



**Agenda for the
Regular Meeting of the
Englewood City Council
Monday, October 17, 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 October 3, 2011.
6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
 - a. Josh Staller, President of the Englewood Rotary Club, will present to the City of Englewood a donation to help fund programs offered by the Police and Fire Departments.
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 declaring the week of October 16 through 22, 2011 as National Save for Retirement Week.

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

9. Consent Agenda Items.
 - a. Approval of Ordinances on First Reading.
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 57 (as amended) relating to fee schedules for sewer connection and collection system fees.
 - ii. Council Bill No. 64, amending the Englewood Municipal Code pertaining to vendor fees.
 - iii. Council Bill No. 65, amending the Englewood Municipal Code pertaining to the Waste Transfer Fee.
 - iv. Council Bill No. 69, authorizing application for and acceptance of Colorado Department of Transportation Grants for 2011/2012.
 - v. Council Bill No. 70, ordinance authorizing two Intergovernmental Subgrantee Agreements for the 2011 Arapahoe County Community Development Block Grant Program.
 - c. Resolutions and Motions.
10. Public Hearing Items. (None Scheduled.)
11. Ordinances, Resolutions and Motions
 - a. Approval of Ordinances on First Reading.
 - i. Council Bill No. 72 – Recommendation from the Community Development Department to adopt a bill for an ordinance authorizing the sale of six Project Rebuild properties funded through the Neighborhood Stabilization Program Grant. **Staff Source: Harold Stitt, Senior Planner, and Janet Grimmatt, Housing Finance Specialist.**
 - b. Approval of Ordinances on Second Reading.
 - i. Council Bill No. 60, adopting the City of Englewood Budget for Fiscal Year 2012.
 - ii. Council Bill No. 61, appropriating funds for the City of Englewood for Fiscal Year 2012.
 - iii. Council Bill No. 62, adopting the Budget for the Littleton/Englewood Wastewater Treatment Plant for Fiscal Year 2012.

- iv. Council Bill No. 63, appropriating funds for the Littleton/Englewood Wastewater Treatment Plant for 2012.
 - v. Council Bill No. 59, establishing the 2011 Mill Levy to be collected in 2012.
 - vi. Council Bill No. 71, amending the City Council Policy Manual regarding the election of Mayor and Mayor Pro Tem.
- c. Resolutions and Motions.
- i. Recommendation from the Englewood McLellan Reservoir Foundation to adopt a resolution of support for a lease of approximately seven acres of McLellan Reservoir property to Miller Family Real Estate, LLC. **Staff Source: Michael Flaherty, Englewood McLellan Reservoir Foundation.**
 - ii. Recommendation from the Department of Finance and Administrative Services to adopt a resolution approving a supplemental appropriation in the amount of \$127,000 for replacement of street lights on South Santa Fe Drive. **Staff Source: Frank Grylewicz, Director of Finance and Administrative Services.**
 - iii. Recommendation from the Department of Finance and Administrative Services to adopt a resolution approving a supplemental appropriation and transfer of funds in the amount of \$6,506.71 for Landscape and Fine Arts Funds projects (Paseo Project and Broadway Holiday Lighting). **Staff Source: Frank Grylewicz, Director of Finance and Administrative Services.**
 - iv. Recommendation from the Community Development Department to approve, by motion, the South Broadway Englewood Business Improvement District Operating Plan and proposed 2012 Budget. **Staff Source: Darren Hollingsworth, Economic Development Coordinator.**
12. General Discussion.
- a. Mayor's Choice.
 - b. Council Members' Choice.
13. City Manager's Report.
14. City Attorney's Report.
15. Adjournment.



PROCLAMATION

WHEREAS, the cost of retirement continues to rise in the United States and the need for greater savings grows; and

WHEREAS, many employees may not be aware of their retirement savings options or may not be taking full advantage of their workplace defined contribution plans to the full extent allowed by law; and

WHEREAS, all workers, including public and private sector employees, employees of tax-exempt organizations and self-employed individuals can benefit from increased awareness of the need to save for retirement;

NOW THEREFORE, I, James Woodward, Mayor of the City of Englewood, Colorado, hereby proclaim **the week of October 16th through 22nd, 2011** as:

NATIONAL SAVE FOR RETIREMENT WEEK

in the City of Englewood, Colorado.

GIVEN under my hand and seal this 17th day of October, 2011.



James K. Woodward, Mayor

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2011

COUNCIL BILL NO. 57
INTRODUCED BY COUNCIL
MEMBER MCCASLIN

AN ORDINANCE AMENDING TITLE 12, CHAPTER 2, RELATING TO SEWER
CONNECTION AND COLLECTION SYSTEM FEES

WHEREAS, 31-35-402 C.R.S. authorizes any municipality to operate and maintain sewer facilities within and outside of the municipality; and

WHEREAS, the Englewood Home Rule Charter Sections 121, 122 and 125, require City Council to set sewer services by Ordinance; and

WHEREAS, the sewer connection fees were last reviewed in 1983; and

WHEREAS, Red Oak Consulting was asked to complete a study to update the City's connection and collection system fees which may be based on the current value of the sewer plant and system, the operating cost of the sewer plant and system or the replacement cost of the City's sewer plant and system; and

WHEREAS, the Englewood Water and Sewer Board determined that the replacement cost was the preferred basis for the calculation of connection and collection system fees because it most accurately reflected the value of the system; and

WHEREAS, the Englewood Water and Sewer Board recommended this proposed fee schedule at its May 10, 2011 meeting;

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 amending Title 12, Chapter 2, Section 8, of the Englewood Municipal Code 2000, to read as follows:

12-2-8: Sewer ~~Tap~~ Connection and Collection Fees.

- A. A sewer ~~tap~~ connection permit for a single-family, residential, and/or commercial and/or an industrial user shall remain in effect until terminated by the City.
- B. At the time of filing the application, sewer ~~tap~~ connection fees shall be paid in accordance with the following schedules:

<u>Water Meter Size</u>	<u>Sewer Tap</u>
<u>¾" or less</u>	<u>\$ 1,400.00</u>
<u>1"</u>	<u>\$ 2,333.00</u>
<u>1½"</u>	<u>\$ 4,667.00</u>
<u>2"</u>	<u>\$ 7,467.00</u>
<u>3"</u>	<u>\$ 14,932.00</u>

4" _____	\$ 23,332.00
6" _____	\$ 46,667.00
8" _____	\$ 74,667.00
10" _____	\$107,332.00

For multi-family units, and mobile home courts, the total tap fee shall not be less than one thousand four hundred dollars (\$1,400.00) per dwelling unit. For hotels and motels, the tap fee shall be seventy five percent (75%) of the tap fee as set forth in this section. If the fee determined by the water meter size from the above schedule is greater than the fee determined by the minimum charge of one thousand four hundred dollars (\$1,400.00) per unit, then the greater fee, as determined by meter size, shall prevail.

~~C. 1.~~ 1. At the time of filing an application for a sewer ~~tap~~ connection permit, sewer ~~tap~~ connection fees for the following properties shall be increased by the addition of a collection system surcharge to the sewer ~~tap~~ connection fees established by ~~subsection A~~ of this section ~~according to the established surcharge schedule:~~

- ~~1.~~ a. Properties within the City which are not in an established sanitation district.
- ~~2.~~ b. Properties outside the City which are tributary to the Northeast Englewood Relief Sewer System which are not exempted by agreement from sewer ~~tap~~ connection surcharge

~~The established sewer tap fee surcharge is:~~

Water Meter Size Sewer	Tap Fee
¾"	\$ 500.00
1"	833.00
1½"	1,667.00
2"	2,667.00
3"	5,333.00
4"	8,333.00
6"	16,667.00
8"	26,667.00
10"	38,333.00

SINGLE USE SEWER CONNECTION AND COLLECTION SURCHARGE FEES

Water Meter Size	Sewer Tap <u>Connection</u> Fee	<u>Collection Surcharge</u> Fee
¾" or less	\$ 1,400.00	\$ 1,200.00
1"	\$ 2,333.00	\$ 2,000.00
1½"	\$ 4,667.00	\$ 4,000.00
2"	\$ 7,467.00	\$ 6,400.00
3"	\$ 14,932.00	\$12,800.00
4"	\$ 23,332.00	\$20,000.00
6"	\$ 46,667.00	\$48,000.00
8"	\$ 74,667.00	\$
10"	\$107,332.00	\$

For multi family units, and mobile home courts, the total tap fee shall not be less than one thousand four hundred dollars (\$1,400.00) per dwelling unit. For hotels and motels, the tap fee shall be seventy five percent (75%) of the tap fee as set forth in this section. If the fee determined by the water meter size from the above schedule is greater than the fee determined by the minimum charge of one thousand four hundred dollars (\$1,400.00) per unit, then the greater fee, as determined by meter size, shall prevail.

