meeting; and

WHEREAS, the passage of this proposed Ordinance will authorize Englewood to renew the Permit for an additional 30 years;

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

Section 1. The Intergovernmental Agreement entitled U.S. Department of Agriculture, Forest Service, Special Use Permit Authority: Federal Land Policy and Mgmt Act, as amended October 21, 1976 (Ref.: FSH 2709.11, section 41.53) is hereby accepted and approved by the Englewood City Council, attached hereto as "Exhibit A".

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

Introduced, read in full, and passed on first reading on the 22nd day of February, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of February, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of February, 2011 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 22nd day of February, 2011.

Loucrishia A. Ellis

EXHIBIT A

Authorization ID: DIL790
Contact ID: ENGLEWOOD_CITY
Expiration Date: 12/31/2039
Use Code: 911

FS-2700-4 (03/06)
OMB 0596-0082

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
SPECIAL USE PERMIT

Authority: FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976
(Ref.: FSH 2709.11, section 41.53)

CITY OF ENGLEWOOD of 1000 ENGLEWOOD PARKWAY, ENGLEWOOD CO 80110-2373 (hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the White River National Forest and .

This permit covers 4.48 acres or 1.48 miles and is described as a 25 foot right-of-way located in the NW1/4NE1/4 Sec. 35, E1/2W1/2 Sec. 26, and SW1/4 Sec. 23, T. 7 S., R. 77 W., 6th P.M., ("the permit area"), as shown on the map attached as Appendix A. This permit is issued for the purpose of: **operation and maintenance of 7,800 feet of a ditch and buried pipeline (4,700 ft on the north side and 3,100 ft on the south side of Boreas Pass) called the Boreas Ditch #2 and associated facilities.**

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. License. This permit is a license for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Amendment. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

E. Existing Rights. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

F. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

G. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the

permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and conditions of this permit.

H. Assignability. This permit is not assignable or transferable. If the holder through death, voluntary sale or transfer, enforcement of contract, foreclosure, or other valid legal proceeding ceases to be the owner of the improvements, this permit shall terminate.

I. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Expiration at the End of the Authorized Period. This permit will expire at midnight on **12/31/2041.** Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.

B. Minimum Use or Occupancy of the Permit Area. Use or occupancy of the permit area shall be exercised at least 50 days each year, unless otherwise authorized in writing under additional terms of this permit.

C. Notification to Authorized Officer. If the holder desires issuance of a new permit after expiration, the holder shall notify the authorized officer in writing not less than six (6) months prior to the expiration date of this permit.

D. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.
2. The permit area is being used for the purposes previously authorized.
3. The permit area is being operated and maintained in accordance with the provisions of the permit.
4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits laws, or regulations.

E. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.

F. Construction. Any construction authorized by this permit may commence by N/A and shall be completed by N/A. If construction is not completed within the prescribed time, this permit may be revoked or suspended.

III. RESPONSIBILITIES OF THE HOLDER

A. Compliance with Laws, Regulations, and other Legal Requirements. The holder shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S. C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

B. Plans. Plans for development, layout, construction, reconstruction, or alteration of improvements on the permit area, as well as revisions of such plans, must be prepared by a qualified individual acceptable to the authorized officer and

shall be approved in writing prior to commencement of work. The holder may be required to furnish as-built plans, maps, or surveys, or other similar information, upon completion of construction.

C. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this authorization. If requested, the holder shall comply with inspection requirements deemed appropriate by the authorized officer.

D. Hazard Analysis. The holder has a continuing responsibility to identify all hazardous conditions on the permit area which would affect the improvements, resources, or pose a risk of injury to individuals. Any non-emergency actions to abate such hazards shall be performed after consultation with the authorized officer. In emergency situations, the holder shall notify the authorized officer of its actions as soon as possible, but not more than 48 hours, after such actions have been taken.

E. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

F. Change in Ownership. This permit is not assignable and terminates upon change of ownership of the improvements or control of the business entity. The holder shall immediately notify the authorized officer when a change in ownership or control of business entity is pending. Notification by the present holder and potential owner shall be executed using Form SF-299 Application for Transportation and Utility Systems and Facilities of Federal Lands, or Form FS-2700-3a, Holder Initiated Revocation of Existing Authorization, Request for a Special Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the party who acquires ownership of, or a controlling interest in, the improvements or business entity.

IV. LIABILITY

For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

A. The holder assumes all risk of loss to the authorized improvements.

B. Subject only to the limits on the holder's liability under Title 24, Article10, of the Colorado Governmental Immunity Act (CGIA), Colorado Revised Statutes (C.R.S.) §§ 24-10-101 through 24-10-119, the holder shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use or occupancy authorized by this permit. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the holder or the holder's heirs, agents, employees, or contractors in connection with the use or occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause III.A of this permit; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment. This clause shall survive termination or revocation of this permit, regardless of cause.

C. The Forest Service has no duty, either before or during the term of this permit, to inspect the property or to warn of hazards. If the Forest Service inspects the property, the Forest Service shall not incur any additional duty or liability for hazards not identified or discovered through the inspections.

D. The holder has an affirmative duty to protect from injury and damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, agents, employees or contractors on, or related to, the lands, property, and other interests covered by this permit. For purposes of this clause, "hazardous material" shall mean any hazardous

substance, pollutant, contaminant, hazardous waste, oil, and/or petroleum product, as those terms are defined under any Federal, State, or local law or regulation.

1. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use or occupancy of the site. If the environment or any government property covered by this permit becomes damaged during the holder's use or occupancy of the site, the holder shall immediately repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

2. Subject only to the limits on the holder's liability under Title 24, Article 10 of the CGIA, C.R.S. §§ 24-10-101 through 24-10-119, the holder shall indemnify, defend, and hold harmless the United States for any damages arising out of the holder's use or occupancy authorized by this permit. The holder shall be liable for all injury, loss, or damage, including fire suppression or other costs associated with rehabilitation or restoration of natural resources, associated with the holder's use and/or occupancy. Compensation shall include but is not limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other associated costs.

3. With respect to roads, the holder shall be liable for damages to all roads and trails of the United States caused by use of the holder or the holder's heirs, agents, employees, and contractors to the same extent as provided under clause IV.D.1, except that liability shall not include reasonable and ordinary wear and tear.

E. Clauses IV.B and IV.D.2 shall not be interpreted to limit any of the holder's liability for, or prevent the United States from taking any action to address, injury, loss, damages, or costs associated with environmental contamination, injury to natural resources, or other cause of action that arises under other law, including the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.*, and the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*, in connection with the holder's use or occupancy of Federal lands, or to diminish any independent obligation of the holder to indemnify the United States with respect to the same.

F. The holder has a continuing responsibility to identify and abate hazardous conditions in the permit area which could affect the improvements or pose a risk of injury to individuals. The holder shall consult with the authorized officer before taking any action to abate these hazards.

G. The authorized officer has determined through a risk assessment that the potential liability of the United States for property damage and personal injury or death arising from the holder's use or occupancy authorized by this permit is $ 25 K per incident.

1. The holder shall maintain commercial general liability (CGL) coverage with a combined single limit self-insurance and/or insurance procured from a third party covering property damage and personal injury or death for $ 5 million per incident and $ N/A in the aggregate. The holder shall pay the premiums for any insurance procured under this clause. The self-insurance documentation shall name the United States as a certificate holder, and the procured insurance policy shall name the United States as an additional insured. The coverage under both types of insurance shall extend to property damage and personal injury or death arising from the holder's activities under the permit, including use or occupancy of National Forest System lands and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by the permit. If the aggregate coverage limit is reached or exceeded and the holder fails to obtain an increase in the aggregate coverage limit or to procure additional insurance, this permit shall terminate. The holder shall provide notice within 48 hours to the Director of Physical Resources, Rocky Mountain Region (303) 275-5350, if the aggregate coverage limit in the procured insurance policy is reached or exceeded during the policy period.

2. Notwithstanding clauses IV.B and IV.D.2 of this permit, any limitation on the holder's liability under State law, including but not limited to the holder's sovereign immunity and the liability under Title 24, Article10, of the CGIA, C.S.A.

§§ 24-10-101 through 24-10-119, that may apply to this permit shall not be construed in any way to impinge upon the ability of the United States to recover under the self-insurance or any procured insurance policy. CGL insurance shall be written on ISO occurrence form CG 00 01 12 07 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The United States shall be included as an additional insured under the CGL insurance policy, using USDA Forest Service additional insured form FS-2700-33. Nothing in this clause precludes the holder or the insurer from asserting any defense that may be available to the holder, including sovereign immunity, in an action brought against the holder.

3. The Forest Service reserves the right to review and approve the self-insurance documentation and any procured insurance policy. The holder shall provide the authorized officer with a copy of the approved self-insurance documentation and an authenticated copy of any procured insurance policy to the Forest Service immediately upon approval or issuance. The self-insurance documentation and any procured insurance policy shall specify that the Forest Service shall be given 30 days prior written notice of cancellation or any modification of the self-insurance documentation or procured insurance policy.

4. If there is a conflict between this permit, the certificate of insurance or insurance policy provided by the Colorado Risk Management Division ("the certificate" or "the insurance policy"), and/or the Colorado Risk Management Division's insurance policy manuals ("insurance policy manuals"), the order of precedence among those documents shall be (1) this permit; (2) the certificate or insurance policy; and (3) the insurance policy manuals.

5. If a claim is submitted to the United States for property damage and personal injury or death arising from the holder's use or occupancy authorized by this permit, the Forest Service shall tender the defense of the claim to the respective representatives of the self-insurance and procured insurance providers. The holder understands that tort claims against the United States are governed by the Federal Tort Claims Act, which may result in the administrative denial of a claim. The holder further understands that in litigation the United States is represented by the United States Department of Justice (USDOJ) and agrees that representatives of the self-insurance and procured insurance providers will coordinate the defense with USDOJ, if a claim is litigated.

H. In the event of any breach of the conditions of this authorization by the holder, the authorized officer may, on reasonable notice, cure the breach for the account at the expense of the holder. If the Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States' rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the election of the Forest Service, be deemed to be additional fees hereunder and shall be due from the holder to the Forest Service on the first day of the month following such election.

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.

4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Prior to abandonment of the improvements or within a reasonable time following revocation or termination of this authorization, the holder shall prepare, for approval by the authorized officer, an abandonment plan for the permit area. The abandonment plan shall address removal of improvements and restoration of the permit area and prescribed time frames for these actions. If the holder fails to remove the improvements or restore the site within the prescribed time period, they become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VI. FEES

A. Termination for Nonpayment. This permit shall automatically terminate without the necessity of prior notice when land use rental fees are 90 calendar days from the due date in arrears.

B. The holder shall pay annually in advance a sum determined by the Forest Service to be the fair market value of the use granted by this authorization. The initial payment is set at **$214.95** for the remainder of the calendar year. Subsequent payments shall be determined by the use of an annual fee schedule. The Forest Service may adjust the amount of payment annually by an appropriate indexing factor to reflect more nearly the fair market value of the use. At certain intervals the Forest Service shall review the fee and adjust the fee as necessary to assure that it is commensurate with the fair market value of the authorized rights and privileges, as determined by appraisal or other sound business management principles.

C. Payment Due Date. The payment due date shall be the close of business on January 1 of each calendar year payment is due. Payments in the form of a check, draft, or money order are payable to USDA, Forest Service. Payments shall be credited on the date received by the designated Forest Service collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

D. Late Payment Interest, Administrative Costs and Penalties Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.

In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to it's original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 *et seq.* Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service.

Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, *et seq.*)

VII. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

C. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

D. Superseded Permit. This permit supersedes a special use permit designated:

CITY OF ENGLEWOOD, DIL100701, dated 09/28/1998.

E. Augmentation Plans for Existing Water Rights (R2-D-108). In the event that the authorized facilities/activities result in an out-of-priority diversion that requires augmentation, the Forest Service authorized officer must approve the augmentation plan in writing prior to the applicant submitting the plan for final decree by the court.

F. Water Rights, Boulder Canyon Act (R2-X-102). This authorization is issued subject to the Boulder Canyon Project Act of December 21, 1928 (45 Stat., 1064).

G. Water Rights (R2-X-103). This authorization confers no right to the use of water by the Holder; such rights must be obtained under State law.

H. Disputes (X96). Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

This permit is accepted subject to the conditions set out above.

HOLDER: CITY OF ENGLEWOOD

By: _____
(Holder Signature)

Title: _____
(Name and Title)

Date: _____

U.S. DEPARTMENT OF AGRICULTURE
Forest Service

By: _____
(Authorized Officer Signature)

Title: SCOTT G. FITZWILLIAMS, Forest Supervisor
(Name and Title)

Date: _____

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 975-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

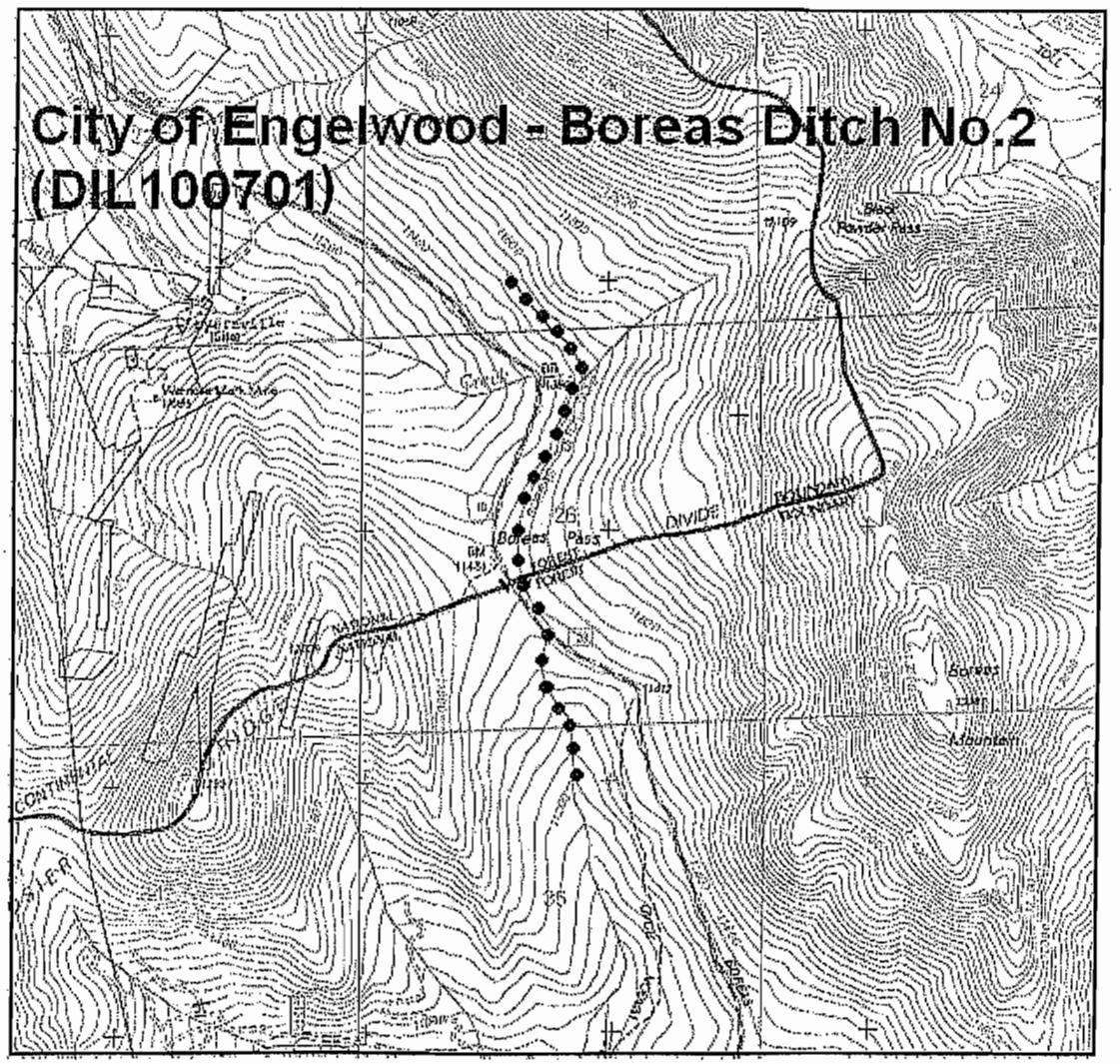
APPENDIX A

City of Englewood

Boreas Ditch No. 2 –DIL790 (Formerly DIL100701)

