

**Agenda for the  
Regular Meeting of the  
Englewood City Council  
Monday, July 18, 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 July 5, 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.)
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.
  - a. A proclamation honoring the 100<sup>th</sup> Anniversary of St. Louis Catholic Parish.
  - b. A proclamation recognizing the 60<sup>th</sup> Anniversary of the Denny Miller Memorial Baseball Field.

9. Consent Agenda Items.

a. Approval of Ordinances on First Reading.

- i. Council Bill No. 37 – Recommendation from the Community Development Department to adopt a bill for an ordinance authorizing the purchase of up to five additional single-family houses funded through the Neighborhood Stabilization Program Grant and the Program Income Reuse Plan. **Staff Sources: Janet Grimmert, Housing Finance Specialist and Harold J. Stitt, Senior Planner.**
- ii. Council Bill No. 38 – Recommendation from the Department of Public Works to adopt a bill for an ordinance accepting a Temporary Construction Easement and a Permanent Easement for the City to install traffic signal equipment at Quincy and Broadway. **Staff Source: Dave Henderson, Engineering/Capital Projects Administrator.**
- iii. Council Bill No. 40 – Recommendation from the Fire Department, Office of Emergency Management, to adopt a bill for an ordinance accepting a 2011 Emergency Management Performance Grant. **Staff Source: Steve Green, Emergency Management Coordinator.**

b. Approval of Ordinances on Second Reading.

- i. Council Bill No. 35, accepting an Edward Byrne Memorial Justice Assistance Grant from the Bureau of Justice Assistance.

c. Resolutions and Motions.

- i. Recommendation from the Department of Parks and Recreation to approve, by motion, a contract for renovation of the racquetball court at the Englewood Recreation Center. **Staff Source: Jerrell Black, Director of Parks and Recreation.**

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

11. Ordinances, Resolutions and Motions

a. Approval of Ordinances on First Reading.

- i. Council Bill No. 36 - Recommendation from the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee to adopt a bill for an ordinance approving a power line easement on the Byers Biosolids Farm for BP Wind Energy North America, Inc. **Staff Sources: Stewart H. Fonda, Utilities Director and Jim Tallent, Treatment Division Manager, Littleton/Englewood Wastewater Treatment Plant.**
- ii. Council Bill No. 39 - Recommendation from the Community Development Department to adopt a bill for an ordinance authorizing Planned Unit Development Amendment #1 for the Shops at Hampden and Logan. Staff further requests that Council set a Public Hearing for August 1, 2011 to gather public input on the proposed Amendment. **Staff Source: Audra Kirk, Planner I.**

- b. Approval of Ordinances on Second Reading.
  - c. Resolutions and Motions.
12. General Discussion.
- a. Mayor's Choice.
    - i. Colorado Housing and Finance Authority (CHFA) Notification to the Local Jurisdiction regarding a 2011 Low-Income Housing Tax Credit Program Project.
  - b. Council Members' Choice.
13. City Manager's Report.
14. City Attorney's Report.
- a. Request for authorization to commence legal action to initiate an eviction for the occupants of 4101 South Cherokee Street.
15. Adjournment.

## PROCLAMATION



WHEREAS, Saint Louis Catholic Parish in Englewood will celebrate its 100<sup>th</sup> Anniversary on July 24, 2011; and

WHEREAS, Saint Louis Catholic Parish has a long history in the community of Englewood; and

WHEREAS, during its 100 years, Saint Louis Catholic Parish has conducted 6,980 Baptisms, 4,545 First Communions, 4,387 Confirmations, 3,192 Funerals, and 1,794 Marriages; and

WHEREAS, Saint Louis Catholic Parish opened Saint Louis Catholic School in 1929, which has educated countless local students over the past eight decades; and

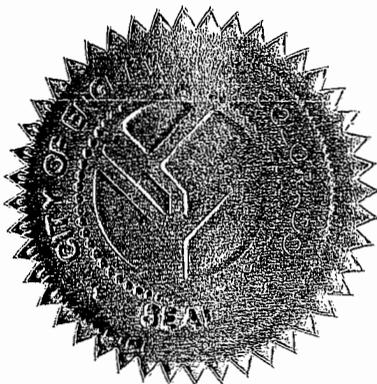
WHEREAS, for the past twenty years, Saint Louis Catholic Parish has operated the Saint Vincent's House to provide lodging for relatives of Craig Hospital patients who have no place to stay while their family members undergo treatment; and

WHEREAS, the parishioners of Saint Louis Catholic Parish operated a food share program for many years, and continue to generously provide assistance and ministries to the poor and needy in our community; and

WHEREAS, the City of Englewood wishes to honor and recognize Saint Louis Catholic Parish on the noteworthy occasion of its 100<sup>th</sup> Anniversary;

NOW, THEREFORE, I, James K. Woodward, Mayor of the City of Englewood, Colorado, hereby congratulate Saint Louis Catholic Parish on the occasion of its 100<sup>th</sup> Anniversary. Residents of the Englewood community are encouraged to help Saint Louis Catholic Parish celebrate this important milestone at the church's anniversary celebration on Sunday, July 24, 2011.

GIVEN under my hand and seal this 18<sup>th</sup> day of July, 2011.




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James K. Woodward, Mayor

## PROCLAMATION



WHEREAS, Englewood's Denny Miller Memorial Baseball Field was built in 1951 to honor young Denny Miller, who had died suddenly of meningitis at the age of twelve; and

WHEREAS, Denny Miller Memorial Baseball Field has provided decades of enjoyment for the young athletes in our community; and

WHEREAS, Denny Miller Field celebrates its 60<sup>th</sup> anniversary this summer; and

WHEREAS, to commemorate the occasion, members of the Daryl G. Brady Family, who are relatives of Denny Miller, have donated an engraved wooden baseball bat sculpture to the City of Englewood; and

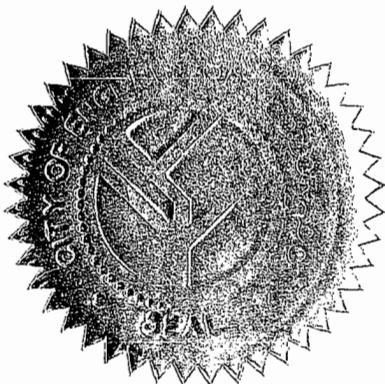
WHEREAS, Blair D. Brady, a relative of Denny Miller, has written a book entitled "*Between You, Me--... and the Fence Post,*" to commemorate the 60<sup>th</sup> anniversary of Denny Miller Memorial Baseball Field; and

WHEREAS, several events have been planned to celebrate this special occasion, including 60<sup>th</sup> Anniversary Baseball Games on Tuesday, July 26, 2011 at 4:30 p.m. at Denny Miller Memorial Baseball Field; and

WHEREAS, the City of Englewood wishes to recognize the 60<sup>th</sup> anniversary of the Denny Miller Memorial Baseball Field, which has been such an important part of our community over the years;

NOW, THEREFORE, I, James K. Woodward, Mayor of the City of Englewood, Colorado, hereby congratulate Mr. Blair Brady on the publication of his book and offer our sincere thanks to the Daryl G. Brady Family for their generous donation of a sculpture. Residents of the Englewood community are encouraged to join the special anniversary celebration by attending the celebration on July 26, 2011 and other events planned throughout the week of July 25 through 31, 2011.

GIVEN under my hand and seal this 18<sup>th</sup> day of July, 2011.




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James K. Woodward, Mayor

## COUNCIL COMMUNICATION

<b>Date:</b> July 18, 2011	<b>Agenda Item:</b> 9 a i	<b>Subject:</b> An Ordinance authorizing the purchase of up to five additional single family houses funded through the Neighborhood Stabilization Program Grant and Program Income Reuse Plan
<b>Initiated By:</b> Community Development Department	<b>Staff Source:</b> Janet Grimmett, Housing Finance Specialist Harold J. Stitt, Senior Planner	

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council approved Resolution 34, Series of 2009 on March 23, 2009 authorizing the Community Development Department to file an application for Federal funding through the Neighborhood Stabilization Program (NSP1); Ordinance 37, Series of 2009, approved on September 21, 2009, authorizing the Neighborhood Stabilization Program (NSP1) Grant Agreement; and Ordinance 49, Series of 2009, approved on November 2, 2009, authorizing the purchase of ten houses in fulfillment of the NSP1 contract; Resolution 35, Series of 2010, approved a transfer and supplemental appropriation of long term asset reserve funds (LTAR) to fund improvements related to the Federal Neighborhood Stabilization Program (NSP1) project; Ordinance 27, Series of 2010, amended the NSP1 budget to add \$500,000 to the grant amount and authorizing the purchase of up to three additional foreclosed single-family homes; Ordinance 2, Series of 2011 authorizing the retention and reuse of monies collected from the sale of NSP properties; and Ordinance 3, Series of 2011 authorizing the purchase of two additional single family homes.

### RECOMMENDED ACTION

Staff recommends that Council approve a bill for an ordinance authorizing the purchase of up to five additional unidentified bank-owned foreclosed single-family residences located in the eligible census tracts throughout the City of Englewood to fulfill the NSP1 contract and the Program Income Reuse Plan with the Colorado Department of Local Affairs.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In 2008, the Federal government passed the Housing and Economic Recovery Act (HERA), the first new legislation in a generation for housing and economic development. HERA appropriated \$3.92 billion for the Neighborhood Stabilization Program (NSP1) to support the acquisition, rehabilitation, or demolition of foreclosed and abandoned properties. The State of Colorado received a total \$53 million in NSP1 funds of which \$37.9 is directly administered by the State.

On March 30, 2009, the Community Development Department submitted an application to the Colorado Department of Local Affairs, Division of Housing for NSP1 funding for Project Rebuild. Project Rebuild will purchase and rehabilitate ten (10) abandoned or foreclosed single-family properties in the City's ten eligible census tracts.

The State Housing Board approved the Project Rebuild NSP1 application on July 14, 2009. The Board awarded the City \$1,253,379. DOH committed an additional \$500,000 for property acquisition. This amount covered the cost of purchasing three more bank owned foreclosed homes. The Colorado Division of Housing (DOH) requested that Community Development Housing staff provide a Program Income Reuse Plan to permit the reuse of projected program income derived from the sale of NSP units for the acquisition, rehab, and sale of additional units by March 10, 2012.

To date, Project Rebuild has acquired or has under contract fifteen (15) single-family vacant foreclosed properties located in the eligible census tracts. With the approval of the NSP1 Program Income Reuse Plan, it is anticipated that five (5) additional unidentified properties could be purchased. This would bring the total of purchased properties to twenty (20).

Generally, Real Estate Owned (REO) lenders and government holding agencies (e.g. FHA, VA, FNMA, etc.), require closing dates to be set within 30 days of their acceptance of an offer to purchase or bid. Given this short time frame to close on a property, it would be impossible for staff to gain Council approval for acquisition of individual site-specific properties given the 45-60 day ordinance approval timeframe.

Section 72 of the Home Rule Charter requires that real property may be sold, but only by ordinance, not using the emergency provision. Each property acquired for Project Rebuild will be brought before Council as soon as possible to receive approval to sell each property to eligible buyers. This will maximize the marketing efforts. This process will expedite the subsequent sale and closing of the property.

## **FINANCIAL IMPACT**

Existing Community Development staff has the required expertise to acquire foreclosed properties, provide rehabilitation, and sell the properties to eligible buyers. All acquisition and rehab expenses will be covered by the NSP1 grant.

## **LIST OF ATTACHMENTS**

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. 37  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE AUTHORIZING THE PURCHASE OF FIVE ADDITIONAL UNIDENTIFIED SINGLE-FAMILY, VACANT, FORECLOSED PROPERTIES LOCATED IN THE CITY OF ENGLEWOOD, COLORADO TO FULFILL THE AMENDED NEIGHBORHOOD STABILIZATION PROGRAM CONTRACT BETWEEN THE COLORADO DEPARTMENT OF LOCAL AFFAIRS AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City Council of the City of Englewood, Colorado authorized an application to the Colorado Department of Local Affairs, Colorado Division of Housing, for a portion of Arapahoe County's allocations of the Federal Neighborhood Stabilization Program funds (NSP1) for funding Project Rebuild by the passage of Resolution No. 34, Series 2009; and

WHEREAS, the City of Englewood Project Rebuild was awarded \$1,253,379 to purchase, rehabilitate, and sell single-family vacant, foreclosed properties in eligible census tracts located in the City of Englewood; and

WHEREAS, the City Council of the City of Englewood, Colorado authorized the execution of an intergovernmental contract for Neighborhood Stabilization Program grant funding between the Colorado Department of Local Affairs and the City of Englewood, Colorado which allowed the purchase of 10 qualifying and then three additional properties for rehabilitation under this program; and

WHEREAS, generally, when real estate is owned by lenders and government holding agencies (e.g. FHA, VA, FNMA, etc.) they require closing dates to be set within 30 days of their acceptance of an offer to purchase or bid. With this short time frame it would be impossible to gain City Council approval for acquisition of individual site-specific properties given the 45-60 day ordinance approval timeframe; and

WHEREAS, Section 72 of the Englewood Home Rule Charter requires that real property may be sold, but only by ordinance, not using the emergency provision; and

WHEREAS, each property acquired for Project Rebuild will be brought before City Council as soon as possible to receive approval to sell each property to eligible buyers; and

WHEREAS, Council approved a second amendment to the NSP1 Grant that allowed the City to retain the NSP1 Grant Program Income funds until the program ends in 2013; and

WHEREAS, City Council Authorized the purchase of two additional unidentified Single-Family, Vacant, Foreclosed properties located in Englewood with the passage of Ordinance No. 3, 2011; and

WHEREAS, the City has purchased 14 houses and has another under contract for a total of 15; 4 have been sold; contracts are pending for 2 more (one is scheduled to close July 15th, and the other is scheduled to close August 12<sup>th</sup>); therefore 10 homes are currently in inventory; and

WHEREAS, Staff requests the City Council authorize the purchase of five (5) additional currently unidentified qualifying houses with those retained funds.

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 purchase of five (5) additional unidentified single-family, vacant, foreclosed properties located in the eligible census tracts throughout the City of Englewood as a part of the NSP1 contract with the Colorado Department of Local Affairs funded through the Neighborhood Stabilization Program Grant (NSP1 Grant).

Introduced, read in full, and passed on first reading on the 18th day of July, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of July, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 20th day of July, 2011 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 18th day of July, 2011.

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Loucrishia A. Ellis

## COUNCIL COMMUNICATION

<b>Date:</b> July 18, 2011	<b>Agenda Item:</b> 9 a ii	<b>Subject:</b> Ordinance Accepting Two Easements for Traffic Signal Equipment
<b>Initiated By:</b> Department of Public Works	<b>Staff Source:</b> Dave Henderson, Engineering/Capital Projects Administrator	

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Staff discussed the need for these easements at the May 23<sup>rd</sup> Study Session, as well as an update at the July 11<sup>th</sup> Study Session.

### RECOMMENDED ACTION

Staff recommends Council adopt a bill for an ordinance accepting two easements (one Temporary Construction Easement and one Permanent Easement) for property occupied by Bank of the West, located at the SW corner of Quincy and Broadway.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The existing traffic signal at the Broadway/Quincy intersection is obsolete (about 35 years old) with substandard poles and mast arm structures, and small 8 inch signal indications. This is one of two traffic signals on the Broadway corridor that has not yet been upgraded; the other is located at the Mansfield intersection.

Traffic Engineering staff has funds budgeted in the Public Improvement Fund (PIF) to upgrade the Quincy/Broadway signal later this year. The lack of available public right-of-way, along with existing utility conflicts, creates the necessity to acquire easements from the bank property at the southwest corner of the intersection. Two easements are required: one *permanent* easement located adjacent to the sidewalk (30 square feet) to set the new pole and traffic signal box, and one *temporary* construction easement (35 square feet) located behind the permanent easement to provide room for installation during construction.

Typically, the City would order an appraisal for property we need to acquire and present an offer for the appraised value. The owner would have the option to order another appraisal (at the City's cost) for another opinion of value. Negotiations would follow and, unless an agreement is reached, the City would have no recourse but to proceed with the process of eminent domain and condemnation for the acquisition.

Public Works staff has been in contact with the Bank of the West corporate office in California and they have agreed to proceed with the voluntary dedication of the easements without the benefit of appraisals in exchange for a \$3,000 payment. The cost of two appraisals together with the fair market value of the easements would exceed \$3,000. Staff believes the settlement is fair and in the best interest of the City.

## **FINANCIAL IMPACT**

Funds for the purchase of the easements are available in the Transportation System Upgrade account in the PIF.

## **LIST OF ATTACHMENTS**

Aerial photo of easement locations  
Bill for an Ordinance

4285

*Gold Sound  
Audio*

**Proposed Transportation  
Easements**

SW corner Broadway & Quincy

**W. Quincy Ave.**

**Proposed  
Temporary  
Construction Easement**  
7' x 10' / 2 = 35 SF

**Proposed  
Permanent Easement**  
3' x 10' = 30 SF

4301

*Bank  
of the  
West*

**S. Broadway**



SCALE: 1 inch = 20 feet  
DATE: May 16, 2011  
PHOTO DATE: 2008

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. 38  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE ACCEPTING TWO EASEMENTS FROM BANK OF THE WEST FOR THE CITY TO INSTALL TRAFFIC SIGNAL EQUIPMENT IN THE LOCATION OF BROADWAY AND QUINCY.

WHEREAS, the existing traffic signal at the Broadway/Quincy intersection is obsolete with substandard poles and mast arm structures, and small 8 inch signal indications; and

WHEREAS, this is one of two traffic signals on the Broadway corridor that have not yet been upgraded with the other old signal located at Mansfield intersection; and

WHEREAS, the Public Works Department has budgeted in the Public Improvement Fund (PIF) funds to upgrade the Quincy/Broadway signal; and

WHEREAS, public Right-of-Way along with existing utility conflicts, creates the necessity to acquire easement from Bank of the West on the SW corner of the intersection; and

WHEREAS, the passage of this Ordinance authorizes the acceptance a permanent easement and a temporary construction easement from Bank of the West to the City which will provide for the installation of traffic signal equipment on Broadway and Quincy;

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

Section 1. The City Council of the City of Englewood hereby authorizes the acceptance of a Grant of Easement, attached hereto as Attachment 1, and a Temporary Construction Easement, attached hereto as Attachment 2, from Bank of the West to the City for the installation of traffic signal equipment located on the SW corner of Quincy and Broadway for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 18th day of July, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of July, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 20th day of July, 2011 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 18th day of July, 2011.

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Loucrishia A. Ellis

GRANT OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that BANK OF THE WEST Owners of 4301 South Broadway, Englewood, Colorado 80110, County of Arapahoe through merger with Commercial Federal Bank. See Exhibit A, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, does hereby grant and convey to the CITY OF ENGLEWOOD, a municipal corporation duly organized and existing under and by virtue of the constitution of the State of Colorado, an easement and right-of-way for traffic control purposes upon, across, in, through and under the following described real property situate in the City of Englewood, County of Arapahoe, State of Colorado, to wit:

A rectangle of land consisting of 30 square feet, more or less and shown on the attached Exhibit B attached hereto and incorporated herein.

reserving, however, to the undersigned, its successors and assigns, the right to utilize and enjoy the above-described premises providing the same shall not interfere with the construction, maintenance, repair, inspection and operation of said traffic control device and providing further that the grantor shall not cause substantial improvements to encroach upon the above-described right-of-way, and the City shall not be liable for removal thereof if so placed.

SIGNED AND DELIVERED this \_\_\_\_ day of \_\_\_\_\_, 2011.

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

STATE OF )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_ as \_\_\_\_\_ of Bank of the West.

\_\_\_\_\_  
Notary Public  
Address:

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

STATE OF CALIFORNIA  
DEPARTMENT OF FINANCIAL INSTITUTIONS

CERTIFICATE OF MERGER

Pursuant to Financial Code Section 4891, I, BRIAN YUEN, Acting Commissioner of Financial Institutions of the State of California, do hereby certify that Commercial Federal Bank (the disappearing depository corporation) merged into Bank of the West (the surviving depository corporation) pursuant to the Agreement of Merger dated as of November 23, 2005, and that, under Financial Code Section 4887(b), the merger became effective at 3:02 p.m., Pacific Standard Time, December 2, 2005.

Given under my hand and official seal on this 2nd day of December, 2005, in Sacramento, California.

BRIAN YUEN  
Acting Commissioner of Financial Institutions

By

KENNETH SAYRE-PETERSON  
Assistant General Counsel



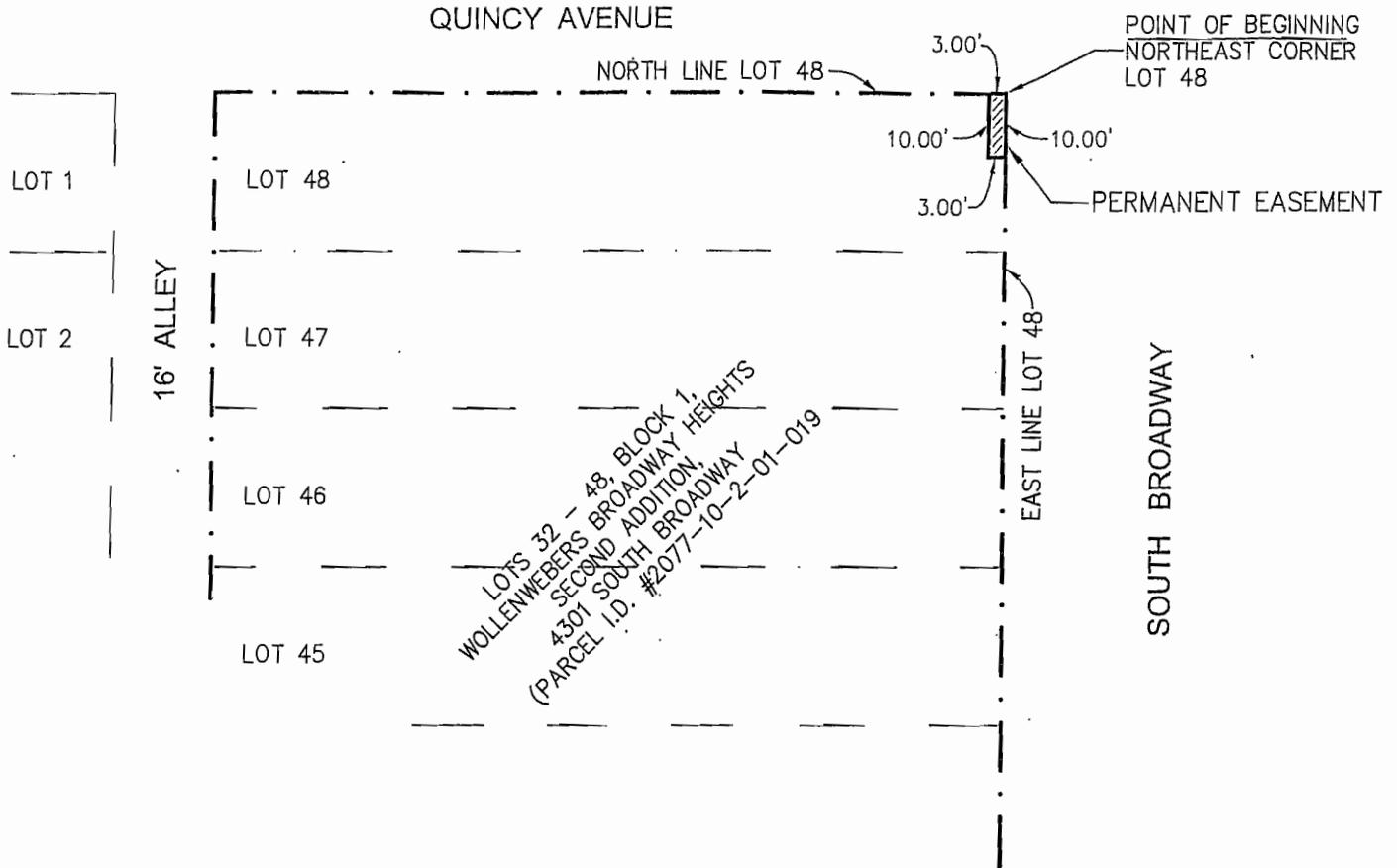


SCALE 1" = 30'



# EXHIBIT PERMANENT EASEMENT

LOCATED IN NORTHWEST 1/4 SECTION 10,  
TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M.  
CITY OF ENGLEWOOD, COUNTY OF ARAPAHOE, STATE OF COLORADO



### DESCRIPTION OF PERMANENT EASEMENT

A PORTION OF LOT 48, BLOCK 1,  
WOLLENWEBER'S BROADWAY HEIGHTS, SECOND ADDITION,  
MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 48,  
 THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 48,  
 A DISTANCE OF 10.00 FEET;  
 THENCE WEST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 48,  
 A DISTANCE OF 3.00 FEET;  
 THENCE NORTH AND PARALLEL WITH THE EAST LINE OF SAID LOT 48,  
 A DISTANCE OF 10.00 FEET TO A POINT ON THE NORTH LINE  
 OF SAID LOT 48;  
 THENCE EAST ALONG THE NORTH LINE OF SAID LOT 48,  
 A DISTANCE OF 3.00 FEET TO THE POINT OF BEGINNING,  
 CITY OF ENGLEWOOD, COUNTY OF ARAPAHOE, STATE OF COLORADO

CONTAINING 30.0 SQUARE FEET

### NOTE:

THIS IS NOT A  
MONUMENTED BOUNDARY SURVEY

COLORADO ENGINEERING & SURVEYING, INC.



By \_\_\_\_\_

Date MAY 5, 2011

EXHIBIT B

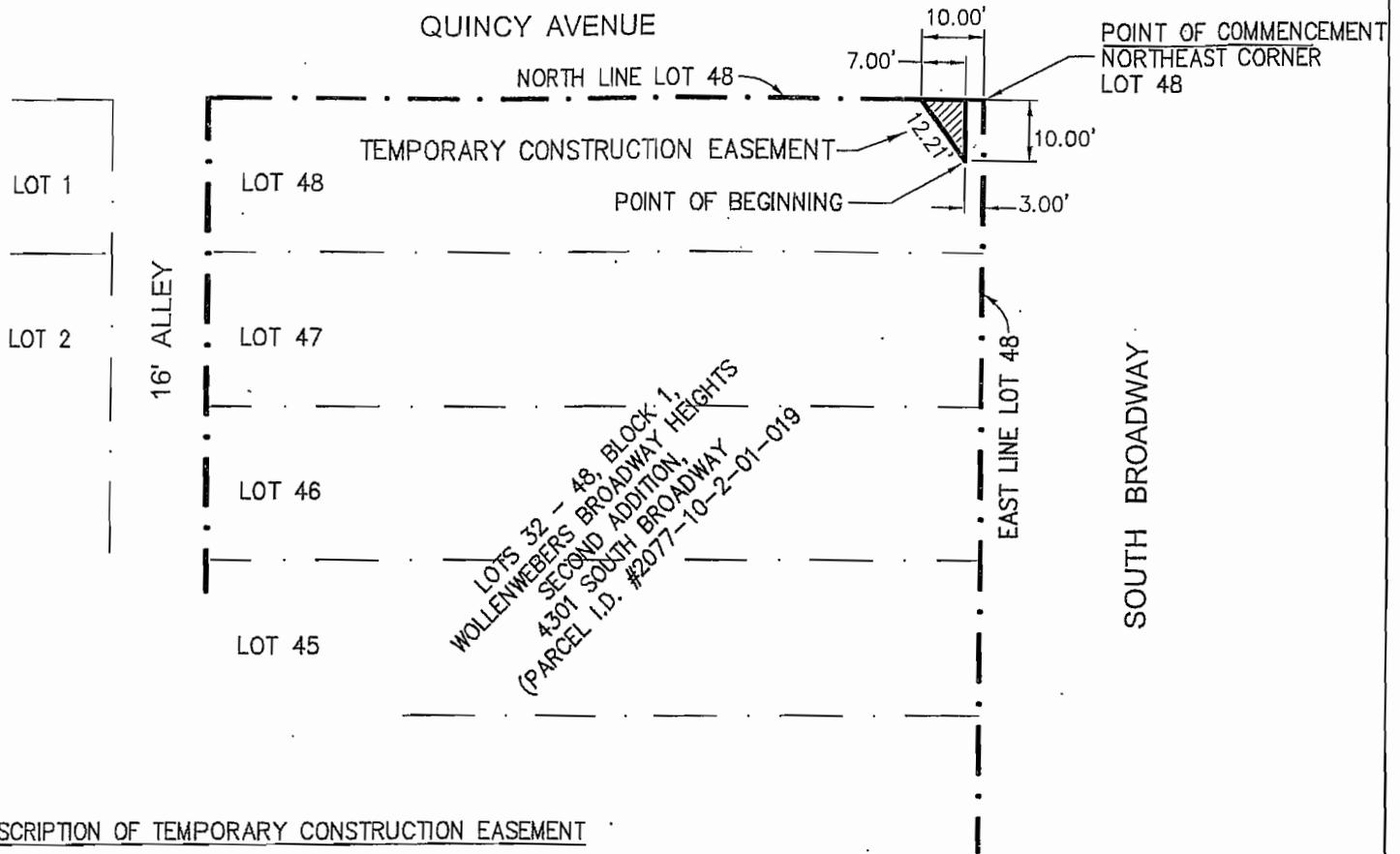
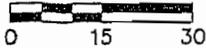


# EXHIBIT TEMPORARY CONSTRUCTION EASEMENT

LOCATED IN NORTHWEST 1/4 SECTION 10,  
TOWNSHIP 5 SOUTH, RANGE 68 WEST OF THE 6TH P.M.  
CITY OF ENGLEWOOD, COUNTY OF ARAPAHOE, STATE OF COLORADO



SCALE 1" = 30'



### DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT

A PORTION OF LOT 48, BLOCK 1,  
WOLLENWEBER'S BROADWAY HEIGHTS, SECOND ADDITION,  
MORE PARTICULARLY DESCRIBED AS FOLLOWS;  
COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 48;  
THENCE SOUTH ALONG THE EAST LINE OF SAID LOT 48,  
A DISTANCE OF 10.00 FEET;  
THENCE WEST AND PARALLEL WITH THE NORTH LINE OF SAID LOT 48,  
A DISTANCE OF 3.00 FEET TO THE POINT OF BEGINNING;  
THENCE NORTHWESTERLY A DISTANCE OF 12.21 FEET, MORE OR LESS,  
TO A POINT ON THE NORTH LINE OF SAID LOT 48, SAID POINT BEING  
10.00 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 48;  
THENCE EAST ALONG THE NORTH LINE OF SAID LOT 48,  
A DISTANCE OF 7.00 FEET;  
THENCE SOUTH AND PARALLEL WITH THE EAST LINE OF SAID LOT 48,  
A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING,  
CITY OF ENGLEWOOD, COUNTY OF ARAPAHOE, STATE OF COLORADO

**NOTE:**  
THIS IS NOT A  
MONUMENTED BOUNDARY SURVEY

COLORADO ENGINEERING & SURVEYING, INC.