**MULTI-FAMILY AND MOBILE HOME DEVELOPMENT SEWER SYSTEM
CONNECTION AND COLLECTION SYSTEM SURCHARGE FEES**

The sewer connection and collection system surcharge fees for Multi-Family Residential properties consists of the greater of:

- 1) The sum of a base fee per connection and a three-tier dwelling unit fee based on the number of dwelling units.

Or

- 2) The meter sized based connection fee.

	<u>Connection Fee</u>	<u>Collection System Surcharge</u>
<u>Base Fee</u>	\$ 845.00	\$ 720.00
<u>Dwelling Unit Fee (per dwelling unit)</u>		
<u>First 12 units</u>	\$ 185.00	\$ 160.00
<u>Next 22 units</u>	\$ 150.00	\$ 125.00
<u>Over 34 units</u>	\$ 85.00	\$ 75.50

~~For multi family units, mobile home courts and other multiple dwelling units, the sewer tap fee surcharge shall not be less than five hundred dollars (\$500.00) per dwelling unit. For hotels and motels, the tap connection fee shall be seventy-five percent (75%) of the tap connection fee as set forth in this section. If the collection system surcharge established by the water meter size from the above surcharge schedule is greater than the fee of five hundred dollars (\$500.00) per dwelling unit, the greater fee shall be charged.~~

**Mixed Use Residential and Commercial Sanitary Sewer Connection and
Collection System Surcharge Fees**

Mixed use Residential and Commercial Sewer Connection and Collection system fees consist of the greater of:

- 1) The sum of a base fee per connection, plus the per residential dwelling unit fee, plus a per commercial fixture unit fee based on the number of fixture units.

OR

- 2) The meter sized based connection fee.

MULTIFAMILY SEWER CONNECTION FEES

	<u>Connection fee</u>	<u>Collection system fee</u>
<u>Base Fee</u>	<u>\$845.00</u>	<u>\$720.00</u>
<u>Dwelling Unit Fee</u> <u>(per dwelling unit)</u>		
<u>First 12 units</u>	<u>\$185.00</u>	<u>\$160.00</u>
<u>Next 22 units</u>	<u>\$150.00</u>	<u>\$125.00</u>
<u>Over 34 units</u>	<u>\$ 85.00</u>	<u>\$ 75.00</u>

COMMERCIAL MIXED USE SEWER CONNECTION FEES

	<u>Connection fee</u>	<u>Collection system fee</u>
<u>First 125 fixture units</u>	<u>\$27.00</u>	<u>\$23.00</u>
<u>Next 250 fixture units</u>	<u>\$11.00</u>	<u>\$10.00</u>
<u>Over 375 fixture units</u>	<u>\$ 9.00</u>	<u>\$ 7.00</u>

2. Properties that connect to the Big Dry Creek interceptor system shall pay a sewer ~~tap~~ connection surcharge fee in the sum of ~~three-one~~ hundred dollars (~~\$300.00~~)(\$100.00) per single-family residential equivalent ~~tap~~ connection in addition to all other charges.

- D. C. The actual cost of any sewer main extension shall be recorded in the utilities office. Where such cost has not been paid, it shall be added to the plant assessment fee to arrive at a total amount due. New sewer extension costs shall include the actual cost of construction plus ten percent (10%) to defray costs of engineering. The total costs shall be assessed in proportion to the front footage of the property served.
- E. D. Where a proposed ~~tap~~ connection will serve property for which a previous assessment has been paid, the previous ~~tap~~ connection fee shall be credited against the current ~~tap~~ connection fee in calculating the balance of the fee due.
- F. E. Nothing in this section shall be construed to alter the rates or terms contained in the connector's agreements heretofore existing between the City of Englewood and sanitation districts.
- G. F. No ~~tap~~ connection shall be made to the POTW without payment of the ~~tap~~ connection fees. Failure to pay fees before tapping to the POTW shall result in ~~tap~~ connection fees being doubled. Any fee or charge not paid shall constitute a lien on the subject property and be collected like taxes.

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

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

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

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

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

Introduced, read in full, and passed on first reading on the 19th day of September, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 23rd day of September, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of September, 2011 for thirty (30) days.

Reintroduced, amended, read in full as amended on first reading on the 3rd day of October, 2011.

Published by Title as an amended Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as an amended Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2011

COUNCIL BILL NO. 64
INTRODUCED BY COUNCIL
MEMBER McCASLIN

AN ORDINANCE AMENDING TITLE 4, CHAPTER 4, SECTION 4, SUBSECTION 7 PARAGRAPH (C), OF THE ENGLEWOOD MUNICIPAL CODE 2000, WHICH PERTAINS TO THE ELIMINATION OF THE VENDOR FEE.

WHEREAS, the Englewood City Council authorized the establishment of a vendor fee which provided a five percent vendor fee to cover the vendor’s expense in the collection and remittance of sales tax by the passage of Ordinance No. 32, Series of 1961; and

WHEREAS, the passage of Ordinance No. 32, Series of 1968 reduced the fee from the initial rate of five percent to 2.5 percent; and

WHEREAS, the passage of Ordinance No. 27, Series of 1970 reduced the fee to 1.6 percent; and

WHEREAS, the passage of Ordinance No. 58, Series of 2002 reduced the fee to .5 percent; and

WHEREAS, the passage of Ordinance No. 35, Series of 2009 reduced the fee to .25 percent; and

WHEREAS, due to the continuing weak revenue growth, the City has looked for ways to reduce costs and/or raise revenues without violating the terms of the TABOR amendment; and

WHEREAS, the fee paid to vendors to collect and remit taxes is a method of saving funds badly needed to support programs that the citizens of Englewood depend upon without placing an undue burden on the business community; and

WHEREAS, by reducing the vendor fee to zero businesses will not withhold the vendor fee after January 1, 2012.

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 amending Title 4, Chapter 4, Section 4, Subsection 7, Paragraph C, of the Englewood Municipal Code 2000, to read as follows:

4-4-4-7: Sales Tax Return.

- A. Every person required to obtain a sales tax license pursuant to the provisions of Section 4-4-4-4, shall file a sales tax return, with payment of tax owed, if any, upon the standard Municipal sales and use tax reporting form as adopted by the Executive Director of the Colorado Department of Revenue, not later than the twentieth day of each month for the

preceding calendar month; provided, however, that if the accounting methods regularly employed by the licensed retailer in the transaction of his/her business, or other conditions, are such that reports of sales made on a calendar monthly basis will impose unnecessary hardship, the Director may, upon request of said retailer, accept reports at such intervals as will, in his/her opinion, better suit the convenience of the taxpayer, and will not jeopardize the collection of the tax.

- B. The returns so filed shall contain such information as may enable the Director to accurately determine the amount of tax collected by the person filing the return, but in all cases shall contain the following information:
1. The amount of gross taxable sales made by the retailer during the period for which the return is filed;
 2. The total sales price of all property returned by the purchaser as a result of a return of goods sold by the retailer; provided, the original sale was a taxable transaction;
 3. The total fair market value of any property received by the retailer as a result of an exchange of property; provided the property so received is held by the retailer to be sold or leased to a user or consumer in the regular course of his/her business;
 4. The total amount of retail sales which are exempt from the tax imposed by Section 4-4-4-2 by reason of the provisions of Section 4-4-4-3;
 5. The total amount of sales made on credit, the obligation for which is not secured by a conditional sales contract, chattel mortgage or other security instrument entitling the retailer to repossess the item sold, which are found to be worthless and which may be deducted as bad debts on the retailer's Federal income tax return.
- C. The return shall be accompanied by an amount equal to the sales tax required to be collected by the retailer but which, in no case, shall be less than the amount actually collected, nor less than three and one-half percent (3.5%) of the figure derived by subtracting from the gross taxable sales, as reflected on the return, the total sales described in subsections B.2., 3., 4. and 5. above, as reflected on the return; ~~provided, however, the retailer may deduct from the total tax due an amount equal to one quarter percent (0.25%) of the sales tax required to be collected, which may be retained by the retailer as a fee for collecting said tax. If the return or the tax remittance is filed later than the twentieth day of each month or as prescribed by the Director, the one quarter percent (0.25%) vendor's fee allowance shall be forfeited and added to the amount of the deficiency.~~
- D. All other persons shall pay to the Director the amount of any tax due under the provisions of this Section 4-4-4-7, not later than fifteen (15) days after the date that said tax becomes due.

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

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

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

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

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

Introduced, read in full, and passed on first reading on the 3rd day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2011

COUNCIL BILL NO. 65
 INTRODUCED BY COUNCIL
 MEMBER OLSON

AN ORDINANCE AMENDING TITLE 4, CHAPTER 7, SECTION 3, OF THE ENGLEWOOD MUNICIPAL CODE 2000, PERTAINING TO INCREASING WASTE TRANSFER FEES.