This permit covers 4.48 acres or 1.48 miles and is described as a 25 foot right-of-way located in the NW1/4NE1/4 Sec. 35, E1/2W1/2 Sec. 26, SW1/4 Sec. 23, T. 7 S., R. 77 W., 6th P.M

[Boreas Pass Quadrangle Map, Scale = 1: 24,000]



Risk Assessment for Boreas Ditch #2 and Facility

On United States Forest Service Site

1. **Name of Site: Boreas Ditch #2**

   A. **What is the Specific Activity:**

   The activity is the operation and maintenance of 7,800 feet of a ditch and buried pipeline (4,700 ft on the north side and 3;100 ft on the south side of Boreas Pass called the Boreas Ditch #2 and facility (a secured concrete vault.) The location is NW ¼ NE ¼ Sec. 35, E1/2W1/2 Sec. 26, and SW1/4 Sec 23, T. 7 S., R. 77W. 6th P.M. "the permit area". The permit is described as a 25 foot right- of- way. The term of the lease is 30 years.

   B. **Identify the risks associated with the activity and potential loss exposures:**

   a. Risk Identification:

   Loss to property and others

   Hazards:

   - Equipment Failure
   - Fire
   - Lightning
   - Flooding
   - Open ditch
   - Employee injury
   - Accidents to Public

Frequency and severity of Accidents:

Frequency	Severity	Risk Rating
Certain	Catastrophic	Extreme
Likely	Severe	High
Possible	Excessive	Moderate
Not Likely	Moderate	Low
	Minor	

Risk Ratings: Extreme (consider not doing the activity), High (higher involvement of risk control, risk transfer and change in insurance limits), Moderate (monitor exposures with risk control), Low (Manage the risk with procedures, regular inspections and insurance limits).

History of Claims at this site: None

Potential Loss Exposure	Frequency	Severity	Risk Rating
Employee Injury	Possible	Moderate	Low
Injury to Public	Not likely	Moderate	Low
Fire	Not likely	Severe	Low
Flooding	Possible	Minor	Low
Lightning	Likely	Moderate	Low
Equipment Failure	Not Likely	Minor	Low

C. Based on risk assessment and risk rating for each exposure, the following are the tools used to mitigate or manage the risks listed.

- Satellite Antenna with ground wire is located outside vault on 12' pole which runs on batteries in the vault. Other than antenna there would be no further lightning exposure.
- Fire exposure: All items on site are non-combustible. Vault is concrete in ground approximately 8 to 10' deep with a locked metal cover. Inside the vault is a recorder/flume. Outside the vault is a metal turnout gate.
- Equipment failure within the vault would result in no record of water flow. No damage would result as the amount of water would be the same amount that would naturally flow from a snowfield through natural drainage into the Blue River Drainage.
- Flooding should there be a leak in the pipe or open ditch would result in little to no damage. The maximum amount of leakage would be 3 cfs. There is a distance to the road of approximately 30 '. The open ditch is approximately 4' deep and the ditch is about 8'wide which would reduce any potential flooding to minimal water loss with no damage to property.
- Employees and/or independent contractors receive training for inspection and maintenance of equipment in vault.

- During the months of May-Oct the site is inspected on a weekly basis. Water runs during the months of May – August only.

- Injuries to Public are unlikely because of the of the location and the security of the vault.

D. Insurance Coverage Assessment:

The City of Englewood maintains General Liability coverage for bodily injury, and/or property damage to others in the amount of $5 million per occurrence. The City also provides workers' compensation insurance as required by State of Colorado Workers' Compensation.

Attached: 2 maps

Joan Welsh
Benefits/Risk Manager
City of Englewood

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY): 02/04/2011

PRODUCER LIC #N/A 1-303-757-5475
CIRSA
3665 Cherry Creek North Drive
Denver, CO 80209

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
City of Englewood
1000 Englewood Parkway
Englewood , CO 80110

INSURER A: CIRSA
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	LIAB 01-2011	01/01/11	01/01/12	EACH OCCURRENCE	$ 5,000,000
	X COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	$ 5,000,000
	X CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$ 0
	X $10m E&O Aggregate				PERSONAL & ADV INJURY	$ 5,000,000
					GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$ 5,000,000
	☐ POLICY ☐ PRO-JECT ☐ LOC					
A	AUTOMOBILE LIABILITY	LIAB 01-2011	01/01/11	01/01/12	COMBINED SINGLE LIMIT (Ea accident)	$ 1,500,000
	X ANY AUTO				BODILY INJURY (Per person)	$
	☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
	☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
	☐ HIRED AUTOS					
	☐ NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS LIABILITY				EACH OCCURRENCE	$
	☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
						$
	☐ DEDUCTIBLE					$
	☐ RETENTION $					$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				☐ WC STATU-TORY LIMITS ☐ OTH-ER	
					E.L. EACH ACCIDENT	$
					E.L. DISEASE - EA EMPLOYEE	$
					E.L. DISEASE - POLICY LIMIT	$
	OTHER					$
						$
						$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Certificate Holder is Additional Insured on Liability Policies if required by contract. Boreas Ditch #2 and facility. Located in the NW 1/4NE 1/4Section 35, E1/2W 1/2Section 26, and SW 1/4Sec. T.7S.,R. 77W., 6th P.M.(the permit area) for the purpose of operation and maintenance.

CERTIFICATE HOLDER | Y | ADDITIONAL INSURED; INSURER LETTER: A

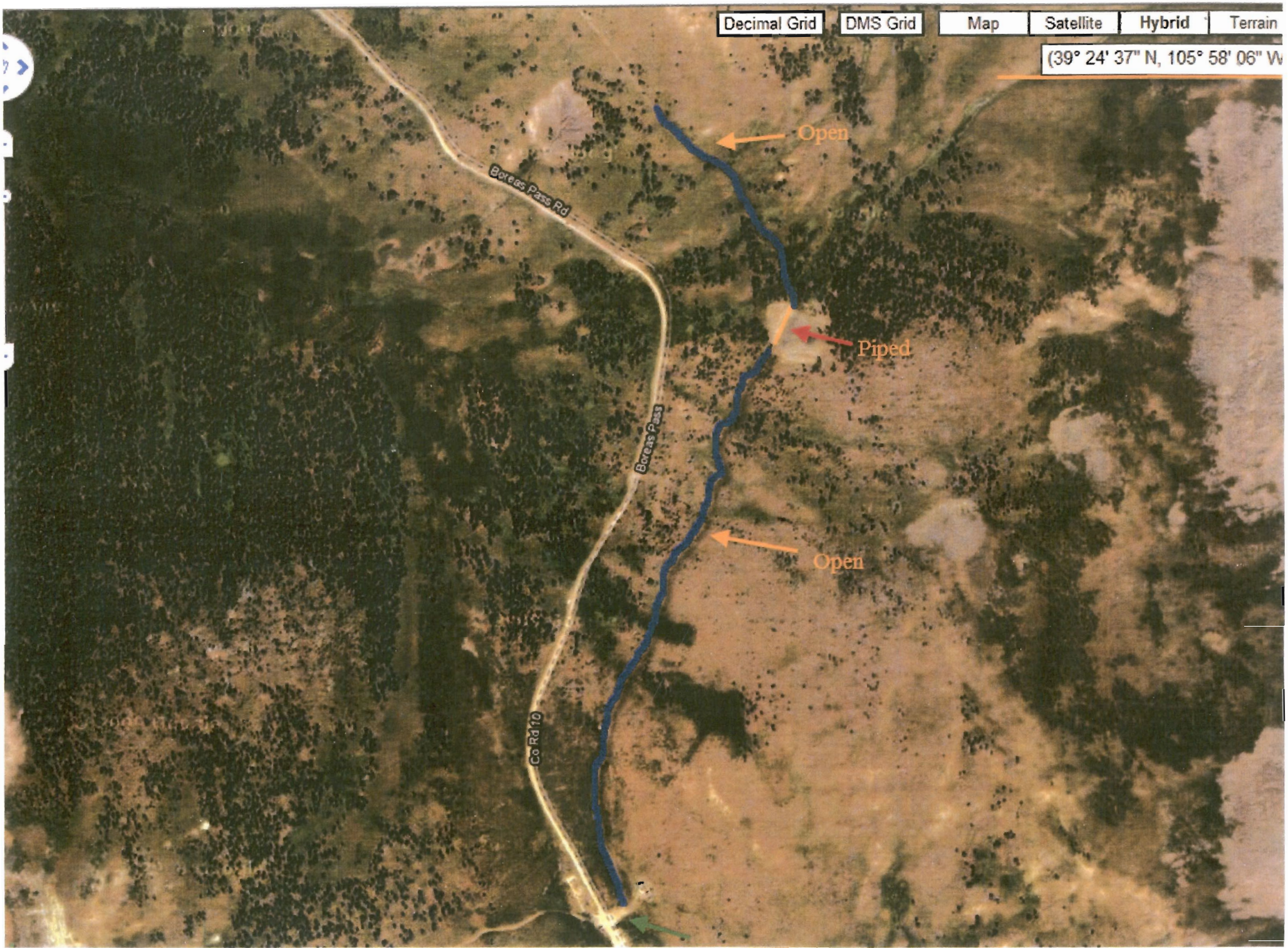
U.S. Department of Agriculture, U.S. Forest Service
Supervisor Office, White River National Forest
900 Grand Ave.
Glenwood Springs, CO 81601
USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

© ACORD CORPORATION 1988


Decimal Grid
DMS Grid
Map
Satellite
Hybrid
Terrain
(39° 24' 37" N, 105° 58' 06" W
Open
Piped
Open
Boreas Pass Rd
Boreas Pass
Co Rd 10
BOREAS DITCH #2 RECORDER VAULT

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
February 22, 2011	9 a iii	South Arapahoe Sanitation District Wastewater Connector's Agreement
Initiated By:		**Staff Source:**
Utilities Department		Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council approved a standard sanitary sewer connector's agreement in January, 1988.

RECOMMENDED ACTION

At their January 11, 2011 meeting, the Englewood Water and Sewer Board recommended Council approval of the South Arapahoe Sanitation District Wastewater Connector's Agreement.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Sanitary sewer service is provided to districts outside of the Englewood corporate boundaries through the standard connector's agreement. The Littleton/Englewood Wastewater Treatment Plant is able to receive and treat sewage transmitted by various districts. The attached agreement addresses this service with the district that owns and maintains the sewer mains.

In the South Arapahoe Sanitation District there are 9,750 taps. The South Arapahoe Sanitation District will continue to own the lines and will be responsible for capital improvements in its system. The attached map shows the South Arapahoe Sanitation District.

The City Attorney's office has reviewed and approved the standard connector's agreement.

FINANCIAL IMPACT

None.

LIST OF ATTACHMENTS

Excerpt from January 11, 2011 Water and Sewer Board Minutes
Bill for an Ordinance

WATER AND SEWER BOARD
MINUTES

January 11, 2011

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

Members present:	Cassidy, Wiggins, Woodward, Olson, Habenicht, Higday, McCaslin, Clark, Burns
Members absent:	None
Also present:	Stewart Fonda, Director of Utilities

Excerpt from Pages 5 and 6 of the January 11, 2011 Water and Sewer Board Minutes

. . . . .

7. SOUTH ARAPAHOE SANITATION DISTRICT WASTEWATER CONNECTOR'S AGREEMENT.

Sanitary sewer service is provided to districts outside of the Englewood corporate boundaries through the standard Connector's Agreement. The Littleton/Englewood Wastewater Treatment Plant is able to receive and treat sewage transmitted by various districts.

In the South Arapahoe Sanitation District there are 9,750 taps. The South Arapahoe Sanitation District will continue to own the lines and will be responsible for capital improvements in its system. The City Attorney's office has reviewed and approved the standard Connector's Agreement.

Mr. Cassidy moved;

Mr. Burns seconded:	To recommend Council approval of the South Arapahoe Sanitation District Wastewater Connector's Agreement.
Ayes:	Cassidy, Wiggins, Woodward, Olson, Habenicht, McCaslin, Clark, Burns, Higday
Nays:	None
Absent:	None

Motion carried.

. . . . .

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2011

COUNCIL BILL NO. 9
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL WASTEWATER CONNECTOR'S AGREEMENT BETWEEN SOUTH ARAPAHOE SANITATION DISTRICT AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City of Englewood owns and operates a sewage system, including a sewage treatment plant which is jointly owned and operated with the City of Littleton known as the L/E Wastewater Treatment Plant (WWTP); and

WHEREAS, the L/E WWTP provides sanitary sewer service to districts outside of the Englewood corporate boundaries through a standard connector's agreement; and

WHEREAS, the South Arapahoe Sanitation District Wastewater desires to utilize the L/E WWTP for treatment of the District's sewage; and

WHEREAS, the South Arapahoe Sanitation District has 9,750 taps; and

WHEREAS, the L/E WWTP is situated physically as to be able to receive and treat the sewage from a designated area served by the South Arapahoe Sanitation District and gathered by the District's sanitary sewage system; and

WHEREAS, South Arapahoe Sanitation District will continue to own the lines and will be responsible for capital improvements and maintenance in its system; and

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended approval of the South Arapahoe Sanitation Wastewater Connector's Agreement at the January 11, 2011 meeting;

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

Section 1. The Intergovernmental Agreement between the City of Englewood and South Arapahoe Sanitation District entitled "Wastewater Connector's Agreement" is hereby approved; a copy is attached hereto as Exhibit 1.