By \_\_\_\_\_  
Date MAY 5, 2011

CONTAINING 35.0 SQUARE FEET

## COUNCIL COMMUNICATION

<b>Date:</b> July 18, 2011	<b>Agenda Item:</b> 9 a iii	<b>Subject:</b> 2011 Emergency Management Performance Grant
<b>Initiated By:</b> Englewood Office of Emergency Management		<b>Staff Source:</b> Steve Green, Emergency Management Coordinator

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

This grant supports the following Council Goals:

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

Council has approved previous grants from this program and passed a resolution authorizing application for the Fiscal Year 2011 grant cycle.

### RECOMMENDED ACTION

Staff seeks Council's approval of a bill for an ordinance accepting a 2011 Emergency Management Performance Grant (EMPG) awarded to the City of Englewood by the State of Colorado in the amount of \$34,900.00.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

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

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

EMPG reimbursement grant funding is designated to support the City's emergency management program, but is not targeted to any specific purchase or expenditure. In the past, funding has been used for a number of improvements in the City of Englewood emergency management program, including:

- Funding for one part-time staff member to assist with day-to-day emergency management duties.
- Providing assistance to various departments in their continuity of operations planning.
- Training city employees in a variety of programs, including hazardous materials response and mitigation.
- Ongoing infrastructure improvements.

**FINANCIAL IMPACT**

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

**LIST OF ATTACHMENTS**

Proposed bill for an ordinance

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. 40  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF THE 2011 EMERGENCY MANAGEMENT PERFORMANCE GRANT/LOCAL EMERGENCY MANAGEMENT SUPPORT (LEMS) AWARDED TO THE CITY OF ENGLEWOOD, COLORADO BY THE STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS.

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

WHEREAS, the City of Englewood received grants from the EMPG program starting in early 2008, to assist in the development of the emergency management program for the City; and

WHEREAS, the Colorado Division of Emergency Management has stated that the EMPG program is expected to continue for the foreseeable future and has encouraged the City's participation; and

WHEREAS, EMPG reimbursement grant funding is designated to support the City's emergency management program, but is not targeted to any specific purchase or expenditure; and

WHEREAS, in the past funding has been used for a number of improvements in the City of Englewood emergency management program, including:

- Funding for one part-time staff member to assist with day-to-day emergency management duties.
- Providing assistance to various departments in their continuity of operations planning.
- Training city employees in a variety of programs, including hazardous materials response and mitigation.
- Ongoing infrastructure improvements; and

WHEREAS, the City of Englewood has been awarded \$34,900 by the State of Colorado 2011 Emergency management Performance Grants (EMPG) program;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorized the acceptance of the Emergency Management Performance Grant (EMPG) Special Project Grant, attached hereto as Attachment 1.

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

Introduced, read in full, and passed on first reading on the 18th day of July, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of July, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 20th day of July, 2011 for thirty (30) days.

---

James K. Woodward, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 18th day of July, 2011.

---

Loucrishia A. Ellis

**AGREEMENT**

*between the*

**STATE OF COLORADO  
DEPARTMENT OF LOCAL AFFAIRS**

*and the*

**CITY OF ENGLEWOOD**

Summary		
Form of Financial Assistance:	<input checked="" type="checkbox"/> Grant <input type="checkbox"/> Loan	Award Amount: <b>\$34,900</b>
<b><u>Agreement Identification:</u></b>		
Contract Encumbrance #:	<u>12EM1L98</u> ( <i>DOLA's primary identification # for this agreement</i> )	
Contract Management System #:	_____    ( <i>State of Colorado's primary identification # for this agreement</i> )	
<b><u>Project Information:</u></b>		
Project/Award Number:	<u>12EM1L98</u>	
Project Name:	<u>2011 Emergency Management Performance Grant/Local Emergency Management Support (LEMS)</u>	
Performance Period:	Start Date: <u>10/1/2010</u> End Date: <u>06/30/2012</u>	
Brief Description of Project / Assistance:	The annual EMPG/LEMS grants enhance all-hazards emergency management planning/preparedness, mitigation, response and recovery capabilities in the State of Colorado by providing financial support to local jurisdictions to staff and operate their emergency management programs.	
<b><u>Program &amp; Funding Information:</u></b>		
Program Name	<u>Emergency Management Performance Grant (EMPG)</u>	
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds):	<u>97.042</u>	
Funding Account Codes:	<u>100/SB00/71E/5110/F1LE/371E</u>	<u>\$34,900.00</u>

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**1. PARTIES**

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

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

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

- A.  The Effective Date.
- B.  The later to occur of the Effective Date or the date of a separate letter issued by the Department (“Release of Funds Letter”) notifying Grantee of the completion of a satisfactory environmental review and authorizing Grantee to obligate or use Grant Funds.
- C.  The Effective Date; provided, however, that all Project costs, if specifically authorized by the funding authority, incurred on or after \_\_\_\_\_, may be submitted for reimbursement as if incurred after the Effective Date.
- D.  insert date for authorized pre-agreement costs, as defined in §4 below and/or in **Exhibit B**, Statement of Project. Such costs may be submitted for reimbursement as if incurred after the Effective Date.
- E.  The Effective Date; provided, however, that the costs identified in the checked subsections below may be submitted for reimbursement as if incurred after the Effective Date (*see checked suboption(s) below*):
  - i.  All Project costs incurred on or after **October 1, 2010**; and

ii.  Pre-award costs for insert purpose, if any, incurred on or after insert starting date allowed under the federal award for pre-award costs.

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

### 3. RECITALS

#### A. Authority, Appropriation, and Approval

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

#### B. Consideration

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

#### C. Purpose

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

#### D. References

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

### 4. DEFINITIONS

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

#### A. Evaluation

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

#### B. Exhibits and Other Attachments

The following are attached hereto and incorporated by reference herein:

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

#### C. Goods

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

#### D. Grant

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

#### E. Grant Funds

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

#### F. Party or Parties

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

#### G. Pre-contract costs

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

#### H. Project Budget

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

**I. Program**

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

**J. Review**

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

**K. Services**

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

**L. Sub-grantee**

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

**M. Work**

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

**N. Work Product**

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

**5. TERM and EARLY TERMINATION.**

**A. Initial Term**

Unless otherwise permitted in §2 above, the Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on June 30, 2012, unless sooner terminated or further extended as specified elsewhere herein.

**B. Two Month Extension**

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

**6. STATEMENT OF PROJECT**

**A. Completion**

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

**B. Goods and Services**

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

**C. Employees**

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

**7. PAYMENTS TO GRANTEE**

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

**A. Maximum Amount**

The maximum amount payable under this Grant to Grantee by the State is \$34,900.00, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in Exhibit B.

**B. Payment**

**i. Advance, Interim and Final Payments**

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

**ii. Interest**

The State shall not pay interest on Grantee invoices.

**iii. Available Funds-Contingency-Termination**

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

**iv. Erroneous Payments**

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

**C. Use of Funds**

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

**D. Matching Funds**

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

**8. REPORTING - NOTIFICATION**

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

**A. Performance, Progress, Personnel, and Funds**

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

**B. Litigation Reporting**

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

**C. Noncompliance**

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

**D. Subgrants**

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

## 9. GRANTEE RECORDS

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

### A. Maintenance

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

### B. Inspection

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

### C. Monitoring

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

### D. Final Audit Report

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

## 10. CONFIDENTIAL INFORMATION-STATE RECORDS

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

### A. Confidentiality

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

### B. Notification

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

### C. Use, Security, and Retention

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

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

**D. Disclosure-Liability**

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

**11. CONFLICTS OF INTEREST**

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

**12. REPRESENTATIONS AND WARRANTIES**

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

**A. Standard and Manner of Performance**

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

**B. Legal Authority – Grantee and Grantee's Signatory**

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

**C. Licenses, Permits, Etc.**

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

**13. INSURANCE**

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

**A. Grantee**

**i. Public Entities**

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

**ii. Non-Public Entities**

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

**B. Grantees and Sub-Grantees**

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

**i. Worker's Compensation**

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

**ii. General Liability**

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

**iii. Automobile Liability**

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

**iv. Additional Insured**

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

**v. Primacy of Coverage**

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

**vi. Cancellation**

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

**vii. Subrogation Waiver**

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

**C. Certificates**

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

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

#### 14. BREACH

##### A. Defined

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

##### B. Notice and Cure Period

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

#### 15. REMEDIES

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

##### A. Termination for Cause and/or Breach

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

##### i. Obligations and Rights

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

##### ii. Payments

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

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

**iii. Damages and Withholding**

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

**B. Early Termination in the Public Interest**

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

**i. Method and Content**

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

**ii. Obligations and Rights**

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

**iii. Payments**

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

**C. Remedies Not Involving Termination**

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

**i. Suspend Performance**

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

**ii. Withhold Payment**

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

**iii. Deny Payment**

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

**iv. Removal**

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

**v. Intellectual Property**

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

**16. NOTICES and REPRESENTATIVES**

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

**A. State:**

Dave Hard, Director  
Colorado Department of Local Affairs  
Division of Emergency Management  
9195 E. Mineral Ave., Ste. 200  
Centennial, CO 80112  
Email: [dave.hard@state.co.us](mailto:dave.hard@state.co.us)

**B. Grantee:**

Stephen Green, Emergency Management Coordinator  
City of Englewood  
City of Englewood Emergency Management  
3615 S. Elati  
Englewood, CO 80110  
Email: [stephen.green@englewoodco.gov](mailto:stephen.green@englewoodco.gov)

**17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

This section  shall  shall not apply to this Grant.

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

**18. GOVERNMENTAL IMMUNITY**

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

**19. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

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

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

**20. RESTRICTION ON PUBLIC BENEFITS**

This section  shall  shall not apply to this Grant.

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

**A. Identification:**

The applicant shall produce one of the following personal identifications:

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

**B. Affidavit**

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

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

**21. GENERAL PROVISIONS**

**A. Assignment and Subgrants**

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

**B. Binding Effect**

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

**C. Captions**

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

**D. Counterparts**

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

**E. Entire Understanding**

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

**F. Indemnification-General**

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

**G. Jurisdiction and Venue**

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

**H. List of Selected Applicable Laws**

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

**I. Loan Forms**

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

**J. Modification**

**i. By the Parties**

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

**ii. By Operation of Law**

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

**iii. Grant Funding Change Letter**

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

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

**K. Order of Precedence**

**i. This Grant**

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

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

**ii. Loan Document**

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

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

**L. Severability**

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

**M. Survival of Certain Grant Terms**

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

**N. Taxes**

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

**O. Third Party Beneficiaries**

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

**P. Waiver**

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

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## COLORADO SPECIAL PROVISIONS

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

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

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

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

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

### C. 3. GOVERNMENTAL IMMUNITY.

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

### D. 4. INDEPENDENT CONTRACTOR

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

### E. 5. COMPLIANCE WITH LAW.

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

### F. 6. CHOICE OF LAW.

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

### G. 7. BINDING ARBITRATION PROHIBITED.

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

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

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

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

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

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

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

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

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

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

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

**M. 13. CORA Disclosure**

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

SPs Effective 7/1/11

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**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS GRANT**

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

<p style="text-align: center;"><b>GRANTEE CITY OF ENGLEWOOD</b></p> <p>By: <u>James K. Woodward</u> Printed Name of Authorized Individual</p> <p>Title: <u>Mayor</u> Official Title of Authorized Individual</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO John W. Hickenlooper, GOVERNOR DEPARTMENT OF LOCAL AFFAIRS</b></p> <p>By: _____ Reeves Brown, Executive Director</p> <p>Date: _____</p> <hr/> <p style="text-align: center;"><b>PRE-APPROVED FORM CONTRACT REVIEWER</b></p> <p>By: _____ William F. Archambault, Jr., Finance and Administration Chief</p> <p>Date: _____</p>
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**ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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

<p><b>STATE CONTROLLER</b> David J. McDermott, CPA</p> <p>By: _____ Barbara M. Casey, Controller Delegate</p> <p>Date: _____</p>
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## EXHIBIT A – APPLICABLE LAWS

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

1. Age Discrimination Act of 1975, 42 U.S.C. Sections 6101, et seq.
2. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634
3. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq.
4. Equal Pay Act of 1963, 29 U.S.C. 206(d)
5. Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b
6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794
7. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d
8. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e
9. Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, et seq.
10. Section 24-34-301, et seq., Colorado Revised Statutes 1997, as amended
11. The applicable of the following:
  - 11.1. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
  - 11.2. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
  - 11.3. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122), and
  - 11.4. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133); and/or the Colorado Local Government Audit Law, 29-1-601, et seq., C.R.S., and State implementing rules and regulations.
  - 11.5. Immigration Status -Cooperation with Federal Officials, CRS 29-29-101, et seq.
  - 11.6. Davis-Bacon Act, 40 U.S.C. SS 276a to 276a-7.
  - 11.7. Copeland Act, 40 U.S.C. S 276c and 18 U.S.C. SS 874.
  - 11.8. Contract Work Hours and Safety Standards Act, 40 U.S.C. SS 327-333, regarding labor standards for federally assisted construction sub-awards.
  - 11.9. Wild and Scenic Rivers Act of 1968, 16 U.S.C. SS 1271 et. seq., related to protecting components or potential components of the national wild and scenic rivers system.
  - 11.10. National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, Executive Order No. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469a-1 et. seq.
  - 11.11. Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5121 et seq., as amended.
  - 11.12. National Flood Insurance Act of 1968, 42 U.S.C. 4001 et. seq.
  - 11.13. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 104.
  - 11.14. Department of Defense Authorization Act of 1986, Title 14, Part B, Section 1412, Public Law 99-145, 50 U.S.C. 1521.
  - 11.15. USA PATRIOT Act of 2001, (Pub. L. 107-56).
  - 11.16. Digital Television Transition and Public Safety Act of 2005, (Pub L. 109-171)
12. Federal Emergency Management Agency, Department of Homeland Security Regulations: All Applicable Portions of 44 CFR Chapter 1, with the following Parts specially noted and applicable to all grants of FEMA/DHS funds:
  - 12.1. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 44 C.F.R. 13.
  - 12.2. Governmentwide Debarment and Suspension (Nonprocurement) and Requirements for Drug-Free Workplace, 44 C.F.R. 17.
  - 12.3. New Restrictions on Lobbying, 44 C.F.R. 18.
13. Privacy Act of 1974, 5 U.S.C. S 5529 and Regulations adopted thereunder (44 C.F.R. 6).
14. Prohibition against use of Federal Funds for Lobbying, 31 U.S.C. 1352
15. None of the funds made available through this agreement shall be used in contravention of the Federal buildings performance and reporting requirements of Executive Order No. 13123, part 3 of title V of the National Energy Conservation Policy Act, 42 U.S.C. 8251 et. Seq., or subtitle A of title I of the Energy Policy Act of 2005 (including the amendments made thereby).
16. None of the funds made available shall be used in contravention of section 303 of the Energy Policy Act of 1992, 42 U.S.C. 13212.
17. Buy American Act, 41 U.S.C. 10a et seq.
18. 2011 EMPG Grant Guidance

## EXHIBIT B – STATEMENT OF PROJECT (SOP)

## 1. GENERAL DESCRIPTION OF THE PROJECT(S).

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

1.2. **Project expenses.** Project expenses include the costs for salaries and benefits for Grantee's emergency manager and emergency management staff, travel, emergency management office operational costs, and the costs associated with, emergency management exercises, training and planning. No more than 5% of this Grant may be used for Management and Administration (M&A) costs. It should be noted that salaries of local emergency managers are not typically categorized as M&A, unless the local Emergency Management Agency (EMA) chooses to assign personnel to specific M&A activities. Additional specific eligible and ineligible cost information is listed in the 2011 EMPG program guidance at <http://www.fema.gov/government/grant/empg/index.shtm>.

## 2. DELIVERABLES:

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

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

## 3. PERSONNEL.

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

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

3.3. **Other Key Personnel.** None.

## 4. FUNDING.

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

## 4.1. Matching Funds.

4.1.1. **Requirement.** The following checked option shall apply

4.1.1.1.  Matching Funds are not required under this Grant.

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

4.1.1.2.1.  include in-kind match;

4.1.1.2.2.  not include in-kind match; or

4.1.1.2.3.  include no more than \_\_\_\_\_% in-kind match.

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

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

4.2. **Project Budget**

Category	Requested Total Project
Personnel	\$94,912
Travel	8,500
Office Support/Other	12,400
Total Estimated Budget (Total Rounded to Nearest \$100)	\$115,800
Total Requested Federal Share - 50% of Total Budget	\$57,900

<b>Actual 2011 Award Amount</b>	
<b>2011 Federal Share (up to 50% of Total Estimated Budget)</b>	<b>\$34,900</b>
<b>Required Non-Federal Match (at least 50% of Total Estimated Budget)</b>	<b>\$34,900</b>
<b>Total Project</b>	<b>\$69,800</b>

Remaining 2010 Award Funds*	
2010 Federal Share Remaining Available for Reimbursement During the FFY 11 Grant Period - as of expenses reported through October 1, 2010. *	\$ 0
Total Federal Funds Available During FFY 2011 Grant Period	\$34,900

\*For information purposes only. Not part of this 2011 award. Any remaining balance is from the 2010 award and remains part of that grant and is reimbursable during the 2011 award period because of the overlapping performance terms. If all four quarters' reimbursements for the 2010 award have been submitted and paid, the 2010 Federal Share Remaining shown above is available for reimbursement during the first three quarters of the 2011 Federal Fiscal Year (FFY). Remaining 2010 funds will be, or already have been, paid for the 2011 first, second and third quarter reimbursement requests as necessary to utilize the full 2010 award. Payments from remaining prior year funds are identified as fifth, sixth and seventh quarter 2010 payments as appropriate on the reimbursements, and the required 50% non-federal match will be counted toward the 2010 grant to properly match the reimbursed amounts. If any 2010 first-fourth quarter reimbursements have not yet been submitted or paid, the 2010 amount remaining available will be reduced by any payments made when submitted and approved. If the 2010 Federal Share Remaining Available amount shown is \$0, the full 2010 award amount has been reimbursed, and has no effect on the funds available during FFY 2011.

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

4.3.1.  not adjust individual budget line amounts without approval of the State. Such approval shall be in the form of:

4.3.1.1. a notice issued by the State in accordance with §16 of the Grant; or

4.3.1.2. an amendment in accordance with the **Modification** subsection of the **General Provisions** of the Grant.

4.3.2.  adjust individual budget line amounts without the State's approval if:

4.3.2.1. there are no transfers to or between administration budget lines; and

4.3.2.2. cumulative budgetary line item changes do not exceed the lesser of ten percent of the total budgeted amount or \$20,000.

**4.4. Non-Supplanting of Grantee Funds.**

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

**5. PAYMENT:**

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

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

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

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

City of Englewood 3615 S. Elati Englewood, CO 80110
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**6. ADMINISTRATIVE REQUIREMENTS:**

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

**6.2. Audit Report.** If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA, Grantee shall submit an electronic

copy of the final audit report, including a report in accordance with the Single Audit Act, to [dola.audit@state.co.us](mailto:dola.audit@state.co.us), or send the report to:

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

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

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

**6.5. Reporting.**

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

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

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

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

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

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

- 6.7. Procurement.** Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantee should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:
- 6.7.1. Sole Source.** Any sole source transaction in excess of \$100,000 must be approved in advance by the Department.
  - 6.7.2. Conduct.** Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee must be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement must be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection must be submitted in writing to, and be approved by the authorized Grantee official.
  - 6.7.3. Debarment.** Grantee shall verify that the Contractor is not debarred from participation in state and federal programs. Sub-grantees should review contractor debarment information on <http://www.epls.gov>.
  - 6.7.4. Funding Disclosure.** When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subgrantees shall: (a) state the percentage of the total cost of the program or project which will be financed with grant money; (b) state the grant program name and dollar amount of state or federal funds for the project or program; and (c) use the phrase "*This project was supported by the Colorado Department of Local Affairs, Division of Emergency Management.*"
  - 6.7.5. Approved Purchases.** Grantee shall verify that all purchases are listed in §1.1 above. Equipment purchases, if any, shall be for items listed in the Approved Equipment List (A.E.L) for the grant period on the Responder Knowledge Base (RKB), at <https://www.rkb.us>
  - 6.7.6. Assignment of Rights/Duties/Equipment.** Grantee shall ensure that no rights or duties exercised under this Grant, or equipment purchased with Grant Funds having a purchase value of \$5,000 or more are assigned without the prior written consent of the Department.

**EXHIBIT C – GRANT APPLICATION PACKAGE**

Insert Approved Grant Application behind this page and in front of any Form attachments.

RESOLUTION NO. 90  
SERIES OF 2010

A RESOLUTION AUTHORIZING AN APPLICATION FOR A 2011 EMERGENCY  
MANAGEMENT PERFORMANCE GRANT.

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

WHEREAS, the City of Englewood has received grants starting with the FY2007- Supplemental Grant and continuing through the FY-2010 cycle, to assist in the development of the emergency management program for the City of Englewood, Colorado; and

WHEREAS, the Colorado Division of Emergency Management has stated that the EMPG program is expected to continue for the foreseeable future and have encouraged the City of Englewood's participation; and

WHEREAS, with the passage of this Resolution the City of Englewood will approve an application for the 2011 Emergency Management Performance Grant (EMPG) program for funds of up to \$57,906.15.

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

Section 1. City Council of the City of Englewood, Colorado hereby authorizes application for a 2011 Emergency Management Performance Grant, attached hereto as Exhibit A.

Section 2. The City Manager is hereby authorized to sign the 2011 Emergency Management Performance Grant Application for and on behalf of the City of Englewood.

ADOPTED AND APPROVED this 20<sup>th</sup> day of December, 2010.

ATTEST: 

  
James K. Woodward, Mayor

  
Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. 90, Series of 2010.

  
Loucrishia A. Ellis, City Clerk

## BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
 SERIES OF 2011

COUNCIL BILL NO. 35  
 INTRODUCED BY COUNCIL  
 MEMBER GILLIT

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT REGARDING THE APPLICATION FOR AND ACCEPTANCE OF AN EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM: LOCAL SOLICITATION CFDA #16.738.

WHEREAS, the Englewood City Council previously authorized the application for and acceptance of Justice Assistance Grants (JAG) with the passage of Ordinance #49, Series of 2008; Ordinance #12, Series 2009; and Ordinance #27, Series of 2009; and Ordinance #16, Series of 2010; and

WHEREAS, the Justice Assistance Grant is a non-matching grant for 2011, awarding the City of Englewood Twenty Thousand Nine Hundred and Three dollars, (\$20,903.00);

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 City to apply for and accept the Justice Assistance Grant from Edward Byrne Justice Assistance Grant Program, attached hereto as Exhibit A.

Section 2. The City Manager is authorized to execute said intergovernmental agreement regarding the grant for and on behalf of the City of Englewood.

Introduced, read in full, and passed on first reading on the 5th day of July, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 8th day of July, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 6th day of July, 2011 for thirty (30) days.

Read by title and passed on final reading on the 18th day of July, 2011.

Published by title in the City's official newspaper as Ordinance No. \_\_\_\_, Series of 2011, on the 22nd day of July, 2011.

Published by title on the City's official website beginning on the 20th day of July, 2011 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. \_\_\_\_, Series of 2011.

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Loucrishia A. Ellis

U.S. Department of Justice  
Office of Justice Programs  
Bureau of Justice Assistance



The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA) is pleased to announce that it is seeking applications for funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. This program furthers the Department's mission by assisting state, local, and tribal efforts to prevent or reduce crime and violence.

## Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2011 Local Solicitation

### Eligibility

Applicants are limited to units of local government appearing on the FY 2011 JAG Allocations List. To view this list, go to [www.ojp.usdoj.gov/BJA/grant/11jagallocations.html](http://www.ojp.usdoj.gov/BJA/grant/11jagallocations.html). For JAG program purposes, a unit of local government is: a town, township, village, parish, city, county, borough, or other general purpose political subdivision of a state; or, it may also be a federally recognized Indian tribe that performs law enforcement functions (as determined by the Secretary of the Interior). Otherwise a unit of local government may be any law enforcement district or judicial enforcement district established under applicable state law with authority to independently establish a budget and impose taxes. In Louisiana, a unit of local government means a district attorney or parish sheriff. In the District of Columbia or any United States Trust Territory, a unit of local government is any agency of the District of Columbia or federal government performing law enforcement functions for the District of Columbia or Trust Territories of the United States.

### Deadline

Registration for this funding opportunity is required prior to application submission, by selecting the "Apply Online" button associated with the solicitation title in OJP's Grants Management System (GMS). (See "How to Apply," page 11.) All registrations and applications are due by 8:00 p.m. eastern time on July 21, 2011. (See "Deadlines: Registration and Application," page 4.)

### Contact Information

For technical assistance with submitting the application, contact the Grants Management System Support Hotline at 1-888-549-9901, option 3, or via e-mail to

**Note:** The GMS Support Hotline hours of operation are Monday–Friday from 6:00 a.m. to 12 midnight eastern time, except federal holidays.

For assistance with any other requirement of this solicitation, contact the BJA Justice Information Center at 1–877–927–5657, via e-mail to [bjajic@oig.dhs.gov](mailto:bjajic@oig.dhs.gov), or by live web chat. The BJA Justice Information Center hours of operation are 8:30 a.m. to 5:00 p.m. eastern time, and 8:30 a.m. to 8:00 p.m. eastern time, Monday through Friday, on the solicitation close date. You may also contact your State Policy Advisor: [www.ojp.gov/BJA/resource/ProgramsOffice.html](http://www.ojp.gov/BJA/resource/ProgramsOffice.html).

**Release date: June 6, 2011**

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# **Edward Byrne Memorial Justice Assistance Grant (JAG) Program: Local Solicitation CFDA #16.738**

## **Overview**

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program (42 U.S.C. 3751(a)) is the primary provider of federal criminal justice funding to state and local jurisdictions. JAG funds support all components of the criminal justice system, from multijurisdictional drug and gang task forces to crime prevention and domestic violence programs, courts, corrections, treatment, and justice information sharing initiatives. JAG-funded projects may address crime through the provision of services directly to individuals and/or communities and by improving the effectiveness and efficiency of criminal justice systems, processes, and procedures.

## **Deadlines: Registration and Application**

Registration is required prior to submission. The deadline to register in GMS is 8:00 p.m. eastern time on July 21, 2011 and the deadline for applying for funding under this announcement is 8:00 p.m. eastern time on July 14, 2011. Please see the "How to Apply" section, page 6, for more details.

## **Eligibility**

Please refer to the cover page of this solicitation for eligibility under this program.

## **JAG Program—Specific Information**

### **Formula**

Once each fiscal year's overall JAG Program funding level is determined, BJA partners with the Bureau of Justice Statistics (BJS) to begin a four step grant award calculation process which consists of:

1. Computing an initial JAG allocation for each state and territory, based on their share of violent crime and population (weighted equally).
2. Reviewing the initial JAG allocation amount to determine if the state or territory allocation is less than the minimum ("de minimus") award amount defined in the JAG legislation (0.25 percent of the total). If this is the case, the state or territory is funded at the minimum level, and the funds required for this are deducted from the overall pool of JAG funds. Each of the remaining states receives the minimum award plus an additional amount based on their share of violent crime and population.
3. Dividing each state's final award amount (except for the territories and District of Columbia) between state and local governments at a rate of 60 and 40 percent, respectively.
4. Determining local unit of government award allocations, which are based on their proportion of the state's three-year violent crime average. If a local eligible award amount is less than \$10,000, the funds are returned to the state to be awarded to these

local units of government through the state agency. If the eligible award amount is \$10,000 or more, then the local government is eligible to apply for a JAG award directly from BJA.

## **Award Amount**

Eligible award amounts under JAG are posted annually to BJA's JAG web page: [www.ojp.usdoj.gov/BJA/grant/jag.html](http://www.ojp.usdoj.gov/BJA/grant/jag.html).