WHEREAS, the City Council of the City of Englewood, Colorado passed Ordinance No. 25, Series 1987, instituting the Waste Transfer Surcharge which imposed a twenty cent surcharge on each cubic yard or portion thereof by each person disposing of trash at a waste transfer facility to offset the impact of heavy vehicles and other traffic using the waste transfer station on the City's streets and bridge; and

WHEREAS, the waste transfer fee has not been adjusted for inflation since it was imposed in 1987; and

WHEREAS, the cost of street and bridge repairs and replacement have increased significantly since 1987; and

WHEREAS, the passage of this Ordinance will increase the Waste Transfer Surcharge from \$.20 (1987) to \$.50 per cubic yard effective January 1, 2012.

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 approves an Ordinance amending Title 4, Chapter 7, Section 3, to read as follows:

4-7-3: - Surcharge Imposed.

On and after the effective date hereof, there is hereby levied and shall be paid and collected a surcharge of ~~twenty~~ fifty cents (\$0.~~20~~ 50) on each cubic yard or portion thereof by each person disposing of trash at a waste transfer facility, including upon each person disposing of trash by his own vehicle at his own facility, whether for a charge or not. Said surcharge is in addition to all other taxes, surcharges and fees imposed by law.

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

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of

competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

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

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

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

Introduced, read in full, and passed on first reading on the 3rd day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2011

COUNCIL BILL NO. 69
 INTRODUCED BY COUNCIL
 MEMBER GILLIT

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT REGARDING THE APPLICATION FOR AND THE ACCEPTANCE OF A COLORADO DEPARTMENT OF TRANSPORTATION GRANT AWARDED TO THE CITY OF ENGLEWOOD FOR THE CHILD PASSENGER SAFETY SEAT PROGRAM AND FOR VARIOUS PROJECTS RELATED TO TRAFFIC SAFETY EDUCATION AND ENFORCEMENT DURING CALENDAR YEARS 2011 AND 2012.

WHEREAS, the Colorado Department of Transportation (CDOT) has solicited city police departments throughout the State of Colorado, including the City of Englewood, to participate in traffic safety education and enforcement programs; and

WHEREAS, CDOT often gives little notice when they announce their safety campaigns; and

WHEREAS, the passage of this ordinance will authorize the City of Englewood to accept funding from the Colorado Department of Transportation (CDOT) for various projects related to traffic safety education and enforcement for all projects initiated in 2011 and 2012, which include the following:

High Visibility Impaired Driving Enforcement Campaign - \$4,400
 Motorcycle Awareness Training - \$747.19
 Click it or Ticket - \$3,000
 Child Passenger Safety - \$500;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the acceptance of the Colorado Department of Transportation Grant awarded to the City of Englewood for funding of various projects related to traffic safety education and enforcement during calendar years 2011 and 2012.

Section 2. The City Manager is hereby authorized to sign said CDOT grants awarded to the City of Englewood for and on behalf of the City of Englewood, Colorado for the calendar years 2011 and 2012.

Introduced, read in full, and passed on first reading on the 3rd day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2011

COUNCIL BILL NO. 70
INTRODUCED BY COUNCIL
MEMBER WILSON

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF TWO INTERGOVERNMENTAL SUBGRANTEE AGREEMENTS FOR 2011 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BETWEEN THE ARAPAHOE BOARD OF COUNTY COMMISSIONERS AND THE CITY OF ENGLEWOOD, COLORADO.

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

WHEREAS, the Englewood City Council passed Resolution 79, Series of 2010, supporting Housing and Community Development that authorized submitting an application for 2011 CDBG funding; and

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

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

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

Section 1. The Subgrantee Agreement for Arapahoe County Community Development Block Grant Funds – Subgrantee: City of Englewood, Project Name: Energy Efficient Englewood (E3) Project Number: ENHS 1121, attached hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

Section 2. The Subgrantee Agreement for Arapahoe County Community Development Block Grant Funds – Subgrantee: City of Englewood, Project Name: Housing Rehabilitation Project Number: ENHS1122, attached hereto as Exhibit B, is hereby accepted and approved by the Englewood City Council.

Section 3. The Mayor is hereby authorized to sign said Agreements for and on behalf of the City of Englewood, Colorado.

Section 4. The City Manager shall be authorized to further extend the subgrantee agreements for the Arapahoe County Community Development Block Grant Program as needed.

Introduced, read in full, and passed on first reading on the 3rd day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

CSHC113714

EXHIBIT A

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

**SUBGRANTEE: CITY OF ENGLEWOOD
PROJECT NAME: ENERGY EFFICIENT ENGLEWOOD (E3)
PROJECT NUMBER: ENHS 1121**

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

I. PURPOSE

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

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

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

II. WORK TO BE COMPLETED BY THE SUBGRANTEE

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

The SubGrantee will utilize CDBG funding to provide grants to fourteen (14) low to moderate income homeowners for energy efficiency interior and exterior home improvements. The intent of the project is to improve the energy efficiency of homes, with a focus on work items that qualify for federal tax credits or any other state or local rebate program, including, but not limited to Energy Star furnaces, water heaters, windows, doors, skylights, insulation, roofing, siding, evaporative coolers, and refrigerators. A maximum of \$8,000 will be granted per household and the grant requires a 20% match from the homeowner. If the homeowner does not have the required match, then the grant will be secured by a declining deed of trust recorded on the property that will be forgiven over a 48 month period.

A. Payment

It is expressly agreed and understood that the total amount to be paid by the County under this contract shall not exceed \$125,000. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with performance

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

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

B. Timeline

All Project activities will be completed, and draw requests submitted, by **July 31, 2012**. In the event that the completion deadline falls on a weekend or holiday, the deadline will be considered the work day prior to the scheduled completion date.

C. Performance Criteria

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

1. Quantifiable Goals:

The SubGrantee will utilize CDBG funding to provide grants to fourteen (14) low to moderate income homeowners for energy efficiency interior and exterior home improvements. The intent of the project is to improve the energy efficiency of homes with a focus on work items that qualify for federal tax credits or any other state or local rebate program, including, but not limited to Energy Star furnaces, water heaters, windows, doors, skylights, insulation, roofing, siding, evaporative coolers, and refrigerators. Grant funds may be used to correct identified eminent hazards and/or other health and safety issues which are needed to ensure the energy efficiency of the home. A maximum of \$8,000 will be granted per household and the grant requires a 20% match from the homeowner. If the homeowner does not have the required match, then the grant will be secured by a declining deed of trust recorded on the property that will be forgiven over a 48 month period.

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

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

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

Items will meet or exceed energy standards set forth at www.energystar.gov and or Xcel Energy. The homeowner will be instructed to meet these standards and provide evidence that work meets these standards i.e. Label off window, contractor's detailed invoice for boiler, hot water heater, etc.

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

2. Community Impact:

Affordable housing – stability and housing quality

3. Monthly Performance Standards:

October 31, 2011:

Outreach and marketing
FFATA form due
Monthly Draw and Reporting Due by 20th

November 30, 2011:

Outreach and marketing
Monthly Draw and Reporting Due by 20th

December 31, 2011:

Provide services to approximately 1 unique household
Monthly Draw and Reporting Due by 20th

January 31, 2012:

Provide services to approximately 2 unique households
Monthly Draw and Reporting Due by 20th

February 29, 2012:

Provide services to approximately 2 unique households
Monthly Draw and Reporting Due by 20th

March 31, 2012:

Provide services to approximately 2 unique households
Monthly Draw and Reporting Due by 20th

April 30, 2012:

Provide services to approximately 2 unique households
Monthly Draw and Reporting Due by 20th

May 31, 2012:

Provide services to approximately 2 unique households
Monthly Draw and Reporting Due by 20th

June 30, 2012:

Provide services to approximately 2 unique households
Monthly Draw and Reporting Due by 20th

July 31, 2012:

Provide services to meet cumulative grant year goal of 14 households served
Monthly Draw and Reporting Due

D. Reporting Requirements

1. Project reports will be due within twenty days following the end of each calendar month until the Project is completed.
2. The official annual audit and/or Financial Statements for the SubGrantee in which both revenues and expenditures for the CDBG Projects described herein are detailed are due annually. The last completed official annual audit report and/or Financial Statements shall be due on May 31, and for four (4) years thereafter on May 31.