Section 2. The Mayor is authorized to execute and City Clerk to attest and seal the Intergovernmental "Wastewater Connector's Agreement", for and on behalf of the Englewood City Council.

Introduced, read in full, and passed on first reading on the 22 day of February, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of February, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of February, 2011 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 22nd day of February, 2011.

Loucrishia A. Ellis

EXHIBIT 1

WASTEWATER
CONNECTOR'S AGREEMENT
For Districts

Sewer Contract No. _____

THIS AGREEMENT, made and entered into this _____ day of _____, 20____ to be effective as of _____, 20__; by and between the CITY OF ENGLEWOOD, COLORADO, a municipal corporation, hereinafter referred to as "City," acting by and through its duly elected, qualified and authorized Mayor and City Clerk, and the SOUTH ARAPAHOE SANITATION DISTRICT, a quasi-municipal corporation and subdivision of the State of Colorado, hereinafter called "District," acting by and through its authorized Representative.

WITNESSETH

WHEREAS, the City owns and operates a sewage system, including a sewage treatment plant which is jointly owned and operated with the City of Littleton, so situated physically as to be able to receive and treat the sewage from a designated area served by the District and gathered by the District's sanitary-sewage system; and

WHEREAS, it is the desire of the District to utilize the facilities owned by the City for the treatment of sewage and the City is willing to serve the District for treatment of sewage under certain conditions;

NOW, THEREFORE, IN CONSIDERATION of the promises and for other good and valuable consideration hereinafter set forth, it is mutually agreed by the parties as follows:

1. The City hereby agrees under the conditions hereinafter set forth, to treat the sewage originating from the District's sanitary sewer system within the area served by the District as approved by the City and as indicated in the description attached hereto, incorporated herein and marked as "Exhibit A."

   The District specifically agrees to prevent sewage from any area other than that described herein, from being discharged into the District's sanitary sewage system connected to the City's trunk line and to prevent connections to the system from or in any area other than those described herein.

2. In the operation of the District's sanitary sewer system, the District agrees that all applicable Code provisions and rules and regulations of the City, including amendments thereto during the term of the contract, shall be the minimum standards for the District's system. The District further agrees to abide by all applicable state and federal laws, rules, regulations, or permits, including those of the Environmental Protection Agency (the EPA) as they become effective or implemented or upon notice from the City. The District shall inform all users, contractors and subcontractors of such standards, rules and regulations upon inquiry from such persons, and shall not furnish any information inconsistent therewith. In this regard, it shall be the responsibility of the District to obtain the applicable requirements from the appropriate governing body. The City shall attempt to maintain and provide information on all requirements to the District; however,

the City does not guarantee the accuracy or completeness of government regulations other than the City's own regulations.

3. Regarding the provision of sewer service, the City's permitting requirements shall be followed by the District and its users. All sewer plans, specifications and methods of work within the District shall be submitted to the City in writing and approved by the City prior to any construction or tap in the District's designated area. No permit shall be final and no service shall be provided to property until construction is approved, in writing by the City.

4. The District shall be responsible for the proper maintenance of its sewer system and shall rectify any problems or conditions which have been determined by the District or the City to be detrimental to the City's treatment process or system. Should the City determine that any discharge enters the sewer system contrary to applicable laws, ordinances, statutes, rules, regulations or permits, the District agrees to proceed at once to take whatever lawful means may be necessary to rectify any such problem or condition.

5. The City shall have the right to allocate service under this Contract, and the City may deny additional service for any utility-related reason, but in no event will the City terminate or refuse any service without cause. The City shall have the right to disconnect service to any area annexed to the District when such annexation takes place without prior written City approval.

   Within one year of this agreement, the District shall provide the City with an estimate of the number of equivalent service taps needed for the next five (5) years under current zoning and planned build out in the District's area as shown on Exhibit A. The District shall monitor zoning changes within its area to estimate its tap requirements and provide the City with notice of tap requirement for the next five (5) year period of time in a form satisfactory to the City. Notice of these requirements shall be given to the City on each anniversary date of this Agreement.

6. The City may impose and collect reasonable fees, tolls and charges, which shall be uniform as to all outside-City users for the services provided by the City under this Connector's Agreement.

   The City shall bill the District users directly for all applicable City charges for services rendered under this Agreement. Should any user not pay the City, the City shall bill the District and the District shall pay the amount due to City within forty-five (45) days of such billing. These charges are subject to adjustment by the City from time to time. When such adjustment to these charges are made, the City shall give the District forty-five (45) days advance written notice.

7. Subject to the terms of the Taxpayer's Bill of Rights (TABOR), the term of this Agreement is for a period of three (3) years from the date of execution and automatically renewed for six (6) subsequent three (3) year periods unless either party gives a minimum of six (6) months written notice, during which time the District agrees that all effluent produced from taps within the District shall not be in violation of any federal, state or City laws, rules or regulations, or any other applicable governmental regulations or the permits under which the City operates its sewage treatment system. The City

agrees, during the term hereof, to treat said effluent and to maintain adequate facilities for treating the same.

8. The District agrees that it will maintain, at its own expense, all lines now owned and operated by the District, it being specifically agreed that the City assumes no responsibility should any of the District's lines become clogged, damaged, or require maintenance. The District shall, if it deems necessary, notify its users of the District's procedure to remedy service disruption.

9. The City is providing only sewage treatment service and, pursuant thereto; permits incidental to the use of the City's sewage lines shall be governed only by this individual Contract with the District and the City does not, by this Contract, offer treatment service except in strict accordance with the terms hereof. This Contract does not offer, and shall not be construed as offering, sewage treatment service to the public generally or to any area outside the limits of the District's service area described in Exhibit A.

10. This Contract may not be assigned, sold or transferred by the District without the City's written consent.

11. Should any federal law, rule, permit or regulation or should a decree or order of a court render void or unenforceable any provision of this Contract, in whole or in part, the remainder shall remain in full force and effect.

12. The District shall enforce this Agreement and each of its terms and conditions within the area described in "Exhibit A." The District shall refuse to serve a user or potential user; disconnect the service of any user pursuant to appropriate law; or take other appropriate action in the event of:

    a. Nonpayment of such user of any charge made by the City for services;

    b. Any violation or noncompliance by such user with the terms of this Agreement;

    c. Violation or noncompliance by such user with the applicable laws, rules, permits or regulations of the City, the United States government, including the EPA, the State of Colorado, including the Department of Health, or other law, rule, permit or applicable regulation.

13. Continued breach of this Agreement by the District and/or its users shall be considered cause for the City to terminate this Agreement. Should the District fail to promptly rectify a breach of any provisions identified herein, after notice thereof, the City may take such steps and do such work as it deems necessary to enforce this Agreement, including litigation and specifically a right to injunction or specific performance against the District or any of its users as is necessary to protect the City's system and operations. The prevailing party shall be entitled to expenses and costs of suit, including attorney fees.

14. Should more than one district be connected to a sewer line, all districts on the sewer line who are in breach of this Agreement shall be jointly and severally liable for any such breach of this Agreement and each such district shall immediately, after notice, rectify any problem or condition detrimental to the treatment process arising within its legal boundaries. When more than one district is connected to a sewer line, and the City

discovers any violation of the terms of this connector's agreement; the City shall not be required to prove which district is at fault but shall make available to all such affected districts all information developed or accumulated by the City pertaining to such breach. Nothing contained herein shall preclude a claim for indemnity or contribution by any District against another District connected to a common sewer line. CRS-13-21-111.5 shall govern the percentage of liability of any district on a common sewer line in the event the City seeks to impose liability based upon negligence or fault.

15. This Contract shall not be used as a legal defense or prohibition to the mandatory consolidation of facilities by either party as may be required by the laws of the State of Colorado of all existing sewer collection systems and facilities to a governmental entity created to assume responsibility for sewer service in the area in which both the City and State are a part under statutory or constitutional authority.

CITY OF ENGLEWOOD, COLORADO

_____
, Mayor

ATTEST:

_____
, City Clerk

SOUTH ARAPAHOE SANITATION DISTRICT

_____
, Chairman

STATE OF COLORADO)
) ss.
COUNTY OF _____)

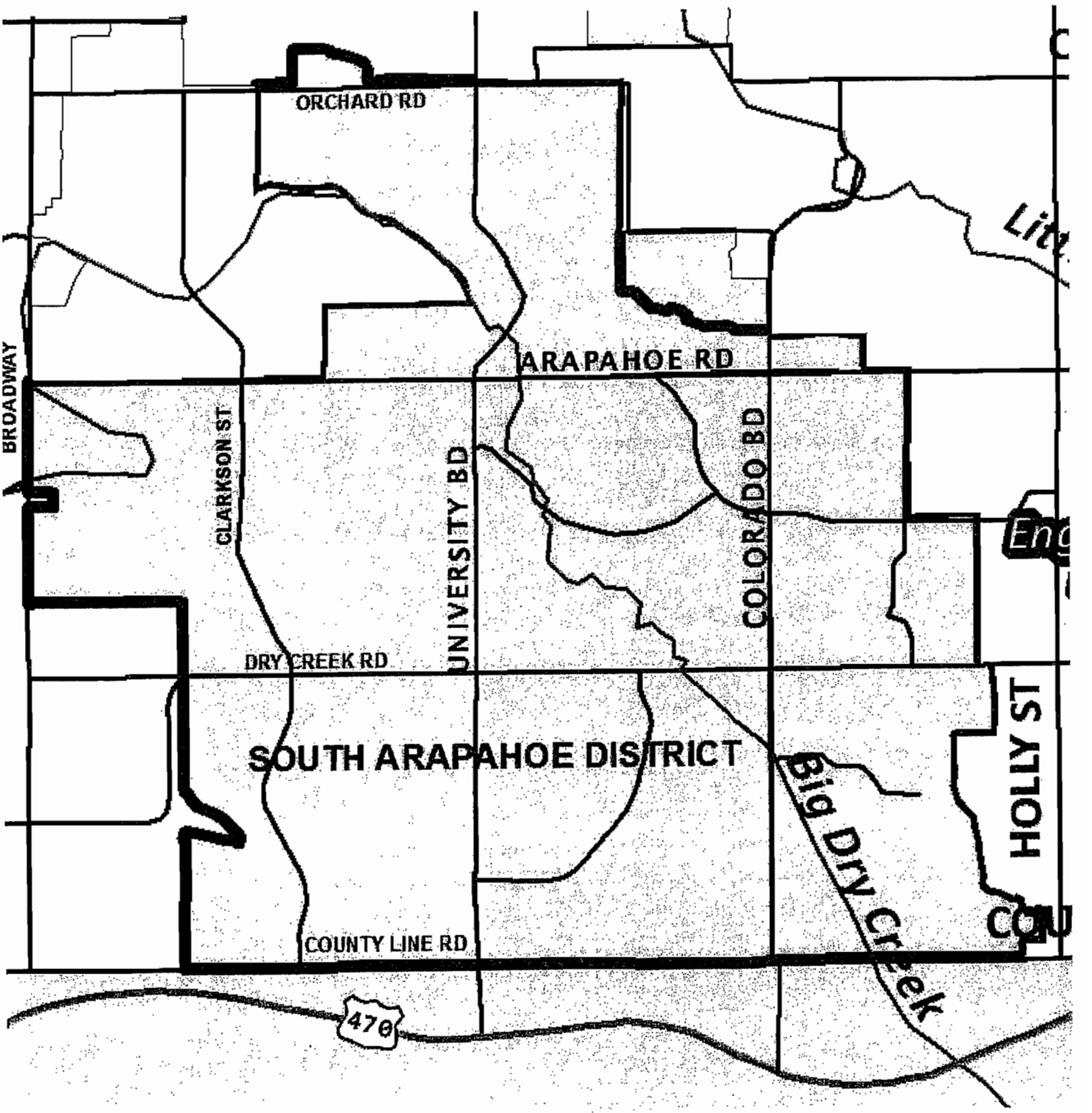
The foregoing instrument was acknowledged before me this ____ day of _____, 20___, by _____.

Witness my hand and official seal.

My Commission expires: _____

_____
NOTARY PUBLIC

EXHIBIT A


ORCHARD RD
ARAPAHOE RD
BROADWAY
CLARKSON ST
UNIVERSITY BD
COLORADO BD
DRY CREEK RD
SOUTH ARAPAHOE DISTRICT
HOLLY ST
Big Dry Creek
COUNTY LINE RD
470

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
February 22, 2011	9 a iv	Greenwood Village Sanitation District Wastewater Connector's Agreement

Initiated By:	Staff Source:
Utilities Department	Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council approved a standard Sanitary Sewer Connector's Agreement in January, 1988.

RECOMMENDED ACTION

At their January 11, 2011 meeting the Englewood Water and Sewer Board recommended Council approval of the Greenwood Village Sanitation District Wastewater Connector's Agreement.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Sanitary sewer service is provided to districts outside of the Englewood corporate boundaries through the standard connector's agreement. The Littleton/Englewood Wastewater Treatment Plant is able to receive and treat sewage transmitted by various districts. The attached agreement addresses this service with the district that owns and maintains the sewer mains.

In the Greenwood Village Sanitation District there are 424 taps. The Greenwood Village Sanitation District will continue to own the lines and will be responsible for capital improvements in its system. The attached map shows the Greenwood Village Sanitation District.

The City Attorney's office has reviewed and approved the standard Connector's Agreement.

FINANCIAL IMPACT

None.

LIST OF ATTACHMENTS

Excerpt from January 11, 2011 Water and Sewer Board Minutes
Bill for an Ordinance

WATER AND SEWER BOARD
MINUTES

January 11, 2011

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

Members present:	Cassidy, Wiggins, Woodward, Olson, Habenicht, Higday, McCaslin, Clark, Burns
Members absent:	None
Also present:	Stewart Fonda, Director of Utilities

Excerpt from Pages 4 and 5 of the January 11, 2011 Water and Sewer Board Minutes

. . . . .

6. GREENWOOD VILLAGE SANITATION DISTRICT WASTEWATER CONNECTOR'S AGREEMENT.

Sanitary sewer service is provided to districts outside of the Englewood corporate boundaries through the standard connector's agreement. The Littleton/Englewood Wastewater Treatment Plant is able to receive and treat sewage transmitted by various districts.

In the Greenwood Village Sanitation District there are 424 taps. The Greenwood Village Sanitation District will continue to own the lines and be responsible for capital improvements in its system. The City Attorney's office has reviewed and approved the standard Connector's Agreement.

Mr. Cassidy moved;

Mr. Burns seconded:	To recommend Council approval of the Greenwood Village Sanitation District Wastewater Connector's Agreement.
Ayes:	Cassidy, Wiggins, Woodward, Olson, Habenicht, McCaslin, Clark, Burns, Higday
Nays:	None
Absent:	None

Motion carried.

. . . . .