All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

## **Purpose Areas**

JAG funds may be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and criminal justice information systems for criminal justice that will improve or enhance such areas as:

- Law enforcement programs.
- Prosecution and court programs.
- Prevention and education programs.
- Corrections and community corrections programs.
- Drug treatment and enforcement programs.
- Planning, evaluation, and technology improvement programs.
- Crime victim and witness programs (other than compensation).

Note: The authorizing statute for the JAG Program provides that funds are to be used for the purposes above and notes that these purposes include all of the purposes previously authorized under the Edward Byrne Memorial State and Local Assistance Program (Byrne Formula) and the Local Law Enforcement Block Grant Program (LLEBG). This provision may be useful to applicants in understanding all of the allowable uses under the above purpose areas. For example, relying on this provision, it can be understood that the JAG Purpose Area "Prosecution and court programs" listed above, provides the states and local units of government with the authority to fund defender, judicial, pretrial, and court administration efforts as well as prosecution programs. For a listing of prior Byrne Formula and LLEBG purpose areas, see [www.ojp.usdoj.gov/BJA/grant/byrnepurpose.html](http://www.ojp.usdoj.gov/BJA/grant/byrnepurpose.html). Although these two programs have been eliminated, their prior purpose areas may be useful in appreciating the scope of the JAG purpose areas.

JAG funds may also be used to address key statutory requirements that may not be otherwise funded, including requirements from the state and federal level, such as addressing limited English proficiency requirements and other similar mandates.

## **Priorities**

BJA recognizes that the downturn in the economy has resulted in significant pressures on state and local criminal justice systems. In these challenging times, shared priorities and leveraged resources can make a significant impact. In light of this, it is important to make SAAs and local JAG recipients aware of several areas of priority that may be of help in maximizing the effectiveness of the Byrne JAG funding at the state and local level.

As an overall framework for success, we encourage both state and local comprehensive justice planning, bringing all of the system stakeholders together, including law enforcement, courts, prosecutors, defenders, corrections officials, and other stakeholders to create a comprehensive and strategic justice plan to ensure coordination and a more effective justice system.

As a part of this strategic planning process, we strongly encourage state and local planners to consider programs that are evidence-based and have been proven effective; in a difficult budgetary climate, it is critical that dollars are spent on programs whose effectiveness is proven. However, we recognize that state and local programs can also be excellent laboratories for innovative programs that can be models for other states and localities addressing difficult problems. BJA has made resources available to SAAs and others to provide training and technical assistance in identifying and using evidence-based practices as the outcome of a comprehensive and strategic justice plan in the state or local community. We also strongly encourage SAAs and local recipients to use JAG funding to support, replicate and expand strategic efforts to assess system cost drivers and to make appropriate policy changes that can reduce system costs while not jeopardizing public safety. These efforts include justice reinvestment and court reengineering as well as others.

In addition to these overarching considerations and in addition to our longstanding and unwavering commitment to keeping violent crime at its lowest level in decades, the following priorities represent key areas where we will be focusing nationally and invite each state to join us in addressing these challenges as a part of our JAG partnership.

#### Counterterrorism and Information Sharing/Fusion Centers

A key priority for DOJ and, indeed, the entire Administration, is effective counterterrorism and terrorism prevention programs. We recognize that state and local law enforcement are critical partners in detecting, identifying, preventing, and disrupting acts of violence against the United States by both domestic and international extremist organizations. Preventing terrorism remains the first goal of DOJ's strategic plan and remains a priority for BJA. A key priority of the National Strategy on Information Sharing for preventing terrorism includes support for State and Major Urban Area fusion centers (fusion centers) to address gaps in achieving full implementation of Global's Baseline Capabilities for fusion centers. Through the partnership of the U.S. Department of Homeland Security and DOJ the support for these fusion centers also enhances a state's response to "all crimes" by improving information sharing and coordination with local law enforcement agencies.

#### Evidence-Based Programs or Practices

OJP considers programs and practices to be evidence-based when their effectiveness has been demonstrated by causal evidence (generally obtained through one or more outcome evaluations). Causal evidence documents a relationship between an activity or intervention (including technology) and its intended outcome, including measuring the direction and size of a change, and the extent to which a change may be attributed to the activity or intervention. Causal evidence depends on the use of scientific methods to rule out, to the extent possible, alternative explanations for the documented change. The strength of causal evidence, based on the factors described above, will influence the degree to which OJP considers a program or practice to be evidence-based.

### Economic Crime

As our economy shows signs of recovery, it is essential that we not allow this progress to be thwarted by economic crime, including mortgage fraud, financial crimes, fraud, and intellectual property crimes that threaten our economic growth and stability.

### Reentry and Smart Probation

In order to lessen the burden on what has been described as an overreliance on incarceration, it is essential that those who have served time can transition back into the community and into crime-free pro-social lives. To do this, we will emphasize smart and effective approaches to offender reentry and will support statewide and local efforts in justice reinvestment, which reduces costly spending on incarceration and reinvests a portion of the savings into other areas of the justice system without sacrificing accountability.

### Indigent Defense

Another key priority area is ensuring that justice is truly done in the criminal justice system—the Attorney General has consistently stressed that the crisis in indigent defense reform is a serious concern of his, a concern which is shared by OJP and BJA. As a former prosecutor and judge, however, the Attorney General is also acutely aware that without adequate funding for the courts, prosecution, problem-solving courts, and other innovative, cost-saving alternatives to incarceration, true justice cannot be achieved.

### Children Exposed To Violence

Last, but certainly not least, we must ensure that, in the context of our continued focus on addressing violent crime, children who are exposed to violence are responded to effectively so that these experiences do not risk the futures of these children and do not fuel the cycle of violence.

These priorities and others will be the focus of our efforts during FY 2011, and we invite you as a partner and grantee to join us in our efforts to address these critical issues.

### Interoperable Communications

Grantees (including sub-grantees) that are using FY 2011 JAG Program funds to support emergency communications activities should comply with the *FY 2011 SAFECOM Guidance for Emergency Communication Grants*, including provisions on technical standards that ensure and enhance interoperable communications. Emergency communications activities include the purchase of Interoperable Communications Equipment and technologies such as voice-over-internet protocol bridging or gateway devices, or equipment to support the build out of wireless broadband networks in the 700 MHz public safety band under the Federal Communications Commission (FCC) Waiver Order. SAFECOM guidance can be found at [www.safecomprogram.gov](http://www.safecomprogram.gov).

Grantees interested in developing a public safety broadband network in the 700 MHz band in their jurisdictions must adhere to the technical standards set forth in the FCC Waiver Order, or any succeeding FCC orders, rules, or regulations pertaining to broadband operations in the 700 MHz public safety band. The recipient shall also ensure projects support the Statewide Communication Interoperability Plan (SCIP) and are fully coordinated with the full-time Statewide Interoperability Coordinator (SWIC) in the state of the project. As the central coordination point for their state's interoperability effort, the SWIC plays a critical role, and can serve as a valuable resource. SWICs are responsible for the implementation of the SCIP through coordination and collaboration with the emergency response community. The U.S. Department of Homeland Security Office of Emergency Communications maintains a list of

BJA-2011-3031

SWICs for each of the 56 states and territories. Please contact [OEC@hg.dhs.gov](mailto:OEC@hg.dhs.gov) if you are not familiar with your state or territory's SWIC. If any future regulatory requirement (from the FCC or other governmental entity) results in a material technical or financial change in the project, the recipient should submit associated documentation, and other material, as applicable, for review by the SWIC to ensure coordination. Please note that for future year solicitations (FY 2012), BJA will require that the SWIC provide approval for changes in interoperable communication projects. Grantees should establish communications with the SWIC in their state or territory in the near future in order to ensure seamless coordination on all projects going forward.

Grantees (and sub-grantees) should provide a listing of all communications equipment purchased with grant award funding (plus the quantity purchased of each item) to their assigned BJA State Policy Advisor once items are procured during any periodic programmatic progress reports.

### **Responsibilities**

The Chief Executive Officer (CEO) of an eligible unit of local government or other officer designated by the CEO must submit the application for JAG funds. A unit of local government receiving a JAG award will be responsible for the administration of the funds including: distributing the funds; monitoring the award; submitting quarterly financial status (SF-425) and performance metrics reports and annual programmatic reports; and providing ongoing oversight and assistance to any subrecipients of the funds.

### **Length of Awards**

Awards are made in the first fiscal year of the appropriation and may be expended during the following 3 years, for a total grant period of 4 years. Extensions beyond this period may be made on a case-by-case basis at the discretion of the Director of BJA and must be requested via the Grants Management System (GMS) **no less than 30 days prior to the grant end date.**

### **Administrative Funds**

A unit of local government may use up to 10 percent of the award, plus any interest accrued, for costs associated with administering JAG funds.

### **Disparate Certification**

A disparate allocation occurs when a city or municipality is allocated one-and-one-half times (150 percent) more than the county, while the county bears more than 50 percent of the costs associated with prosecution or incarceration of the municipality's Part 1 violent crimes. A disparate allocation also occurs when multiple cities or municipalities are collectively allocated four times (400 percent) more than the county, and the county bears more than 50 percent of the collective costs associated with prosecution or incarceration of each municipality's Part 1 violent crimes.

- ★ Jurisdictions certified as disparate must identify a fiscal agent that will submit a **joint application** for the aggregate eligible allocation to all disparate municipalities. The joint application must determine and specify the award distribution to each unit of local government and the purposes for which the funds will be used. When beginning the JAG application process, a Memorandum of Understanding (MOU) that identifies which

jurisdiction will serve as the applicant/fiscal agent for joint funds, must be completed, and signed by the Authorized Representative for each participating jurisdiction. The signed MOU should be attached to the application. For a sample MOU, go to [www.ojp.usdoj.gov/BJA/grant/jag11/11JAGMOU.pdf](http://www.ojp.usdoj.gov/BJA/grant/jag11/11JAGMOU.pdf).

## **Governing Body Review**

The applicant agency (fiscal agent in disparate situations) must make the grant application available for review by the governing body (or to the organization designated by the governing body) not fewer than 30 days before the application is submitted to BJA.

## **Public Comment**

The applicant agency (the fiscal agent in disparate situations) must include a statement that the application was made public and that, to the extent of applicable law or established procedure, an opportunity to comment was provided to citizens and to neighborhood or community-based organizations.

## **Budget Information**

### **Match Requirement**

While match is not required with the JAG Program, match can be used as an effective strategy for states and units of local government to expand justice funds and build buy-in for local criminal justice initiatives.

### **Supplanting**

Federal funds must be used to supplement existing funds for program activities and cannot replace or supplant nonfederal funds that have been appropriated for the same purpose. Supplanting is prohibited under JAG. Please see BJA's [JAG web page](#) and the updated JAG FAQs for examples of supplanting.

### **Trust Fund**

Award recipients may drawdown JAG funds in advance. To do so, a trust fund must be established in which to deposit the funds. The trust fund may or may not be an interest-bearing account. If subrecipients draw down JAG funds in advance, they also must establish a trust fund in which to deposit funds. This trust fund requirement only applies to direct JAG award recipients as well as subrecipients that are not on a reimbursement basis.

### **Prohibited Uses**

No JAG funds may be expended outside of JAG purpose areas. Even within these purpose areas, however, JAG funds cannot be used directly or indirectly for security enhancements or equipment for nongovernmental entities not engaged in criminal justice or public safety. Nor may JAG funds be used directly or indirectly to provide for any of the following matters unless BJA certifies that extraordinary and exigent circumstances exist, making them essential to the maintenance of public safety and good order:

- Vehicles (excluding police cruisers), vessels (excluding police boats), or aircraft (excluding police helicopters).
- Luxury items.
- Real estate.
- Construction projects (other than penal or correctional institutions).
- Any similar matters.

\*For information related to requesting a waiver to use funds for any prohibited item, please refer to the updated JAG FAQs on BJA's [JAG web page](#).

## Reporting Requirements

Once an award is accepted, award recipients must submit quarterly financial status (SF-425) and annual performance reports through [GMS](#).

In addition, applicants who receive funding under this solicitation must provide data that measures the results of their work. Please refer to "Performance Measures" below for further information.

## Performance Measures

To assist in fulfilling the Department's responsibilities under the Government Performance and Results Act of 1993 (GPRA), P.L. 103-62, applicants who receive funding under this solicitation must provide data that measures the results of their work. **Quarterly performance metrics reports must be submitted through BJA's Performance Measurement Tool (PMT) web site: [www.bjaperformancetools.org](http://www.bjaperformancetools.org).** The performance measure can be found at: [www.bjaperformancetools.org/help/ARRAJAGandJAGCombinedIndicatorGrid.pdf](http://www.bjaperformancetools.org/help/ARRAJAGandJAGCombinedIndicatorGrid.pdf).

**All JAG recipients should be aware that BJA is currently considering changes to the JAG performance reporting processes, including measures. While state administering agencies will play a role in the process, recipients are advised that the reporting requirements noted above may be subject to modification through this process.**

Submission of performance measures data is not required for the application. Instead, applicants should discuss in their application their proposed methods for collecting data for performance measures. Please refer to the section "What an Application Must Include" (below) for additional information.

**Note on project evaluations:** Applicants that propose to use funds awarded through this solicitation to conduct project evaluations should be aware that certain project evaluations (such as systematic investigations designed to develop or contribute to generalizable knowledge) may constitute "research" for purposes of applicable DOJ human subjects protections. However, project evaluations that are intended only to generate internal improvements to a program or service, or are conducted only to meet OJP's performance measure data reporting requirements likely do not constitute "research." Applicants should provide sufficient information for OJP to determine whether the particular project they propose would either intentionally or unintentionally collect and/or use information in such a way that it meets the DOJ regulatory definition of research.

Research, for the purposes of human subjects protections for OJP-funded programs, is defined as, “a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge” (28 C.F.R. § 46.102(d)). For additional information on determining whether a proposed activity would constitute research, see the decision tree to assist applicants on the “Research and the Protection of Human Subjects” section of the OJP Other Requirements for OJP Applications” web page ([www.ojp.usdoj.gov/funding/other\\_requirements.htm](http://www.ojp.usdoj.gov/funding/other_requirements.htm)). Applicants whose proposals may involve a research or statistical component also should review the “Confidentiality” section on that web page.

## Notice of New Post-Award Reporting Requirements

Applicants should anticipate that all recipients (other than individuals) of awards of \$25,000 or more under this solicitation, consistent with the Federal Funding Accountability and Transparency Act of 2006 (FFATA), will be required to report award information on any first-tier subawards totaling \$25,000 or more, and, in certain cases, to report information on the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients. Each applicant entity must ensure that it has the necessary processes and systems in place to comply with the reporting requirements should it receive funding. Reports regarding subawards will be made through the FFATA Subaward Reporting System (FSRS), found at [www.fsr.gov/](http://www.fsr.gov/).

Please note also that applicants should anticipate that no subaward of an award made under this solicitation may be made to a subrecipient (other than an individual) unless the potential subrecipient acquires and provides a Data Universal Numbering System (DUNS) number.

## How to Apply

Applications are submitted through OJP’s Grants Management System (GMS). GMS is a web-based, data-driven computer application that provides cradle to grave support for the application, award, and management of awards at OJP. Applicants must register in GMS for each specific funding opportunity and should begin the process immediately to meet the GMS registration deadline, especially if this is the first time using the system. Complete instructions on how to register and submit an application in GMS can be found at [www.ojp.usdoj.gov/gmscbt/](http://www.ojp.usdoj.gov/gmscbt/). If the applicant experiences technical difficulties at any point during this process, please e-mail [GMS.HelpDesk@usdoj.gov](mailto:GMS.HelpDesk@usdoj.gov) or call 888-549-9901 (option 3), Monday–Friday from 6:00 a.m. to midnight eastern time, except federal holidays. OJP highly recommends that applicants start the registration process as early as possible to prevent delays in submitting an application package by the specified application deadline.

All applicants should complete the following steps:

1. **Acquire a DUNS number.** A DUNS number is required to submit an application in GMS. In general, the Office of Management and Budget requires that all applicants (other than individuals) for federal funds include a DUNS (Data Universal Numbering System) number in their application for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for federal assistance applicants, recipients, and subrecipients. The DUNS number will be used throughout the grant life

cycle. Obtaining a DUNS number is a free, one-time activity. Obtain a DUNS number by calling Dun and Bradstreet at 866-705-5711 or by applying online at [www.dnb.com](http://www.dnb.com). A DUNS number is usually received within 1-2 business days.

2. **Acquire or renew registration with the Central Contractor Registration (CCR) database.** OJP requires that all applicants (other than individuals) for federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. The CCR database is the repository for standard information about federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must **update or renew their CCR registration annually** to maintain an active status. Information about CCR registration procedures can be accessed at [www.ccr.gov](http://www.ccr.gov).
3. **Acquire a GMS username and password.** A new user must create a GMS profile by selecting the “First Time User” link under the sign-in box of the [GMS](#) home page. For more information on how to register in GMS, go to [www.ojp.usdoj.gov/gmscbt/](http://www.ojp.usdoj.gov/gmscbt/).
4. **Verify the CCR registration in GMS.** OJP requests that all applicants verify their CCR registration in GMS. Once logged into GMS, please click the “CCR Claim” link on the left side of the default screen. Click the submit button to verify the CCR registration.
5. **Search for the funding opportunity on GMS.** After logging into GMS or completing the GMS profile for username and password, go to the “Funding Opportunities” link on the left side of the page. Please select the Bureau of Justice Assistance and the Edward Byrne Memorial Justice Assistance Grant (JAG) Program—Local Solicitation.
6. **Register by selecting the “Apply Online” button associated with the solicitation title.** The search results from step 5 will display the solicitation title along with the registration and application deadlines for this funding opportunity. Please select the “Apply Online” button in the “Action” column to register for this solicitation and create an application in the system.
7. **Submit an application consistent with this solicitation by following the directions in GMS.** Once submitted, GMS will display a confirmation screen stating the submission was successful. **Important:** In some instances, an applicant must wait for GMS approval before submitting an application. Applicants are urged to submit the application **at least 72 hours prior** to the due date of the application.

**Note: OJP’s Grants Management System (GMS) does not accept executable file types as application attachments.** The disallowed file types include, but are not limited to, the following extensions: “.com,” “.bat,” “.exe,” “.vbs,” “.cfg,” “.dat,” “.db,” “.dbf,” “.dll,” “.ini,” “.log,” “.ora,” “.sys,” and “.zip.”

## Experiencing Unforeseen GMS Technical Issues

If an applicant experiences unforeseen GMS technical issues beyond the applicant’s control that prevent submission of its application by the deadline, the applicant must contact the Bureau of Justice Assistance Programs Office staff **within 24 hours after the deadline** and request approval to submit the application. At that time, BJA Programs Office staff will instruct the applicant to submit specific information detailing the technical difficulties. The applicant must e-

mail: a description of the technical difficulties, a timeline of submission efforts, the complete grant application, the applicant DUNS number, and GMS Help Desk tracking number(s) received. After the program office reviews all of the information submitted, and contacts the GMS Help Desk to validate the technical issues reported, OJP will contact the applicant to either approve or deny the request to submit a late application. If the technical issues reported cannot be validated, the application will be rejected as untimely.

The following conditions are not valid reasons to permit late submissions: (1) failure to begin the registration process in sufficient time, (2) failure to follow GMS instructions on how to register and apply as posted on its Web site, (3) failure to follow all of the instructions in the OJP solicitation, and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

Notifications regarding known technical problems with GMS, if any, are posted at the top of the OJP funding web page, [www.ojp.usdoj.gov/funding/solicitations.htm](http://www.ojp.usdoj.gov/funding/solicitations.htm).

## What an Application Must Include

This section describes what an application is expected to include and sets out a number of elements. Applicants should anticipate that failure to submit an application that contains all of the specified elements may negatively affect the review of the application and, should a decision nevertheless be made to make an award, will result in the inclusion of special conditions that preclude access to or use of award funds pending satisfaction of the conditions.

OJP strongly recommends use of appropriately descriptive file names (e.g., "Program Narrative," "Budget and Budget Narrative," "Memoranda of Understanding," etc.) for all required attachments.

### 1. Application for Federal Assistance (SF-424)

The SF-424 is a standard form required for use as a cover sheet for submission of pre-applications, applications, and related information. Grants.gov and GMS take information from the applicant's profile to populate the fields on this form.

### 2. Program Narrative

Applicants **must** submit a program narrative that generally describes the proposed program activities for the four year grant period. The narrative must outline the type of programs to be funded by the JAG award and provide a brief analysis of the need for the programs. Narratives must also identify anticipated coordination efforts involving JAG and related justice funds. Certified disparate jurisdictions submitting a **joint application** must specify the funding distribution to each disparate unit of local government and the purposes for which the funds will be used.

**Failure to submit this required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.**

### 3. Budget and Budget Narrative

Applicants **must** submit a budget and budget narrative outlining how JAG funds, including administrative funds if applicable, will be used to support and implement the program. This narrative should include a full breakdown of administrative costs, as well as an overview of

how funds will be allocated across approved JAG purpose areas. Applicants should utilize the following approved budget categories to label the requested expenditures: Personnel, Fringe Benefits, Travel, Equipment, Supplies, Consultants/Contracts, and an Other category. For informational purposes only, a sample budget form may be found at [www.ojp.usdoj.gov/funding/forms/budget\\_detail.pdf](http://www.ojp.usdoj.gov/funding/forms/budget_detail.pdf). Failure to submit this required information will result in an application being change requested in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding special condition at the time of award if time does not permit for a change request process.

**Failure to submit this required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.**

#### **4. Review Narrative**

Applicants **must** submit information documenting that the date the JAG application was made available for review to the governing body, or to an organization designated by that governing body, on a date not less than 30 days before the application was submitted to BJA. The attachment must also specify that an opportunity to comment was provided to citizens to the extent applicable law or established procedures make such opportunity available. Failure to submit this required information will result in an application being change requested in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding special condition at the time of award if time does not permit for a change request process.

**Failure to submit this required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.**

#### **5. Abstract**

Applicants **must** provide an abstract that includes the applicant's name, title of the project, goals of the project, and a description of the strategies to be used. In addition, above or below the abstract narrative, applicants **must identify up to five project identifiers** that would be associated with proposed project activities. The list of all identifiers can be found at [www.ojp.usdoj.gov/BJA/grant/jag11/JAGIdentifiers.pdf](http://www.ojp.usdoj.gov/BJA/grant/jag11/JAGIdentifiers.pdf). The abstract **must not** exceed a half-page, or 400-500 words.

**Failure to submit this required information will result in an application being returned in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding of funds special condition at the time of award.**

#### **6. Tribal Authorizing Resolution (if applicable)**

If an application is being submitted by either (1) a tribe or tribal organization or (2) a third party proposing to provide direct services or assistance to residents on tribal lands, then a current authorizing resolution of the governing body of the tribal entity or other enactment of the tribal council or comparable governing body authorizing the inclusion of the tribe or tribal organization and its membership should be included with the application. In those instances when an organization or consortium of tribes proposes to apply for a grant on behalf of a tribe or multiple specific tribes, then the application should include a resolution from all tribes that will be included as a part of the services/assistance provided under the grant. A consortium of tribes for which existing consortium bylaws allow action without support from

all tribes in the consortium (i.e., without authorizing resolution or other enactment of each tribal governing body) may submit a copy of its consortium bylaws with the application in lieu of tribal resolutions.

#### **7. Additional Attachments (if applicable)**

Jurisdictions certified as disparate **must** identify a fiscal agent that will submit a **joint application** for the aggregate eligible allocation to all disparate municipalities. The joint application **must** determine and specify the award distribution to each unit of local government and the purposes for which the funds will be used. When beginning the JAG application process, a Memorandum of Understanding (MOU) that identifies which jurisdiction will serve as the applicant/fiscal agent for joint funds, **must** be completed, and signed by the Authorized Representative for each participating jurisdiction. The signed MOU **must** be attached to the application. For a sample MOU, go to [www.ojp.usdoj.gov/BJA/grant/jag11/11JAGMOU.pdf](http://www.ojp.usdoj.gov/BJA/grant/jag11/11JAGMOU.pdf).

**Failure to submit this required information will result in an application being change requested in the Grants Management System (GMS) for inclusion of the missing information OR the attachment of a withholding special condition at the time of award if time does not permit for a change request process.**

#### **8. Other Standard Forms**

Additional forms that may be required in connection with an award are available on OJP's funding page at [www.ojp.usdoj.gov/funding/forms.htm](http://www.ojp.usdoj.gov/funding/forms.htm). For successful applicants, receipt of funds may be contingent upon submission of all necessary forms. Please note in particular the following forms.

- a. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (required to be submitted in GMS prior to the receipt of any award funds).
- b. Disclosure of Lobbying Activities (required for any applicant that expends any funds for lobbying activities; this form must be downloaded, completed, and then uploaded).
- c. Accounting System and Financial Capability Questionnaire (required for any applicant other than an individual that is a non-governmental entity and that has not received any award from OJP within the past 3 years; this form must be downloaded, completed, and then uploaded).
- d. Standard Assurances (required to be submitted in GMS prior to the receipt of any award funds).

## **Review Process**

OJP is committed to ensuring a fair and open process for awarding grants. The Bureau of Justice Assistance reviews the application to make sure that the information presented is reasonable, understandable, measurable, and achievable, as well as consistent with the solicitation.

Absent explicit statutory authorization or written delegation of authority to the contrary, all final grant award decisions will be made by the Assistant Attorney General (AAG).

## Additional Requirements

Applicants selected for awards must agree to comply with additional legal requirements upon acceptance of an award. We strongly encourage you to review the information pertaining to these additional requirements prior to submitting your application. Additional information for each can be found at [www.ojp.usdoj.gov/funding/other\\_requirements.htm](http://www.ojp.usdoj.gov/funding/other_requirements.htm).

- Civil Rights Compliance
- Faith-Based and Other Community Organizations
- Confidentiality
- Research and the Protection of Human Subjects
- Anti-Lobbying Act
- Financial and Government Audit Requirements
- National Environmental Policy Act (NEPA)
- DOJ Information Technology Standards (if applicable)
- Single Point of Contact Review
- Nonsupplanting of State or Local Funds
- Criminal Penalty for False Statements
- Compliance with Office of Justice Programs Financial Guide
- Suspension or Termination of Funding
- Nonprofit Organizations
- For-Profit Organizations
- Government Performance and Results Act (GPRA)
- Rights in Intellectual Property
- Federal Funding Accountability and Transparency Act (FFATA) of 2006
- Awards in excess of \$5,000,000 – federal taxes certification requirement
- Active CCR Registration

**Application Checklist**  
**FY 2011 Edward Byrne Memorial Justice Assistance Grant (JAG) Program:**  
**Local Solicitation**

The application checklist has been created to aid assist in developing an application.

**Eligibility Requirement:**

- \_\_\_\_\_ The jurisdiction listed as the legal name on the application corresponds with the eligible jurisdiction listed on BJA's JAG web page
- \_\_\_\_\_ The federal amount requested is within the allowable limit of the FY 2011 JAG Allocations List as listed on BJA's JAG web page

**The Application Contains:**

- \_\_\_\_\_ Standard 424 Form (see page 13)
- \_\_\_\_\_ Program Narrative (see page 13)
- \_\_\_\_\_ Budget and Budget Narrative (see page 13)
- \_\_\_\_\_ Review Narrative (the date the JAG application was made available to the governing body for review and that it was provided to the public for comment) (see page 14)
- \_\_\_\_\_ Abstract (see page 14)
- \_\_\_\_\_ Additional Attachment: Memorandum of Understanding (MOU), if in a funding disparity (see page 15)
- \_\_\_\_\_ Tribal Authorizing Resolution (if applicable) (see page 14)
- \_\_\_\_\_ Other Standard Forms as applicable (see page 15), including:
  - \_\_\_\_\_ Disclosure of Lobbying Activities (if applicable)
  - \_\_\_\_\_ Accounting System and Financial Capability Questionnaire (if applicable)
- \_\_\_\_\_ DUNS Number (see page 11)
- \_\_\_\_\_ CCR Registration (see page 12)

## COUNCIL COMMUNICATION

<b>Date</b> July 18, 2011	<b>Agenda Item</b> 9 c i	<b>Subject:</b> Award Contract for Racquetball Court Remodel
<b>INITIATED BY:</b> Parks and Recreation	<b>STAFF SOURCE:</b> Jerrell Black, Director of Parks & Recreation	

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council appropriated funds for Racquetball Court Wall & Floor Repairs in the 2011 Conservation Trust Fund budget.

### RECOMMENDED ACTION

Staff recommends that City Council approve, by motion, a construction contract for the **"Englewood Recreation Center Racquetball Court Remodel**, in the amount of **\$107,863** to the lowest responsible bidder, **DSRW Enterprises, Inc. dba Calahan Construction Services** and authorizing the Director of Parks and Recreation to execute the contract.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Racquetball courts were originally constructed in 1984 when the Recreation Center was built. Every year, during the annual closing, staff patches and paints the court walls and refinishes the floor as needed. In the late 1990's, we installed a new wall system in all of the courts. In 2009, we installed a new floor in Court #4. The remaining three courts still have the original parquet flooring and all four of the courts are in need of a new wall system.

Staff contracted with See Architecture to research available floor and wall systems and to prepare design drawings and specifications. Staff, along with our consultant, toured other facilities in the metro area to evaluate the performance of various wall and floor systems. Based on the architect's research and a field visit to the Denver Athletic Club, staff has selected a composite wall system that will substantially reduce future maintenance costs. The flooring system installed in Court # 4 is holding up well and we are specifying the same for the other courts.

Design drawings and specifications were completed and the project was publicly advertised on May 24<sup>th</sup>. Staff personally contacted the flooring company we have used for years along with the representative of the wall system company we specified. Three contractors and one manufacturer's representative attended a pre-bid walkthrough on June 7<sup>th</sup>.