E. Labor Standards (Davis-Bacon)

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

F. Lead Based Paint Regulations

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

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

G. Environmental Review

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

H. Uniform Relocation Act (URA)

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

III. RESPONSIBILITIES OF THE SUBGRANTEE

A. Federal Compliance

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

1. 24 CFR Part 570;
2. 24 CFR Parts 84 and 85;
3. Title VI of the Civil Rights Act of 1964;
4. Title VIII of the Civil Rights Act of 1968;
5. Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
6. Fair housing regulations established in the Fair Housing Act, Public Law 90-284, and Executive Order 11063;
7. Section 504 of the Rehabilitation Act of 1973;
8. Asbestos guidelines established in CPD Notice 90-44;
9. The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39;
10. Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
11. Section 3 of the Housing and Urban Development Act of 1968;
12. Non-discrimination in employment, established by Executive Order 11246;
13. Lead Based Paint regulations established in 24 CFR Parts 35 and 570.608;

14. Audit requirements established in OMB Circular A-133; and
15. Cost principles established in OMB Circulars A-87 and A-122.
16. Conflict of Interest:
 - (a) Applicability. In the procurement of property and services by participating jurisdiction, State recipients, and subrecipients, the conflict of interest provision in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.
 - (b) Conflicts prohibited. No persons described in paragraph (c) of this section who exercise or who have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
 - (c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving CDBG funds.
 - (d) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the CDBG Investment Partnership Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:
 - (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exemption is sought would not violate State or local law.
 - (e) Factors to be considered for exemption. In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
 - (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
 - (2) Whether the person affected is a member of a group or class of low income persons intended to be the beneficiaries of the assisted activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

- (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
 - (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
 - (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
 - (6) Any other relevant considerations.
- (f) Owners and Developers.
- (1) No owner, developer or sponsor of a project assisted with CDBG funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a CDBG-assisted affordable housing unit in a project. This provision does not apply to an individual who receives CDBG funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.
 - (2) Exceptions. Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f) (1) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the CDBG program and the effective and efficient administration of the owner's or developer's CDBG-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:
 - (i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provide to the group or class;
 - (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;
 - (iii) Whether the tenant protection requirements of Sec. 92.253 are being observed;
 - (iv) Whether the affirmative marketing requirements of Sec. 92.351 are being observed and followed; and
 - (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

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

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

B. Non-Appropriations Clause

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

C. Expenditure Restrictions

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

D. Agreement Changes

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

E. Direct Project Supervision and Administration

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

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

F. Indemnity

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

G. Bonding and Insurance

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

1. Comprehensive General Liability: In the amount of not less than \$1,000,000 combined single limit. Coverage to include:
 - a. Premises Operations
 - b. Products/Completed Operations
 - c. Broad Form Contractual Liability
 - d. Independent Contractors
 - e. Broad Form Property Damage
 - f. Employees as Additional Insured
 - g. Personal Injury
 - h. Arapahoe County and the SubGrantee as Additional Named Insured
 - i. Waiver of Subrogation
2. Comprehensive Automobile Liability: In the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage to include:
 - a. Arapahoe County and the SubGrantee as additional Named Insured
 - b. Waiver of Subrogation
3. Employers Liability and Workers Compensation: The Contractor shall secure and maintain employer's liability and Worker's Compensation Insurance that will protect it against any and all claims resulting from injuries to and death of workers engaged in work under any contract funded pursuant to this agreement. Coverage to include Waiver of Subrogation.

4. All referenced insurance policies and/or certificates of insurance shall be subject to the following stipulations:
 - a. Underwriters shall have no rights of recovery subrogation against Arapahoe County or the SubGrantee; it being the intent of the parties that the insurance policies so effected shall protect the parties and be primary coverage for any and all losses covered by the described insurance.
 - b. The clause entitled "Other Insurance Provisions" contained in any policy including Arapahoe County as an additional named insured shall not apply to Arapahoe County, or the SubGrantee.
 - c. The insurance companies issuing the policy or policies shall have no recourse against Arapahoe County, or the SubGrantee for payment of any premiums due or for any assessments under any form of any policy.
 - d. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
5. Certificate of Insurance: The Contractor shall not commence work under any contract funded pursuant to this Agreement until he has submitted to the SubGrantee, received approval thereof, certificates of insurance showing that he has complied with the foregoing insurance requirements. The SubGrantee shall also submit a copy of the Contractor's certificates of insurance to the County.
6. Notwithstanding the provisions contained in this paragraph (G) set forth hereinabove, the County reserves the right to modify or waive said provisions for projects or activities for which these provisions would prove prohibitive. The SubGrantee understands, however, that the decision to waive or modify those provisions is fully within the discretion of the County.

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

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

H. Records

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

term of this Agreement. All records pertaining to the Project are to be maintained for a minimum of five years following close-out of the Project.

I. Reporting

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

J. Timeliness

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

K. Reimbursement for Expenses

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

L. Program Income

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

M. Real Property

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

N. State and County Law Compliance

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

O. Subcontracts

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

P. Suspension or Termination

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

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

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

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

S. Disallowance

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

T. Verification of Lawful Presence

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

SubGrantee shall verify lawful presence in the manner required by the statute, and shall provide proof of compliance upon the request of the County.

IV. RESPONSIBILITIES OF THE COUNTY

A. Administrative Control

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

B. Performance and Compliance Monitoring

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

C. Reporting to HUD

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

V. EXTENT OF THE AGREEMENT

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

VI. NOTICES

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

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

and

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

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

In Witness Whereof, the Parties have caused this Agreement to be duly executed this _____ day
of _____, 2011.

SubGrantee: City of Englewood

Signature James K. Woodward

Mayor
Title

Board of County Commissioners
Arapahoe County, Colorado

Don Klemme on behalf of the Board of County Commissioners
Pursuant to Resolution #110143

PROJECT BUDGET

COLUMN A	COLUMN B	COLUMN C	COLUMN D
Project Activities (specify by line item)	Estimated Total Cost of Activity	CDBG Funds	Other Funds Committed
Project administration, including personnel costs, Lead Based Paint testing costs, and Energy Audit costs	\$44,200	\$13,000	\$31,200
Grants for Energy Efficiency	\$140,000	\$112,000	\$28,000
TOTAL:	\$184,200	\$125,000	\$59,200

ENERGY EFFICIENT ENGLEWOOD (E³) Program Guidelines

I. Purpose

The intent of the project is to improve the energy and water efficiency of owner-occupied Englewood homes with a focus on items that are Energy Star rated and/or qualify for federal tax credits or any other state or local rebate programs if available, including but not limited to appliances, furnaces, water heaters, windows, doors, skylights, insulation, roofing, evaporative coolers, insulated siding, etc. Grant funds may be used to correct identified eminent hazards and/or other health and safety issues which are needed to ensure the energy efficiency of the home. A maximum of \$8,000 is granted per household and requires a 20% match from the homeowner. If the homeowner does not have the required match, then the grant will be secured by a declining Deed of Trust recorded on the property which will be forgiven over a 48-month period.

II. Procedures

1. Letter with application and Affidavit of Residency mailed to homeowner requesting following documentation:
 - Income verification for all household members over 18 (e.g. two current wage stubs, current 1040 Income Tax forms, award letters from Social Security, VA, Worker's Compensation, SSI, OAP, etc.)
 - Bank statements for the previous two months.
 - Deed of Trust, Warranty Deed, Quit Claim Deed showing current ownership
 - Current homeowner's insurance policy showing coverage
 - Current property tax statement from Arapahoe County
 - Divorce papers verifying the amount of child support or alimony being received (if applicable)
2. Schedule interview with homeowner.
3. At interview obtain signed application, Affidavit of Residency, and driver's license for all persons 18 and older living in the home. Provide homeowner with "Renovate Right Important Lead Hazard Information" and obtain homeowner signature that booklet was received. If a match is required and homeowner does not have funds for the match, offer homeowner a declining Deed of Trust recorded on the property which will be forgiven over a 48-month period. If a declining Deed of Trust is recorded against the property, applicant shall be instructed to return any received rebates to the City of Englewood. Rebate funds received by the City of Englewood shall be Program Income.

4. Once income eligibility is determined, mail homeowner letter informing them of acceptance into the program. Direct them to obtain Xcel Energy Blower Door Audit. Audit may be reimbursed to homeowner or paid directly to Xcel. Xcel invoice showing audit is required for direct payment. Xcel invoice showing audit and proof of payment by homeowner is required for reimbursing homeowner.
5. Contact Arapahoe County Weatherization to determine if applicant has received previous weatherization services and items corrected. If eligible, refer applicant to Arapahoe County Weatherization program.
6. Conduct environmental assessment.
7. Energy Audit is used as a general guide for work to be completed to make the home more energy and water efficient.
8. If an issue is discovered that needs to be resolved prior to providing Energy Efficiency services, such as but not limited to, electrical hazards or plumbing or roof leaks, funds may be used to correct the issue before proceeding with approved work items.
9. Homeowner selects company/individual to conduct work or purchase materials. Company name and/or individual name is matched against the Federal Excluded Party List System to insure eligibility to receive federal funds. This is completed before any work begins. Once cleared the homeowner is instructed to proceed and to ensure appropriate permits are obtained, if required, by the Englewood Building and Safety Division.

10. Payment may be made either directly to homeowner, upon receipt of paid invoices, or paid directly to company/individual. Reimbursement is 80% of the total invoice when a 20% match is required. Copies of checks and invoices are placed in file.
11. Items will meet or exceed energy standards set forth at www.energystar.gov.
12. Upon completion of all work, final lead based clearance test is performed by a Lead Based Paint Certified contractor.