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2011

COUNCIL BILL NO. 10
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL WASTEWATER CONNECTOR'S AGREEMENT BETWEEN GREENWOOD VILLAGE SANITATION DISTRICT AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City of Englewood owns and operates a sewage system, including a sewage treatment plant which is jointly owned and operated with the City of Littleton known as the L/E Wastewater Treatment Plant (WWTP); and

WHEREAS, the L/E WWTP provides sanitary sewer service to districts outside of the Englewood corporate boundaries through a standard connector's agreement; and

WHEREAS, the Greenwood Village Sanitation District desires to utilize the L/E WWTP for treatment of the District's sewage; and

WHEREAS, the Greenwood Village Sanitation District has 424 taps; and

WHEREAS, the L/E WWTP is situated physically as to be able to receive and treat the sewage from a designated area served by the Greenwood Village Sanitation District and gathered by the District's sanitary sewage system; and

WHEREAS, Greenwood Village Sanitation District will continue to own the lines and will be responsible for capital improvements and maintenance in its system; and

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended approval of the Greenwood Village Sanitation District Wastewater Connector's Agreement at the January 11, 2011 meeting;

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

Section 1. The Intergovernmental Agreement between the City of Englewood and Greenwood Village Sanitation District entitled "Wastewater Connector's Agreement" is hereby approved; a copy is attached hereto as Exhibit 1.

Section 2. The Mayor is authorized to execute and City Clerk to attest and seal the Intergovernmental "Wastewater Connector's Agreement", for and on behalf of the Englewood City Council.

Introduced, read in full, and passed on first reading on the 22 day of February, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of February, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of February, 2011 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 22nd day of February, 2011.

Loucrishia A. Ellis

EXHIBIT 1

WASTEWATER
CONNECTOR'S AGREEMENT
For Districts

Sewer Contract No. _____

THIS AGREEMENT, made and entered into this 6th day of December, 2010 to be effective as of December 6, 2010; by and between the CITY OF ENGLEWOOD, COLORADO, a municipal corporation, hereinafter referred to as "City," acting by and through its duly elected, qualified and authorized Mayor and City Clerk, and GREENWOOD VILLAGE GENERAL IMPROVEMENT DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (District), hereinafter called "District," acting by and through its authorized Representative.

WITNESSETH

WHEREAS, the City owns and operates a sewage system, including a sewage treatment plant which is jointly owned and operated with the City of Littleton, so situated physically as to be able to receive and treat the sewage from a designated area served by the District and gathered by the District's sanitary-sewage system; and

WHEREAS, it is the desire of the District to utilize the facilities owned by the City for the treatment of sewage and the City is willing to serve the District for treatment of sewage under certain conditions;

NOW, THEREFORE, IN CONSIDERATION of the promises and for other good and valuable consideration hereinafter set forth, it is mutually agreed by the parties as follows:

1. The City hereby agrees under the conditions hereinafter set forth, to treat the sewage originating from the District's sanitary sewer system within the area served by the District as approved by the City and as indicated in the description attached hereto, incorporated herein and marked as "Exhibit A."

   The District specifically agrees to prevent sewage from any area other than that described herein, from being discharged into the District's sanitary sewage system connected to the City's trunk line and to prevent connections to the system from or in any area other than those described herein.

2. In the operation of the District's sanitary sewer system, the District agrees that all applicable Code provisions and rules and regulations of the City, including amendments thereto during the term of the contract, shall be the minimum standards for the District's system. The District further agrees to abide by all applicable state and federal laws, rules, regulations, or permits, including those of the Environmental Protection Agency (the EPA) as they become effective or implemented or upon notice from the City. The District shall inform all users, contractors and subcontractors of such standards, rules and regulations upon inquiry from such persons, and shall not furnish any information inconsistent therewith. In this regard, it shall be the responsibility of the District to obtain the applicable requirements from the appropriate governing body. The City shall attempt to maintain and provide information on all requirements to the District; however,

the City does not guarantee the accuracy or completeness of government regulations other than the City's own regulations.

3. Regarding the provision of sewer service, the City's permitting requirements shall be followed by the District and its users. All sewer plans, specifications and methods of work within the District shall be submitted to the City in writing and approved by the City prior to any construction or tap in the District's designated area. No permit shall be final and no service shall be provided to property until construction is approved, in writing by the City.

4. The District shall be responsible for the proper maintenance of its sewer system and shall rectify any problems or conditions which have been determined by the District or the City to be detrimental to the City's treatment process or system. Should the City determine that any discharge enters the sewer system contrary to applicable laws, ordinances, statutes, rules, regulations or permits, the District agrees to proceed at once to take whatever lawful means may be necessary to rectify any such problem or condition.

5. The City shall have the right to allocate service under this Contract, and the City may deny additional service for any utility-related reason, but in no event will the City terminate or refuse any service without cause. The City shall have the right to disconnect service to any area annexed to the District when such annexation takes place without prior written City approval.

   Within one year of this agreement, the District shall provide the City with an estimate of the number of equivalent service taps needed for the next five (5) years under current zoning and planned build out in the District's area as shown on Exhibit A. The District shall monitor zoning changes within its area to estimate its tap requirements and provide the City with notice of tap requirement for the next five (5) year period of time in a form satisfactory to the City. Notice of these requirements shall be given to the City on each anniversary date of this Agreement.

6. The City may impose and collect reasonable fees, tolls and charges, which shall be uniform as to all outside-City users for the services provided by the City under this Connector's Agreement.

   The City shall bill the District users directly for all applicable City charges for services rendered under this Agreement. Should any user not pay the City, the City shall bill the District and the District shall pay the amount due to City within forty-five (45) days of such billing. These charges are subject to adjustment by the City from time to time. When such adjustment to these charges are made, the City shall give the District forty-five (45) days advance written notice.

7. Subject to the terms of the Taxpayer's Bill of Rights (TABOR), the term of this Agreement is for a period of three (3) years from the date of execution and automatically renewed for six (6) subsequent three (3) year periods unless either party gives a minimum of six (6) months written notice, during which time the District agrees that all effluent produced from taps within the District shall not be in violation of any federal, state or City laws, rules or regulations, or any other applicable governmental regulations or the permits under which the City operates its sewage treatment system. The City

agrees, during the term hereof, to treat said effluent and to maintain adequate facilities for treating the same.

8. The District agrees that it will maintain, at its own expense, all lines now owned and operated by the District, it being specifically agreed that the City assumes no responsibility should any of the District's lines become clogged, damaged, or require maintenance. The District shall, if it deems necessary, notify its users of the District's procedure to remedy service disruption.

9. The City is providing only sewage treatment service and, pursuant thereto; permits incidental to the use of the City's sewage lines shall be governed only by this individual Contract with the District and the City does not, by this Contract, offer treatment service except in strict accordance with the terms hereof. This Contract does not offer, and shall not be construed as offering, sewage treatment service to the public generally or to any area outside the limits of the District's service area described in Exhibit A.

10. This Contract may not be assigned, sold or transferred by the District without the City's written consent.

11. Should any federal law, rule, permit or regulation or should a decree or order of a court render void or unenforceable any provision of this Contract, in whole or in part, the remainder shall remain in full force and effect.

12. The District shall enforce this Agreement and each of its terms and conditions within the area described in "Exhibit A." The District shall refuse to serve a user or potential user; disconnect the service of any user pursuant to appropriate law; or take other appropriate action in the event of:

    a. Nonpayment of such user of any charge made by the City for services;

    b. Any violation or noncompliance by such user with the terms of this Agreement;

    c. Violation or noncompliance by such user with the applicable laws, rules, permits or regulations of the City, the United States government, including the EPA, the State of Colorado, including the Department of Health, or other law, rule, permit or applicable regulation.

13. Continued breach of this Agreement by the District and/or its users shall be considered cause for the City to terminate this Agreement. Should the District fail to promptly rectify a breach of any provisions identified herein, after notice thereof, the City may take such steps and do such work as it deems necessary to enforce this Agreement, including litigation and specifically a right to injunction or specific performance against the District or any of its users as is necessary to protect the City's system and operations. The prevailing party shall be entitled to expenses and costs of suit, including attorney fees.

14. Should more than one district be connected to a sewer line, all districts on the sewer line who are in breach of this Agreement shall be jointly and severally liable for any such breach of this Agreement and each such district shall immediately, after notice, rectify

any problem or condition detrimental to the treatment process arising within its legal boundaries. When more than one district is connected to a sewer line, and the City discovers any violation of the terms of this connector's agreement; the City shall not be required to prove which district is at fault but shall make available to all such affected districts all information developed or accumulated by the City pertaining to such breach. Nothing contained herein shall preclude a claim for indemnity or contribution by any District against another District connected to a common sewer line. CRS-13-21-111.5 shall govern the percentage of liability of any district on a common sewer line in the event the City seeks to impose liability based upon negligence or fault.

15. This Contract shall not be used as a legal defense or prohibition to the mandatory consolidation of facilities by either party as may be required by the laws of the State of Colorado of all existing sewer collection systems and facilities to a governmental entity created to assume responsibility for sewer service in the area in which both the City and State are a part under statutory or constitutional authority.

CITY OF ENGLEWOOD, COLORADO

_____

James K. Woodward, Mayor

ATTEST:

_____

Loucrishia A. Ellis, City Clerk

GREENWOOD VILLAGE GENERAL IMPROVEMENT DISTRICT NO. 1,
a quasi-municipal corporation and political subdivision of the State of Colorado (District)

_____

Nancy N. Sharpe, President

ATTEST:

_____

Susan M. Phillips, Secretary

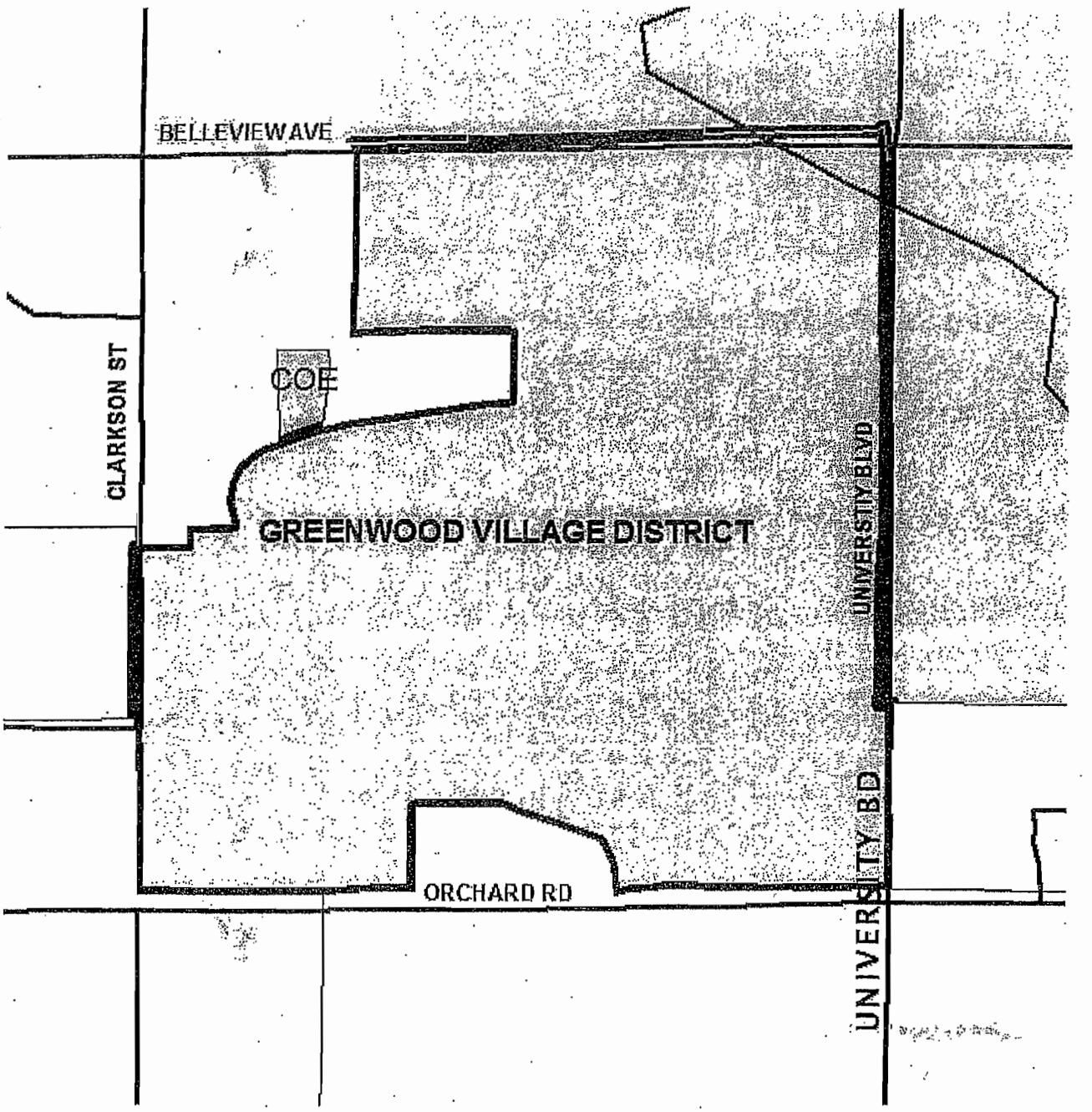
APPROVED AS TO FORM:

_____

Tonya Haas Davidson, City Attorney

City of Greenwood Village Sewer General Improvement District No. 1 Colorado SEAL

EXHIBIT A


BELLEVIEW AVE
CLARKSON ST
COE
GREENWOOD VILLAGE DISTRICT
UNIVERSITY BLVD
ORCHARD RD
UNIVERSITY BD

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
February 22, 2011	9 a v	A Bill for an Ordinance authorizing and approving the First Amendment to Declaration of Covenants Imposing and Implementing the River Point Public Improvement Fee

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

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council discussed this amendment of Covenants Imposing and Implementing the River Point Public Improvement Fee on February 14, 2011.

City Council discussed various aspects of the River Point development numerous times in the past, including the ground lease between the City and the Sheridan Redevelopment Agency.

RECOMMENDED ACTION

Staff recommends the City Council approve the attached bill for an ordinance authorizing and approving the First Amendment to Declaration of Covenants Imposing and Implementing the River Point Public Improvement Fee.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The City of Sheridan declared certain areas within its boundaries as blighted in 2003 and began an improvement program that included leasing a portion (54.5 acres) of the Englewood Golf Course (now Broken Tee Golf Course). Essentially, the following amendments change how the public improvement fee (PIF) is allocated in the future and should have no financial or other impact on the City of Englewood.

The first sentence of Section 8 of the Original PIF Covenant reads as follows and is *deleted* in its entirety:

> "The Public Improvement Fee revenues generated pursuant to this PIF Covenant, after deduction of any collection fee under the Collection Agent Agreement, shall be used (i) one-half for the payment of any Public Financing Requirements in accordance with the terms of the Indenture, and (ii) one-half for the Agency, or the City by agreement with Agency, to provide municipal services River Point, or (iii) as may other be provided in the PIF Agreement."