It is critical that any oil based staining of the new floors take place when the Recreation Center is closed. Bid documents included this requirement but allowed contractors to demo, install flooring, and install wall systems while the Center is open. All work must be complete by 5:30 AM on September 5<sup>th</sup> (the day we reopen after our one week closure). The contractor will need to close Courts 2, 3, and 4 on August 8<sup>th</sup>. Court #1 will remain open.

## FINANCIAL IMPACT

Only one bid was received at the public bid opening held on June 16<sup>th</sup>. Calahan Construction Services submitted a bid of \$137,145.00. This bid exceeded the project budget and, with concurrence from the City's Purchasing Division, we requested a revised quote from Calahan to exclude all work in Court # 1. The revised scope of work resulted in a contract price of \$107,863.00. Staff and our architect have reviewed the deduction offered and find the cost fair and reasonable. Building maintenance staff will patch the walls and paint Court # 1 until budget is available for a full restoration in the future.

Calahan Construction has not worked with Englewood in the past; however, this general contractor is using Ponder Floor Company as a subcontractor. Ponder has a long history with successful flooring projects at our Recreation Centers.

Costs associated with the project are as follows:

Calahan Construction	\$107,863.00
See Architecture (Design and Inspection)	3,500.00
Construction contingency	<u>3,637.00</u>
Total Estimated Cost	\$115,000.00

\$115,000 is budgeted and available in the Conservation Trust Fund.

## LIST OF ATTACHMENTS

Contract

## CONTRACT

### CITY OF ENGLEWOOD, COLORADO

THIS CONTRACT and agreement, made and entered into this 18<sup>th</sup> day of July, 2011, by and between the City of Englewood, a municipal corporation of the State of Colorado hereinafter referred to as the "City", and **DSRW Enterprises, Inc. dba Calahan Construction Services, Inc.**, whose address is: **95 Rio Grande Blvd, Denver, CO 80223**, ("Contractor"), commencing on the 24<sup>th</sup> day of May, 2011, and continuing for at least ten (10) days thereafter the City advertised that sealed proposals would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the following:

#### **PROJECT: Englewood Recreation Center Racquetball Court Remodel**

WHEREAS, proposals pursuant to said advertisement have been received by the Mayor and City Council and have been certified by the Director of Parks and Recreation to the Mayor and City Council with a recommendation that a contract for work be awarded to the above named Contractor who was the lowest reliable and responsible bidder therefore, and

WHEREAS, pursuant to said recommendation, the Contract has been awarded to the above named Contractor by the Mayor and City Council and said Contractor is now willing and able to perform all of said work in accordance with said advertisement and his proposal.

NOW THEREFORE, in consideration of the compensation to be paid and the work to be performed under this contract, the parties mutually agree as follows:

- A. Contract Documents: It is agreed by the parties hereto that the following list of instruments, drawings and documents which are attached or incorporated by reference constitute and shall be referred to either as the Contract Documents or the Contract and all of said instruments, drawings, and documents taken together as a whole constitute the Contract between the parties hereto and they are as fully a part of this agreement as if they were set out verbatim and in full:

- Invitation to Bid
- Contract (this instrument)
- Insurance
- Performance Payment Maintenance Bond
- Building Estimate by Calahan Construction Services dated June 5, 2011
- Drawings sheets A1 through A4

- B. Scope of Work: The Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all the work described, drawn, set forth, shown and included in said Contract Documents excluding work in court #1.
- C. Terms of Performance: The Contractor agrees to undertake the performance of the work under this Contract within ten (10) days from being notified to

commence work by the Director of Parks and Recreation and agrees to fully complete said work **beginning August 8, 2011 and completing the work by 5:30 AM on September 5, 2011** in accordance with the provisions of the Contract Documents and Specifications.

- D. Indemnification: The city cannot and by this Agreement/Contract does not agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity, for any purpose. The Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature including Worker's Compensation claims, in any way resulting from or arising out of this Agreement/Contract; provided, however, that the Contractor need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and Employees.
- E. Termination of Award for Convenience: The City may terminate the award at any time by giving written notice to the Contractor of such termination and specifying the effective date of such termination, at least thirty (30) days before the effective date of such termination. In that event all finished or unfinished service, reports, material (s) prepared or furnished by the Contractor after the award shall, at the option of the City, become its property. If the award is terminated by the City as provided herein, the Contractor will be paid that amount which bears the same ratio to the total compensation as the services actually performed or material furnished, bear to the total services/materials the successful firm agreed to perform under this award, less payments of compensation previously made. If the award is terminated due to the fault of the Contractor the clause relating to termination of the award for cause shall apply.
- F. Termination of Award for Cause: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations or if the Contractor shall violate any of the covenants, agreements or stipulations of the award, the City shall have the right to terminate the award by giving written notice to the Contractor of such termination and specifying the effective date of termination. In that event, all furnished or unfinished services, at the option of the City, become its property, and the Contractor shall be entitled to receive just, equitable compensation for any satisfactory work documents, prepared completed or materials as furnished.

Notwithstanding the above, the Contractor shall not be relieved of the liability to the City for damages sustained by the City by virtue of breach of the award by the Contractor and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor is determined.

- G. Terms of Payment: The City agrees to pay the Contractor for the performance of all the work required under this contract, and the Contractor agrees to accept as his full and only compensation therefore, such sum or sums of money as may be proper in accordance with the price or prices set forth in the

Contractor's proposal attached and made a part hereof, the total estimated cost thereof being One-Hundred Seven Thousand, Eight-Hundred Sixty Three dollars (\$107,863.00)

- H. Appropriation of Funds: At present, \$107,863.00 has been appropriated for the project. Notwithstanding anything contained in this Agreement to the contrary, the parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement/Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated. The City shall immediately notify the Contractor or its assignee of such occurrence in the event of such termination.
- I. Liquidated Damages: The City and Contractor recognize that time is of the essence in this Agreement because of the public interest in health and safety, and that the City will suffer financial loss, and inconvenience, if the Work is not complete within the time specified in the bid documents, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by the City if the Work is not complete on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay, but not as a penalty, Contractor shall pay the City \$1000 for each day that expires after the time specified for final completion until the Work is finally complete.
- J. Assignment: Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the City specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the Assignor from any duty or responsibility under the Contract Documents.
- K. Contract Binding: It is agreed that this Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns, and successors.

- L. **Contractors Guarantee:** The Contractor shall guarantee that work and associated incidentals shall remain in good order and repair for a period of one (1) year from all causes arising from defective workmanship and materials, and to make all repairs arising from said causes during such period without further compensation, plus a standard ten (10) year Wall Panel Manufactures Warranty. The determination of the necessity for the repair or replacement of said project, and associated incidentals or any portion thereof, shall rest entirely with the Director of Parks and Recreation whose decision upon the matter shall be final and obligatory upon the Contractor.

**VERIFICATION OF COMPLIANCE WITH C.R.S. 8-17.5-101 ET.SEQ. REGARDING HIRING OF ILLEGAL ALIENS**

(a) **Employees, Contractors and Subcontractors:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not contract with a subcontractor that fails to certify to the Contractor that the subcontractor 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:** Contractor 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 hired for employment to perform work under this public contract. Contractor 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 Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall:

(1) notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

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

(d) **Duty to Comply with State Investigation:** Contractor 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 Contractor's breach of any section of this paragraph or provisions required pursuant to C.R.S. 8-17.5-102. Contractor shall be liable for actual and consequential damages to the City in addition to any other legal or



## COUNCIL COMMUNICATION

<b>Date:</b> July 18, 2011	<b>Agenda Item</b> 11 a i	<b>Subject</b> Ordinance Approving BP Wind Energy North America Inc. Easement on Byers Biosolids Farm
<b>INITIATED BY</b> L/E WWTP Supervisory Committee		<b>STAFF SOURCE</b> Stu Fonda, Utilities Director Jim Tallent, L/E WWTP Treatment Division Manager

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None.

### RECOMMENDED ACTION

It is recommended that Council adopt a bill for an ordinance approving the grant of an easement to BP Wind Energy for transmission facilities on the Byers biosolids farm.

BP is developing renewable energy programs in eastern Colorado, which require construction of electric transmission lines. The current alignment, crossing the Littleton/Englewood Wastewater Treatment Plant biosolids farm property in Byers, is the most direct path to the nearest Xcel Energy substation near Deer Trail, Colorado.

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

BP Wind Energy North America Inc. (BP) is proposing to develop a private transmission line through Kit Carson, Washington and Arapahoe Counties in eastern Colorado. This private transmission line will enable BP to transport power from their prospective wind farm projects in eastern Colorado, to the Front Range power market. The Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Byers biosolids farm property is within BP's area of interest for transmission line development.

Wind and transmission projects add many benefits to the local communities: payments from the transmission right-of-way agreements provide an additional revenue stream to participating landowners with minimal impact to existing farming and ranching operations. Construction of the transmission line will increase demand for local supplies and services, while creating new jobs. Additionally, the tax revenue contributed to the governmental agencies due to the construction of the generation and transmission facilities provides long-term benefits to the local communities.

In May 2010, the Cities of Englewood and Littleton received a request for an easement from BP to construct a private power transmission line (above ground) through the Byers biosolids farm. The easement would be 100 feet wide, for a 2-mile portion that would house approximately ten power transmission structures. .

The BP request package was forwarded to Hill and Robbins for review and recommendation. Copies of the documents were sent to the Littleton and Englewood City Attorneys for review of municipal issues, while Hill and Robbins reviewed operational and fee issues.

Hill and Robbins reviewed the initial agreement, indicating L/EWWTP's option is to negotiate the best deal possible and addressed the following questions from the Supervisory Committee:

- Initial payment - BP's initial offer of payment was \$9,000 per mile, post construction. Pre-construction payment would be \$1,000 per mile to hold the easement before construction. These would be one-time only payments. Final negotiated payment is \$15,000/mile plus \$2,500/tower constructed.
- Power of condemnation - BP can use condemnation for utility purposes.
- Confinement of easement - The easement will be confined to a certain strip of land at one end of the property, which must be restored, post construction, to its pre-construction condition acceptable to Littleton and Englewood.
- Farmer access - The existing dry land farming activities are specifically described in the draft agreement as a use that is compatible with the easement. The farmers do not think it will be difficult to work around the structures.
- Devaluation of adjacent property - Factored in as part of the consideration to be paid to the Cities.
- Non-exclusive - The easement should be exclusively for power transmission, not for eventual pipeline or cable, and that it should include a strong restoration condition requiring BP to restore any land disturbed by the construction of the power line back to original condition over a three-year period.
- Guarantee of structure removal upon termination of agreement - Verbiage added to provide either a removal bond or reimbursement for reasonable out-of-pocket costs of removal and restoration incurred by owner.
- Other restrictions - The voltage has also been restricted, and other communication lines are not allowed with the proposed agreement.

## **FINANCIAL IMPACT**

Easement payments are offered as applicable annual pre-construction payments of \$1,000 per mile or minimum \$2,000/year plus either: 1) One-Time Payment or 2) Annual Payment. One-Time Payment option is estimated to range between \$52,500 and \$65,000, while the Annual Payment option would take between 15-18 years to realize the same amount.

Following final agreement development, an evaluation of payment options was completed and, although there may be potential for very long-term revenue benefits, the One-Time Payment option is recommended.

## **LIST OF ATTACHMENTS**

Littleton BP Ordinance  
Original Communication with BP  
Power Line Alignment  
Tower and Wind Farm Information  
Proposed Bill for an Ordinance

1 CITY OF LITTLETON, COLORADO

2  
3 ORDINANCE NO. 12

4  
5 Series of 2011 Cernanec and Cole

6  
7 INTRODUCED BY COUNCILMEMBERS:

8  
9 AN ORDINANCE OF THE CITY OF LITTLETON,  
10 COLORADO, APPROVING BP ENERGY EASEMENT ON  
11 BYERS BIOSOLID FARM

12  
13 WHEREAS, BP Wind Energy North America (BP) is proposing to develop a  
14 transmission line across property owned, in part, by the City of Littleton; and

15  
16 WHEREAS, City Charter, Section 59, requires that all conveyances of an interest in  
17 land by the city shall be signed by the president of the council.

18  
19 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
20 CITY OF LITTLETON, COLORADO, THAT:

21  
22 Section 1: The proposed Easement between the City of Littleton and BP Wind  
23 Energy North America, Inc. attached hereto is approved.

24  
25 Section 2: The City Attorney will be authorized to make minor changes to the  
26 transmission easement.

27  
28 Section 3: Severability. If any part, section, subsection, sentence, clause or  
29 phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the  
30 validity of the remaining sections of this ordinance. The City Council hereby declares that it would  
31 have passed this ordinance, including each part, section, subsection, sentence, clause or phrase  
32 hereof, irrespective of the fact that one or more parts, sections, subsections, sentences, clauses or  
33 phrases may be declared invalid.

34  
35 Section 4: Repealer. All ordinances or resolutions, or parts thereof, in conflict  
36 with this ordinance are hereby repealed, provided that this repealer shall not repeal the repealer  
37 clauses of such ordinance nor revive any ordinance thereby.

38  
39 INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council of  
40 the City of Littleton on the 7<sup>th</sup> day of June, 2011, passed on first reading by a vote of 7  
41 FOR and 0 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the  
42 Municipal Courthouse and on the City of Littleton Website.

1 PUBLIC HEARING on the Ordinance to take place on the 21<sup>st</sup> day of  
2 June, 2011, in the Council Chambers, Littleton Center, 2255 West Berry Avenue,  
3 Littleton, Colorado, at the hour of 7:00 p.m., or as soon thereafter as it may be heard.

4 PASSED on second and final reading, following public hearing, by a vote of 6  
5 FOR and 0 AGAINST on the 21<sup>st</sup> day of June, 2011 and ordered  
6 published by posting at Littleton Center, Bemis Library, the Municipal Courthouse and on the City  
7 of Littleton Website.

8  
9 ATTEST:

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19

CITY CLERK

\_\_\_\_\_  
PRESIDENT OF CITY COUNCIL

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

## BP Wind Energy



### Idaho. Goshen North wind farm.

Site mobilization for the 124.5 MW Goshen North wind farm started on March 16, 2010. Located on an 11,000 acre site approximately 10 miles east of the city of Idaho Falls, the Goshen North wind farm will utilize 83 GE xle wind turbine generators, each with a rated capacity of 1.5 MW. The project will employ approximately 250 workers during peak construction and is expected to be in commercial operation by year end.



A view of the where the lay down yard will be located for Goshen North, Idaho.

If you would like more information about BP Wind Energy please contact:  
Amanda Abbott, Director, Government and Public Affairs at [abbottaj@bp.com](mailto:abbottaj@bp.com) (713) 354 2100

## BP Wind Energy



### BP Wind Energy Power for the U.S., from the U.S.

BP Wind Energy is one of the leading wind developers in the U.S. with a portfolio that includes the opportunity to develop almost 100 projects in 25 States. We have over 1,200 MW in commercial operation and more than 1,000 MW in an advanced stage of development.



*The Cedar Creek I Wind Farm, Weld County, Colorado..*

BP Wind Energy currently has interests in eight operating wind farms.

### California. The Edom Hills wind farm.

The wind project became operational in September 2008 and is owned and operated 100% by BP Wind Energy. Located in the San Geronio Pass, California the wind farm was a re-powering project of an existing 11 MW wind energy facility which saw 139 windmatics replaced with 8 Clipper Liberty 2.5 MW turbines increasing the power to 20 MW. There is an existing power purchase agreement with Southern California Edison.

### Colorado. The Cedar Creek wind farm.

The wind farm is located in Weld County, Colorado and is a development venture between BP and Infigen. The 300.5 MW wind-power facility utilizes 274 wind turbines and became operational in December 2007. Power from the Cedar Creek wind farm is sold under a long-term contract to the Public Service Company of Colorado, a subsidiary of Xcel Energy Inc.

## BP Wind Energy



### Kansas. The Flat Ridge I wind farm.

Located in Barber County some 60 miles southwest of Wichita, Kansas the project utilizes 40 Clipper 2.5 MW wind turbine generators and became commercially operational in February 2009. Westar Energy, Inc. owns 50% of phase I of the wind farm and is purchasing from BP 50 MW of the physical power generated under a long-term power purchase agreement.



*The Fowler Ridge I Wind Farm, Benton County, Indiana.*

### Indiana. The Fowler Ridge I wind farm.

Located in Benton County about 90 miles northwest of Indianapolis, phase I of the Fowler Ridge Wind Farm became operational in March 2009. The first phase utilizes 222 wind turbines - 182 Vestas V-82 1.65 MW turbines and 40 Clipper C-96 2.5 MW turbines - producing 400 MW of clean energy. BP and Dominion are partners for 301 MW of phase one, with BP retaining sole ownership of 99 MW.

Phase II of the Fowler Ridge Wind Farm became operational in December 2009. Phase II utilizes 133 GE SLE turbines each with a rated capacity of 1.5 MW producing 200 MW of clean energy. BP and Sempra Generation are 50 percent joint venture partners in the wind farm. Power from Phase II has been sold under four, long-term 50 MW power purchase agreements.

### South Dakota. The Titan 1 wind farm.

Located on a 7500-acre site south of the town of Ree Heights, the Titan I Wind Farm is 100% owned by BP Wind Energy and became operational in December 2009. Phase I utilizes 10 Clipper wind turbines each with a rated capacity of 2.5 MW producing 25 MW of clean energy. The power from the Titan I Wind Farm has been sold under a long-term power purchase agreement.

## BP Wind Energy



### Texas. The Sherbino I and Silver Star I wind farms.

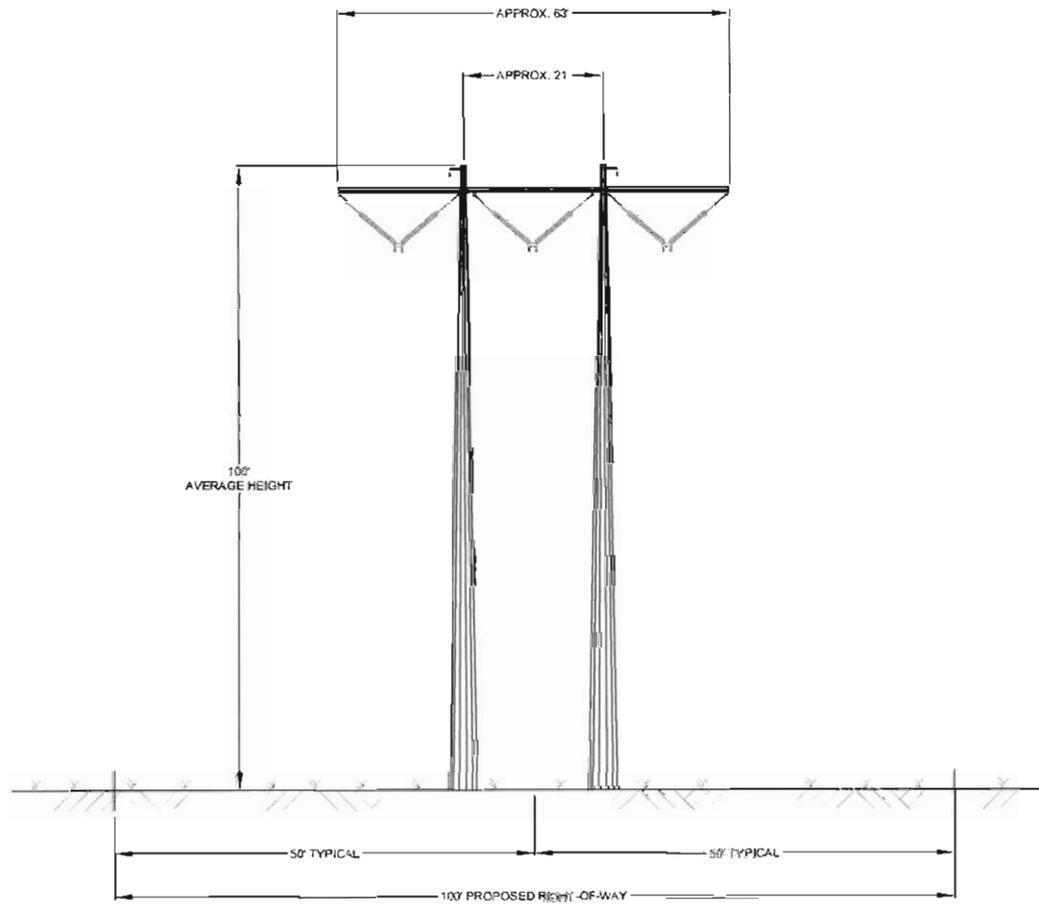
The 150 MW Sherbino I wind farm became commercially operational in October 2008. Located some 40 miles east of Fort Stockton in Pecos County, Texas the project is a joint venture between BP and NRG Energy. Phase I utilizes 50 Vestas 3 MW wind turbine generators. Power produced from phase I will be delivered into the Electricity Reliability Council of Texas (ERCOT) transmission system and sold on the wholesale power market.



*The Silver Star I Wind Farm, Erath and Eastland Counties, Texas.*

The 60 MW Silver Star I wind farm located 80 miles southwest of the Dallas/Fort Worth metropolitan area became operational on September 24, 2008. The project utilizes 24 Clipper Windpower 2.5 MW Liberty turbines and is owned and operated 100% by BP Wind Energy.

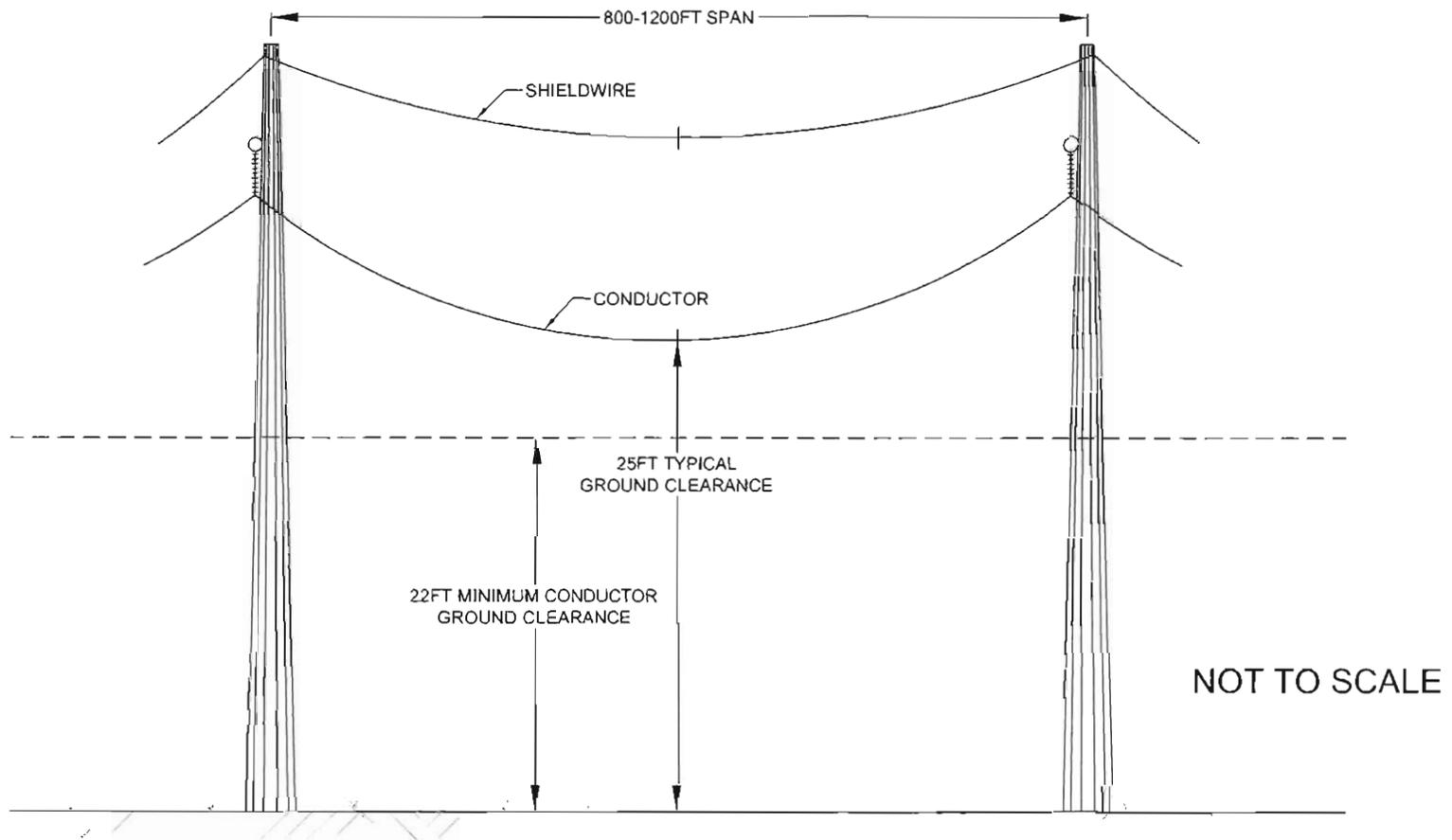
230kV H-FRAME  
STRUCTURE VIEW



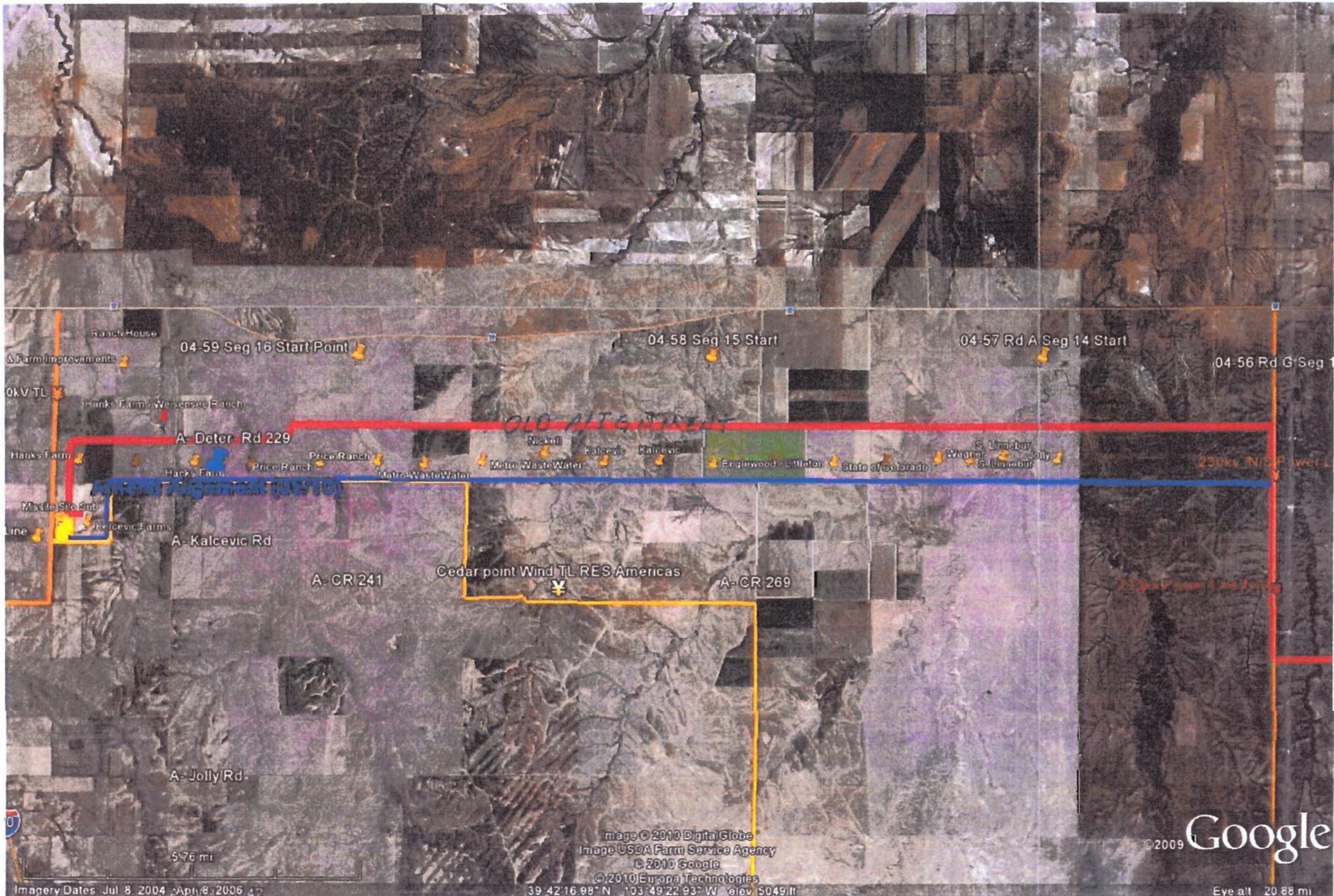
NOT TO SCALE

Note:  
For illustration only –  
Actual structure type and design may vary.

230kV H-FRAME  
PROFILE VIEW



Note:  
For illustration only –  
Actual structure type and design may vary.





Timothy A. Butler  
Independent Representative for LoneTree Energy & Assoc., LLC  
Contract Agents for BP Wind Energy North America, Inc.  
P.O. Box 1686, Castle Rock, Colorado 80104

May 13, 2010

Jim Tallent, Operations Division Manager  
Englewood/Littleton Bi/City Water Treatment Plant  
2900 South Platte River Drive  
Englewood, Colorado 80110-1460

Dear Mr. Tallent;

Attached is BP Wind Energy's (BP) standard information and easement request packet.