Lead-Based Paint Policy

Applicants with properties constructed within the City of Englewood prior to 1978 will receive the booklet "Renovate Right". This booklet details Lead-Based paint hazards and what to expect from their contractor. At the back of the booklet is a confirmation signature page that the applicant must sign stating that they have received a copy of the booklet. This signature page will be retained in each applicant's file.

The Housing Construction Specialist (HCS) will perform a lead-based paint evaluation prior to any work starting. If lead-based paint issues are found, the HCS will determine the required actions and estimate costs to determine whether the project is suitable for rehabilitation within the constraints of the Program. This is required through the HUD regulations found in 24 CFR Part 35. All federal and state laws must be followed. All documents pertaining to the evaluation, testing results and assessments will be retained in the applicant's file.

Language on application:

LEAD-BASE PAINT

Contractor certifies that only lead-free paint will be used. If it is determined that lead-base paint exists in a hazardous form or location, Contractor/Owner must cover all areas involved with a lead-free paint.

LEAD SAFE WORK PRACTICES

On all work items flagged as "Interim Controls" or as requiring "lead safe work practices", workers must use lead safe work practices per 24CFR 35.1350. These practices are represented in the "Lead Safety Field Guide" (*Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work*) published by HUD-1779-LHC, March 2001 or any HUD-approved Lead Safe Work Practices class. Work disturbing lead-based paint is not considered complete until clearance, if required, is achieved.

INTERIM CONTROLS

All persons carrying out activities flagged as "interim Controls" or as required "lead safe work practices" must either be supervised by an EPA abatement supervisor or provide proof of completion of HUD-approved worker training course in lead safe work practices prior to start of work.

Attachment "C"
To Sub-Recipient Agreement between
Arapahoe County Government
And

City of Englewood

Project Number ENHS 1121

The Federal Funding Accountability and Transparency Act (FFATA) requires the Office of Management and Budget (OMB) to maintain a single, searchable website that contains information on all Federal spending awards. As part of this, Arapahoe County Housing and Community Development is requiring all agencies that meet the following thresholds to report:

DUNS Number (required regardless of the size of agency or award) _____

If your agency or organization:

- 1) had a gross income, from all sources, over \$300,000 in Agency's previous tax year, or
- 2) your agency or organization receives more than 80% of annual gross revenues from the Federal government and those revenues are greater than \$25 million annually, and
- 3) Your agency or organization is receiving an award of \$25,000 or more, and
- 4) compensation information of your five top senior executives is not available to the general public;

then you must provide the total compensation and names of your top five executives below.

1) _____ Name, please print	_____
	Annual Salary
2) _____ Name, please print	_____
	Annual Salary
3) _____ Name, please print	_____
	Annual Salary
4) _____ Name, please print	_____
	Annual Salary
5) _____ Name, please print	_____
	Annual Salary

Please check this box if you do not meet any of the thresholds noted above.

I certify that the information reported in this form is in compliance with the False Claims Act (U.S. Code Collection, title 31, Subtitle III, Chapter 37, Subchapter III § 3729). I understand that any person who knowingly makes a false or fraudulent claim for payment or approval, may be liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000 plus three (3) times the amount of damages which the Government sustains.

Signature: _____ **Date:** _____

Title: _____

CSH0113681

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

**SUBGRANTEE: CITY OF ENGLEWOOD
PROJECT NAME: HOUSING REHABILITATION
PROJECT NUMBER: ENHS 1122**

**EXHIBIT
B**

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

I. PURPOSE

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

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

The SubGrantee previously received CDBG funds for the Project and is now receiving Program Income from the Project. The County agrees to allow SubGrantee to continue to use the Program Income received for the continuation of the Housing Rehabilitation Project.

II. WORK TO BE COMPLETED BY THE SUBGRANTEE

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

The SubGrantee will use Program Income to provide low interest loans and/or grants to income eligible homeowners for health and safety related home improvements. Typical improvements may include (but are not necessarily limited to) plumbing, electrical systems, roofs, and HVAC work.

A. Payment

It is expressly agreed and understood that the total amount to be paid by the County under this contract shall not exceed \$0.00. Payment of eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with performance criteria established in Section II-C. The parties expressly recognize that the SubGrantee is to reuse Program Income

funds generated from previous years CDBG rehab loan activities, and that it is at the discretion of the County to allow reuse. In addition, reuse is contingent upon receipt of such funds. In the event that said funds, or any part thereof, are, or become, unavailable, then the County may immediately terminate or amend this agreement. To the extent C.R.S. § 29-1-110 is applicable, any financial obligation of the County to the SubGrantee beyond the current fiscal year is also contingent upon adequate funds being appropriated, budgeted and otherwise available.

B. Timeline

All Project activities will be completed by **April 30, 2012** unless this Agreement is modified by mutual agreement of the County and SubGrantee.

C. Performance Criteria

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

1. Quantifiable Goals:

The SubGrantee will provide four or more home improvement loans or grants to income eligible Englewood homeowners. All improvements funded under this grant are to be performed in compliance with applicable local or industry codes and standards.

2. Community Impact:

Affordable housing – stability and housing quality

3. Quarterly Performance Standards:

September 30, 2011:

Market program, interview potential clients

October 31, 2011:

Provide one (1) rehabilitation loan/grant
Monthly Draw and Reporting Due by 20th

November 30, 2011:

Monthly Draw and Reporting Due by 20th

December 31, 2011:

Provide one (1) rehabilitation loan/grant
Monthly Draw and Reporting Due by 20th

January 31, 2012:

Provide one (1) rehabilitation loan/grant
Monthly Draw and Reporting Due by 20th

February 29, 2012:

Monthly Draw and Reporting Due by 20th

March 31, 2012:

Provide one (1) rehabilitation loan/grant
Monthly Draw and Reporting Due by 20th

April 30, 2012:

Provide services to meet cumulative grant year goal of 4 households served
Complete all renovations funded by project
Submit final drawdown and completion report to County

D. Reporting Requirements

1. Project reports will be due by the 20th of the following month until the Project is completed.
2. The official annual audit and/or Financial Statements for the SubGrantee in which both revenues and expenditures for the CDBG Projects described herein are detailed are due annually.

E. Labor Standards (Davis-Bacon)

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

F. Lead Based Paint Regulations

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

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

G. Environmental Review

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

H. Uniform Relocation Act (URA)

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

III. RESPONSIBILITIES OF THE SUBGRANTEE

A. Federal Compliance

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

1. 24 CFR Part 570;
2. 24 CFR Parts 84 and 85;
3. Title VI of the Civil Rights Act of 1964;
4. Title VIII of the Civil Rights Act of 1968;
5. Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
6. Fair housing regulations established in the Fair Housing Act, Public Law 90-284, and Executive Order 11063;
7. Section 504 of the Rehabilitation Act of 1973;
8. Asbestos guidelines established in CPD Notice 90-44;
9. The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39;
10. Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
11. Section 3 of the Housing and Urban Development Act of 1968;
12. Non-discrimination in employment, established by Executive Order 11246;
13. Lead Based Paint regulations established in 24 CFR Parts 35 and 570.608;
14. Audit requirements established in OMB Circular A-133; and
15. Cost principles established in OMB Circulars A-87 and A-122.
16. Conflict of Interest:

- (a) Applicability. In the procurement of property and services by participating jurisdiction, State recipients, and subrecipients, the conflict of interest provision in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.
- (b) Conflicts prohibited. No persons described in paragraph (c) of this section who exercise or who have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- (c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving CDBG funds.
- (d) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the CDBG Investment Partnership Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:
- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exemption is sought would not violate State or local law.
- (e) Factors to be considered for exemption. In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
 - (2) Whether the person affected is a member of a group or class of low income persons intended to be the beneficiaries of the assisted activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 - (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
 - (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

- (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
 - (6) Any other relevant considerations.
- (f) Owners and Developers.
- (1) No owner, developer or sponsor of a project assisted with CDBG funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a CDBG-assisted affordable housing unit in a project. This provision does not apply to an individual who receives CDBG funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.
 - (2) Exceptions. Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f) (1) of this section on a case-by-case basis when it determines that the exception will serve to further the purpose of the CDBG program and the effective and efficient administration of the owner's or developer's CDBG-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:
 - (i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provide to the group or class;
 - (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;
 - (iii) Whether the tenant protection requirements of Sec. 92.253 are being observed;
 - (iv) Whether the affirmative marketing requirements of Sec. 92.351 are being observed and followed; and
 - (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

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

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

B. Non-Appropriations Clause

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

C. Expenditure Restrictions

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

D. Agreement Changes

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

E. Direct Project Supervision and Administration

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

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

F. Indemnity

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

G. Bonding and Insurance

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

1. Comprehensive General Liability: In the amount of not less than \$1,000,000 combined single limit. Coverage to include:
 - a. Premises Operations
 - b. Products/Completed Operations
 - c. Broad Form Contractual Liability
 - d. Independent Contractors
 - e. Broad Form Property Damage
 - f. Employees as Additional Insured
 - g. Personal Injury
 - h. Arapahoe County and the SubGrantee as Additional Named Insured
 - i. Waiver of Subrogation
2. Comprehensive Automobile Liability: In the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage to include:
 - a. Arapahoe County and the SubGrantee as additional Named Insured
 - b. Waiver of Subrogation
3. Employers Liability and Workers Compensation: The Contractor shall secure and maintain employer's liability and Worker's Compensation Insurance that will protect it against any and all claims resulting from injuries to and death of workers engaged in work under any contract funded pursuant to this agreement. Coverage to include Waiver of Subrogation.
4. All referenced insurance policies and/or certificates of insurance shall be subject to the following stipulations:
 - a. Underwriters shall have no rights of recovery subrogation against Arapahoe County or the SubGrantee; it being the intent of the parties that the insurance policies so effected shall protect the parties and be primary coverage for any and all losses covered by the described insurance.