The *replacement* text reads as follows:

> "The Public Improvement Fee revenues generated pursuant to this PIF Covenant, after deduction of any collection fee under the Collecting Agent Agreement, shall be used to pay Public Financing Requirements in accordance with the terms of the Indenture and the PIF Agreement, Agency administrative costs, and to reimburse the City for the cost of providing municipal services to River Point."

Section 16 Amendment by Declarant of the Original PIF Covenant reads as follows and is *deleted* in its entirety:

> Section 16. Amendment by Declarant. "Subject to the provisions hereof regarding obtaining the prior written approval of the Agency and, if required by the Indenture, the Trustee, Declarant may amend the provisions of this PIF Covenant with the consent of the Owners who hold fee title to not less than seventy-five percent (75%) of the total acreage of the PIF Property; provided, however, that so long as the Englewood Lease remains in effect, the Tenant under the Englewood Lease shall have the sole right of consent as to the land subject to the Englewood Lease; and provided further, that no amendment to this PIF Covenant shall impose the Public Improvement Fee on the fee interest in the land subject to the Englewood Lease."

The *replacement* text reads as follows:

> Section 16. Amendment by Declarant. Subject to the provisions hereof regarding obtaining the prior written approval of the Agency and, if required by the Indenture, the Trustee, Declarant may amend the provisions of this PIF Covenant with the consent of the Owners who hold fee title to not less than seventy-five percent (75%) of the total acreage of the PIF Property; provided, however, that so long as the Englewood Lease remains in effect, the Tenant under the Englewood Lease shall have the sole right of consent as to the land subject to the Englewood Lease; and provided further, that this PIF Covenant shall never impose the Public Improvement Fee on the fee interest of the City of Englewood in the land subject to the Englewood Lease either before or after the Englewood Lease terminates and control of the leased land reverts to the City of Englewood.

FINANCIAL IMPACT

This action will have no financial impact on the City of Englewood as the provisions of the original lease are not impacted by this First Amendment and the PIF terminates when the lease is terminated.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2011

COUNCIL BILL NO. 11
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE CONSENTING TO THE FIRST AMENDMENT TO DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE RIVER POINT PUBLIC IMPROVEMENT FEE ("PIF Covenant Amendment").

WHEREAS, the City of Englewood owns approximately 54.5 acres that are leased to the Sheridan Redevelopment Agency (the "Agency") pursuant to a Ground Lease dated November 27, 2006; and

WHEREAS, the land that is the subject of the Ground Lease is part of the River Point at Sheridan commercial area that is being developed by Weingarten Miller Sheridan LLC, a Colorado limited liability company ("WMS"), the Ground Lease is for an initial 20-year term, with three 20-year renewal options; and

WHEREAS, as consideration for the Ground Lease, the Agency paid rent of $4,190,000 for the initial 20-year term, with lesser amounts of rent to be paid for the ensuing three 20-year terms, and, since the land covered by the Ground Lease was part of the original Englewood Golf Course, the Agency agreed to redesign and rebuild, at its expense, a portion of the Englewood Golf Course Complex; and

WHEREAS, in 2007, the Agency issued bonds to finance a portion of the River Point at Sheridan development as an urban renewal project under the Colorado Urban Renewal Law; and

WHEREAS, in order to help pay the Agency's bonds and to pay the city of Sheridan for its added costs in providing municipal services to River Point at Sheridan, WMS, with the approval of the Agency, recorded the Declaration of Covenants Imposing and Implementing the River Point Public Improvement Fee on February 20, 2007 (the "Declaration"), which imposed a one-percent Public Improvement Fee (the "PIF") on sales of goods and services in River Point at Sheridan; and

WHEREAS, the Declaration covers the property that is the subject of the Ground Lease and also the property that is owned by WMS and by the larger retailers in River Point at Sheridan; and

WHEREAS, by the terms of the Declaration, the PIF will end, as to the property that is the subject of the Ground Lease, when the Ground Lease ends, so as not to burden the property of the City of Englewood when control of that property is returned to the City at the end of the Ground Lease;

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 consents to the PIF "First Amendment to Declaration of Covenants Imposing and Implementing the River Point Public Improvement Fee", attached hereto as Attachment 1, for and on behalf of the City of Englewood, Colorado.

Section 2. The Mayor is authorized to sign the second amendment of the "First Amendment to Declaration of Covenants Imposing and Implementing the River Point Public Improvement Fee" for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 22nd day of February, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 25th day of February, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of February, 2011 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 22nd day of February, 2011.

_____
Loucrishia A. Ellis

ATTACHMENT 1

FIRST AMENDMENT TO DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE RIVER POINT PUBLIC IMPROVEMENT FEE

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS IMPOSING AND IMPLEMENTING THE RIVER POINT PUBLIC IMPROVEMENT FEE (this "PIF Covenant Amendment") is made as of March ____, 2011, by Weingarten Miller Sheridan, LLC, a Colorado limited liability company ("Declarant").

Recitals

This PIF Covenant Amendment is made with respect to the following facts:

A. Declarant executed that certain Declaration of Covenants Imposing and Implementing the River Point Public Improvement Fee which was recorded on February 20, 2007, at Reception No. B7021613 of the records of the Clerk and Recorder of Arapahoe County, Colorado (the "Original PIF Covenant").

B. As more fully set forth in the Original PIF Covenant, the PIF Covenant imposed a Public Improvement Fee on certain PIF Sales made within the PIF Property to be used as set forth in the PIF Covenant including, without limitation, for the payment of Public Financing to pay for certain public improvements of the commercial project in the City of Sheridan, Colorado, known as River Point at Sheridan.

C. Sheridan Redevelopment Agency ("Agency") in cooperation with Declarant and others has entered into a refunding of the initial Public Financing and, in connection with the refunding of the initial Public Financing, Agency and Declarant have agreed to amend and restate the PIF Agreement.

D. In connection with the refunding of the initial Public Financing, Declarant desires to amend the PIF Covenant as more particularly set forth herein below.

E. The Agency and the City of Englewood, Colorado desire to evidence that they have taken all appropriate action and do hereby consent to this PIF Covenant Amendment.

NOW, THEREFORE, Declarant amends the PIF Covenant as more particularly set forth herein below:

Section 1. Capitalized terms that are not defined in this PIF Covenant Amendment have the meaning defined in the Original PIF Covenant.

Section 2. The following definitions from Section 1 of the PIF Covenant are amended to read as follows:

> "Indenture" means an Indenture of Trust by and between the Agency and the Trustee, as the same may from time to time be in effect, including any supplement or amendment thereto, executed and delivered in connection with any Public Financing.

"PIF Agreement" means a Public Finance and Public Improvement Fee Agreement between the Declarant and the Agency, as the same may from time to time be in effect, including any supplement or amendment thereto, executed and delivered in connection with any Public Financing.

"PIF Covenant" means the Original PIF Covenant, as amended by this PIF Covenant Amendment.

"PIF Property" means the real property described on Exhibit A attached hereto. For the purpose of clarification, the PIF Property has not changed since the date of the Original PIF Covenant. Rather, the names and boundaries of certain lots and blocks and other property located within River Point at Sheridan Subdivision Filing No. 1 have changed as a result of replatting portions of the PIF Property as River Point at Sheridan Filing Nos. 2, 3 and 4.

"Trustee" means the bank or trust company duly incorporated and existing under and by virtue of the laws of any State or of the United States of America that is duly appointed and serving as Trustee under the Indenture.

Section 3. The first sentence of Section 8 of the Original PIF Covenant is deleted in its entirety and replaced with the following:

> "The Public Improvement Fee revenues generated pursuant to this PIF Covenant, after deduction of any collection fee under the Collecting Agent Agreement, shall be used to pay Public Financing Requirements in accordance with the terms of the Indenture and the PIF Agreement, Agency administrative costs, and to reimburse the City for the cost of providing municipal services to River Point."

Section 4. Section 16 Amendment by Declarant is deleted in its entirety and replaced with the following:

> Section 16. Amendment by Declarant. Subject to the provisions hereof regarding obtaining the prior written approval of the Agency and, if required by the Indenture, the Trustee, Declarant may amend the provisions of this PIF Covenant with the consent of the Owners who hold fee title to not less than seventy-five percent (75%) of the total acreage of the PIF Property; provided, however, that so long as the Englewood Lease remains in effect, the Tenant under the Englewood Lease shall have the sole right of consent as to the land subject to the Englewood Lease; and provided further, that this PIF Covenant shall never impose the Public Improvement Fee on the fee interest of the City of Englewood in the land subject to the Englewood Lease either before or after the Englewood Lease terminates and control of the leased land reverts to the City of Englewood.

Section 5. Except as amended hereby, the terms and provisions of the Original PIF Covenant remain in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, Declarant has executed this PIF Covenant Amendment as of the date first set forth above.

WEINGARTEN MILLER SHERIDAN LLC,
a Colorado limited liability company

By: WEINGARTEN REALTY INVESTORS,
a Texas Real Estate Investment Trust,
Manager

By:_____
Name:_____
Title:_____
Date:_____

STATE OF TEXAS)
)ss.
COUNTY OF HARRIS)

The foregoing instrument was acknowledged before me this _____ day of March, 2011, by _____, as _____ of Weingarten Realty Investors, a Texas Real Estate Investment Trust, Manager of Weingarten Miller Sheridan LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

CONSENT OF SHERIDAN REDEVELOPMENT AGENCY

SHERIDAN REDEVELOPMENT AGENCY,
a Colorado urban renewal authority

By:_____
Name:_____
Title:_____
Date:_____

STATE OF COLORADO)
)ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this _____ day of March, 2011, by _____, as _____ of Sheridan Redevelopment Agency, a Colorado urban renewal authority.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

CONSENT OF CITY OF ENGLEWOOD, COLORADO

CITY OF ENGLEWOOD, COLORADO, a
Colorado home rule municipal corporation

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
)ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this _____ day of March, 2011, by _____, as _____ of City of Englewood, Colorado, a Colorado home rule municipal corporation.

Witness my hand and official seal.

My commission expires: _____

_____
Notary Public

EXHIBIT A

Legal Description

RIVER POINT AT SHERIDAN SUBDIVISION FILING NO. 2, COUNTY OF ARAPAHOE, STATE OF COLORADO, ACCORDING TO THE REPLAT RECORDED DECEMBER 19, 2007, UNDER RECEPTION NO. B7158299, EXCEPTING THEREFROM LOT 2, BLOCK 6

RIVER POINT AT SHERIDAN SUBDIVISION FILING NO. 3, COUNTY OF ARAPAHOE, STATE OF COLORADO, ACCORDING TO THE REPLAT RECORDED MARCH 13, 2009 UNDER RECEPTION NO. B9025368

RIVER POINT AT SHERIDAN SUBDIVISION FILING NO. 4, COUNTY OF ARAPAHOE, STATE OF COLORADO, ACCORDING TO THE REPLAT RECORDED NOVEMBER 20, 2008, UNDER RECEPTION NO. B8128635

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2011

COUNCIL BILL NO. 4
INTRODUCED BY COUNCIL
MEMBER WILSON

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A FEMA U.S. DEPARTMENT OF HOMELAND SECURITY ASSISTANCE TO FIREFIGHTERS GRANT (AFG) 2009 AWARDED TO THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City of Englewood Fire Department sought and was awarded a grant from FEMA U.S. Department of Homeland Security Assistance to Firefighters Grant (AFG) the passage of this Ordinance authorizes the acceptance of the 2009 Assistance to Firefighter's Grand Award funding the purchase and installation of an upgraded generator for the Fire/Police Complex and the purchase of upgraded hazardous gas detectors for the fire apparatus; and

WHEREAS, the current generator in the Fire/Police complex is the original generator supplied to the building in the early 1970's, before the communications center addition and the advent of computer systems etc.; and

WHEREAS, an engineer study recommended the replacement of the current 85 KW generator with a 200 KW generator to supply the emergency needs to the building; and

WHEREAS, the hazardous gas detectors replace current detectors provided by an earlier AFG grant in 2003, these detectors are past their service life and need to be replaced; and

WHEREAS, the detectors provided by this grant will also be interoperable with our neighboring agencies, where our current detectors are not; and

WHEREAS, this Assistance to Firefighters Grant is $118,082.00 with the City obligation of $11,808.00 plus any cost overruns on the estimates, this grant was applied for in March 2009 so some cost increases are possible, FEMA's commitment is a maximum $106,274.00;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the acceptance of the FEMA U.S. Department of Homeland Security Assistance to Firefighters Grant (AFG) and accompanying terms and conditions awarded to the City of Englewood for the purchase and installation of an upgraded generator for the Fire/Police Complex, and the purchase of upgraded hazardous gas detectors for the Englewood fire apparatus, attached hereto as Exhibit A.

Introduced, read in full, and passed on first reading on the 7th day of February, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 11th day of February, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 9th day of February, 2011 for thirty (30) days.

Read by title and passed on final reading on the 22nd day of February, 2011.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2011, on the 25th day of February, 2011.

Published by title on the City's official website beginning on the 23rd day of February, 2011 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 2011.

Loucrishia A. Ellis

EXHIBIT A

Award Package

U.S. Department of Homeland Security
Washington, D.C. 20472

FEMA

Mr. Kraig Stovall
Englewood Fire Department
3615 S. Elati Street
Englewood, Colorado 80110-3519

Re: Grant No.EMW-2009-FO-10090

Dear Mr. Stovall:

On behalf of the Federal Emergency Management Agency (FEMA) and the Department of Homeland Security (DHS), I am pleased to inform you that your grant application submitted under the FY 2009 Assistance to Firefighters Grant has been approved. FEMA's Grant Programs Directorate (GPD), in consultation with the U.S. Fire Administration (USFA), carries out the Federal responsibilities of administering your grant. The approved project costs total to $118,082.00. The Federal share is 90 percent or $106,274.00 of the approved amount and your share of the costs is 10 percent or $11,808.00.

As part of your award package, you will find Grant Agreement Articles. Please make sure you read and understand the Articles as they outline the terms and conditions of your grant award. Maintain a copy of these documents for your official file. **You establish acceptance of the grant and Grant Agreement Articles when you request and receive any of the Federal grant funds awarded to you.** By accepting the grant, you agree not to deviate from the approved scope of work without prior written approval from FEMA.

If your SF 1199A has been reviewed and approved, you will be able to request payments online. Remember, you should request funds when you have an immediate cash need.

If you have any questions or concerns regarding the awards process or how to request your grant funds, please call the helpdesk at 1-866-274-0960.

Sincerely,

Timothy W. Manning
Deputy Administrator for National Preparedness and Protection

FEMA

U.S. Department of Homeland Security
Washington, D.C. 20472

AGREEMENT ARTICLES

ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM - Operations and Safety program

GRANTEE: Englewood Fire Department

PROGRAM: Operations and Safety

AGREEMENT NUMBER: EMW-2009-FO-10090

AMENDMENT NUMBER:

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Article II	Grantee Concurrence
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Article I - Project Description

The purpose of the Assistance to Firefighters Program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. After careful consideration, FEMA has determined that the grantee's project submitted as part of the grantee's application, and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the program's purpose and worthy of award. Therefore, the grantee shall perform the work described in the approved grant application as itemized in the request details section of the application and further described in the grant application's narrative. These sections of the application are made a part of these grant agreement articles by reference. The grantee may not change or make any material deviations from the approved scope of work outlined in the above referenced sections of the application without prior written approval from FEMA.