Essentially, BP is developing an electric transmission line from Eastern Kit Carson County, Colorado to Xcel Energy/PSCo's proposed Missile Silo Substation located north of Deer Trail, Colorado. This transmission line will be used in conjunction with one or more of the renewable energy wind projects under development in Eastern Colorado.

The transmission corridor will cross the northern portions of Sections 17 and 18, Township 4 South, Range 57 West of the 6<sup>th</sup> PM, Arapahoe County, which are titled to the City of Englewood (50%) and City of Littleton (50%).

Once you have reviewed this material, I would like to speak to you or your representative in regard to the proper procedure for advancing this request.

I may be reached at (303) 507-9600 or [tabutler@viawest.net](mailto:tabutler@viawest.net).

Sincerely,

Tim Butler, Contract Agent

Cc: Mark Wengierski, BP Wind Energy North America Inc.  
Andy Horvat, LoneTree Energy & Assoc.

# BP Wind Energy



Mark E. Wengierski  
BP Wind Energy North America Inc.  
700 Louisiana St., 33<sup>rd</sup> Floor  
Houston, TX 77002

Phone: 713-354-4812  
Fax: 713-354-2120  
Email: mark.wengierski@bp.com

May 13, 2010

Jim Tallent, Operations Division Manager  
Englewood/Littleton Bi/City Water Treatment Plant  
2900 South Platte River Drive  
Englewood, Colorado 80110-1460

Dear Mr. Tallent;

As you may know, BP is proposing to develop a private transmission line through Kit Carson, Washington and Arapahoe Counties in eastern Colorado. This private transmission line will enable BP to transport power from their prospective wind farm projects in eastern Colorado, to the Front Range power market. Your property is within BP's area of interest for transmission line development.

Wind and transmission projects add many benefits to the local communities: payments from the transmission right of way agreements provide an additional revenue stream to participating landowners with minimal impact to existing farming and ranching operations. Construction of the transmission line will increase demand for local supplies and services, while creating new jobs. Additionally, the tax revenue contributed to the governmental agencies due to the construction of the generation and transmission facilities provides long-term benefits to the local communities.

I have included an informational package for your review which includes a brief description of BP's active projects, including the Cedar Creek I Wind Farm in Weld County, Colorado, a Transmission Easement Agreement for your review, sample drawings, and other related documents.

BP would appreciate the opportunity to discuss our transmission development plans with you. LoneTree Energy has been contracted by BP to assist in its transmission right of way acquisition efforts. Tim Butler a land agent with LoneTree Energy, will be in contact with you shortly, or you may contact Tim at your convenience at (303) 507-9600 or tabutler@viawest.net.

If you have any questions or need any more information please do not hesitate to contact me.

Sincerely,

Mark E. Wengierski

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. 36  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE APPROVING THE GRANT OF AN EASEMENT TO B P WIND ENERGY NORTH AMERICA INC. FOR TRANSMISSION FACILITIES ON THE BYERS BIOSOLIDS FARM.

WHEREAS, BP Wind Energy North America Inc. is proposing to develop a private transmission line through Kit Carson, Washington and Arapahoe Counties; and

WHEREAS, this will enable BP to transport power from their prospective wind farm projects in eastern Colorado to the Front Range power market; and

WHEREAS, the Littleton/Englewood Byers biosolids farm property is within BP's area of interest for transmission line development; and

WHEREAS, payments from the transmission Right-of-Way agreements provide an additional revenue stream to participating landowners with minimal impact to existing farming and ranching operations; and

WHEREAS, in May 2010 Littleton/Englewood Waste Water Treatment Plant received a request for an easement from BP to construct a private, power transmission line (above ground) through the Byers biosolids farm; and

WHEREAS, the easement would be 100 feet wide, and two miles in length and would house approximately ten power transmission structures;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the "Grant of Easement and Easement Agreement for Transmission Facilities", between the BP Wind Energy North America Inc., City of Littleton and the City of Englewood, Colorado, as attached hereto as Exhibit A.

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

Introduced, read in full, and passed on first reading on the 18th day of July, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of July, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 20th day of July, 2011 for thirty (30) days.

---

James K. Woodward, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 18th day of July, 2011.

---

Loucrishia A. Ellis

For Recorder's Use Only

Recording Requested By and  
When Recorded Return to:

Land Manager  
BP Wind Energy North America Inc.  
700 Louisiana, 33<sup>rd</sup> Floor  
Houston, TX 77002  
(713) 354-2130

---

**GRANT OF EASEMENT AND EASEMENT AGREEMENT  
FOR TRANSMISSION FACILITIES**

This GRANT OF EASEMENT AND EASEMENT AGREEMENT FOR TRANSMISSION FACILITIES (this "Agreement") is made, dated and effective as of \_\_\_\_\_, 2011 (the "Effective Date"), between the City of Englewood and the City of Littleton, each to an undivided one-half interest (Collectively "Grantor"), and BP Wind Energy North America Inc., a Virginia corporation ("Grantee"). Grantor is the sole owner of that certain property located in Arapahoe County, Colorado, as more particularly described in Exhibit A attached hereto and made part hereof (the "Property").

1. Grant of Transmission Easement. For good and valuable consideration, the legal sufficiency of which is hereby acknowledged by Grantor, Grantor hereby grants to Grantee and its successors and assigns, an exclusive easement ("Transmission Easement") on, along, over, under and across a portion of the Property one hundred (100) feet wide (such portion of the Property, the "Easement Area" as more particularly described in Exhibit B attached hereto and made part hereof). The Easement Area may be used by Grantee for the following purposes and no other: to erect, construct, reconstruct, replace, remove, maintain and use a single line of poles, with such wires and cables as from time to time are suspended therefrom for the transmission of electrical energy (not to exceed 345 kilovolts) and/or for communication purposes that are directly related to and dedicated solely for Grantee's operations, and all necessary and proper foundations, footings, guy wires, anchors, crossarms and other appliances, fixtures and facilities for use in connection with said towers, poles, wires and cables on, along, over, under and/or across the Easement Area. The Easement Area may exceed 100 feet in width by up to 50 feet to the extent reasonably necessary to provide for an airspace overhang of Transmission Facilities (as defined below) located on the Property to allow for blow-out of transmission wires. Said towers, poles, wires, cables, foundations, footings, guy wires, anchors, crossarms, appliances, fixtures, and facilities are herein collectively called the "Transmission Facilities."

2. Payment. In consideration of the rights granted hereunder, Grantee agrees to pay Grantor the amounts set forth in the Fee Schedule attached hereto ("Fee Schedule").

3. Construction Activities. During the construction of the Transmission Facilities, Grantee may use for construction purposes an additional fifty (50) feet of land in total on either or

both sides of the Easement Area. Grantee will use commercially reasonable efforts to minimize surface disturbance on the portion of the Property lying outside of the Easement Area during construction, as more particularly described in Section 14 of this Agreement. Grantee shall notify Grantor of the commencement and completion of construction on the Easement Area.

4. Access. Grantor also hereby grants to Grantee an access easement (the "Access Easement") over, across and along the Easement Area by means of roads and lanes thereon if existing, or otherwise by such route or routes as Grantee may construct from time to time for the purposes of (a) ingress to and egress from Transmission Facilities (whether located on the Property or elsewhere) and (b) entering onto the Easement Area at any time to conduct inspections, tests, geotechnical reviews, soil tests, environmental studies, wildlife and/or habitat studies, transmission studies, archeological assessments, land surveying, title examinations, site engineering, and such other activities as Grantee reasonably deems necessary or appropriate for determining whether the Easement Area is or remains suitable for Grantee's permitted purposes under this Agreement. Grantee shall consult with Landowner on the location of any such new roads and lanes prior to their construction. Grantee shall also have the right to maintain and improve any such roads and lanes; provided, however, that Grantee shall compensate Grantor for any damage caused thereby as provided in Section 14, below.

5. Term and Termination. Subject to the terms and conditions of this Agreement, the term of this Agreement shall be perpetual, commencing on the Effective Date, unless and until one of the following events occurs: (a) the Agreement is terminated by Grantee by written notice to Owner, or (b) "Start of Construction" (as defined below) has not occurred by the date which is ten (10) years after the Effective Date, in which case this Agreement shall automatically terminate. As used in this Agreement, "Start of Construction" shall be deemed to have occurred upon the earlier of (i) the installation of any Transmission Facilities in the Easement Area or (ii) the installation of the first transmission pole or vertical structure on the transmission project of which the Easement Area will be a part. If construction of the Transmission Facilities on the Easement Area has not been completed within twelve (12) months after Start of Construction; or if after the date commercial quantities of electricity are first transmitted by Transmission Facilities located on the Easement Area, Grantee ceases to operate Transmission Facilities on the Easement Area for a period of twenty-four (24) consecutive months, then unless due to an event of force majeure, Grantor may elect to terminate this Agreement by written notice to Grantee.

6. Removal. Upon termination of this Agreement, Grantee shall (a) upon written request by Grantor, prepare and place of record in the official real property records of Arapahoe County, an instrument releasing all of Grantee's right, title and interest in and to the Property under this Agreement, and (b) as soon as practicable thereafter, remove all above-ground Transmission Facilities and transmission line poles down to a depth of four feet (4') from the Easement Area and restore the soil surface to a condition reasonably similar to its original condition. Within sixty (60) days of completion of construction of Transmission Facilities on the Property, Grantee shall provide security ("Removal Bond") to cover the estimated removal costs associated with the Transmission Facilities then on the Property pursuant to this section. The Removal Bond shall be, at Grantee's option, either a removal bond from an individual or entity engaged in the construction business and reasonably acceptable to the parties, a surety bond from an issuer with a Best's Rating of not less than A, a corporate guarantee (from a financially responsible entity

that is reasonably acceptable to the parties and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to the parties, a cash deposit, or other security reasonably acceptable to both parties. The amount of the Removal Bond shall be the estimated cost of removing the Transmission Facilities, net of their estimated salvage value. In the event the county or other governmental authority requires Grantee to provide security for removal or decommissioning of the Project, Grantee shall provide a single Removal Bond that benefits both Grantor and the governmental authority in a manner consistent with the requirements of the governmental authority, and the governmental authority shall have access to the Property pursuant to reasonable notice to effect or complete the required removal or decommissioning. If Grantee fails to remove such Transmission Facilities within twenty-four (24) months of termination of this Agreement, or such longer period as Grantor may provide by extension, Grantor may do so, in which case Grantee shall reimburse Grantor for reasonable out-of-pocket costs of removal and restoration incurred by Grantor.

7. Character of Easements. This Agreement and the Transmission Easement and Access Easement shall run with the Property, whether or not this Agreement and/or the Transmission Easement and/or Access Easement are referenced or described in any conveyance, ground lease or other instrument granting rights in, to or under all or any portion of the Property. This Agreement and the Transmission Easement and Access Easement shall inure to the benefit of, and be binding upon, Grantor and Grantee and their respective transferees, successors and assigns and all persons claiming under them. Any sale or other transfer of the Property by Grantor shall be subject to this Agreement and the Transmission Easement and Access Easement. The Transmission Easement and Access Easement are irrevocable, and Grantor has no right to terminate this Agreement except as provided herein. Grantor further agrees with respect to the Transmission Easement and Access Easement that, except as provided in Section 5, above, (a) no act or failure to act on the part of Grantee shall be deemed to constitute an abandonment, surrender or termination thereof except upon recordation by Grantee of a quitclaim deed or other release or termination instrument specifically terminating the Transmission Easement or Access Easement or conveying the Transmission Easement or Access Easement back to Grantor, or as otherwise may be declared by an order of a court having proper jurisdiction over this Agreement; (b) non-use of the entirety of the Transmission Easement, Access Easement and/or Easement Area shall not prevent the future use of the entire scope thereof in the event the same is needed; and (c) no use of or improvement to the Easement Area or any lands benefited by the Transmission Easement or Access Easement (within the scope of rights described in Section 1 and Section 4 of this Agreement), and no transfer of the Transmission Easement or Access Easement shall, separately or in the aggregate, constitute an overburdening of the Transmission Easement or Access Easement.

8. Assignment. Grantee may convey or assign this Agreement or its rights with respect to the Transmission Easement or Access Easement at any time, in whole or in part, to one or more assignees or subassignees, without the need for Grantor's consent. Grantee shall have the right to make a partial conveyance or assignment of the Transmission Easement or Access Easement resulting in two or more persons or entities having interests as tenants-in-common who shall have the right to jointly use any Transmission Facilities and/or roads on the Property for ingress to and egress from the Transmission Facilities. The assignor under any assignment hereunder shall be released from obligations and liabilities accruing after the date such obligations and liabilities are assumed by the assignee, to the extent assumed by the assignee. The assignee under

any assignment of this Agreement shall assume the obligations and liabilities accruing hereunder from the date and to the extent such obligations and liabilities are assigned by the assignor. Grantee shall provide Grantor with the name, address and contact information for any assignees or subassignees hereunder for notice purposes, as well as a copy of any recorded document evidencing such assignment.

9. Compliance with Laws. Grantee shall comply with all laws, regulations and rules governing the erection, construction, reconstruction, replacement, removal, maintenance and use of the Transmission Facilities. Grantor agrees to cooperate fully and promptly with Grantee, so long as such work is accomplished at no out-of-pocket cost to Grantor, and to join in all applications for permits, licenses and governmental approvals or requests for other instruments if necessary for purposes of the intended use or development of the Easement Area or the Property.

10. Maintenance; Costs. Grantee shall have the right to make all foreseen and unforeseen and ordinary and extraordinary changes and repairs which may be required to the Transmission Facilities, and shall maintain and keep the Easement Area in good order, repair and condition, including but not limited to trimming, cutting and removing trees and underbrush anywhere on the Property as reasonably necessary if any limbs, branches or other parts are within or overhang the Easement Area. When Grantee performs such maintenance activities, Grantee shall remove all debris created (such as, but not limited to, tree limbs, underbrush, etc.) and dispose of such debris offsite. All costs and expenses incident to the erection, construction, reconstruction, replacement, removal, repair, maintenance and use of the Transmission Facilities, including the trimming and cutting of any trees and underbrush, shall be borne by Grantee.

11. Grantor's Right to Use the Easement Area. Notwithstanding the reservation of exclusivity in Section 1 of this Agreement, Grantor retains the right to use the Property, including the Easement Area, for all purposes not inconsistent with, and which will not interfere with, the rights granted to Grantee by this Agreement, including, without limitation, dry land farming on the Property. Specifically, but without limiting the generality of the foregoing, (i) Grantor shall not undertake or allow any digging, tunneling or other form of construction activity in the Property which would disturb or damage the Transmission Facilities, unearth, obstruct or interfere with the operation and use of the Transmission Facilities or endanger the lateral support to the Easement Area or Transmission Facilities, and (ii) Grantor shall not grant other persons easement rights in the Property if such easement rights shall in any way interfere with the easement rights granted Grantee under this Agreement. The parties agree that dry land farming practices employed on the Property as of the Effective Date are consistent with, and shall not interfere with, Grantee's rights under this Agreement.

12. Indemnity. Grantee shall, at all times, save and hold harmless and indemnify Grantor, its officers, partners, agents, contractors and employees, from and against all losses, damages, expenses, claims, demands, suits and actions for personal injuries and property damage outside the Easement Area, to the extent caused by the negligence or willful misconduct of Grantee, its officers, partners, agents, contractors and employees.

13. Quiet Enjoyment. Grantor represents and warrants to Grantee that Grantor has good title to the Property and the Easement Area and warrants title to and quiet enjoyment of the

Transmission Easement, Access Easement and the Easement Area by Grantee and Grantee and Grantee's members, managers, agents, licensees, contractors, subcontractors, lessees, sublessees, mortgagees, successors, and assigns against the lawful claims and demands of all persons whomsoever. Grantor shall cooperate with Grantee, at Grantee's sole expense, to obtain a non-disturbance agreement or other appropriate agreement from any party that holds a lien, easement, lease, mortgage, deeds of trust, mineral or oil and gas right, option to purchase or lease, or any other encumbrance or exception to Grantor's fee title ownership of the Property, recorded or unrecorded (collectively, "Liens"). A non-disturbance or other agreement is an agreement between Grantee and Grantee's successor and assigns and a holder of a Lien which provides that the holder of the Lien subordinates its rights under the Lien and shall not disturb or interfere with any of the rights or benefits granted under this Agreement or terminate or extinguish this Agreement. Grantor agrees to satisfy and pay when due all obligations under any Lien affecting the Property including any taxes and assessments. If Grantor fails to satisfy and pay when due all obligations under any Lien, Grantee shall be entitled (but not obligated) to make payments in fulfillment of Grantor's obligations to the holder of the Lien and may offset the amount of such payments from amounts due Grantor under this Agreement or seek reimbursement from Grantor, which amounts Grantor agrees to promptly pay upon written demand.

14. Surface Damage. In the event that Grantor suffers damage to crops, grass, soil, fences, trees, and other property or improvements on the Property as a result of Grantee's construction, reconstruction, replacement, removal, maintenance, operation and use of the Transmission Facilities, Grantee shall pay Grantor fair compensation for any such losses or damage caused by Grantee, and, if the parties cannot reach agreement as to the amount which would constitute fair compensation, either party may pursue all remedies available to such party at law. Should a growing crop be damaged or destroyed by Grantee, "fair compensation" for purposes hereof shall be calculated in accordance with the rate of the average production per acre in the general area as determined by the local NRCS Office, multiplied by the current market price. Should a tree be damaged or destroyed by Grantee, "fair compensation" for purposes hereof shall be calculated in consultation with Colorado State University's Agricultural Experiment Station and Cooperative Extension Service. Grantee will take reasonable care when removing top soil, to separate said top soil from the subsoil, and to restore said top soil to the surface to the satisfaction of Grantor, so as to, as nearly as is commercially practicable, restore the land to its original state after both construction on the Property and operations on the Easement Area have been completed, and shall use commercially reasonable efforts to remediate any soil settling identified by Owner for a period of three (3) years after completion of construction of Transmission Facilities on the Property. Other than as expressly set forth herein, Grantee shall not be responsible to pay Grantor any losses of income, rent, business opportunities, profits or other losses arising out of Grantor's inability to grow crops or otherwise use the Easement Area.

15. Financing.

15.1 Grantee may collaterally assign, mortgage or otherwise encumber its interest in this Agreement to a Financing Party (as hereinafter defined) under a Mortgage (as hereinafter defined). The term "Financing Party" means any institution (including any trustee or agent of behalf of such institution) providing debt or other financing to Grantee or its successors or assigns. The term "Mortgage" shall mean any mortgage, deed of trust, deed to secure debt or other security

instrument by which Grantee's interest under this Agreement is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation to a Financing Party. Each Financing Party who provides notice to Grantor of its Mortgage shall be referred to as "Mortgagee." In the event any such Mortgage is granted, the Mortgagee thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 15, upon delivery to Grantor of written notice of its name and address.

15.2 So long as any Mortgage remains in effect, this Agreement shall not be modified, and Grantor shall not accept a surrender of the Property or a termination or release of this Agreement prior to the expiration of the term hereof, without the prior consent of all Mortgagees.

15.3 Grantor, upon providing Grantee any notice of (i) default under this Agreement or (ii) termination of this Agreement, shall at the same time provide a copy of such notice to each Mortgagee. Such Mortgagee shall have the same period, after the giving of such notice, for remedying any default or causing the same to be remedied (but shall have no obligation to remedy or cause the remedy of any default), as is given Grantee after the giving of such notice to Grantee to remedy the default specified in any such notice. The Mortgagee shall have the absolute right to do any act or thing required to be performed by Grantee under this Agreement, and any such act or thing performed by a Mortgagee shall be as effective as if done by Grantee itself. Following acquisition of Grantee's easement interest hereunder by the Mortgagee or its assignee or designee as a result of foreclosure of Grantee's easement interest or assignment of Grantee's easement interest in lieu of foreclosure, or by a purchaser of Grantee's easement interest at a foreclosure sale, this Agreement shall continue in full force and effect and the Mortgagee or other party acquiring title to the easement estate shall, as promptly as reasonably possible, commence the cure of any defaults hereunder and thereafter diligently process such cure to completion; provided, however, the Mortgagee or other party acquiring title to the easement estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-curable Defaults"). Non-curable Defaults shall be deemed waived by Grantor as to any party acquiring title to the easement estate upon completion of foreclosure proceedings or acquisition of Grantee's interest in this Agreement by such party. Upon the subsequent sale or other transfer by the Mortgagee or other acquiring party of the easement interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Mortgagee or other acquiring party shall have no further duties or obligations hereunder arising after the effective date of such subsequent sale or other transfer. Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating this Agreement.

15.4 Grantor shall execute such estoppel certificates (certifying as to such matters as Grantee may reasonably request, including, without limitation, that no default then exists under this Agreement to Grantor's knowledge, if such be the case) and/or consents to assignment and/or non-disturbance agreements as Grantee or any Mortgagee may reasonably request from time to time.

15.5 Without limiting any other provisions of this Agreement, including Section 19, in the event Grantor wishes to terminate this Agreement as a result of any default by Grantee hereunder after expiration of any applicable period of notice and cure, Grantor shall give prompt

notice to the Mortgagees, and shall not terminate this Agreement unless and until it has complied with this Section and Mortgagees have elected not to respond to Grantor's notice within the period hereinafter described. Grantor shall, upon written request of the first priority Mortgagee, made within forty (40) days after notice to such Mortgagee, enter into a new easement agreement with such Mortgagee, or its designee, within twenty (20) days after the receipt of such request. Such new easement agreement shall be effective as of the date of the termination of this Agreement by reason of default by Grantee, and shall be for a perpetual term (subject only to any termination rights expressly set forth in this Agreement) and upon the same terms, covenants, conditions and agreements as contained in this Agreement. Upon the execution of any such new easement agreement, the Mortgagee shall agree in writing to perform or cause to be performed all of the covenants and agreements set forth in this Agreement to be performed by Grantee to the extent that Grantee failed to perform the same prior to the execution and delivery of the new easement agreement.

16. Notices. All notices, requests and communications (each, a "Notice") under this Agreement shall be given in writing, by (i) personal delivery (confirmed by the courier delivery service), or (ii) first class certified mail, postage prepaid, return receipt requested, to the individuals and addresses indicated below:

(a) If to Grantor:

City of Englewood / City of Littleton  
c/o Littleton/Englewood Waste Water Treatment Plant  
Attn: Operations Manager  
2900 South Platte River Drive  
Denver, Colorado 80110-1460      Facsimile: \_\_\_\_\_

(b) If to Grantee:

BP Wind Energy North America Inc.  
700 Louisiana, 33<sup>rd</sup> Floor  
Houston, TX 77002  
Attention: Land Manager  
Facsimile: (713) 354-2120

(c) If to Mortgagee:

At the address indicated in Mortgagee's notice sent to Grantor under Section 15.1 hereof.

Except as expressly provided herein, any Notice provided for herein shall become effective only upon and at the time of first receipt by the party to whom it is given, unless such Notice is only mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date that it is mailed. Any party may, by proper written notice hereunder to the other party, change the individual address to which such Notice shall thereafter be sent.

17. Legal Matters.

(a) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, excluding the choice of law provisions thereof.

(b) The parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either party shall not be employed in the interpretation of this Agreement. No waiver by a party of any provision of this Agreement shall be deemed to be a waiver of any other provision hereof. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa, whenever the context so requires. The terms "include", "includes" and "including", as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and do not define, limit or otherwise affect the scope, meaning or intent hereof. The term "hereof" or "herein" means the entirety of this Agreement unless otherwise indicated.

18. Integration; Amendment. This Agreement, when executed, approved and delivered, together with all exhibits attached hereto, shall constitute the entire agreement between the parties and there are no other representations or agreements, oral or written, except as expressly set forth herein. This Agreement may not be amended or modified except by a written agreement signed by the parties hereto.

19. Default; Remedies. If any party should fail to perform any of its obligations under this Agreement within thirty (30) days after the other party has given such party written notice of such failure (or such longer period if the failure cannot be cured within thirty (30) days but the defaulting party commences such cure within thirty (30) days and thereafter diligently prosecutes such cure to completion), including failure to make any payments due hereunder, then the non-defaulting party shall have the right, at its option and without further notice, but subject to the limitations set forth in the last sentence of this section, to exercise, in addition to any remedies expressly set forth in this Agreement, any and all remedies available in law or in equity, and any court enforcing the rights and duties granted in this Agreement shall have the power (insofar as that power may be granted by contract) to issue restraining orders or injunctions as necessary to enforce the provisions of this Agreement. Notwithstanding the foregoing or any rights at law or equity, neither this Agreement nor the rights of Grantee granted hereunder shall be terminated under any circumstances.

20. Further Assurances. Each party agrees that it will without further consideration execute and deliver such other documents and take such other action as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement. The parties acknowledge and agree that the provisions of this Section and Section 22 shall survive the execution and recording of this Agreement, and the Grantee may seek specific performance of said Sections, together with such other legal and equitable remedies as may be provided by law.

21. Inaccuracy of Legal Description or Ownership. In the event of any inaccuracy in the description of the Property or Easement Area in Exhibit A or Exhibit B, respectively, or in the description of the parties in whom title to the Property is vested, Grantor and Grantee shall

amend this Agreement to correct such inaccuracy in order to accomplish the intent of Grantor and Grantee.

22. Recording. Grantor and Grantee agree that this Agreement (without the Fee Schedule) shall be recorded in the official real property records of Arapahoe County.

23. Severability. If any terms or provisions of this Agreement are deemed to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

24. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original agreement, and all of which shall constitute one agreement.

*[signature pages follow]*



"GRANTOR"

City of Littleton

By: \_\_\_\_\_  
Name: Doug Clark  
Date: June 30, 2011

APPROVED AS TO FORM  
By: \_\_\_\_\_  
Littleton City Attorney  
Date

STATE OF Colorado )  
COUNTY OF Arapahoe ) ss

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of June, 2011, by Doug Clark as Mayor of the City of Littleton, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity on his own behalf.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public for the State of Colorado  
My commission expires: July 2, 2013  
Commission No. \_\_\_\_\_





Exhibit A

THE PROPERTY

The Premises is all of the following tracts or parcels of land, situated in Arapahoe County, State of Colorado, more particularly described as follows:

Section 17, Township 4 South, Range 57 West of the 6th P.M., EXCEPT the West 40 feet and the South 40 feet thereof as described in Quit Claim Deed recorded September 8, 1948, in Book 618, Page 128, County of Arapahoe, State of Colorado.

ALL OF SECTION 18, EXCEPT THE EAST 40 FEET;  
THE NORTH ONE-HALF OF SECTION 19, EXCEPT THE EAST 40 FEET;  
THE NORTH ONE-HALF, EXCEPT THE WEST 40 FEET;  
THE SOUTHWEST QUARTER, EXCEPT THE WEST 40 FEET;  
AND THE NORTH ONE-HALF OF THE SOUTHEAST QUARTER OF SECTION 20;  
ALL IN TOWNSHIP 4 SOUTH, RANGE 57 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO. ===

In the event of inaccuracies in the foregoing legal description, Grantee and Grantor shall modify this Exhibit "A" to correct the inaccuracies.

Tax Reference

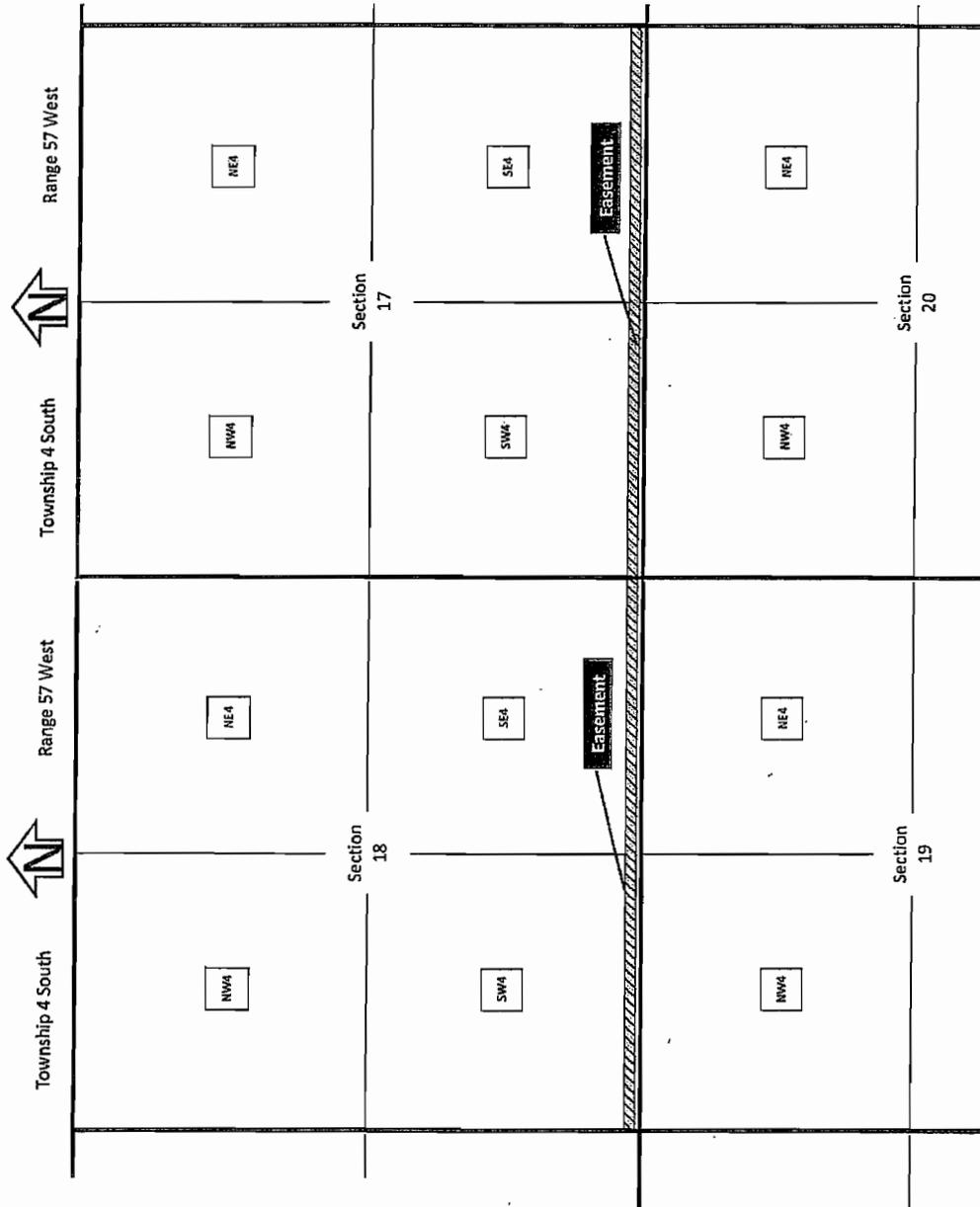
Parcel 1993-00-0-00-024	S17-T04S-R57W	(599.49 acres, more / less)
Parcel 1993-00-0-00-004	S18-T04S-R57W-	(308.72 acres, more / less)
Parcel 1993-00-0-00-006	S18-T04S-R57W-	(305.43 acres, more / less)

**Exhibit B**

**EASEMENT AREA**

A 100 foot wide tract of land generally described as:

The North 100 feet of the South 130 feet of Sections 17 and 18, Township 4 South, Range 57 West of the 6<sup>th</sup> PM; County of Arapahoe, State of Colorado.