- b. The clause entitled "Other Insurance Provisions" contained in any policy including Arapahoe County as an additional named insured shall not apply to Arapahoe County, or the SubGrantee.
 - c. The insurance companies issuing the policy or policies shall have no recourse against Arapahoe County, or the SubGrantee for payment of any premiums due or for any assessments under any form of any policy.
 - d. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
5. Certificate of Insurance: The Contractor shall not commence work under any contract funded pursuant to this Agreement until he has submitted to the SubGrantee, received approval thereof, certificates of insurance showing that he has complied with the foregoing insurance requirements. The SubGrantee shall also submit a copy of the Contractor's certificates of insurance to the County.
 6. Notwithstanding the provisions contained in this paragraph (H) set forth hereinabove, the County reserves the right to modify or waive said provisions for projects or activities for which these provisions would prove prohibitive. The SubGrantee understands, however, that the decision to waive or modify those provisions is fully within the discretion of the County.

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

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

H. Records

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

I. Reporting

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

J. Timeliness

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

K. Reimbursement for Expenses

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

L. Program Income

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

M. Real Property

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

N. State and County Law Compliance

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

O. Subcontracts

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

P. Suspension or Termination

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

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

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

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

S. Disallowance

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

T. Verification of Lawful Presence

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

IV. RESPONSIBILITIES OF THE COUNTY

A. Administrative Control

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

B. Performance and Compliance Monitoring

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

C. Reporting to HUD

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

V. EXTENT OF THE AGREEMENT

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

VI. NOTICES

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

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

and

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

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

In Witness Whereof, the Parties have caused this Agreement to be duly executed this _____ day
of _____, 2011.

SubGrantee: City of Englewood

Signature James K. Woodward

Mayor
Title

Board of County Commissioners
Arapahoe County, Colorado

Don Klemme on behalf of the Board of County Commissioners
Pursuant to Resolution #110143

PROJECT BUDGET

COLUMN A	COLUMN B	COLUMN C	COLUMN D
Project Activities (specify by line item)	Estimated Total Cost of Activity	CDBG Funds	Other Funds Committed
Rehab administration	\$50,000	\$5,000	\$45,000
Project Rehab expenses	\$70,000	\$45,000	\$25,000
TOTAL:	\$120,000	\$50,000	\$70,000

COUNCIL COMMUNICATION

Date: October 17, 2011	Agenda Item: 11 a i	Subject: Ordinance authorizing the sale of 2293 W Baltic Ave, 2295 W Baltic Ave, 4101 S Cherokee St, 4585 S Julian St, 4825 S Delaware St, and 2320 W Harvard Ave funded through the Neighborhood Stabilization Program Grant
Initiated By: Community Development Department		Staff Source: Harold J. Stitt, Senior Planner Janet Grimmatt, Housing Finance Specialist

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council approved Resolution 34 Series of 2009 authorizing staff to apply to the Department of Local Affairs, Colorado Division of Housing, for a portion of Arapahoe County's allocation of the Federal Neighborhood Stabilization Program funds (NSP1).

City Council approved Ordinance 37, Series of 2009 authorizing the execution of a contract for NSP1 grant funding between the State of Colorado Department of Local Affairs and the City of Englewood.

City Council approved Ordinance 49, Series of 2009 authorizing the purchase of ten unidentified single-family vacant foreclosed properties located in the eligible census tracts throughout the City of Englewood to fulfill the NSP1 contract with the Colorado Department of Local Affairs.

City Council approved Ordinance 15, Series of 2010 authorizing the sale of 2198 W. Adriatic Pl, 2335 W. Baltic Pl, 2010 W. Baltic Pl, 4819 S. Delaware St, and 4681 S Decatur St #226 funded through the NSP1 grant

City Council approved Ordinance 27, Series of 2010 authorizing an amendment to the NSP1 contract budget to purchase up to three additional unidentified single-family vacant foreclosed properties located in the eligible census tracts throughout the City of Englewood to fulfill the NSP1 contract with the Colorado Department of Local Affairs.

City Council approved Ordinance 49, Series of 2010 authorizing the sale of 2215 W Wesley Ave, 3395 W Grand Ave, 4744 S Galapago St, 3102 W Radcliff Dr, 2159 W Vassar Ave, and 3115 S Acoma St funded through the NSP1 grant

City Council approved Ordinance 34, Series of 2011, authorizing an amendment to the NSP1 contract budget to purchase up to five additional unidentified single-family vacant foreclosed properties located in the eligible census tracts throughout the City of Englewood to fulfill the NSP1 contract with the Colorado Department of Local Affairs.

RECOMMENDED ACTION

Staff recommends that Council approve a Bill for Ordinance authorizing the sale of six single family residences located at 2293 W Baltic Ave, 2295 W Baltic Ave, 4101 S Cherokee St, 4585 S Julian St, 4825 S Delaware St, and 2320 W Harvard Ave.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In 2008, the Federal government passed the Housing and Economic Recovery Act (HERA). HERA appropriated \$3.92 billion nationally for the Neighborhood Stabilization Program (NSP1) to support the acquisition, rehabilitation, or demolition of foreclosed and abandoned properties. The Colorado Department of Local Affairs through the Division of Housing received a total \$37.9 million in NSP1 funds.

In March, the Community Development Department submitted an application to the State as authorized for NSP1 funding for Project Rebuild. Project Rebuild was awarded a total of \$1,753,379.00 by the State Housing Board to purchase, rehabilitate, and sell foreclosed single-family properties in eligible census tracts located throughout the City of Englewood. In September, Council approved entering into an agreement with the State for NSP1 funding.

The NSP1 contract requires the purchase, rehabilitation, and resale of a maximum twenty homeownership units. Currently six homes located at 2293 W Baltic Ave, 2295 W Baltic Ave, 4101 S Cherokee St, 4585 S Julian St, 4825 S Delaware St, 2320 W Harvard Ave have been purchased and are in various stages of being rehabbed. All six properties will soon be available to sell to eligible owner/occupied buyers.

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 sell the properties to eligible buyers. All selling expenses will be covered by funds provided by the NSP1 grant. At this time, all proceeds from the sale of each property will be reimbursed to the State of Colorado as program income as required by the contract until all houses are sold or the program expires March 10, 2013.

No LTAR funds were used in the rehabilitation of these six properties.

LIST OF ATTACHMENTS

Bill for Ordinance

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2011

COUNCIL BILL NO. 72
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE APPROVING THE SALE ON THE OPEN MARKET OF SIX PROPERTIES WHICH WERE PURCHASED AND REHABILITATED WITH FUNDS FROM THE NEIGHBORHOOD STABILIZATION PROGRAM GRANT AND FUND 46.