Article II - Grantee Concurrence

By requesting and receiving Federal grant funds provided by this grant program, the grantee accepts and agrees to abide by the terms and conditions of the grant as set forth in this document and the documents identified below. By receiving funds under this grant, grantees agree that they will use the funds provided through the Fiscal Year 2009 Assistance to Firefighters Grant Program in accordance with these Articles of Agreement and the program guidelines provided in the Fiscal Year 2009 Assistance to Firefighters Grants program guidance. All documents submitted as part of the application are made a part of this agreement by reference.

Article III - Period of Performance

The period of performance shall be from **04-JUN-10 to 03-JUN-11**.

Article IV - Amount Awarded

The amount of the award is detailed on the Obligating Document for Award attached to these articles. Following are the budgeted estimates for each object classes of this grant (including Federal share plus grantee match):

Personnel	$0.00
Fringe Benefits	$0.00
Travel	$0.00
Equipment	$118,082.00
Supplies	$0.00
Contractual	$0.00
Construction	$0.00
Other	$0.00
Indirect Charges	$0.00
Total	$118,082.00

NEGOTIATION COMMENTS IF APPLICABLE (max 4000 characters)

Article V - Financial Guidelines

The grantee and any subgrantee shall comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit Requirements. A non-exclusive list of regulations commonly applicable to FEMA grants are listed below:

A. Administrative Requirements

1. 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
2. 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (OMB Circular A-110)

B. Cost Principles

1. 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)
2. 2 CFR Part 220, Cost Principles for Educational Institutions (OMB Circular A-21)
3. 2 CFR Part 230, Cost Principles for Nonprofit Organizations (OMB Circular A-122)
4. Federal Acquisition Regulations (FAR), Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations

C. Audit Requirements

1. OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations

Article VI - Prohibition on Using Federal Funds

Recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of FEMA.

Article VII - GPD Allocations

The recipient agrees that all allocations and use of funds under this grant will be in accordance with the FY 2009 Assistance to Firefighters Grant Program guidance and application kit.

Article VIII - Financial Reporting

The grantee must complete an on-line, semiannual financial status report to meet FEMA requirements. Semiannual financial reports are due within 30 days of the end of every six month period for the life of the grant. At the end of the performance period, or upon completion of the grantee's final program narrative, the grantee must complete an on-line final financial status report that is required to close out the grant. If a grantee's performance period is extended beyond the initial 12-month period, a periodic performance report is due every six month increment until closeout.

Article IX - FEMA Officials

Program Officer: Tom Harrington is the Program Officer for the Assistance to Firefighters Grant Program. The Program Officer is responsible for the technical monitoring of the stages of work and technical performance of the activities described in the approved grant application.

Grants Assistance Officer: Jane Early is the Assistance Officer for this grant program. The Assistance Officer is the Federal official responsible for negotiating, administering, and executing all grant business matters.

Grants Management Division POC: The Grants Management Specialist shall be contacted to address all financial and administrative grant business matters for this award. If you have any questions regarding your grant please call ASK-GMD at 866-927-5646 to be directed to a specialist.

1a. AGREEMENT NO. EMW-2009-FO-10090	2. AMENDMENT NO. 0	3. RECIPIENT NO. 84-6000583	4. TYPE OF ACTION AWARD	5. CONTROL NO. W469000N
6. RECIPIENT NAME AND ADDRESS Englewood Fire Department 3615 S. Elati St. Englewood Colorado, 80110-3519	7. ISSUING OFFICE AND ADDRESS Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 POC: Jane Early	8. PAYMENT OFFICE AND ADDRESS FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20472		
9. NAME OF RECIPIENT PROJECT OFFICER Kraig Stovall	PHONE NO. 3037622474	10. NAME OF PROJECT COORDINATOR Tom Harrington		PHONE NO. 1-866-274-0960
11. EFFECTIVE DATE OF THIS ACTION 04-JUN-10	12. METHOD OF PAYMENT SF-270	13. ASSISTANCE ARRANGEMENT Cost Sharing	14. PERFORMANCE PERIOD From:04-JUN-10 To:03-JUN-11 Budget Period From:15-JAN-10 To:30-SEP-10	

15. DESCRIPTION OF ACTION
a. (Indicate funding data for awards or financial changes)

PROGRAM NAME ACRONYM	CFDA NO.	ACCOUNTING DATA (ACCS CODE) XXXX-XXX-XXXXXX-XXXXX-XXXX-XXXX-X	PRIOR TOTAL AWARD	AMOUNT AWARDED THIS ACTION + OR (-)	CURRENT TOTAL AWARD	CUMMULATIVE NON-FEDERAL COMMITMENT
AFG	97.044	2010-M9-3120GF-25000000-4101-D	$0.00	$106,274.00	$106,274.00	$11,808.00
		TOTALS	$0.00	$106,274.00	$106,274.00	$11,808.00

b. To describe changes other than funding data or financial changes, attach schedule and check here.
N/A

16a. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address)

Assistance to Firefighters Grant recipients are not required to sign and return copies of this document. However, recipients should print and keep a copy of this document for their records.

16b. FOR DISASTER PROGRAMS: RECIPIENT IS NOT REQUIRED TO SIGN

This assistance is subject to terms and conditions attached to this award notice or by incorporated reference in program legislation cited above.

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title) N/A	DATE N/A
18. FEMA SIGNATORY OFFICIAL (Name and Title) Jane Early	DATE 28-MAY-10

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2011

COUNCIL BILL NO. 7
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING THE INTERGOVERNMENTAL AGREEMENT ENTITLED "AGREEMENT RTD & CITY OF ENGLEWOOD COST SHARING FOR THE ART" BETWEEN THE REGIONAL TRANSPORTATION DISTRICT (RTD) AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the Englewood City Council approved an Intergovernmental Agreement between RTD and the City of Englewood for funding of the Englewood Circulator Shuttle for 2004 – 2007 by the passage of Ordinance No. 50, Series of 2004; and

WHEREAS, the Englewood City Council approved an Intergovernmental Agreement between RTD and the City of Englewood for funding of the Englewood Circulator Shuttle for September 10, 2007 through December 31, 2007 by the passage of Ordinance No. 66, Series of 2007; and

WHEREAS, the Englewood City Council approved an Intergovernmental Agreement between RTD and the City of Englewood for funding of the Englewood Circulator Shuttle for January 1, 2008 through December 31, 2008 by the passage of Ordinance No. 10, Series of 2008; and

WHEREAS, the Englewood City Council approved an Intergovernmental Agreement between RTD and the City of Englewood for funding of the Englewood Circulator Shuttle for January 1, 2010 through December 31, 2010 by the passage of Ordinance No. 4, Series of 2010; and

WHEREAS, the City of Englewood designed the Englewood Shuttle to provide circulator shuttle service in the general area of the CityCenter Englewood, downtown Englewood and the Swedish/Craig Medical Center; and

WHEREAS, this service provides mobility and access to the commercial areas in and around the vicinity of the CityCenter Englewood light rail station, downtown Englewood and the Swedish/Craig Medical Center; and

WHEREAS, the City Council of the City of Englewood, Colorado approved application to the Denver Regional Council of Governments (DRCOG) Congestion Mitigation Air Quality Funds for operation of a Circulator Shuttle in November 2002; and

WHEREAS, the passage of this proposed Ordinance will provide the same level of service for the calendar year 2011;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the IGA entitled "Agreement RTD & City of Englewood Cost Sharing For The Art" between the Regional Transportation District (RTD) and the City of Englewood, Colorado, as attached hereto as Exhibit 1.

Section 2. The Mayor and City Clerk are authorized to execute and attest said Intergovernmental Agreement for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 7th day of February, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 11th day of February, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 9th day of February, 2011 for thirty (30) days.

Read by title and passed on final reading on the 22nd day of February, 2011.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2011, on the 25th day of February, 2011.

Published by title on the City's official website beginning on the 23rd day of February, 2011 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 2011.

_____
Loucrishia A. Ellis

EXHIBIT 1

AGREEMENT
RTD & CITY OF ENGLEWOOD COST SHARING FOR THE ART

This Agreement is made this _____ day of _____, 2011, between the Regional Transportation District, a political subdivision of the state of Colorado organized pursuant to the Regional Transportation District Act, C.R.S. § 32-9-101, et seq., (hereafter "RTD"), and the City of Englewood, Colorado, a Colorado home rule city (hereafter "the City"). RTD and the City may also be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

1. The City has funded and operated route circulator bus service within the Englewood area (the "art") since September 2004. This service provides mobility and access from the Englewood Civic Center to Swedish Medical Center and Craig Hospital along Englewood Parkway and Old Hampden Avenue.

2. RTD also provides light rail and bus service in and around the City.

3. RTD and the City agree that these services are complementary to providing attractive and effective transit service for people working and living in the area in and around Englewood.

4. Although RTD does not provide circulator bus service in Englewood and the City does not provide such service as a private contractor for RTD, RTD wishes to financially contribute to the continued provision of circulator bus service in Englewood.

AGREEMENT

Now, therefore, in consideration of the promises and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **ART CIRCULATOR BUS SERVICE.** The City shall continue to manage and operate, either directly or through its designated agent(s), the art route circulator bus service in the City. The City and/or its designated agent(s) shall be solely responsible for all art operations, management, marketing, administration, and services delivery functions, including provision of vehicles, vehicle maintenance, insurance, and accounting. As part of its operations of the art service, the City and/or its designated agent(s) shall provide fuel for the vehicle(s), the cost of which shall be reimbursed as an operating expense as provided in this Agreement. Except as specifically provided herein, RTD shall have no responsibility for the operations and management of the art. RTD shall have no responsibility for, nor authority or control with respect to, the supervision and management of any employees or contractors who work in connection with the art. Notwithstanding RTD's right to stop funding as provided herein, RTD has no obligation, nor right pursuant to this Agreement, to otherwise continue the services provided by the City, if the City ceases to provide these services.

2. **COOPERATION.** The Parties agree to cooperate and share information about transit issues in Englewood, as provided in this Paragraph 2.

A. The City and RTD shall each designate a representative responsible for the implementation of this Agreement.

B. City and RTD staff will confer on marketing and service development issues and regularly exchange relevant information in order to report progress to the respective organizations.

3. **ART SERVICE.** The art route, service hours and frequency of service shall be as shown on Exhibit A, which is attached and hereby fully incorporated by reference. The Parties hereafter may, upon mutual agreement in writing by both Parties, modify Exhibit A as necessary to effect this Agreement. RTD reserves the right to withdraw funding, as provided in this Agreement, if the City implements any major changes to these services.

4. **MARKETING AND PROMOTIONAL MATERIALS.** The City and its designated agent(s) shall develop and implement art marketing and promotional materials and activities at their sole cost. RTD staff reserve the right to review and comment upon proposed marketing strategies and materials. RTD shall include current art brochures, maps and other informational and promotional materials supplied by the City or its designated agent(s) at all of its information/customer service centers. Specifications for such materials shall be approved by the RTD to ensure compatibility with RTD display capability. The RTD customer service telephone information center will provide up-to-date art service and schedule information. The City shall allow RTD to display an appropriate RTD logo (stating that the service is in partnership with the RTD) on all vehicles used to furnish the art service and financially supported in part by RTD through this Agreement. Notwithstanding the foregoing, the art shall not be designated, marketed, or promoted as an RTD-branded service.

5. **TERM AND RENEWAL.** The term of this Agreement shall be deemed to have begun on January 1, 2011 and shall expire on December 31, 2011. Thereafter, the Parties may, by written agreement, renew the Agreement for successive periods of one year each under the same terms and conditions, although any renewal of this Agreement will contain specific funding levels for the renewal year(s). Nothing herein obligates RTD to make funds available for the art or to renew this Agreement in any future fiscal year. Even if this Agreement is renewed in subsequent years, nothing herein shall imply funding will be renewed at the same or any level

6. **SIGNAGE.** The City shall maintain all art signs and sign posts and shall be solely responsible for all signage related to the art.

7. **RTD FUNDING.** To support the City's art service, RTD shall reimburse the City one hundred percent (100%) of the Net Cost of operating the art service.

   A. Net Cost shall be defined as all operating costs for the art, including fuel, less Estimated Farebox Revenue, based upon the regularly scheduled service hours and cost breakdown as provided in Exhibit B, which is attached hereto and fully incorporated by reference herein. Operating costs, as referenced herein, shall not include any administrative costs for the City. The City is solely responsible for any additional operating costs relating to service hours that exceed those regularly scheduled service hours as shown in Exhibits A or B, including any special events and holidays.

   B. Estimated Farebox Revenue for the 2011 year of operation shall be $57,456, as provided in Exhibit B. Since the City offers the art as a fare-free service, Estimated Farebox Revenue is based upon a survey performed in October 2010 by RTD that determined the average fare that would have been collected had the City charged RTD's local fare for the art service.

C. Nothing in this Agreement shall prevent the City from collecting contributions or fees from other entities to help defray the unreimbursed costs of providing the art service. RTD shall not be a party to any such arrangement and shall not receive any direct allocation of or credit for such contributions or fees.

8. **INVOICING AND PAYMENT.**

A. The City shall submit an invoice to RTD on a monthly basis for payment of the Net Cost pursuant to paragraph 7 herein. The invoice shall include an itemized list of reimbursable operating expenses, including fuel, and shall deduct $4,788 as Estimated Farebox Revenue. In addition, the invoice shall include a summary, as agreed, of service, and any other information that RTD requests.

B. RTD shall pay all approved invoices within thirty (30) days of receipt. If RTD does not approve an invoice from the City or its designated agent(s), a written explanation of disputed items will be sent within ten (10) days of RTD's receipt of the invoice.

9. **RECORDS.** The City and/or its designated agent(s) will maintain full and complete financial records for the operation of the art, including but not limited to information on the number of passenger boardings on the art, any farebox revenue collected as a result of the operation of art service, if any, and any other information that RTD requests. The City and/or its designated agent(s) shall make these records available to RTD for audit for three (3) years. National Transit Database (NTD) data shall be kept in accordance with Federal Transit Administration ("FTA") requirements and shall be reported as part of RTD's NTD submission.

10. **ART PERFORMANCE ASSESSMENT.** The art service performance will be assessed by RTD, in its sole discretion, to determine if performance expectations have been met and to determine if the funding provided by RTD is warranted. If RTD chooses not to renew this Agreement, RTD shall notify the City by April 1, 2011. If this Agreement is terminated due to lack of funding by either Party in the next year's budget cycle it shall notify the other party on or before December 1 and service will be terminated effective January 1. Nothing herein obligates the RTD to renew or extend this Agreement at any time.