FOR ILLUSTRATION ONLY - NOT TO SCALE

Note: This sketch is meant to depict the legal description of the easement. It does not represent a monumented land survey.

## FEE SCHEDULE

1. Annual Pre-Construction Payments. Within thirty (30) days after the Effective Date, and within thirty (30) days after each anniversary of the Effective Date occurring prior to payment being made under Section 2 below and prior to termination of this Agreement, Grantee shall pay Grantor the sum of One Thousand Dollars (\$1,000.00) per mile of the Property included in the Easement Area, with a minimum payment of \$2,000.00 per year.
2. After Commencement of Construction. After commencement of construction of Transmission Facilities on the Easement Area, Grantee shall pay Owner the following:

*Owner to Select Payment Option:*

**One-Time Payment:**

(Check Here ) (Initial Here   ) Within thirty (30) days after the commencement of construction of Transmission Facilities on the Easement Area, as determined by Grantee, in its sole discretion, Grantee shall pay Grantor the sum of Fifteen Thousand Dollars (\$15,000.00) per mile of the actual length of the Transmission Facilities in the Easement Area, and Grantor shall not be obligated to reimburse Grantee, and Grantee shall not offset, any payments previously made pursuant to Section 1 above. In the event Grantee installs transmission poles within the Easement Area, then together with such payment, Grantee shall also pay Grantor Two Thousand Five Hundred Dollars (\$2,500.00) for each transmission pole that Grantee installs in the Easement Area.

**OR**

**Annual Payments:**

(Check Here ) (Initial Here   ) Within thirty (30) days after commencement of construction of Transmission Facilities on the Easement Area, and thereafter within 30 days of each anniversary of the commencement of construction for the term of this Agreement, but not later than the termination of this Agreement, Grantee shall pay Grantor the sum of One Thousand Five Hundred Dollars (\$1,500) per mile of the actual length of the Transmission Facilities in the Easement Area, such amount to be adjusted for inflation at a rate of 2.5% per year over the term of this Agreement. If the base of the transmission line poles are not located on Grantor's Property, but rather a portion of the Transmission Facilities such as a horizontal cross arm or wire hangs in the airspace above Grantor's Property ("Airspace Transmission Facilities"), then the payment is Three Hundred Dollars (\$300) per mile of the actual length of the Airspace Transmission Facilities in the Easement Area.

**Attachment 1**  
**BP Wind Energy Easement Payment Detail Summary**

Based on final Agreement language, the following is an estimation of easement payment options (in addition to any described pre-construction payments):

**One-Time Payment:**

Within thirty (30) days after the commencement of construction of Transmission Facilities on the Easement Area, as determined by Grantee, in its sole discretion, Grantee shall pay Grantor the sum of Fifteen Thousand Dollars (\$15,000.00) per mile of the actual length of the Transmission Facilities in the Easement Area, and Grantor shall not be obligated to reimburse Grantee, and Grantee shall not offset, any payments previously made pursuant to Section 1 above. In the event Grantee installs transmission poles within the Easement Area, then together with such payment, Grantee shall also pay Grantor Two Thousand Five Hundred Dollars (\$2,500.00) for each transmission pole that Grantee installs in the Easement Area.

\$15,000 x 2 miles = \$30,000

\$2,500/pole x 14 poles (800 ft spacing) = \$35,000 + \$30,000 = **\$65,000**

\$2,500/pole x 9 poles (1,200 ft spacing) = \$22,500 + \$30,000 = **\$52,500**

**Annual Payments:**

Within thirty (30) days after commencement of construction of Transmission Facilities on the Easement Area, and thereafter within 30 days of each anniversary of the commencement of construction for the term of this Agreement, but not later than the termination of this Agreement, Grantee shall pay Grantor the sum of One Thousand Five Hundred Dollars (\$1,500) per mile of the actual length of the Transmission Facilities in the Easement Area, such amount to be adjusted for inflation at a rate of 2.5% per year over the term of this Agreement. If the base of the transmission line poles are not located on Grantor's Property, but rather a portion of the Transmission Facilities such as a horizontal cross arm or wire hangs in the airspace above Grantor's Property ("Airspace Transmission Facilities"), then the payment is Three Hundred Dollars (\$300) per mile of the actual length of the Airspace Transmission Facilities in the Easement Area.

Year	Annual Payment	Total
1	\$3,000	
2	\$3,075	
3	\$3,152	
4	\$3,231	
5	\$3,311	
6	\$3,394	
7	\$3,479	
8	\$3,566	
9	\$3,655	
10	\$3,747	\$33,610
11	\$3,840	
12	\$3,936	
13	\$4,035	
14	\$4,136	
15	\$4,239	\$53,796
16	\$4,345	
17	\$4,454	
18	\$4,565	\$67,159
19	\$4,679	
20	\$4,796	\$76,634
21	\$4,916	
22	\$5,039	
23	\$5,165	
24	\$5,294	
25	\$5,426	\$102,473

## COUNCIL COMMUNICATION

<b>DATE:</b> July 18, 2011	<b>AGENDA ITEM:</b> 11 a ii	<b>SUBJECT:</b> The Shops at Hampden and Logan Planned Unit Development, Amendment 1
<b>INITIATED BY:</b> Community Development		<b>STAFF SOURCE:</b> Audra L. Kirk, Planner I

### COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

There has been no previous Council action concerning the proposed Shops at Hampden and Logan PUD Amendment 1. Council approved the original Shops at Hampden and Logan PUD on September 16, 2002 as Ordinance Number 44, Series of 2002.

### PREVIOUS PLANNING COMMISSION ACTION

The Planning and Zoning Commission considered The Shops at Hampden and Logan PUD Amendment 1 at Public Hearing on June 21, 2011. The Commission considered public testimony and voted 7 to 0 to forward the proposed Amendment 1 to City Council.

### RECOMMENDED ACTION

Staff seeks Council's support for a bill for an ordinance approving Amendment 1 for the Shops at Logan Planned Unit Development. Staff further recommends that Council set August 1, 2011 as the date for Public Hearing to consider testimony on the proposed amendment.

### BACKGROUND

The Planned Unit Development is a rezoning process that establishes specific zoning and site planning criteria to meet the needs of a specific development proposal that may not be accommodated within existing zoning development regulations. A PUD rezoning provides the opportunity for unified development control for multiple properties or multiple uses.

This property is a 4.33 acre site occupied by a Safeway Stores since 1984. Prior to rezoning in 2002, this property was zoned B-1. The B-1 zone district did not allow for fueling stations, and therefore Safeway rezoned to the current PUD. The rezoning was approved by Council on September 16, 2002 as Ordinance Number 44, Series of 2002.

## **AMENDMENT 1 OVERVIEW**

Amendment 1 to The Shops at Hampden at Logan will change the Permitted Principal Uses to allow a drive thru automatic teller machine (ATM).

## **FINANCIAL IMPACT**

There is no financial impact to the City.

## **LIST OF ATTACHMENTS**

Planning and Zoning Commission Findings of Fact  
Staff Report  
Bill for Ordinance

**CITY OF ENGLEWOOD PLANNING AND ZONING COMMISSION**

IN THE MATTER OF CASE #ZON2011-002 )  
FINDINGS OF FACT, CONCLUSIONS )  
AND RECOMMENDATIONS FOR AN ) FINDINGS OF FACT AND  
AMENDMENT TO THE SHOPS AT ) CONCLUSIONS OF THE  
HAMPDEN AND LOGAN PLANNED UNIT ) CITY PLANNING AND  
DEVELOPMENT ) ZONING COMMISSION  
)  
)  
INITIATED BY: )  
CKE ENGINEERING INC. )  
14257 WEST EVANS CIRCLE )  
LAKEWOOD, CO 80228 )  
)

Commission Members Present: Brick, Welker, Knoth, Roth, Calonder, King, Bleile

Commission Members Absent: Fish

This matter was heard before the City Planning and Zoning Commission on June 21, 2011, in the City Council Chambers of the Englewood Civic Center.

Testimony was received from Staff. The Commission received notice of Public Hearing, Certification of Posting, Staff Report and supplemental information from Staff, which were incorporated into and made a part of the record of the Public Hearing.

After considering statements of the witness, and reviewing the pertinent documents, the members of the City Planning and Zoning Commission made the following Findings and Conclusions.

**FINDINGS OF FACT**

- 1. **THAT** The Shops at Hampden and Logan Planned Unit Development was approved by City Council on September 16, 2002 as Ordinance No. 44, Series of 2002.
- 2. **THAT** the Amended PUD plan and site plan were reviewed by the City's Development Review Team on September 14, 2010.
- 3. **THAT** a neighborhood meeting was held on Wednesday, March 16, 2011. Notice of the pre-application meeting was mailed to owners of property within 500 feet of the site.

4. **THAT** the request for Amendment No. 1 to The Shops at Hampden and Logan Planned Unit Development was filed by CKE Engineering, Inc. on April 26, 2011. The Amendment will change the Permitted Principal Uses to allow a drive-thru automatic teller machine (ATM).
5. **THAT** the changes to the site will impact less than 2,000 square feet of the existing 4.33 acre site and will require 11 parking spaces, leaving a total of 228 parking spaces.
6. **THAT** Public Notice of the Public Hearing was given by publication in the Englewood Herald on June 3, 2011 and was on the City's website from May 25, 2011 through June 21, 2011.
7. **THAT** the property was posted as required, said posting setting forth the date, time, and place of the Public Hearing.
8. **THAT** Planner Kirk testified the request is for Amendment No. 1 to The Shops at Hampden and Logan Planned Unit Development. Ms. Kirk testified to the criteria the Commission must consider when reviewing an amendment to a PUD application. Ms. Kirk further testified that Staff recommends approval of the amendment.
9. **THAT** the PUD District Plan is consistent with adopted and generally accepted standards of development in the City of Englewood.

### **CONCLUSIONS**

1. **THAT** the application was filed by CKE Engineering, Inc. seeking approval for the Shops at Hampden and Logan Planned Unit Development Amendment No. 1.
2. **THAT** proper notification of the date, time, and place of the Public Hearing was given by publication in the official City newspaper, posting on the City's website and by posting of the property for the required length of time.
3. **THAT** all testimony received from staff has been made part of the record of the Public Hearing.
4. **THAT** the request meets the criteria for an amendment.
5. **THAT** The Shops at Hampden and Logan Planned Unit Development Amendment No. 1 is in conformance with Roadmap Englewood: 2003 Englewood Comprehensive Plan.

**DECISION**

**THEREFORE**, it is the decision of the City Planning and Zoning Commission that the application filed by CKE Engineering, Inc. for The Shops at Hampden and Logan Planned Unit Development Amendment No. 1 be recommended to City Council for approval.

The decision was reached upon a vote on a motion made at the meeting of the City Planning and Zoning Commission on June 21, 2011, by Mr. King, seconded by Mr. Brick, which motion states:

Mr. King moved:

Mr. Brick seconded: *CASE #ZON2011-002, THE SHOPS AT HAMPDEN AND LOGAN PLANNED UNIT DEVELOPMENT AMENDMENT NO. 1 BE RECOMMENDED FOR APPROVAL TO CITY COUNCIL WITH A FAVORABLE RECOMMENDATION FOR ADOPTION.*

AYES: Calonder, King, Knoth, Roth, Bleile, Welker, Bleile  
NAYS: None  
ABSTAIN: None  
ABSENT: Fish

The motion carried.

These Findings and Conclusions are effective as of the meeting on June 21, 2011.

**BY ORDER OF THE CITY PLANNING & ZONING COMMISSION**

  
Chad Knoth, Chair



# M E M O R A N D U M

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**TO:** Planning and Zoning Commission  
**THRU:** Alan White, Director, Community Development  
**FROM:** Audra L. Kirk, Planner 1 ✓  
**DATE:** June 21, 2011

**SUBJECT:** **Case ZON2011-001** - Public Hearing  
The Shops at Hampden and Logan Planned Unit Development Amendment 1

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**APPLICANT:**

CKE Engineering, Inc.  
14257 West Evans Circle  
Lakewood, Colorado 80228

**PROPERTY OWNERS:**

Safeway Stores 45 Inc.  
1371 Oakland Boulevard  
#200  
Walnut Creek, CA 94596

**PROPERTY ADDRESS:**

201 East Jefferson Avenue

**REQUEST:**

The applicant has submitted an application to amend The Shops at Hampden and Logan Planned Unit Development (PUD) which was approved by City Council on September 16, 2002 as Ordinance Number 44, Series of 2002.

**RECOMMENDATION:**

The Department of Community Development recommends that the Planning and Zoning Commission approve The Shops at Hampden and Logan PUD Amendment 1 as proposed and forward a recommendation of approval to City Council.

**LEGAL DESCRIPTION:**

LOTS 14-35 BLK 3 & LOTS 12-39 BLK 4 TOG WITH VAC ST & ALLEYS ADJ SD LOTS & BLKS EX PARCEL DESC AS BEG 15 FT N OF SW COR LOT 22 BLK 3, TH E 58 FT, TH S 35 FT, TH E 170 FT, TH N 20 FT, TH E 16 FT, TH SE 44 FT, TH ALG CURVE TO RT 31.85 FT,

TH SW 30 FT, TH W 240 FT, TH N 105 FT TO BEG & EX HI/WAY & EX E 7 FT OF LOTS 29-39 BLK 4 FOR STREET BIRCH'S ADD TO S BDWY HTS 2ND FLG

**ZONE DISTRICT:**

The Shops at Hampden and Logan

**PROPERTY LOCATION AND SURROUNDING LAND USE:**

The subject property of this PUD amendment is located at the northwest corner of South Logan Street and East Jefferson Avenue. Adjoining land to the north is zoned MU-B-1 Mixed -use central business zone district, and is part of the Shops at Hampden and Logan. Land east and southeast of the site is zoned M-2 Mixed-use medical, office and high density residential and limited retail zone district. Land within this zone district contains commercial and residential uses. Land directly to the south is zoned MU-B-2 general arterial business zone district. This land contains a portion of the Little Dry Creek.

**PUD AMENDMENT PROCEDURE:**

Modifications to the PUD and site plan amendments may only be made pursuant to the same procedures as the original plans were approved. Therefore a pre-application neighborhood meeting, City review and public hearings before the Planning and Zoning Commission and City Council are required.

**BACKGROUND:**

The Planned Unit Development is a rezoning process that establishes specific zoning and site planning criteria to meet the needs of a specific development proposal that may not be accommodated within existing zoning development regulations. A PUD rezoning provides the opportunity for unified development control for multiple properties or multiple uses.

This property is an 4.33 acre site occupied by a Safeway Stores since 1984. Prior to rezoning in 2002, this property was zoned B-1. The B-1 zone district did not allow for fueling stations, and therefore Safeway rezoned to the current PUD. The rezoning was approved by Council on September 16, 2002 as Ordinance Number 44, Series of 2002, with the following conditions:

1. Refueling tanker truck access to the site shall be only from South Sherman Street access via U.S. 285, and shall be accomplished between the hours of 11 p.m. and 6 a.m.
2. The outdoor garden center accessory use shall be limited to the months of April through July, shall not utilize more than 20 parking spaces and the layout shall be consistent with the PUD proposed site plan.
3. The shrubbery between the sidewalk and South Logan Street shall be of one species, consistent in height and width at maturity, and shall not be of a species that will overgrow the sidewalk. A Burning Bush species is suggested. Further, shrubbery and landscaping proposed on the west side of the sidewalk shall be moved further west up the slope to provide more grass closer to the sidewalk.
4. In the event the fueling facility is not operated for fueling or any other permitted use for a period of one (1) year, the applicant shall be required to remove the fuel

pumps, kiosk, canopy, air pump station, and underground tanks, and restore the site to paved parking use. This period may be extended up to an additional 180 days, for cause, following review by the Director of Community Development.

5. Sign #4, as illustrated on Sheet PUD-7, shall be reconstructed or replaced. This sign shall not exceed 100 square feet (per face) in total area and shall include a maximum of 50 square feet for off-premise advertising for retail business tenants of The Shops at Hampden and Logan.

#### **NEIGHBORHOOD MEETING SUMMARY:**

Pursuant to the Unified Development Code amendment procedure, the applicant conducted a neighborhood meeting on Wednesday, March 16, 2011, prior to submitting the Amendment application. Notice of the pre-application meeting was mailed to owners of property within 500 feet of the site. A meeting summary is attached (See Exhibit A).

#### **CITY DEPARTMENT AND DIVISION REVIEW:**

The Amended PUD Plan and site plan were reviewed by the City's Development Review Team (DRT) on September 14, 2010. Identified issues were addressed by the applicant and the final Shops at Hampden and Logan PUD Amendment 1 packet was submitted on April 26, 2011. The final plans were again reviewed by City Agencies and no further issues were identified.

#### **AMENDMENT 1 OVERVIEW:**

Amendment 1 to The Shops at Hampden at Logan will change the Permitted Principal Uses to allow a drive thru automatic teller machine. (ATM).

**Site Plan:** The applicant is proposing the site plan amendments to include a drive thru ATM. The changes to the site will be minimal and will impact less than 2,000 s.f. of the existing 4.33 acre site.

**Landscaping:** The applicant is proposing the addition of 6 new shrubs at the southeast area of the drive thru ATM. This proposed shrubbery will be screening from headlights at the ATM. All other landscaping on the site will remain.

**Signage:** The proposed PUD amendment does not impact the current signage regulations. The current PUD allows for a total of 10 signs not to exceed 440 square feet. The proposed ATM kiosk will be included in the total number and square footage of allowable signage.

**Parking:** The original PUD provided 239 spaces for The Shops at Hampden and Logan. This does include the Safeway grocery store as well as the retail located at the north end of the site. The retail are not part of the PUD, however, the PUD did require that the parking is shared by both Safeway and the retail stores. The proposed ATM drive thru will require 11 parking spaces, leaving 228 and a total parking ration of 4.40 spaces per 1000 s.f. of gross retail.

Current parking requirements for retail uses in the MU-B-1 zone district would require Safeway and the retail to the north to have a total of 98 parking spaces.

Staff believes that an adequate number of retail parking spaces are provided in the PUD.

**SUMMARY:**

The applicant is proposing minor changes to the existing PUD, in order to allow a drive thru ATM. Although there will be a reduction of 11 parking spaces there will not be a negative impact on the current parking.

**PLANNED UNIT DEVELOPMENT CONSIDERATIONS:**

The Commission must determine if the modifications proposed in Amendment 1 meet District Plan and Site Plan criteria as established in the PUD Ordinance. Consideration at this time is made only to the modifications addressed in Amendment 1.

**PUD District Plan**

The District Plan sets forth the zoning regulations under which the proposed amendments will occur.

1. *The PUD District Plan is, or is not, in conformance with the District Plan requirements and the Comprehensive Plan.*

Amendment 1 is in conformance with the applicable requirements for the general location, arrangement, extent and character of the development. The proposed amendments do not alter the Comprehensive Plan objectives for housing, cultural arts and business and employment identified in the original PUD.

2. *All required documents, drawings, referrals, recommendations, and approvals have been received.*

All appropriate documents concerning Amendment 1 have been received and approved.

3. *The PUD District Plan is consistent with adopted and generally accepted standards of development in the City of Englewood.*

The Amendment 1 District Plan remains consistent with accepted development standards established by the City of Englewood.

4. *The PUD District Plan is substantially consistent with the goals, objectives, design guidelines, policies and any other ordinance, law or requirement of the City.*

Amendment 1 is in conformance with all other ordinances, laws and requirements of the City.

5. *When the PUD District Plan is within the Englewood Downtown Development Authority (EDDA) area, the Plan is consistent with the EDDA approved designs, policies and plans.*

Not applicable.

#### PUD Site Plan

The Site Plan sets forth the site planning and design parameters under which the proposed amendments will occur.

1. *The PUD Site Plan is, or is not, in conformance with the District Plan requirements.*

Amendment 1 establishes the arrangement, orientation, location, and the building envelopes on the site which are in conformance with the District Plan.

2. *All required documents, drawings, referrals, recommendations, and approvals have been received.*

All required site plan materials have been received and approved.

3. *The PUD Site Plan is consistent with adopted and generally accepted standards of development of the City of Englewood.*

Amendment 1 is consistent with development standards set forth in the District Plan. The Development Review Team reviewed the site plan and determined that the proposal meets established City development standards.

4. *The PUD Site Plan is substantially consistent with the goals, objectives and policies and/or any other ordinance, law or requirement of the City.*

The proposed PUD Site Plan presented in Amendment 1 is in conformance with all other ordinances, laws and requirements of the City.

#### **ATTACHMENTS:**

Exhibit A: The Shops at Hampden and Logan PUD Amendment 1 Site Plan

Exhibit B: Neighborhood Meeting Summary – March 16, 2011

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2011

COUNCIL BILL NO. 39  
INTRODUCED BY COUNCIL  
MEMBER \_\_\_\_\_

A BILL FOR

AN ORDINANCE APPROVING AMENDMENT 1, TO THE PLANNED UNIT DEVELOPMENT FOR THE SHOPS AT HAMPDEN AND LOGAN TO ALLOW A DRIVE THRU AUTOMATIC TELLER MACHINE (ATM).

WHEREAS, the Englewood City Council approved the Shops at Hampden and Logan Planned Unit Development with the passage of Ordinance No. 44, Series of 2002; and

WHEREAS, CKE Engineering, Inc. filed an application for an amendment to the Shops at Hampden and Logan PUD; and

WHEREAS, the proposed amendment would change the Permitted Principal Uses to allow a drive thru automatic teller machine (ATM); and

WHEREAS, the Englewood Planning and Zoning Commission held a Public Hearing on June 21, 2011 and recommends Englewood City Council approve Amendment No. 1;

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

Section 1. The Englewood City Council finds that all required documents, drawings, referrals, recommendations and approvals have been received.

Section 2. The Englewood City Council finds that the P.U.D. site plan is consistent with adopted and generally accepted standards of development within the City.

Section 3. The P.U.D. site plan is substantially consistent with the goals, objectives and policies and/or any other ordinance, law or requirement of the City.

Section 4. The City Council of the City of Englewood, Colorado hereby approves the Amendment No. 1 to the Shops at Hampden and Logan Planned Unit Development; attached hereto as Exhibit A.

Section 5. The Amendment will change the Permitted Principal Uses to allow a drive thru automatic teller machine (ATM).

Introduced, read in full, and passed on first reading on the 18th day of July, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of July, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 20<sup>th</sup> day of July, 2011 for thirty (30) days.

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James K. Woodward, Mayor

ATTEST:

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Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 18th day of July, 2011.

---

Loucrishia A. Ellis

# THE SHOPS AT HAMPDEN AND LOGAN PUD-1ST AMENDMENT

201 E. JEFFERSON AVE.  
CITY OF ENGLEWOOD, COUNTY OF ARAPAHOE  
STATE OF COLORADO  
SHEET 1 OF 4

J.M.F.V.M.

## SHEET INDEX

PUD1 COVER SHEET  
PUD2 PUD MAP EXISTING CONDITIONS  
PUD3 PUD MAP AMENDED CONDITIONS  
PUD4 ATM KIOSK ELEVATIONS

## OWNER

SAFeway STORES 45, INC.  
1371 OAKLAND BLVD. #200  
WALNUT CREEK, CA 94596  
PH. (303) 843-7561  
MR. DAN CLAYTON

## ENGINEER

CKE ENGINEERING, INC.  
14257 W. EVANS CIRCLE  
LAKEWOOD, CO 80228  
PH: (303) 917-1757  
FAX: (303) 980-5962  
MR. JOE COCO

## APPLICANT

KEY BANK  
3300 E. FIRST AVENUE  
DENVER, CO 80206  
PH. (303) 945-6076  
MR. MARK PHILLIPS

## SIGNATURE BLOCK:

PROPERTY OWNER:

\_\_\_\_\_  
DATE

STATE OF COLORADO }  
COUNTY OF ARAPAHOE }SS

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY

OF \_\_\_\_\_ A.D. 20\_\_\_\_ BY \_\_\_\_\_

AS \_\_\_\_\_ OF \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_

NOTARY PUBLIC

ADDRESS

APPROVED FOR THE CITY OF ENGLEWOOD:

PLANNING AND ZONING COMMISSION CHAIRPERSON \_\_\_\_\_ DATE \_\_\_\_\_

PLANNING AND ZONING COMMISSION RECORDING SECRETARY \_\_\_\_\_ DATE \_\_\_\_\_

MAYOR OF ENGLEWOOD \_\_\_\_\_ DATE \_\_\_\_\_

ATTESTED

THE FOREGOING APPROVAL WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_ A.D. 20\_\_\_\_

BY \_\_\_\_\_ AND \_\_\_\_\_

CITY CLERK

## CLERK AND RECORDER

THIS PLANNED UNIT DEVELOPMENT IS ACCEPTED FOR FILING IN THE OFFICE OF THE  
CLERK AND RECORDER OF ARAPAHOE COUNTY,

COLORADO, AT \_\_\_\_\_ O'CLOCK, \_\_\_\_\_ M., THIS \_\_\_\_\_ DAY OF \_\_\_\_\_  
RECEPTION NUMBER \_\_\_\_\_ BOOK NUMBER \_\_\_\_\_  
PAGE NUMBER \_\_\_\_\_

BY: \_\_\_\_\_  
CITY CLERK \_\_\_\_\_ DEPUTY

## BACKGROUND

THIS AMENDMENT TO THE SHOPS AT HAMPDEN AT LOGAN PUD IS TO ADD A DRIVE THRU AUTOMATIC TELLER MACHINE (ATM) TO THE LIST OF PERMITTED PUD DISTRICT PLAN REGULATIONS PRINCIPLE USES. THE AUTOMATIC TELLER MACHINE WILL NOT HAVE ANY IMPACT ON THE EXISTING GRADING, DRAINAGE OR AREA OF LANDSCAPING ON-SITE.

## CONSTRUCTION SCHEDULE

CONSTRUCTION OF PROPOSED IMPROVEMENTS SHALL TAKE APPROXIMATELY 4-6 WEEKS.

## PUD DISTRICT PLAN REGULATIONS

### A. GENERAL REGULATIONS:

UNLESS OTHERWISE PROVIDED FOR IN THIS PUD OR AND AMENDMENT THERETO ALL PROVISIONS, STANDARDS, REGULATIONS AND PROCEDURES PERTINENT TO AN APPLICATION FOR THE DEVELOPMENT OF LAND WITHIN THIS PUD ZONE DISTRICT SHALL COMPLY WITH THE REQUIREMENTS OF THE MU-B-1 ZONE DISTRICT IN PLACE AT THE TIME SUCH APPLICATION IS RECEIVED.

### B. PERMITTED PRINCIPAL USES.

98. DRIVE THRU AUTOMATIC TELLER MACHINE (ATM).

### C. ACCESSORY USES.

NO CHANGE.

### D. DEVELOPMENT STANDARDS.

4. SIGNAGE

A MAXIMUM TOTAL OF TEN (10) SIGNS SHALL BE PERMITTED FOR THE PUD, INCLUDING THOSE SIGNS MOUNTED ON THE GROCERY STORE, THOSE MOUNTED ON THE FUELING FACILITY, THOSE MOUNTED ON THE ATM KIOSK, AND THE FREESTANDING SIGNS. THE TOTAL AREA OF ALL SIGNS COMBINED SHALL NOT EXCEED 440 SQUARE FEET.