WHEREAS, the Englewood City Council approved Resolution No. 34, Series of 2009 authorizing the City to apply to the Department of Local Affairs, Colorado Division of Housing for a portion of Arapahoe County's allocation of the Federal Neighborhood Stabilization Program funds (NSP1); and

WHEREAS, the City Council approved Ordinance No. 37, Series of 2009 authorizing the execution of a contract for Neighborhood Stabilization Program grant funding between the State of Colorado Department of Local Affairs and the City of Englewood; and

WHEREAS, the City Council approved Ordinance No. 49, Series of 2009 authorizing the purchase of ten (10) unidentified, single-family, vacant, foreclosed properties located in the eligible census tracts throughout the City of Englewood to fulfill the NSP1 contract with the Colorado Department of Local Affairs; and

WHEREAS, the City Council approved Ordinance No. 27, Series of 2010, authorizing an amendment to the NSP1 contract budget to purchase up to three (3) additional unidentified single family, vacant, foreclosed properties located in the eligible census tracts throughout the City of Englewood to fulfill the NSP1 Contract with the Colorado Department of Local Affairs; and

WHEREAS, the City Council approved Ordinance No. 3, Series of 2011, authorizing an amendment to the NSP1 contract budget to purchase two (2) additional unidentified single family, vacant, foreclosed properties located in the eligible census tracts throughout the City of Englewood to fulfill the NSP1 Contract with the Colorado Department of Local Affairs; and

WHEREAS, the City Council approved Ordinance No. 34, Series of 2011, authorizing an amendment to the NSP1 contract budget of purchase up to five (5) additional unidentified single family, vacant, foreclosed properties located in the eligible census tracts throughout the City of Englewood to fulfill the NSP1 Contract with the Colorado Department of Local Affairs; and

WHEREAS, six such properties are almost ready to be sold to private parties who will secure their own financing; and

WHEREAS, if an offer to purchase is received from any City employee, their family members, or any business in which a City employee has a financial interest, such offer will be submitted to the Englewood City Council for approval;

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

Section 1. Approval is hereby given for the sale on the open market of six properties which were purchased and rehabilitated with funds from the Neighborhood Stabilization Program Grant and Fund 46. Said properties will be sold to private parties who shall secure their own financing.

Section 2. The following properties are authorized to be sold on the open market:

1. 2293 West Baltic Avenue
2. 2295 West Baltic Avenue
3. 4101 South Cherokee Street
4. 4585 South Julian Street
5. 4825 South Delaware Street
6. 2320 West Harvard Avenue

Section 3. The sale of these properties shall require the purchaser to agree as follows:

1. All households being served must qualify under the terms of the NSP1 Grant.
2. The purchasing household will undergo a minimum of 8 hours of HUD approved homeownership counseling.
3. The purchasing household must occupy the property as a principal residence for a minimum of five years.

Section 4. The sale price shall be equal to or less than the costs to acquire and redevelop the home.

Section 5. The sale proceeds will be reimbursed to the NSP1 funds and Fund 46 upon the rehabilitation and sale of the foreclosed properties.

Section 6. The Mayor and the City Clerk are authorized to execute the proper form of deed for the conveyance of these properties pursuant to Section 72 of the Englewood City Charter.

Introduced, read in full, and passed on first reading on the 17th day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 21st day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 17th day of October, 2011.

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2011

COUNCIL BILL NO. 60
 INTRODUCED BY COUNCIL
 MEMBER WILSON

AN ORDINANCE ADOPTING THE BUDGET OF THE CITY OF ENGLEWOOD,
 COLORADO, FOR THE FISCAL YEAR 2012.

WHEREAS, pursuant to the provisions of Part I, Article X, of the Charter of the City of Englewood, Colorado, a budget for the fiscal year 2012 was duly submitted by the City Manager to the City Council on August 29, 2011; and

WHEREAS, a public hearing on said budget was held by the City Council within three weeks after its submission at the meeting of the City Council on September 6, 2011. Regular notice of the time and place of said hearing was published within seven days after submission of the budget in the manner provided in the Charter for the publication of an ordinance; and

WHEREAS, the City Council of the City of Englewood has studied and discussed the budget on numerous occasions;

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

Section 1. That the budget of the City of Englewood, Colorado, for the fiscal year 2012, as submitted by the City Manager, duly considered by the City Council and changes made by the City Manager to reflect Council discussion after public hearing, is adopted as the budget for the City of Englewood for the fiscal year 2012.

Section 2. GENERAL FUND

2012 BUDGET

Total Fund Balance, January 1, 2012 \$ 8,753,654

	<u>Revenues</u>
Sales/Use Tax	22,115,126
Property and Specific Ownership Tax	3,130,000
Franchise/Occupation/Cigarette Tax	3,255,651
License/Permits	574,025
Intergovernmental Revenue	1,552,315
Charges for Services	3,392,567
Cultural & Recreation	2,599,668
Fines & Forfeitures	1,318,450
Interest	100,000
Miscellaneous	<u>419,153</u>

Total Revenues \$ 38,456,955
 Other Financing Sources 1,969,785

Total Sources of Funds	\$ 40,426,740
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	<u>Expenditures</u>
Legislation	333,793
City Manager's Office	672,072
City Attorney's Office	746,734
Municipal Court	974,417
Human Resources	470,910
Finance and Administrative Services	1,541,645
Information Technology	1,360,355
Community Development	1,478,398
Public Works	5,436,637
Police	10,921,455
Fire	7,711,732
Library Services	1,256,481
Parks and Recreation Services	5,834,425
Contingencies	150,000
Debt Service	<u>2,060,739</u>
Total Uses of Funds	\$ 40,949,793
Total Fund Balance, December 31, 2012	\$ 8,230,601

Section 3. SPECIAL REVENUE FUNDS

Conservation Trust Fund

Fund Balance, January 1, 2012	\$ 98,916
Revenues	\$ 327,000
Expenditures	\$ 403,500
Fund Balance, December 31, 2012	\$ 22,416

Community Development Fund

Fund Balance, January 1, 2012	\$ -0-
Revenues	\$ 300,000
Expenditures	\$ 300,000
Fund Balance, December 31, 2012	\$ -0-

<u>Donors Fund</u>		
Fund Balance, January 1, 2012	\$	101,072
Revenues	\$	96,500
Expenditures	\$	172,780
Fund Balance, December 31, 2012	\$	24,792
<u>Malley Center Trust Fund</u>		
Fund Balance, January 1, 2012	\$	291,667
Revenues	\$	15,000
Expenditures	\$	15,000
Fund Balance, December 31, 2012	\$	291,667
<u>Parks and Recreation Trust Fund</u>		
Fund Balance, January 1, 2012	\$	449,303
Revenues	\$	20,000
Expenditures	\$	20,000
Fund Balance, December 31, 2012	\$	449,303
<u>Open Space Fund</u>		
Fund Balance, January 1, 2012	\$	190,551
Revenues	\$	645,000
Expenditures	\$	772,000
Fund Balance, December 31, 2012	\$	63,551
<u>Neighborhood Stabilization Program Fund</u>		
Fund Balance, January 1, 2012	\$	526,386
Revenues	\$	1,488,436
Expenditures	\$	2,014,822
Fund Balance, December 31, 2012	\$	-0-

Section 4. DEBT SERVICE FUND

<u>General Obligation Bond Fund</u>		
Fund Balance, January 1, 2012	\$	164,656
Revenues	\$	853,500
Expenditures	\$	959,200
Fund Balance, December 31, 2012	\$	58,956

Section 5. CAPITAL PROJECT FUNDS

Public Improvement Fund

Fund Balance, January 1, 2012	\$	329,782
Revenues	\$	1,754,000
Expenditures and Transfers	\$	2,000,739
Fund Balance, December 31, 2012	\$	83,043

Capital Projects Fund

Fund Balance, January 1, 2012	\$	<42,239>
Revenues and Transfers In	\$	340,000
Expenditures	\$	274,781
Fund Balance, December 31, 2012	\$	22,980

Section 6. ENTERPRISE FUNDS

Water Fund

Fund Balance, January 1, 2012	\$	6,818,223
Revenues	\$	11,832,380
Expenditures	\$	13,049,665
Fund Balance, December 31, 2012	\$	5,600,938

Sewer Fund

Fund Balance, January 1, 2012	\$	3,644,933
Revenues	\$	25,984,080
Expenditures	\$	18,894,661
Fund Balance, December 31, 2012	\$	10,734,352

Storm Drainage Fund

Fund Balance, January 1, 2012	\$	749,062
Revenues	\$	331,232
Expenditures	\$	348,473
Fund Balance, December 31, 2012	\$	731,821

Golf Course Fund

Fund Balance, January 1, 2012	\$	538,560
Revenues	\$	2,312,426
Expenditures	\$	2,161,643
Fund Balance, December 31, 2012	\$	689,343

Concrete Utility Fund

Fund Balance, January 1, 2012	\$	294,204
Revenues	\$	711,200

Expenditures	\$ 697,249
Fund Balance, December 31, 2012	\$ 308,155
 <u>Housing Rehabilitation Fund</u>	
Fund Balance, January 1, 2012	\$ 909,889
Revenues	\$ 1,000,000
 Expenditures	
Fund Balance, December 31, 2012	\$ 1,000,000
	\$ 909,889

Section 7. INTERNAL SERVICE FUNDS

<u>Central Services Fund</u>	
Fund Balance, January 1, 2012	\$ 107,882
Revenues	\$ 353,400
 Expenditures and Transfers	
Fund Balance, December 31, 2012	\$ 353,463
	\$ 107,819
 <u>Servicenter Fund</u>	
Fund Balance, January 1, 2012	\$ 950,990
Revenues	\$ 2,273,080
 Expenditures & Transfers	
Fund Balance, December 31, 2012	\$ 2,260,423
	\$ 963,647
 <u>Capital Equipment Replacement Fund</u>	
Fund Balance, January 1, 2012	\$ 1,430,499
Revenues	\$ 825,915
 Expenditures	
Fund Balance, December 31, 2012	\$ 1,264,936
	\$ 991,478
 <u>Risk Management Fund</u>	
Fund Balance, January 1, 2012	\$ 720,040
Revenues	\$ 1,187,027
 Expenditures and Transfers	
Fund Balance, December 31, 2012	\$ 1,867,850
	\$ 39,217
 <u>Employee Benefits Fund</u>	
Fund Balance, January 1, 2012	\$ 611
Revenues	\$ 5,337,426
 Expenditures and Transfers	
Fund Balance, December 31, 2012	\$ 5,284,552
	\$ 53,485

Section 8. That the said budget shall be a public record in the office of the City Clerk and shall be open to public inspection. Sufficient copies thereof shall be made available for the use of the City Council and the public, the number of copies to be determined by the City Manager.