11. **DRUG AND ALCOHOL TESTING PROGRAM.** The City shall require the contractor providing the art service to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Part 40 and Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Colorado, or the Regional Transportation District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 40 and 655 and review the testing process. The City agrees further to certify annually its compliance with Part 40 and 655 before December 31st of every year and to submit the Management Information System (MIS) reports no later than February15th of every year to the Substance Abuse Testing Department, Regional Transportation District,1600 Blake Street, Denver, CO 80202. To certify compliance, the City shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

12. **LIABILITY AND IMMUNITY.**

A. The Parties agree that RTD shall have no liability to third parties arising out of the operations or management of the art service and the City shall have no liability to third parties arising out of the operations or management of any RTD services.

B. To the extent that there is or may in the future be insurance coverage for the operations of the art, the City and its designated agent (s) shall cause RTD and its officers and employees to be named as additional insured on all insurance policies for any operations of the art.

C. Without waiving the privileges and immunities conferred by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., each Party shall be responsible for any claims, demands, or suits arising out of its own negligence. It is specifically understood and agreed that nothing contained in this paragraph or elsewhere in this Agreement shall be construed as an express or implied waiver by RTD of its governmental immunity including limitations of amounts or types of liability or the governmental acceptance by RTD of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

13. **NO LIMITATION ON RTD RIGHTS OR AUTHORITY.** Nothing in this Agreement shall be construed to limit RTD's right to establish routes or services or perform any functions authorized by C.R.S. § 32-9-101, et seq.

14. **NO THIRD-PARTY BENEFICIARIES.** The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements, including but not limited to subcontractors, subconsultants, and suppliers. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15. **FINANCIAL OBLIGATIONS SUBJECT TO APPROPRIATIONS.** This Agreement does not contain any multiple-fiscal year financial obligations by either party that extend beyond its current fiscal year. The financial obligations of each Party under this Agreement shall be subject to and limited by the appropriation of sufficient funds therefore by its governing body. Funds for this agreement have been budgeted, authorized, and appropriated by the RTD Board of Directors for the 2010 fiscal year. Nothing herein obligates RTD to budget, authorize, or appropriate funds for any future fiscal year. To the extent permitted by law, all of the operating costs of the art and revenues, if applicable, of the art shall be treated by RTD as its "operating costs" and its "revenues collected" for purposes of compliance with C.R.S. § 32-9-119.7.

16. **STATUS OF PARTIES.**

A. The City, or its designated agent, shall be solely responsible for hiring, supervising, and discharging the employees or contractors who operate the art service. The RTD shall have no responsibility for, nor authority or control with respect to, the supervision and management of the drivers and other employees or contractors who work in connection with the service.

B. The Parties agree that the status of each Party shall be that of an independent contractor to the other, and it is not intended, nor shall it be construed, that one Party or any officer, employee, agent or contractor of such Party is an employee, officer, agent, or representative of the other Party. Nothing contained in the Agreement or documents incorporated by reference herein or otherwise creates any partnership, joint venture, or other association or relationship between RTD

and the City. Any approval, review, inspection, direction or instruction by RTD or any party on behalf of RTD shall in no way affect either Party's independent contractor status or obligation to perform in accordance with this Agreement. Neither Party has authorization, express or implied, to bind the other to any agreements, liability, or understanding except as expressly set forth in this Agreement.

C. The City and/or its designated agent(s) shall be responsible for all federal and state taxes and contributions for Social Security, unemployment insurance, income withholding tax, and other taxes measured by wages paid to employees, as well as any subcontractor or vendor. The City acknowledges that it, its designated agent(s) and/or its or its designated agent(s) employees are not entitled to workers' compensation benefits or unemployment insurance benefits from RTD, unless the City or a third party provides such coverage, and that RTD does not pay for or otherwise provide such coverage. The City shall be solely responsible for its own actions, its employees, and agents.

17. **LEGAL AUTHORITY.** The City and RTD represent or warrant to each other that they have all necessary authority to enter into this Agreement and to perform their obligations hereunder and that this Agreement does not conflict with any other agreement that each Party is subject or to which it may be bound. The person signing and executing this Agreement on behalf of either Party represents that he/she has been fully authorized to execute this Agreement and to validly and legally bind a Party to all the terms, performances, and provisions herein set forth. The Parties shall have the right, at their option, to either temporarily suspend, or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the other Party or the person signing the Agreement to enter into this Agreement. Neither Party shall be obligated to perform any of the provisions of this Agreement after it has suspended or terminated this Agreement as provided in this Paragraph.

18. **NO ASSIGNMENT.** Except as otherwise provided in the Agreement, neither party may assign the Agreement and/or any of its rights and obligations hereunder without the written consent of the other Party.

19. **CONFLICT OF INTEREST.** No officer, member, or employee of either Party and no members of a governing body, and no other public official or employee of the governing body of the locality or localities included within RTD, during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

20. **WRITTEN AMENDMENTS.** This Agreement may be modified or amended only by a written document duly executed by both parties.

21. **NOTICES.** Correspondence regarding this Agreement shall be sent to:

For the City:

City of Englewood
Community Development Department
1000 Englewood Parkway
Englewood, Colorado 80110
Attn: Harold Stitt
303.762.2341

For the RTD

Regional Transportation District
1600 Blake Street
Denver, Colorado 80202
Attn: Bruce Abel
303.299.2839

The addresses or contacts may be changed by the Parties by written notice.

22. **ENTIRE AGREEMENT.** The terms and provisions of this Agreement, including but not limited to the Recitals above and the Exhibit(s) or Attachments incorporated by reference herein, represent the entire understanding of the parties with respect to the subject matter of this Agreement, and merge, incorporate and supersede all prior communications between the City and RTD concerning that subject. No representations or warranties are made by the City or RTD except as herein set forth.

23. **WAIVER AND BREACH.** The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon a subsequent breach.

24. **GOVERNING LAW, VENUE.** Each and every term, provision, condition, of this Agreement is subject to the provisions of Colorado law. This Agreement is subject to such modifications as may be required by changes in Colorado or federal law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Venue for any action arising hereunder shall be in the District Courts for the State of Colorado.

25. **SEVERABILITY.** The Parties expressly agree that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

26. **COUNTERPARTS.** This Agreement shall be executed in two counterparts each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

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WHEREFORE, the Parties have entered into this Agreement as of the date first set forth above.

REGIONAL TRANSPORTATION DISTRICT

By: _____

Phillip A. Washington
General Manager
Regional Transportation District

CITY OF ENGLEWOOD

By: _____

James K. Woodward
Mayor
City of Englewood

ATTEST:

_____
Loucrishia A. Ellis
City Clerk

Approved as to legal form:
Regional Transportation District

_____
Rolf G. Asphaug
Deputy General Counsel

Exhibit A

art Service Description

Span of Service:

Weekday-	6:30 AM- 6:30 PM
Saturday-	No service provided
Sunday-	No service provided
Holidays-	No service provided

Service Frequency:

Weekday	every 15 minutes
Saturday-	Not Applicable
Sunday-	Not Applicable
Holidays-	Not Applicable

Annual Revenue Hours:

Weekday-	6,144
Saturday-	Not Applicable
Sunday-	Not Applicable
Holidays-	Not Applicable
Total	6,144

Exhibit B

Summary of Anticipated Operating Costs and Revenues

Expense- January 2011 – December 31, 2011	
art operating hours expense-6144 hours @ 42.49 per hour	$ 261,059
art fuel expenses	$ 34,000
Expense	$ 295,059
Estimated Farebox Revenue- January 2011 – December 2011	
Passenger fares based on October 2010 survey	$ 57,456
Total Revenue	$ 57,456

2004 Ridership

Month	Ridership	Total	Average
September-04	5,419	5,419	5,419
October-04	9,166	14,585	7,293
November-04	10,362	24,947	8,316
December-04	12,149	37,096	9,274

2005 Ridership

Month	Ridership	Total	Average
January-05	11,353	11,353	11,353
February-05	11,642	22,995	11,498
March-05	14,513	37,508	12,503
April-05	14,024	51,532	12,883
May-05	14,982	66,514	13,303
June-05	14,487	81,001	13,500
July-05	13,574	94,575	13,511
August-05	17,599	112,174	14,022
September-05	15,968	128,142	14,238
October-05	17,162	145,304	14,530
November-05	16,505	161,809	14,710
December-05	15,877	177,686	14,807

2006 Ridership

Month	Ridership	Total	Average
January-06	17,815	17,815	17,815
February-06	15,318	33,133	16,567
March-06	17,928	51,061	17,020
April-06	15,067	66,128	16,532
May-06	18,300	84,428	16,886
June-06	16,414	100,842	16,807
July-06	14,722	115,564	16,509
August-06	17,711	133,275	16,659
September-06	16,587	149,862	16,651
October-06	18,181	168,043	16,804
November-06	17,820	185,863	16,897
December-06	14,725	200,588	16,716

2007 Ridership

Month	Ridership	Total	Average
January-07	17,198	17,198	17,198
February-07	16,084	33,282	16,641
March-07	18,276	51,558	17,186
April-07	17,059	68,617	17,154
May-07	18,471	87,088	17,418
June-07	17,612	104,700	17,450
July-07	17,265	121,965	17,424
August-07	18,438	140,403	17,550
September-07	13,914	154,317	17,146
October-07	16,823	171,140	17,114
November-07	15,619	186,759	16,978
December-07	16,406	203,165	16,930

2008 Ridership

Month	Ridership	Total	Average
January-08	18,228	18,228	18,228
February-08	17,804	36,032	18,016
March-08	17,925	53,957	17,986
April-08	18,468	72,425	18,106
May-08	17,552	89,977	17,995
June-08	18,959	108,936	18,156
July-08	19,657	128,593	18,370
August-08	18,850	147,443	18,430
September-08	19,476	166,919	18,547
October-08	22,677	189,596	18,960
November-08	18,053	207,649	18,877
December-08	20,167	227,816	18,985

2009 Ridership

Month	Ridership	Total	Average
January-09	19,606	19,606	19,606
February-09	20,692	40,298	20,149
March-09	20,459	60,757	20,252
April-09	20,562	81,319	20,330
May-09	20,459	101,778	20,356
June-09	21,522	123,300	20,550
July-09	20,199	143,499	20,500
August-09	20,045	163,544	20,443
September-09	19,271	182,815	20,313
October-09	19,759	202,574	20,257
November-09	18,229	220,803	20,073
December-09	17,953	238,756	19,896

2010 Ridership

Month	Ridership	Total	Average
January-10	12,131	12,131	12,131
February-10	12,654	24,785	12,393
March-10	14,672	39,457	13,152
April-10	14,253	53,710	13,428
May-10	13,047	66,757	13,351
June-10	14,717	81,474	13,579
July-10	13,876	95,350	13,621
August-10	15,804	111,154	13,894
September-10	15,616	126,770	14,086
October-10	14,852	141,622	14,162
November-10	14,043	155,665	14,151
December-10	15,390	171,055	14,255

2011 Ridership

Month	Ridership	Total	Average
January-11			
February-11			
March-11			
April-11			
May-11			
June-11			
July-11			
August-11			
September-11			
October-11			
November-11			
December-11			

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
February 22, 2011	11 c i	Resolution of support for the Englewood McLellan Reservoir Foundation to complete negotiations for lease of approximately 10.1 acres to Benjamin Franklin Charter School, LLC.
Initiated By: Englewood McLellan Reservoir Foundation		**Staff Source:** Michael Flaherty, EMRF Board

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

In 1999, City Council authorized the creation of the Englewood McLellan Reservoir Foundation (EMRF) for the purpose of facilitating the development of property adjacent to the City's McLellan Reservoir. On December 17, 2007, Council supported EMRF in the sale of approximately 11 acres of PA85 to RTD for $3.2 million. On December 1, 2008, City Council supported EMRF in leasing approximately 12.8 acres of PA84 to TT of Denver. On December 6, 2010, City Council, by resolution, supported EMRF in its initial negotiations with Benjamin Franklin Charter School, LLC.

RECOMMENDED ACTION

EMRF recommends City Council approval of the Resolution supporting the EMRF to complete negotiations with the Benjamin Franklin Charter School, LLC for lease of approximately 10.1 acres of EMRF property within Highland Ranch Planning Area 85.

BACKGROUND

In 1999, City Council authorized, through Ordinance 41, the creation of the Englewood McLellan Reservoir Foundation, a non-profit corporation charged with furthering the development of the McLellan Reservoir property and transferred the property to EMRF. The following goals for development were established by City Council in Ordinance 41.

1. Protect the quality of the City's stored water at McLellan Reservoir.
2. Protect the reservoir ecosystem.
3. Establish and maximize a future long-term income stream to benefit the City.
4. Maintain the quality of the Highline Canal recreational facilities and the wetlands between C-470 and County Line Road.
5. Minimize development impacts on the reservoir.
6. Enhance the quality of life of the neighborhood of which it is part.
7. Enhance the quality of life for residents of the City of Englewood.

During the Executive Session of February 7, 2011, EMRF Directors informed City Council of the change of property under consideration for leasing to the Franklin Charter School. The change of

location was necessitated due to the rejection of the previously proposed site plan by Douglas County. The developer has indicated their willingness to proceed with negotiations on the alternative site. Approval of this resolution will allow EMRF to complete formal lease negotiations with Benjamin Franklin Charter School, LLC.

FINANCIAL IMPACT

Rental income will initiate during the 6 month construction period at the rate of $4000/month. The annual base rental rate will escalate from $108,000 in Year 1 to $189,000 in Year 5, for an aggregate total of $765,000. Depending on the school's ability to expand its student population, revenue in years 6-8 will total $647,000, with annual escalations based on the Consumer Price Index thereafter.

LIST OF ATTACHMENTS

Draft Letter of Interest
Site Map of Subject Property
Resolution

Franklin Charter School

DRAFT

Englewood/McLellan Reservoir Foundation
1000 Englewood Parkway
Englewood, CO 80110
Attention: Rick Kahm

February __, 2011

This will supplement our letter of Interest dated November 17, 2010.

1. Property. The Property which will be subject to the Lease is described as the tract of land located at acres at the Southwest corner of Plaza Drive and Greensborough Drive, Highlands Ranch, CO., containing approx. 10.138 acres.

2. Rent. The rental terms shall be:

Construction Rent: Upon execution of a Lease, Tenant shall pay monthly construction rent of $4,000 per month until county has issued a certificate of occupancy (CO).