## LEGAL DESCRIPTION

LOTS 12 THRU 39, INCLUSIVE, TOGETHER WITH ALL OF THE VACATED ALLEY LYING BETWEEN AND ADJOINING SAID LOTS 12 THRU 39, BLOCK 3, BIRCH'S ADDITION TO SOUTH BROADWAY HEIGHTS BEING THE SECOND FILING; EXCEPT THAT PORTION OF LOTS 22 THROUGH 28 AND THE VACATED ALLEY AND STREET RECORDED IN BOOK 4112 AT PAGE BETWEEN THE WEST LINE OF LOT 25, BLOCK 3, BIRCH'S ADDITION TO SOUTH BROADWAY HEIGHTS, BEING THE SECOND FILING (SAID LINE ALSO BEING THE EAST RIGHT OF WAY LINE OF SOUTH SHERMAN STREET) EXTENDED SOUTHERLY AND THE EAST LINE OF LOT 26, BLOCK 4, BIRCH'S ADDITION TO SOUTH BROADWAY HEIGHTS, BEING THE SECOND FILING, EXTENDED SOUTHERLY EXCEPT THAT PORTION CONVEYED IN BOOK 4112 AT PAGE 475 OF LOTS 22 THROUGH 28 AND THE VACATED ALLEY AND STREET, BLOCK 3, BIRCH'S ADDITION TO SOUTH BROADWAY HEIGHTS, BEING THE SECOND FILING, ARAPAHOE COUNTY, COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF LOT 22 WHICH LIES 15 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 22; THENCE EAST 58 FEET PARALLEL TO THE SOUTH LINE OF LOT 22; THENCE SOUTH 35 FEET PARALLEL TO THE WEST LINE OF LOTS 22 AND 23; THENCE EAST 170 FEET, PARALLEL TO THE SOUTH LINE OF LOTS 23 AND 28; THENCE NORTH 20 FEET, PARALLEL TO THE EAST LINE OF LOT 28 TO A POINT ON THE NORTH LINE OF LOT 28; THENCE EAST ALONG THE NORTH LINE OF LOT 28 A DISTANCE OF 16 FEET TO A POINT; THENCE ON A DEFLECTION ANGLE OF 60 DEGREES TO THE RIGHT A DISTANCE OF 44 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT; THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 31.85 FEET, SAID CURVE HAS A CENTRAL ANGLE OF 41 DEGREES 28 MINUTES 17 SECONDS AND A RADIUS OF 44.00 FEET, THE LONG CHORD OF SAID CURVE BEARS SOUTHERLY ON A DEFLECTION ANGLE OF 40 DEGREES 02 MINUTES 48 SECONDS TO THE RIGHT FROM THE PRECEDING COURSE A DISTANCE OF 31.16 FEET TO A POINT ON A NON-TANGENT LINE; THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 34 DEGREES 57 MINUTES 12 SECONDS A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 285, WHICH LIES 15 FEET SOUTH OF AND PARALLEL TO THE SOUTH LINE OF LOTS 25 AND 26 WHICH IS ALSO THE SOUTH LINE OF THAT PORTION OF JEFFERSON AVENUE VACATED IN BOOK 789 AT PAGE 356; THENCE WESTERLY ON A DEFLECTION ANGLE OF 45 DEGREES TO THE RIGHT AND ALONG THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 285 A DISTANCE OF 240.00 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SOUTH SHERMAN STREET; 105.00 FEET ALONG SAID EAST LINE AND THE WEST LINE OF LOTS 22 THROUGH 25, TO THE POINT OF BEGINNING, INCLUDED IN THIS PARCEL ARE THE APPLICABLE PORTIONS OF THE 16 FOOT WIDE ALLEY, THE 15 FOOT SIDE STREET VACATED IN BOOK 789 AT PAGE 356 AND VACATED GRANT STREET.

ALL IN THE COUNTY OF ARAPAHOE, STATE OF COLORADO.

AND

THE PORTION OF VACATED SOUTH GRANT STREET FROM THE EXTENDED NORTH LOT LINE OF LOT 39, BLOCK 3, BIRCH'S ADDITION TO SOUTH BROADWAY HEIGHTS, BEING THE SECOND FILING EXTENDED EASTERLY TO THE NORTHWEST CORNER OF LOT 12, BLOCK 4, BIRCH'S ADDITION SOUTH BROADWAY HEIGHTS, SECOND FILING, TO THE NORTH LINE OF VACATED EAST JEFFERSON AVENUE.

LOTS 12 THRU 39 INCLUSIVE TOGETHER WITH ALL OF THE VACATED ALLEY LYING BETWEEN THE EXTENDED NORTH LINE OF LOT 12 EXTENDED EASTERLY TO THE NORTHWEST CORNER OF LOT 39 AND THE NORTH RIGHT OF WAY LINE OF VACATED EAST JEFFERSON AVENUE, BLOCK 4, BIRCH'S ADDITION TO SOUTH BROADWAY HEIGHTS BEING THE SECOND FILING.

EXCEPT THAT PORTION OF LOTS 26 THRU 29 AND VACATED EAST JEFFERSON AVENUE AS MORE PARTICULARLY DESCRIBED IN INSTRUMENT RECORDED MAY 19, 1959 IN BOOK 1128 AT PAGE 116 IN THE CLERK AND RECORDER'S OFFICE OF THE COUNTY OF ARAPAHOE.

EXCEPT THE EAST 7 FEET OF LOTS 28 THRU 39.

COUNTY OF ARAPAHOE, STATE OF COLORADO



VICINITY MAP  
N.T.S.

## PUD DEVELOPMENT SUMMARY

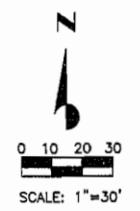
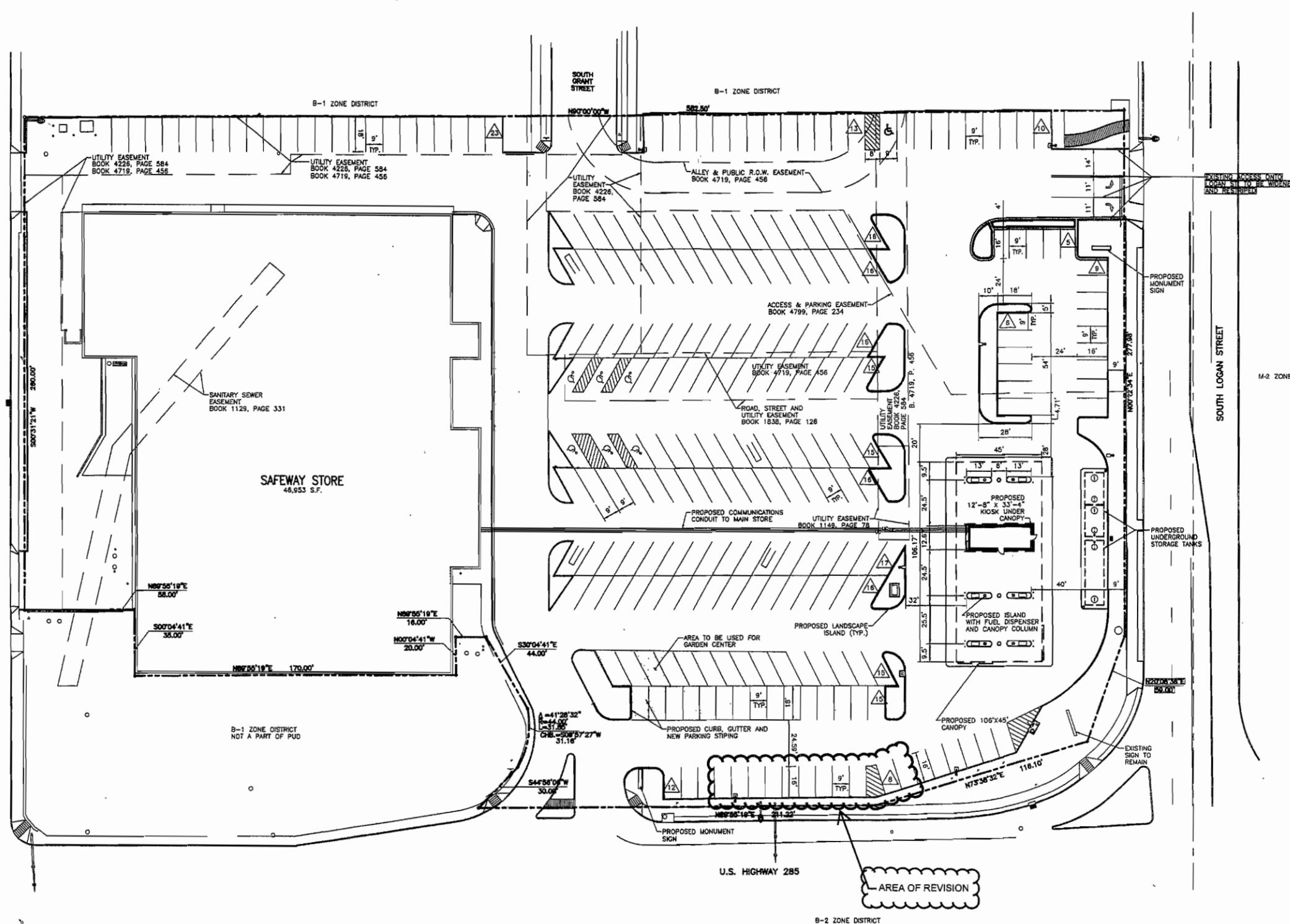
### LAND USE DATA

	EXISTING		PROPOSED	
	S.F.	% OF AREA	S.F.	% OF AREA
TOTAL AREA INCLUDED IN PUD	188,939	100.0%	188,939	100.0%
SAFeway STORE FOOTPRINT	46,953		46,953	
FUELING FACILITY CANOPY FOOTPRINT	4,778		4,778	
ATM KIOSK CANOPY FOOTPRINT	N/A		38	
TOTAL BUILDING AREA	51,731	27.4%	51,769	27.4%
DRIVES AND PARKING AREAS	128,234	67.9%	128,196	67.9%
ON-SITE LANDSCAPED AREA	11,233	6.0%	11,233	6.0%
MAX ALLOCABLE ROW LANDSCAPING AREA	14,170		14,170	
TOTAL EFFECTIVE LANDSCAPED AREA	25,403	13.4%	25,403	13.4%

REVISED 5/16/11

**CKE ENGINEERING INC**  
14257 W. EVANS CIRCLE  
LAKEWOOD, CO. 80228  
(303) 917-1757

COVER SHEET



**UTILITY LEGEND**

—○—	MANHOLE
—◇—	VALVE
—W—	EXISTING WATER LINE
—SS—	EXISTING SANITARY SEWER
—STS—	EXISTING STORM SEWER
—G—	EXISTING GAS LINE
—UE—	EXISTING UNDERGROUND ELECTRICAL
—OE—	EXISTING OVERHEAD ELECTRICAL
—UT—	EXISTING UNDERGROUND TELEPHONE
—T—	EXISTING OVERHEAD TELEPHONE
△	NUMBER OF PARKING SPACES

- NOTES:**
- ALL EXISTING PARKING STRIPING TO BE REMOVED. PARKING LOT TO BE RESTRIPE PER THIS PLAN. PROPOSED STANDARD PARKING SPACES ARE 8' X 18'.
  - TANKER INGRESS AND EGRESS VIA SHERMAN STREET ONLY
  - TANKER DELIVERIES LIMITED TO BETWEEN THE HOURS OF 11:00 P.M. & 6:00 A.M. THE FOLLOWING DAY
  - EXISTING SITE LIGHTS TO BE RELOCATED PER NEW PARKING LAYOUT AS NECESSARY
  - ALL CANOPY LIGHTING SHALL BE DIRECTED DOWNWARD AND SHALL BE FLUSH-MOUNTED, USING SHARP-CUTOFF LUMINAIRES AND NO DROP LENSES.

REVISIONS				
No.	Description	Des. By	Drn. By	Date
1	PER INITIAL REVIEW COMMENTS	JKW	CJH	12/18/01
2	PER SECOND REVIEW COMMENTS	JKW	CJH	3/9/02
3	PER COMMENTS AT PLANNING & ZONING COMMISSION	JB	CJH	5/21/02
4	PER PLANNING & ZONING COMMISSION FINDINGS & CONCLUSIONS	JB	CJH	7/23/02
5	PER CHANGES DETERMINED AT CITY COUNCIL HEARING	JB	CJH	9/18/02



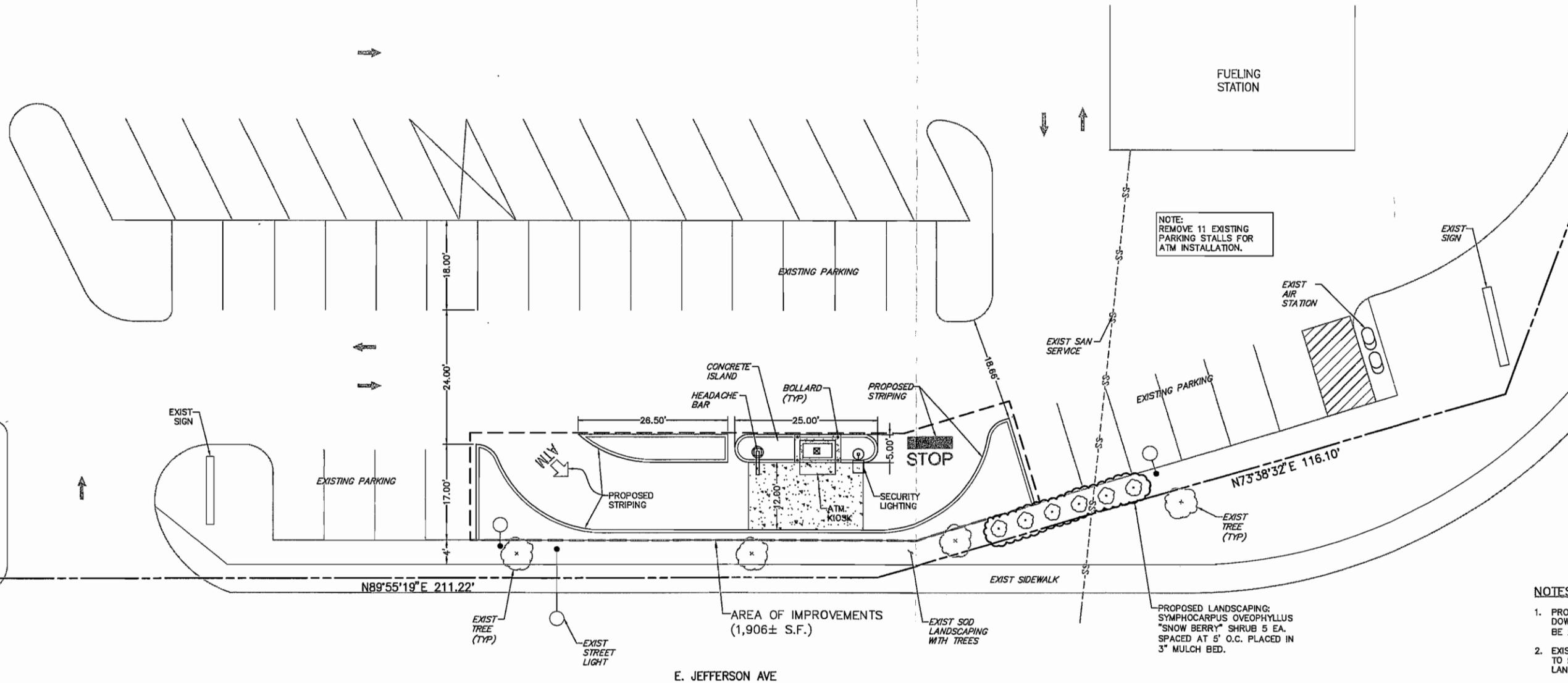
**SAFEMART, INC.**  
 6900 South Yosemite Street  
 Englewood, Colorado 80112-1412  
 Tel: (303) 643-7600

**Galloway, Romero & Associates**  
 Design Engineering Planning  
 5350 DTC Parkway  
 Greenwood Village, Colorado 80111  
 Tel: (303) 770-8884  
 Fax: (303) 770-3536

PARKING SUMMARY

	EXISTING	PROPOSED
STANDARD SPACES	236	225
STANDARD ACCESSIBLE SPACES	4	4
VAN ACCESSIBLE SPACES	3	3
CART CORRALS	-4	-4
TOTAL NET SPACES	239	228

PROPOSED PARKING RATIO: 4.40 SPACES / 1000 S.F. (GROSS)



NOTES:

1. PROPOSED SECURITY LIGHT SHALL BE FULLY SHIELDED DOWNCAST LIGHT FIXTURE. HEIGHT TO FIXTURE SHALL BE 24' MAX.
2. EXISTING IRRIGATION WILL BE ADJUSTED IN THE FIELD TO BE OPERATIONAL AND ACCOMMODATE NEW LANDSCAPING.
3. NEW MULCH BED SHALL MATCH EXISTING MULCH BEDS IN THE SHOPPING CENTER.
4. NEW LANDSCAPING INSTALLED AS PART OF THE PROPOSED KIOSK ATM SHALL BE MAINTAINED BY THE EXISTING SHOPPING CENTER.

REVISED 5/16/11

**CKE ENGINEERING INC**  
 14257 W. EVANS CIRCLE  
 LAKEWOOD, CO. 80228  
 (303) 917-1757





Push Through Lettering - Front and Back



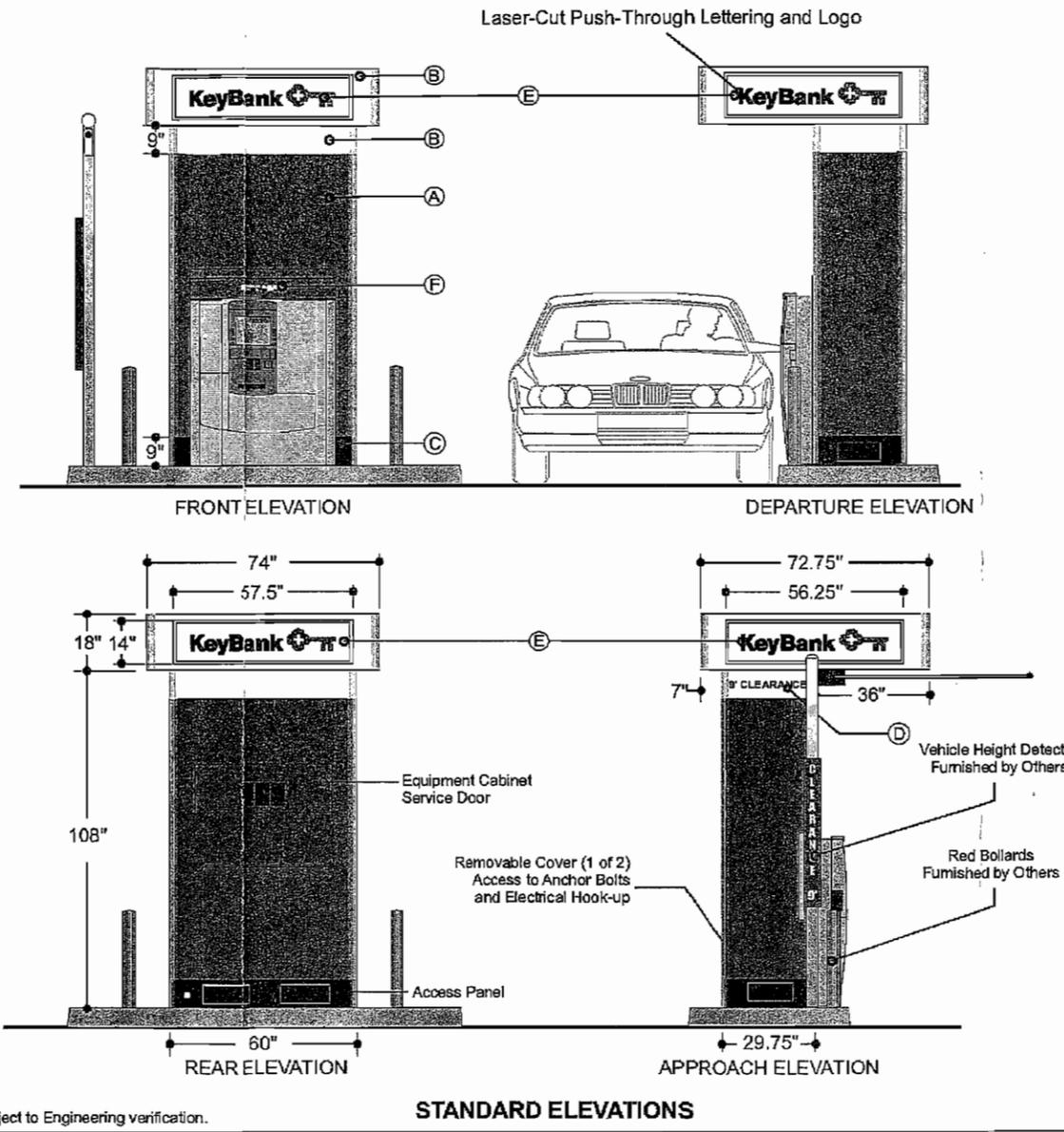
Push-Through Lettering - Left and Right

Network - determined by State



Paint & Graphics Detail

- (A) Kiosk Paint  
Color: PMS 1795 Red  
Finish: Automotive Smooth
- (B) Canopy and Top Stripe Paint  
Color: White CBS 006  
Finish: Automotive Smooth
- (C) Bottom Stripe Paint  
Color: Black CBS 008  
Finish: Automotive Smooth
- (D) Vinyl Decals  
3M Scotchcal vinyl applied to painted metal surface of unit  
Color: Black  
Material: 3M#220-12 Black
- (E) Backlit Push-Through Letters  
Translucent Vinyl applied to push-through lettering and logo.  
Color: Match PMS 1795  
Material: 3M#230-33 Red  
Color: Black  
Material: 3M#230-22 Black
- (F) Network Panel  
Reverse Print on Clear, with white backing. Plex Size 14.75" x 2.25".  
Networks Layout Varies by State.



GRAPHICS LAYOUT

<b>Coovette</b> BUILDING SYSTEMS		585 Electric Road • Salem, Virginia 24153 TEL (540) 375-2608 • FAX (540) 375-2638 www.coovette.com • products@coovette.com	
<b>P-5163</b>			
Rev. #: P4.0	Sheet 1 of 2	Date: 2/4/10	
Approved By:	Drawn By: Matt M.	2/4/10	MM
		1/25/10	MM
		1/20/10	MM
		1/13/10	MM
DATE	BY	DESCRIPTION	REV #



Product: 750 Ultra Slim Surround  
Option A

Ultra Slim Surround Specs & Options

<b>FINISH</b>	<b>ACCESS PANEL</b>	<b>CANOPY</b>	<b>OPTIONS</b>
<input checked="" type="radio"/> Metal <input type="radio"/> Stucco	<input checked="" type="radio"/> Approach <input type="radio"/> Rear	<input checked="" type="radio"/> Canopy <input type="radio"/> Collar 15"	<input type="radio"/> POS Panel <input checked="" type="radio"/> Networks Panel <input type="radio"/> Envelope Dispenser <input type="radio"/> Waste Receptacle <input type="radio"/> Bollard Posts <input type="radio"/> Vehicle Height Detector
<b>CONFIGURATION</b>	<input type="radio"/> Front <input checked="" type="radio"/> Departure	<input type="radio"/> Signcan <input type="radio"/> Down Lighting <input checked="" type="radio"/> Front <input type="radio"/> Rear <input type="radio"/> Left <input type="radio"/> Right	
<input checked="" type="radio"/> Drive-up <input type="radio"/> Walk-up		<input checked="" type="radio"/> Backlighting <input type="radio"/> Front <input type="radio"/> Rear <input type="radio"/> Left <input type="radio"/> Right	

REVISED 5/16/11

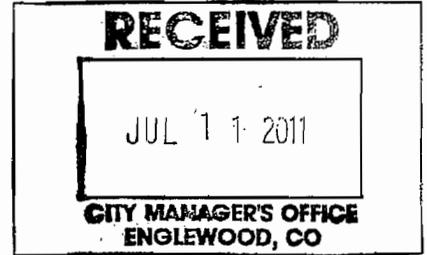
**CKE ENGINEERING INC**  
14257 W. EVANS CIRCLE  
LAKEWOOD, CO. 80228  
(303) 917-1757



financing the places where  
people live and work

NOTIFICATION TO THE LOCAL JURISDICTION  
CHIEF EXECUTIVE OFFICER  
2011 LOW-INCOME HOUSING TAX CREDIT PROGRAM

July 7, 2011



Mayor Jim Woodward  
City of Englewood  
1000 Englewood Parkway  
Englewood, CO 80110

Re: Murals of Englewood

Dear Honorable Woodward:

The Colorado Housing and Finance Authority (CHFA) is, by executive order of Governor Ritter, administrator of the Federal Low-Income Housing Tax Credit Program (LIHTC) in Colorado. The LIHTC program was created by the 1986 Tax Reform Act to encourage the production and preservation of affordable rental housing. The LIHTC is a ten-year federal income tax credit available to owners of low-income housing who commit to keeping the units' rent and income restricted for a minimum of 15 years.

By law, CHFA is required to notify the chief executive officer of the local jurisdiction where a LIHTC project is being proposed for the purpose of providing an opportunity for comment on the proposed project. We would appreciate your assistance in this matter.

Please provide us with your comments on the attached form, attach any additional information, and sign and return the form to our office as soon as possible.

Sincerely,

Paula K. Harrison  
Tax Credit Officer

colorado housing and finance authority

1981 Blake Street  
Denver, CO 80202

303.297.chfa (2432)

800.877.chfa (2432)  
toll free

303.297.7305  
tdd

348 Main Street  
Grand Junction, CO 81501

970.241.2341

800.877.8450  
toll free

NOTIFICATION TO THE LOCAL JURISDICTION

Project Name: Murals of Englewood  
Project Address: 3500 South Sherman Street, Englewood  
Project Sponsor: Murals Limited Liability Limited Partnership  
Type of Project: New Construction  
Number of Units: 50 low-income units, 50 total units

1. Do you view this proposed project as being consistent with the development and preservation of the housing plan in your community?

2. If proposed project is not viewed as consistent with local housing needs and priorities, please explain why.

3. Other Comments:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

Return this portion to:

CHFA, Attention: Paula K. Harrison, Tax Credit Officer  
1981 Blake Street, Denver, CO 80202

## **PROPOSED DEVELOPMENT**

The Murals at Englewood ("Murals")  
3500 South Sherman Street  
Englewood, Colorado

## **DEVELOPER**

Everwood Development, LLC

## **ARCHITECT**

Parikh Stevens Architects

## **PROJECT DESCRIPTION**

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Interestingly, Everwood Development was introduced to the City of Englewood via another "like" project we are working on in Westminster, Colorado. After hearing of our involvement in Westminster, the City of Englewood contacted us regarding potential development opportunities available in their community. We quickly identified the property located at 3500 South Sherman Street as a priority redevelopment site for the City. The site, located at the corner of South Sherman Street and East Hampden Avenue, acts as a gateway to the city and to the sprawling medical campuses of Swedish and Craig Hospitals. It currently sits in a state of blight, with a free standing three-story dilapidated building – most recently occupied by the Englewood Masonic Lodge – which will have to be demolished prior to the commencement of construction. Everwood Development officially obtained site control of the parcel in April 2011 via purchase/option agreement.

Everwood believes successful partnerships begin with communication. To that extent, we have had numerous meetings with the City of Englewood regarding our vision for the site, the standards of development expected by the city, what is allowed under current zoning regulations, and any potential resources the City of Englewood might be able to provide to the project.

The current design of the project reflects our discussions with the city. It adheres to the existing zoning code, which means *NO FURTHER PUBLIC HEARINGS OR APPROVALS* are needed to move forward with the project if it is successful in obtaining tax credits. In addition, we have already engaged a proven architectural firm in Parikh Stevens, and also a highly experienced civil engineer in Atwood Associates, to begin working with the city on crucial design features such as layout and storm water detention. The project formally submitted for Preliminary Site Plan review in early June, and on June 21<sup>st</sup> the development team met with the city to formally go through the preliminary review. This is a unique process in which a representative from each of the City's main departments (fire, public works, police, parks, etc.) attends to provide feedback to the development team. This feedback has been implemented into the plans which are submitted as part of this project. Other than formal site plan approval (which is administrative) and securing a building permit, this project from a governmental approval process is "ready to proceed".

The proposed project will be 100% affordable (see unit mix and rents below) and include 50 rental apartments and 6,600 square feet of medical office/retail space. The project will be four (4) stories of new wood-frame construction a flat roof and a varied exterior façade using masonry, glass, fiber cement siding, and architectural metals.

Project features include on-site management, a community room, tot lot and pocket park, bike storage and a secure access entrance system. Unit amenities include air conditioning, in-unit washer & dryers, mini-blinds, carpet, a coat closet, refrigerator, stove, dishwasher and garbage disposals. Unit finishes will be of high quality and durability and include such unique features as granite countertops and low-flow plumbing fixtures.

The site not only has high volume traffic and excellent visibility, but it is also in close proximity to public transportation, employment opportunities, services, and community facilities. Therefore, the location is ideal for both commercial and residential tenants.

## **Transportation**

The City of Englewood provides a free "circulator" shuttle called, **art**, has exceeded ridership expectations since it began operating in September of 2004. This free shuttle transports riders to 19 stops connecting CityCenter Englewood, businesses in downtown Englewood, and the medical facilities in and near Craig Hospital and Swedish Medical Center. The shuttles run every fifteen minutes. There is an **existing** stop located on Sherman Street immediately in front of the proposed "Murals" project. The shuttle route includes an innovative public art project that placed sculptures at most of the shuttle stops. The majority of the artwork is offered for sale, with the City keeping a portion of the proceeds from any sale. The shuttle is funded by the Regional Transportation District (RTD) and the City of Englewood (see enclosed route map). The **art** also includes a stop at the CityCenter Englewood Light Rail Station which provides linkages to downtown Denver. The **art** stop is also a regular RTD stop for public bus routes #12 and #35.

## **Employment / Services**

### Swedish Medical Center

Englewood's largest employer, Swedish Medical Center, a part of HealthOne, is internationally recognized for its medical care. Swedish is a 368 bed acute care hospital and general care facility, with a neurotrauma center, Women Services, and Children's Health Services. Swedish is also known for its stroke program as it treats more strokes than any other hospital in Colorado. Related programs include outpatient surgical facilities, orthopedics, oncology and cardiovascular medicine. *(Swedish is 0.15 miles from "Murals")*

### Craig Hospital

Since 1956, Craig Hospital has specialized in helping spinal cord and brain injury patients resume quality lives. This 80-bed facility, located in Englewood, is known around the world for its excellence in the treatment of spinal cord and brain injury patients. Craig emphasizes a balanced, comprehensive, and personalized approach to treatment focusing on both the physical and psychological well-being of the patient. *(Craig Hospital is 0.45 miles from "Murals")*

### Kaiser Permanente

Kaiser offers outpatient health care services, including: internal medicine, pediatrics, family practice, laboratory, radiology, dermatology, speech therapy, trauma, allergy, optometry, optical dispensing and an on-site pharmacy. *(Kaiser is 1.0 miles from "Murals")*

The location of the proposed "Murals" project is second to none which will ensure a project that is feasible for the long term and in the short term "The Murals" will continue the renaissance currently taking place within Englewood.

## DEVELOPMENT STRATEGY

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The site contains a three story building that will have to be demolished prior to construction. The surrounding land uses are as follows:

- o North: Various Medical Office
- o South: Safeway Grocery Store
- o East: Medical Office Building and Retail
- o West: Various Commercial and Retail Uses

The site currently holds a "MUB1" zoning designation. This zoning lends itself well to our vision. The Murals at Englewood will consist of four (3) stories of residential rental housing above one (1) story of medical office/retail for a total of four (4) stories.

Although the current zoning allows for more units and retail space than we are currently programming, our plan is derived from analyzing the potential financing tools available to us along with market demand. We have determined the economic breakpoint is reached at fifty (50) units when using conventional debt financing paired with equity generated by 9% low-income housing tax credits.

As mentioned the development will consist of fifty units composed as follows:

Unit Type	# of DU	Proposed Net Monthly Contract Rent Per Unit	Rent Limit	Income Limit
1BR	2	\$550	40%	40%
2BR	1	\$655	40%	40%
3 BR	1	\$751	40%	40%
1BR	12	\$696	50%	60%
2BR	17	\$831	50%	60%
3BR	11	\$954	50%	60%
1BR	2	\$843	60%	60%
2BR	2	\$1,007	60%	60%
3BR	2	\$1,158	60%	60%

This will be a true mixed-income project, targeting rents at a variety of rent levels to meet the housing needs of the diverse demographic that surrounds the site.

The first floor of the project will consist of approximately 6,600 square feet of medical office/retail space (see site plan for layout). We have already begun working with a highly experienced commercial real estate broker with ties to both Swedish and Craig Hospitals with the intention of pre-leasing the commercial space for medical office use. This would provide a much needed service both to residents and to the community, which has seen little "new" medical office space constructed over the previous ten years.

## FINANCIAL ANALYSIS

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Because of the current state of both the equity and debt markets and because of the competitiveness of 9% low-income housing tax credits, it was realized to make this project a reality it would take substantial cooperation from potential GAP funding sources.

Inclusion of the project sources of funds listed below stems from positive discussions with the Colorado Department of Local Affairs (DOLA). In addition, we have talked to multiple tax credit investors and feel confident in obtaining 90+ cents per dollar of tax credits.

**Lastly, this project does NOT rely on any income generated by the commercial component in order to be successful.** Neither affordable housing lenders, nor tax credit syndicators possess much of an appetite for mixed-use development. However, as mentioned previously, zoning regulations required the inclusion of a retail/office component, as is common with most urban infill sites in prime locations today. If needed, we could replat and condo out the commercial space. However, the process of doing so is time consuming and would only add more cost to the project. Instead, we will use a "Master Lease" structure, and by not relying on commercial revenue this eliminates any risk associated with this type of financing structure should there be an issue leasing the commercial space. However, the market study shows demand for this space and once leased, the commercial income generated will provide an attractive upside to the project.

From our discussion with the above mentioned parties, we have prepared the following Sources and Uses statement:

<b>Total Development Cost (TDC)</b>		
	<b>\$11,702,900</b>	
Name of Source	Amount	Per Unit
Conventional First Mortgage (non-HUD)	\$1,974,000	\$39,480
Syndication Proceeds*	\$9,217,438	\$184,348
State DOLA HOME Funds	\$450,000	\$9,000
Deferred Developer Fee	\$61,462	2,845
<b>TOTAL</b>	<b>\$11,702,900</b>	<b>\$234,058**</b>

\*\* The Per Unit Cost includes cost of the commercial space as well. Subtracting out the costs associated with the commercial space, the Per Unit Cost of the residential component is \$215,783. The commercial component will be funded with First Mortgage proceeds. No tax credit equity will be used to fund commercial costs.

## **PROJECT ARCHITECTURAL**

Everwood Development is working with local firm Parikh Stevens Architects. From experience, we know the importance of having a local architect that is not only familiar with city codes and processes, but also understands the local history and architectural style. Parikh Stevens has been involved in the design and development of similar projects in terms of both type and scope. They have worked with for-profit and non-profit developers, in addition to corporations and governmental agencies.

Given the long and storied history of Englewood it is important that we incorporate elements of the past with the promise of the future. Our preliminary drawings show a contemporary urban design which highlights Englewood's strong "art" scene. However, the City of Englewood also has a unique history which includes mining and aviation. We hope to incorporate this rich history into the final design as well.

We have narrowed in on a concept and design compatible with the area. We are also exploring sustainable and energy efficient features. We currently plan to incorporate the following "green" strategies.

- Redevelopment of an urban site
- Utilize site with easy access to public transportation
- Prevent pollution from construction activities
- Provide at least 20% landscaped open space

- Provide enhanced storm water quality and detention systems
- Use a high reflectance roofing material for at least 75% of the roof area
- Prevent light pollution
- Provide water efficient landscaping
- Use water efficient plumbing fixtures
- Use energy efficient lighting and HVAC fixtures
- Prevent use of CFC based refrigerants
- Use recycled content in building materials
- Use regionally manufactured building materials
- Use rapidly renewable building materials
- Use FSC certified wood
- Provide a well sealed envelope for the building
- Provide ample natural ventilation & light
- Use low-emitting paints, adhesives & sealants.
- Use low-emitting carpets and agrifiber products.
- Provide covered storage for the occupant's bicycles
- Provide recycling for occupants

It is important to have a project that not only has significant curb appeal but also has a layout that is functional and practical today and in the years to come. As a result of positive feedback, we are confident that the design is headed in the right direction and will achieve these goals.

## **LONG TERM VISION**

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Everwood Development does not view The Murals at Englewood as a "one-off" project. Our organization has a resume of experience totaling over 10,000 units developed and/or constructed and a combined 70+ years in the production of multifamily housing throughout the country. We are committed to a continued presence in the State of Colorado and look to becoming a long term partner in creation of affordable housing opportunities to the many people who need them. To that extent, we will continue working in a cooperative manner with the lenders, investors, agencies, cities and neighborhoods with which we do business.

## PROPOSED PROJECT TEAM

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### **DEVELOPER & GENERAL PARTNER: Everwood Development, LLC**

The savvy development partners at Everwood Development have a history of creating projects that work. These projects include apartments, supportive housing, historic preservation, mixed-use, and in-fill single family homes. Creating linkages between partners, the development team maintains positive relationships with equity partners and city and state leaders. How do we make it work? We focus on quality and sustainable designs that exceed expectations and result in a positive cash-flow. In addition, we pay attention to meeting community needs such as historic preservation, preserving neighborhood legacies, mixed-use, linkages to services and transportation, neighborhood stabilization, social services and green practices.

During the construction process, each partner closely monitors costs to bring projects in on time and on budget. A broad range of experience also enables each partner to maximize the entire package and maximize equity. Collectively, the Everwood development partners have developed over \$600 million dollars in Minnesota and nationally. (Please see attached Developer Profile).

3550 Labore Road, Suite 10  
Saint Paul, MN 55110  
651-787-4012 / [www.everwooddevelopment.com](http://www.everwooddevelopment.com)

#### **Key Contacts:**

Ryan Sailer, Partner  
612-508-4627 / [rsailer@everwooddevelopment.com](mailto:rsailer@everwooddevelopment.com)

✦ Mr. Sailer will be the lead contact point for the development team.

David Dye  
612-747-1318 /

Marv Kotek  
651-787-0687 /

### **ARCHITECT: Parikh Stevens Architects**

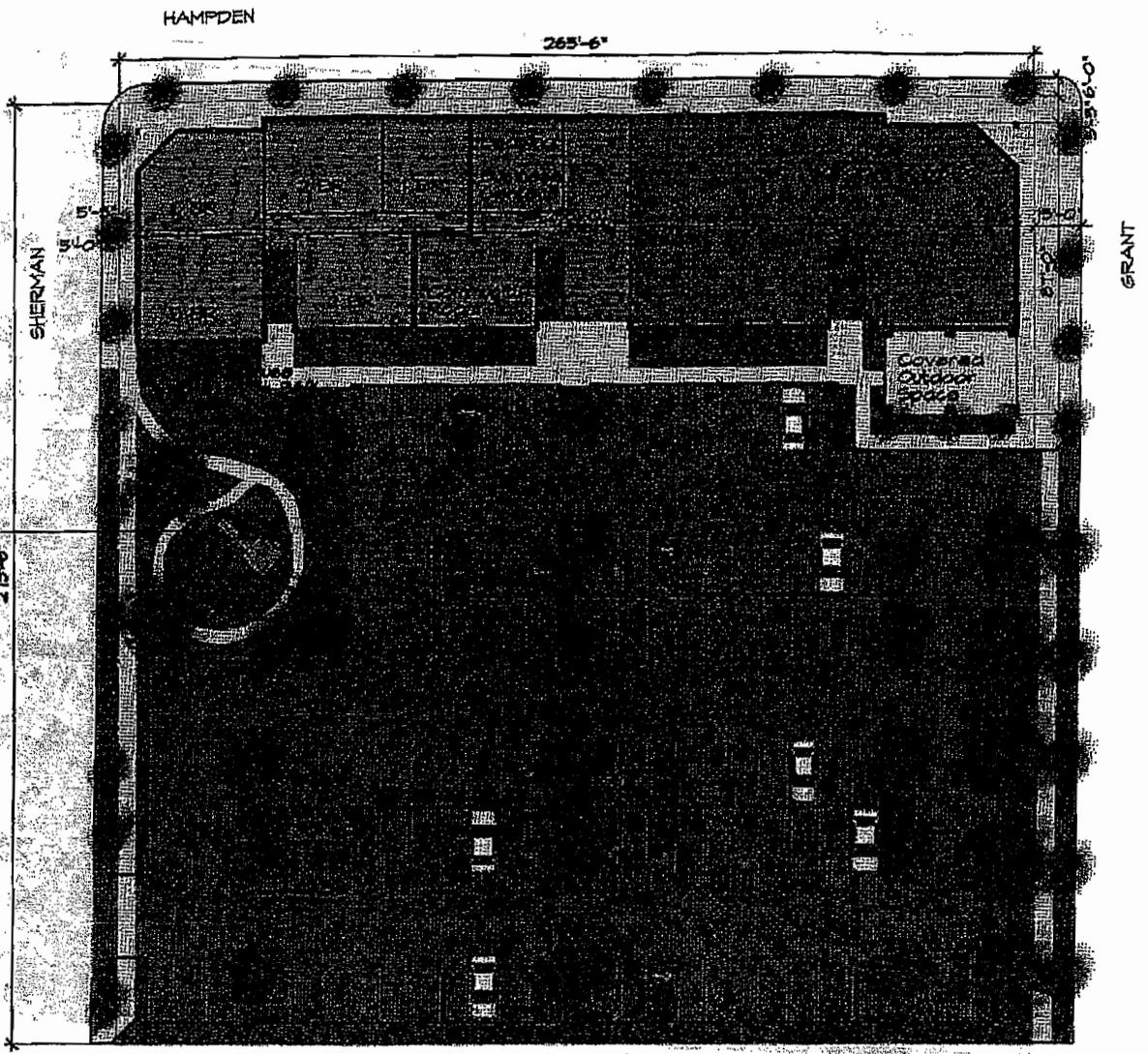
Parikh Stevens Architects is a Denver firm specializing in architecture, urban planning and interior design. We service an extensive list of clients ranging from homeowners to developers to corporations to non-profit and governmental organizations. Parikh Stevens skillfully manages the talents of all the design and building process players, while nurturing the involvement of its clients through the planning, design, and construction phases.

Parikh Stevens has recently been certified as MWBE, DBE, and SBE by the City of Denver and State of Colorado.

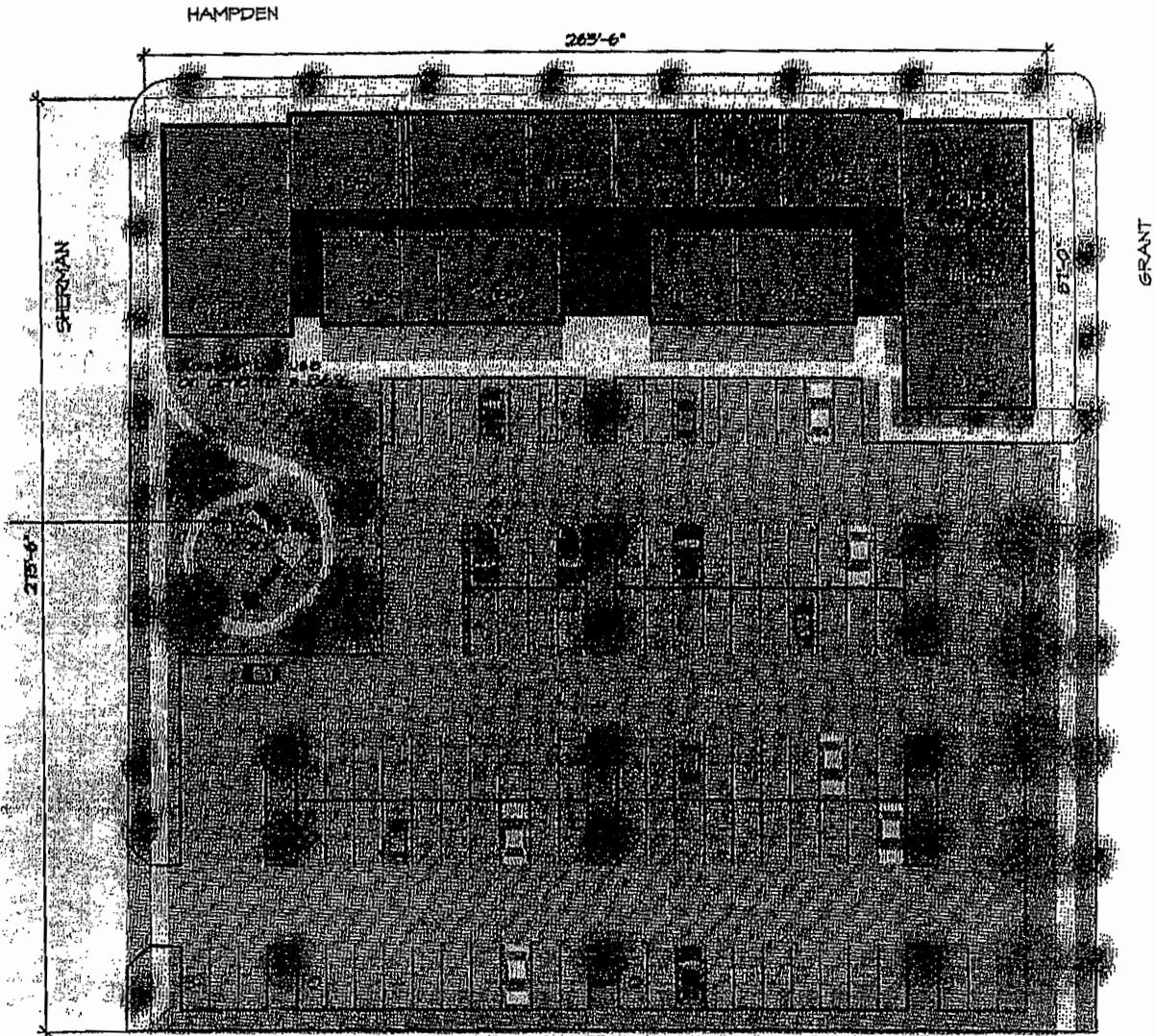
3457 Ringsby Court  
Suite 209  
Denver, CO 80216  
303-825-2595 / [www.parikhstevens.com](http://www.parikhstevens.com)

#### **Key Contacts:**

Harsh Parikh, Principal  
303-825-2595



North  
 GROUND FLOOR PLAN / SITE PLAN  
 1" = 60'



North  
 2ND, 3RD & 4TH FLOOR PLANS  
 1" = 60'

## Scheme - STATS

### Unit Mix

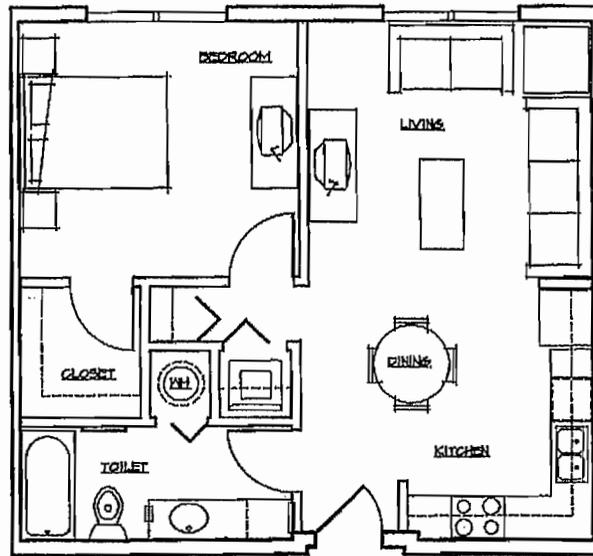
	1 BR Unit	2 BR Unit	3 BR Unit	Totals
Ground Floor	1	2	2	5
Second Floor	5	6	4	15
Third Floor	5	6	4	15
Fourth Floor	5	6	4	15
Totals	16	20	14	50

### Parking Requirements

Use	Qty	Stalls per	Stalls Reqd
1 bedroom units	16	1.5	24
2 bedroom units	20	1.5	30
3 Bedroom units	14	2	28
Medical Office	6600	300	22
Total	-	-	104

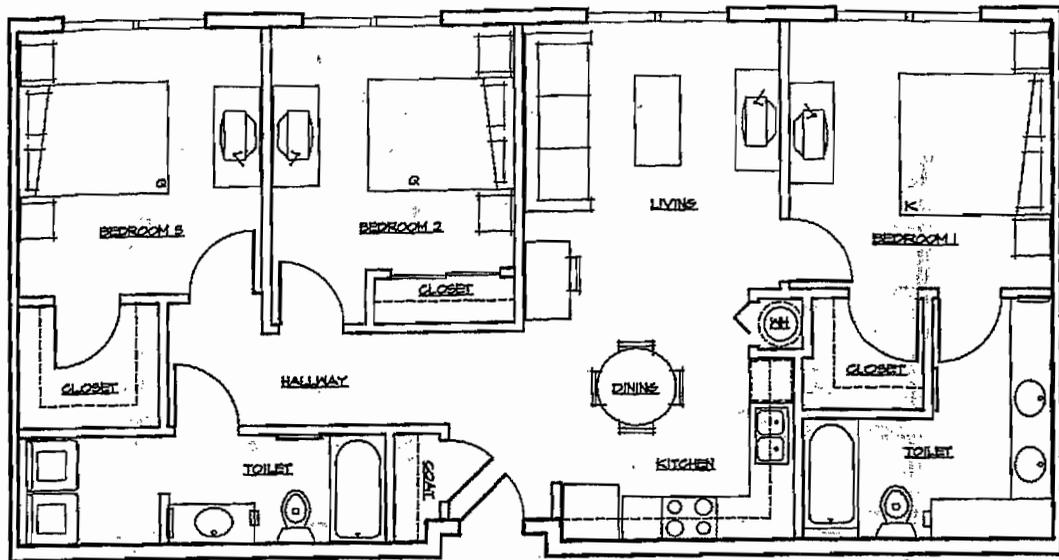
### Other Stats

Off Street Parking Spaces	107
Building Stories	4
Building GFA	65,000.sf



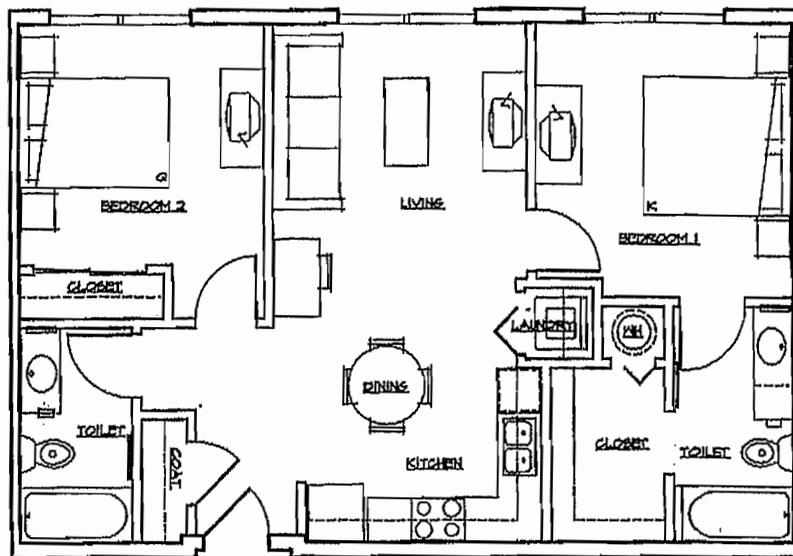
REPRESENTATIVE UNIT PLANS

1 BEDROOM UNIT / 700 sf



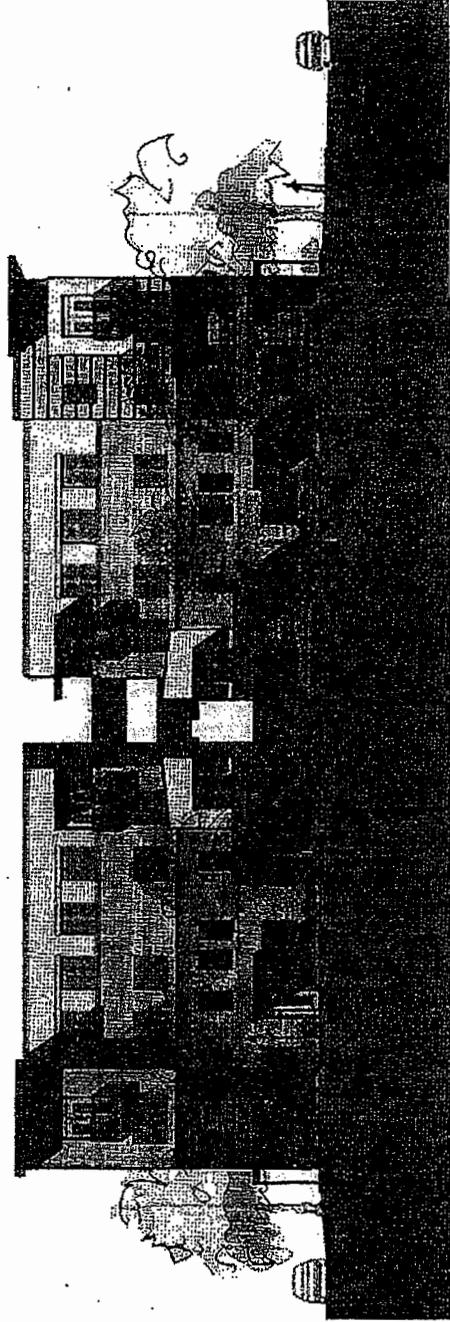
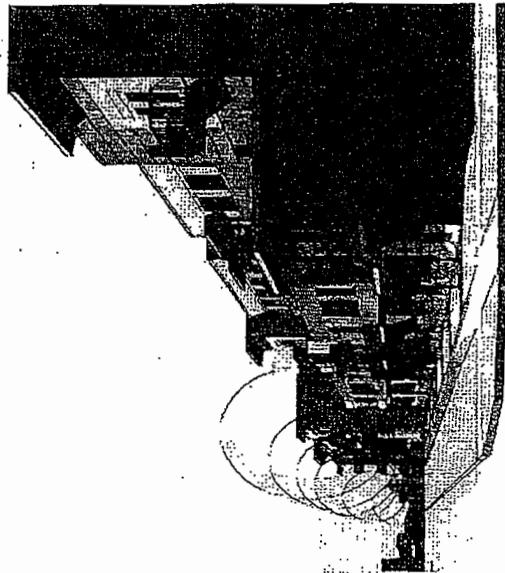
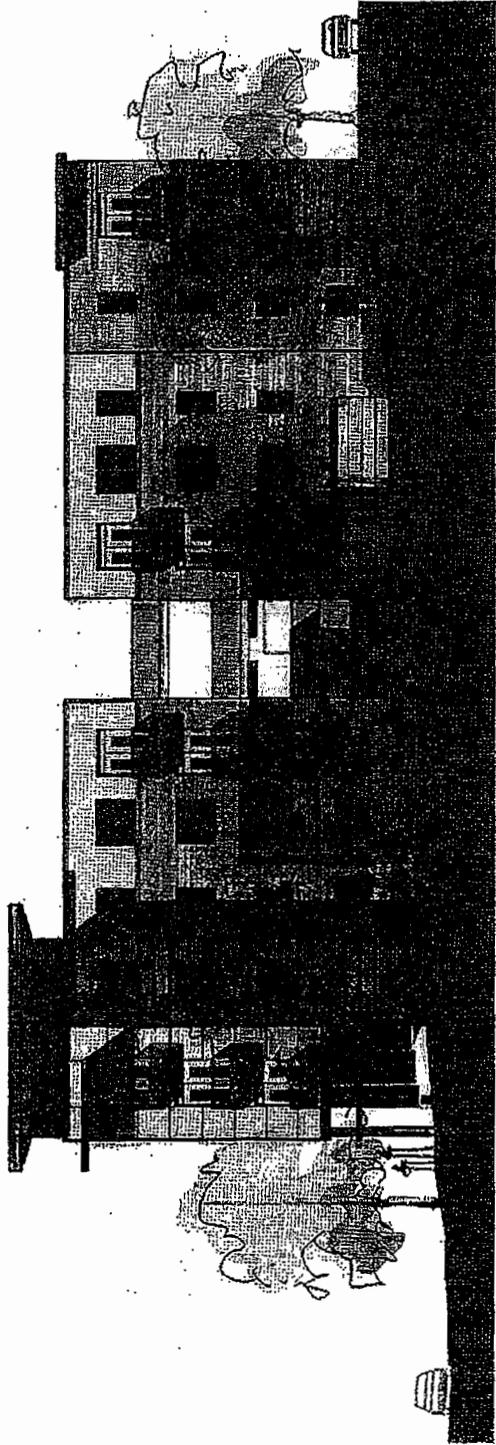
**REPRESENTATIVE UNIT PLANS**

2 BEDROOM UNIT / 900 sf



*REPRESENTATIVE UNIT PLANS*

2 BEDROOM UNIT / 900 sf



**Architectural Aesthetics Sample**

## COUNCIL COMMUNICATION

<b>Date:</b> July 18, 2011	<b>Agenda Item:</b> 14 a	<b>Subject:</b> Authorization to commence legal action in the matter of the eviction at 4101 South Cherokee Street
<b>Initiated By:</b> Community Development Department	<b>Staff Source:</b> Janet Grimmett, Housing Finance Specialist Harold J. Stitt, Senior Planner	

### RECOMMENDED ACTION

Staff requests that Council approve a motion authorizing the City Attorney to take all necessary legal action to effect the eviction of all persons including any and all personal property illegally possessing the City owned property located at 4101 South Cherokee Street (Lots 45-46, Block 20, Jackson's Broadway Heights.)

### BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

On April 26, 2011, the Community Development Department through Project Rebuild, the Neighborhood Stabilization program, redeemed 4101 South Cherokee Street from the Public Trustee through the Public Sale process.

The Public Sale was set for March 30, 2011. The property was sold to The Buy-Out Company, LLLP. As the only junior lien holder, the City of Englewood filed an Intent to Redeem with the Public Trustee's Office on April 7, 2011. On April 15, 2011, the Public Trustee notified the City of the April 26, 2011 redemption deadline and the required redemption amount. A wire transfer from the City NSP account in that amount was sent to the Public Trustee's Office on April 25, 2011. On April 26, 2011, Community Development staff requested the Public Trustee's office issue a deed, in the name of the City of Englewood-Housing Rehabilitation Fund for this property. On April 28, 2011, the Public Trustee electronically filed and recorded the deed at Reception #D1039769.

Since the issuance of the Public Trustee deed for 4101 South Cherokee Street, the former owner has continued to occupy the property. Despite repeated attempts to contact the former owner, they have failed to vacate the property. The final recourse for the City is to initiate eviction through the Arapahoe County Court.

### FINANCIAL IMPACT

All costs associated with this legal action will be reimbursed by NSP funds.