Upon issuance of CO rent shall be as follows:

	Annual	Monthly
a. Months 1-12 following CO	$108,000	$9,000.00/mo
b. Months 13-24 following CO	$121,000	$10,083.33/mo
c. Months 25-36 following CO	$148,000	$12.333/33/mo
d. Months 37-48 following CO	$175,000	$14.583.33/mo
e. Months 49-60 following CO	$189,000	$15,750.00/mo

(Provided Tenant does not exercise its right to terminate the Lease as to the Termintion Parcel as described in below in Paragraph 4)

f. Months 61-72 following CO	$202,000	$16,833.33/mo
g. Months 73-84 following CO	$216,000	$18,000.00/mo
h. Months 84-95 following CO	$229,000	$19.008.333/mo

i. Months 96-300 (or commencing Month 61 if Tenant exercised its right to terminate the Lease as to the Termination Parcel)-- Rent shall be adjusted yearly based upon CPI Index for Urban Consumers, Denver, Boulder, Metro Area-All Items Index (the "Index") with a minimum increase of 1% and maximum of 3% over previous year lease amount. Original lease term shall be 300 months (25

YRS.) with 5 renewable options of 10 years each. In the event Tenant exercised its first option, the rent shall be adjusted, commencing on the first day of the 301st month by an amount equal to any increase the Index from the Effective Date of the Lease to the 300th month of the Lease, and thereafter the rent shall be increased annually with a minimum increase of 1% and maximum increase of 3% over previous year lease amount.

3. Right to Partial Termination. At the end of the 60th month following the issuance of CO, the Tenant will have a right to terminate the lease as it pertains to a parcel of approx. 2.675 acres, described on Exhibit B attached to this Letter, and the rent for the remaining Property, commencing with the 61st month shall be $189,000 annually, increased by the increase in the Index over the prior 12 months, and thereafter shall be subject to adjustment with the Index as above described.

4. Deposit. The Foundation acknowledges receipt of the $10,000 deposit which will continue to be held pursuant to the terms of the original Letter of Interest.

5. Due Diligence.

A. The period of time commencing with the original Letter of Interest and ending at midnight, Mountain Standard Time, on February 28, 2011 is hereinafter referred to as the "Due Diligence Period." During the Due Diligence Period, we shall have the right to conduct soil, engineering, environmental and other tests with regard to the Property; investigate the availability of utilities, the applicable governmental requirements relating to signage and construction of improvements on the Property, the availability of necessary permits and licenses relating to signage and construction of any improvements; and determine generally the desirability and utility of the Property for our proposed Charter School. We shall have the right, it our sole and absolute discretion, at any time during the Due Diligence Period, to terminate the proposed lease transaction by delivery of written notice to you, in which event you will have the right to retain the deposit, and the parties shall have no further rights or obligations to the other hereunder.

B. During the Due Diligence Period, we shall have the right to (i) order a title report of the Property ("Title Commitment") from a title company mutually acceptable ("Title Company"), and (ii) obtain an ALTA survey of the Property ("Survey"). If we fail to object in writing to any items reflected in the Title Commitment, any related Schedule B document, and Survey during the Due Diligence Period, then all such items shall be deemed to be Permitted Exceptions (hereinafter defined). If we do object in writing to any of the items reflected in the Title Commitment, any related title documents, and Survey, the Foundaiton shall have ten (10) days ("Title Cure Period") following your receipt of our written objections in which to either advise us that you decline to cure any of such objections, or your intent to remove or cure, to our reasonable satisfaction, any matters to

which we have objected. If the Foundation has commenced to cure, and thereafter is diligently pursuing the cure of, such item(s) but such item(s) cannot be cured within the Due Diligence Period, Tenant, by written notice to the Foundation, shall have the unilateral right to extend the Due Diligence Period with respect to its approval of title until such time as the cure of such items has been completed or until Tenant, in its sole discretion, determines that the item(s) cannot be cured within a period compatible with Tenant's intended use of the Property, or until the Foundation advises us in writing that they are unable to cure the matters objected to by us. If the Foundation declines to cure, or advises of its intent to cure but thereafter fails to cure such items during the Due Diligence Period or Tenant has extended the Due Diligence Period and thereafter determines that the item(s) cannot be cured within the extended Due Diligence Period, Tenant shall have the right (i) to terminate the lease transaction by written notice to the Foundation within ten (10) days after the expiration of the Due Diligence Period (as it may have been extended), in which event the Foundation shall retain the deposit and the parties shall have no further rights or obligations to the other hereunder or (ii) waive the objection to such matters and proceed with the lease transaction. "Permitted Exceptions" shall mean any encumbrances reflected in the Title Commitment and related title documents or on any survey of the Property to which we do not object within the Due Diligence Period or to which any objection has been waived or deemed waive by us.

C. Title Policy. If Tenant does not elect to terminate the lease transaction prior to the expiration of the Due Diligence Period, we shall have the right to cause the Title Company to issue to us, at our cost, a Leasehold Owner Policy of Title Insurance in form acceptable to us covering the Property.

D. Supersedes Original Letter. To the extent any provisions of this Paragraph 6 relating to Title, Survey or any other Due Diligence matters conflict with the original Letter of Interest, the terms of this supplemental letter shall control and supersede in all respects the earlier terms.

PRINTED: 2009-10-07 11:26:19

RESOLUTION NO. _____
SERIES OF 2011

A RESOLUTION SUPPORTING THE ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION (EMRF) IN THE NEGOTIATION OF A LEASE OF A PORTION OF THE MCLELLAN PROPERTY TO BENJAMIN FRANKLIN CHARTER SCHOOL.

WHEREAS, the Englewood/McLellan Reservoir Foundation (EMRF) was formed to oversee the development of the McLellan Reservoir property; and

WHEREAS, the Englewood City Council supported the Englewood/McLellan Reservoir Foundation in the negotiation of a lease of a portion of McLellan property with Benjamin Franklin Charter School by the passage of Resolution No. 89, series 2010; and

WHEREAS, a change of location was necessitated due to the rejection of the previously proposed site by Douglas County; and

WHEREAS, the Lease is for approximately 10.1 acres of the Englewood/McLellan Reservoir Foundation property; and

WHEREAS, Benjamin Franklin Charter School submitted a Letter of Interest which was previously submitted to the Englewood City Council; and

WHEREAS, EMRF had reviewed the financial terms of the Letter of Interest with City Council and City Council has instructed EMRF to begin the negotiation of final lease terms; and

WHEREAS, upon completion of negotiation EMRF shall obtain a recommendation from City Council; and

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

Section 1. The City Council of the City of Englewood, Colorado, hereby supports the negotiation for a Lease of property between the Englewood/McLellan Reservoir Foundation and Benjamin Franklin Charter School.

ADOPTED AND APPROVED this 22nd day of February, 2011.

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 2011.

_____

Loucrishia A. Ellis, City Clerk

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
February 22, 2011	11 c ii	Contract Extension for Transit Shuttle Services
Initiated By:		**Staff Source:**
Community Development Department		Harold J. Stitt, Senior Planner

PREVIOUS COUNCIL ACTION

Council approved by Ordinance 50, Series of 2004, an Intergovernmental Agreement (IGA) between the City of Englewood and the Regional Transportation District (RTD) for funding of the Englewood Circulator Shuttle for 2004-2007. Council approved by Ordinance 66, Series of 2007, an Intergovernmental Agreement (IGA) between the City of Englewood and the Regional Transportation District (RTD) for funding of the Englewood Circulator Shuttle for the fourth quarter of 2007. Council approved, by Motion, in August 2004 a contract for transit services with Laidlaw Transit Services and subsequently extended this contract by Resolution No. 87, Series of 2005, Resolution No. 77, Series of 2006, by Motion approved on December 3, 2007, by Motion on March 3, 2008, by Motion on April 6, 2009, and by Motion, on December 21, 2009, a contract for transit services with MV Transportation, Inc.

RECOMMENDED ACTION

Staff recommends Council approve, by motion, an agreement between the City of Englewood and MV Public Transportation, Inc. for 2011 management, operation, and maintenance of the art shuttle. The contract amount is $261,059.

BACKGROUND AND ANALYSIS

In 2009, after five years of art shuttle service, the Community Development Department reissued a Request for Proposals (RFP) for management, operation, and maintenance of the shuttle. For 2010, the contract for art shuttle management, operation, and maintenance was awarded to MV Transportation. This contract included the option of four one-year extensions. This contract is the first extension and will provide for all vehicles and operational components of the art shuttle for calendar year 2011. Fuel will be supplied by the City with reimbursement by RTD.

FINANCIAL IMPACT

This contract is for the operation of art shuttle services in the amount of $261,059. RTD will reimburse the City the contract and fuel costs less the lost fare amount. The lost fair amount is equivalent to the fare capture rate times the percentage of riders that would not have had a RTD pass or a transfer from another RTD service, had the art operated as a fare service charging the standard RTD full fare. The calculated lost fare amount for 2011 will be $57,456. This is a

significant decrease compared to the 2010 lost fare amount of $84,107. This decrease is due to the apparent reduction in art ridership in 2010 compared to 2009. This lost fare amount is included in the approved 2011 Community Development Department budget. The contract continues the same level of service operating Monday through Friday, 6:30 a.m. to 6:30 p.m. at no cost to riders.

ATTACHMENTS

Contract

Transit Shuttle Services Operations Contract

This Contract is made and entered into as of the _____ day of _____, 2011, by and between the City of Englewood, a Colorado Municipal Corporation (City), and MV Public Transportation Inc., a California Corporation whose address is 360 Campus Lane, Suite 201, Fairfield, CA 95434, (MV).

WHEREAS, The purpose of this contract is to implement various transportation services and improvements to reduce dependency on the single occupant automobile, facilitate movement of traffic to and within the commercial areas of the City of Englewood and to minimize traffic congestion in the shuttle area.

WHEREAS, The City desires to engage MV to provide said Transit Shuttle Management, Operations, and Maintenance services.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purpose:** The purpose of this Contract is to set forth all of the terms and conditions agreed upon between the Parties by which MV shall provide to the City: transit management, operations, and maintenance services, as provided herein. MV shall perform such services as set forth in this contract using that degree of care, skill, and knowledge employed by leading contractors in the field of transit management and operations in the United States.

2. **Scope of Services:** This Contract incorporates the requirements, conditions, obligations and promises of the City's **"Notice Inviting Proposals For A Circulator Shuttle In The City Of Englewood, Colorado", dated September 18, 2009** and the **"Proposal to Provide Management, Operation and Maintenance Services for the art shuttle in the City of Englewood, Colorado" by MV Public Transportation, Inc., dated October 12, 2009.**

3. **Independent Contractor:** The City hereby contracts with MV to provide the shuttle services described herein within the City of Englewood as an independent contractor and not as an agent of the City.

4. **Quality of Service:** MV acknowledges that, through the provision of services, the City desires to provide to their citizens a high quality of service in the operation and maintenance of this shuttle system. MV agrees to supply the shuttle services described in paragraph two, above, in a safe, efficient, and professional manner.

5. **Compensation:** Compensation for 2011 shall be an amount not to exceed $261,059. In subsequent years MV will be compensated according to the following rate schedule:

January 1, 2011 – December 31, 2011	$42.49 per revenue service hour
January 1, 2012 – December 31, 2012	$43.01 per revenue service hour
January 1, 2013 – December 31, 2013	$43.32 per revenue service hour
January 1, 2014 – December 31, 2014	$43.91 per revenue service hour

Note 1: The rates above do not include costs for Professional Liability Insurance as the parties have agreed to remove this requirement from this Contract.

Note 2: The rates above are based upon an estimated volume of 6,120 annual revenue hours (12 revenue hours each bus using 2 buses per day for 255 days per year) unless otherwise agreed upon.

Note 3: For purposes of this Contract, revenue service hours shall be calculated from arrival at the first shuttle pick-up location to the departure from the last shuttle drop-off location.

6. **Term:** This Contract shall be for a term of twelve months commencing upon January 1, 2011 and ending at midnight, December 31, 2011. Thereafter, the City Manager and MV may extend this contract for four consecutive one-year periods, upon mutual agreement of the parties, subject to the same terms and conditions of this contract as specified in Paragraph 2 above.

7. **Applicable Law:** The parties agree this Contract shall be governed by and construed in accordance with the law of the State of Colorado. The venue for any litigation shall be Arapahoe County, Colorado.

8. **Termination:** In addition to any other rights provided herein, the City shall have the right, at any time and in its sole discretion, to terminate, not for cause, in whole or in part, this Contract and further performance of the services by delivery to MV of written Notice of Termination specifying the extent and effective date of termination.

9. **Amendments:** All changes to this Contract shall be in writing and executed by the authorized officials of the Parties. In the event a change in this Contract is anticipated to cause an increase or decrease in the annual revenue service hours or in the Operating Expenses hereunder, the Contractor and the City agree to negotiate an increase or decrease in the contracted amount of compensation. In the event any Federal, State, or local law, rule, regulation or ordinance becomes operative during the term of this Contract that has the effect of increasing MV's operating costs, to include, but not limited to, laws, rule, regulations, or ordinances pertaining to environmental protection or climate change, such as carbon credits, or new taxes imposed based on energy consumption; changes in the Americans With Disabilities Act; or government mandated increases to employee wages and/or benefits, to include health care benefits, City and MV shall meet to discuss the impact of these unanticipated additional costs and negotiate an equitable adjustment to MV's rates. In the event City and MV are unable to agree on the amount of the equitable rate adjustment, MV may terminate this contract for convenience.

10. **Assignment:** MV shall not assign its performance of this contract without the prior written consent of the City. Any attempt by the contractor to assign any performance of this contract without such consent shall be null and void.

11. **Subject to Annual Appropriation:** Any provision of this agreement or its attachments which impose upon the City, directly or indirectly, any financial obligation whatsoever to be performed or which may be performed in any fiscal year subsequent to the year of

execution of this agreement is expressly made contingent upon and subject to funds for such financial obligation be appropriated, budgeted and otherwise made available.

12. **Verification of Compliance with C.R.S. 8-17.5-101 ET.SEQ. Regarding Hiring of Illegal Aliens:**

(a) Employees, Consultants and Sub-consultants: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Consultant shall not contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]

(b) Verification: Consultant will participate in either the E-Verify program or the Department program, as defined in C.R.S. 8-17.5-101 (3.3) and 8-17.5-101 (3.7), respectively, in order to confirm the employment eligibility of all employees who are newly fired for employment to perform work under this public contract for services. Consultant is prohibited from using the E-Verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

(c) Duty to Terminate a Subcontract: If Consultant obtains actual knowledge that a sub-consultant performing work under this Contract knowingly employs or contracts with an illegal alien, the Consultant shall;

(1) notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and

(2) terminate the subcontract with the sub-consultant if, within three days of receiving notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

(d) Duty to Comply with State Investigation: Consultant shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation by that the Department is undertaking pursuant to C.R.S. 8-17.5-102 (5)

(e) Damages for Breach of Contract: The City may terminate this contract for a breach of contract, in whole or in part, due to Consultant's breach of any section of this paragraph or provisions required pursuant to CRS 8-17.5-102. Consultant shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract under this Paragraph 12.

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective the day and date first above written.

MV PUBLIC TRANSPORTATION, INC

By: _____ _____
Brad Cornelsen, CFO Daniel Lee, Director, Contracts

STATE OF IOWA)
) ss
COUNTY OF_____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2011,

By _____ as _____of MV Public Transportation, Inc.

My commission expires: _____ _____
Notary Public

CITY OF ENGLEWOOD, COLORADO

By: _____
James K. Woodward, Mayor

ATTEST:

_____
Loucrishia A. Ellis, City Clerk