Introduced, read in full, and passed on first reading on the 3rd day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2011 _____

COUNCIL BILL NO. 61
 INTRODUCED BY COUNCIL
 MEMBER JEFFERSON

AN ORDINANCE APPROPRIATING MONIES FOR ALL MUNICIPAL PURPOSES IN THE CITY OF ENGLEWOOD, COLORADO, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2012, AND ENDING DECEMBER 31, 2012, CONSTITUTING WHAT IS TERMED THE ANNUAL APPROPRIATION BILL FOR THE FISCAL YEAR 2012.

WHEREAS, a public hearing on the Proposed 2012 Budget was held September 6, 2011; and

WHEREAS, the operating budgets and Multiple Year Capital Plan for all City departments and funds were reviewed at a budget workshop held on September 12, 2011; and

WHEREAS, the Charter of the City of Englewood requires the City Council to adopt bills for ordinances adopting the Budget and Appropriation Ordinance no later than thirty days prior to the first day of the next fiscal year.

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

Section 1. That there be and there hereby is appropriated from the revenue derived from taxation in the City of Englewood, Colorado, from collection of license fees and from all other sources of revenue including available fund balances during the year beginning January 1, 2012, and ending December 31, 2012, the amounts hereinafter set forth for the object and purpose specified and set opposite thereto, specifically as follows:

GENERAL FUND

Legislation	\$	333,793
City Manager's Office		672,072
City Attorney's Office		746,734
Municipal Court		974,417
Human Resources		470,910
Finance and Administrative Services		1,541,645
Information Technology		1,360,355
Community Development		1,478,398
Public Works		5,436,637
Police		10,921,455
Fire		7,711,732
Library Services		1,256,481
Parks and Recreation Services		5,834,425
Contingencies		150,000
Debt Service – Civic Center		1,574,000
Debt Service – Other		<u>486,739</u>

Total General Fund	\$	40,949,793
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CONSERVATION TRUST FUND

Total Conservation Trust Fund	\$	403,500
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COMMUNITY DEVELOPMENT FUND

Total Community Development Fund	\$	300,000
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DONORS FUND

Total Donors Fund	\$	172,780
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MALLEY CENTER TRUST FUND

Total Malley Center Trust Fund	\$	15,000
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PARKS AND RECREATION TRUST FUND

Total Parks and Recreation Trust Fund	\$	20,000
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OPEN SPACE FUND

Total Open Space Fund	\$	772,000
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NEIGHBORHOOD STABILIZATION PROGRAM FUND

Total Neighborhood Stabilization Program Fund	\$	2,014,822
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GENERAL OBLIGATION BOND FUND

Total General Obligation Bond Fund	\$	959,200
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PUBLIC IMPROVEMENT FUND

Total Public Improvement Fund	\$	2,000,739
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CAPITAL PROJECTS FUND

Total Capital Projects Fund \$ 274,781

WATER FUND

Total Water Fund \$ 13,049,665

SEWER FUND

Total Sewer Fund \$ 18,894,661

STORM DRAINAGE FUND

Total Storm Drainage Fund \$ 348,473

GOLF COURSE FUND

Total Golf Course Fund \$ 2,161,643

CONCRETE UTILITY FUND

Total Concrete Utility Fund \$ 697,249

HOUSING REHABILITATION FUND

Total Housing Rehabilitation Fund \$ 1,000,000

CENTRAL SERVICES FUND

Total Central Services Fund \$ 353,463

SERVICENTER FUND

Total ServiCenter Fund \$ 2,260,423

CAPITAL EQUIPMENT REPLACEMENT FUND

Total Capital Equipment Replacement Fund \$ 1,264,936

RISK MANAGEMENT FUND

Total Risk Management Fund \$ 1,867,850

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2011

COUNCIL BILL NO. 62
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE ADOPTING THE BUDGET FOR THE LITTLETON/
ENGLEWOOD WASTEWATER TREATMENT PLANT FOR THE FISCAL
YEAR 2012.

WHEREAS, a public hearing on said budget was held by the City Council within three weeks after its submission on August 29, 2011. The hearing was held at the meeting of City Council on September 6, 2011, regular notice of the time and place of said hearing having been published within seven days after the submission of the budget in the manner provided in the Charter for the publication of an ordinance; and

WHEREAS, pursuant to the provisions of an agreement between the City of Littleton, Colorado, and the City of Englewood, Colorado, a budget for the fiscal year 2012 was reviewed by the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee and recommended it be submitted to the City Council at their meeting; held on September 15, 2011; and

WHEREAS, the City Council of the City of Englewood, as the administering authority for the Littleton/Englewood Wastewater Treatment Plant, has studied the budget on numerous occasions; and

WHEREAS, it is the intent of the City Council to adopt the 2012 budget for the Littleton/Englewood Wastewater Treatment Plant as now submitted.

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

Section 1. That the budget of the Littleton/Englewood Wastewater Treatment Plant for the fiscal year 2012, as submitted by the Littleton/Englewood Wastewater Treatment Plant Supervisory Committee and duly considered by the City Council after public hearing, is hereby adopted as the budget for the Littleton/Englewood Wastewater Treatment Plant for the fiscal year 2012, as follows:

Littleton/Englewood Wastewater Treatment Plant

Fund Balance – January 1, 2012	\$	115,674
Revenues	\$	19,177,265
Expenditures	\$	19,177,265
Fund Balance – December 31, 2012	\$	115,674

Section 2. That the said budget as accepted shall be a public record in the Office of the City Clerk and shall be open to public inspection. Sufficient copies thereof shall be made available for the use of the City Council and the public, the number of copies to be determined by the City Manager.

Introduced, read in full, and passed on first reading on the 3rd day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2011

COUNCIL BILL NO. 59
INTRODUCED BY COUNCIL
MEMBER McCASLIN

AN ORDINANCE FIXING THE TAX LEVY IN MILLS UPON EACH DOLLAR OF THE ASSESSED VALUATION OF ALL TAXABLE PROPERTY WITHIN THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, it is the duty of the City Council of the City of Englewood, Colorado, under the Englewood Home Rule Charter and Colorado Revised Statutes, to make the annual property levy for City purposes; and

WHEREAS, the City Council has duly considered the estimated valuation of all the taxable property within the City and the needs of the City and of each of said levies and has determined that the levies as hereinafter set forth, are proper and wise; and

WHEREAS, the following levies are permitted under Article X, Section 20 of the Colorado Constitution without a vote by the citizens;

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

Section 1. That there be and hereby is levied for the year of 2011, due and payable as required by statute in the year 2012, a tax of 5.880 mills on the dollar for the General Fund of the City of Englewood, Colorado, and 1.741 mills on the dollar for the General Obligation Bond Debt Service Fund of the City of Englewood, Colorado.

That the levy hereinabove set forth shall be levied upon each dollar of the assessed valuation of all taxable property within the corporate limits of the City of Englewood, Colorado, and the said levy shall be certified by law.

Introduced, read in full, and passed on first reading on the 3rd day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. _____
 SERIES OF 2011

COUNCIL BILL NO. 71
 INTRODUCED BY COUNCIL
 MEMBER WOODWARD

AN ORDINANCE AMENDING THE CITY COUNCIL POLICY MANUAL REGARDING THE
 ELECTION OF THE MAYOR AND MAYOR PRO TEM.

WHEREAS, both the Englewood Home Rule Charter and the Rules of Order and Procedure for the Englewood City Council contain provisions for election of the Mayor; and

WHEREAS, the Rules of Order and Procedure contains a provision for election of the Mayor and Mayor Pro Tem but also contains secret ballot language; and

WHEREAS, in 1991 the Colorado Sunshine Act was amended to provide for certain exceptions to the general rule of meetings being open to the public; and

WHEREAS, election of the Mayor and Mayor Pro Tem does not meet any of the exceptions; therefore, the election of the Mayor and Mayor Pro Tem may not be held in an Executive Session; and

WHEREAS, since the amendment to the Colorado Sunshine Act election of the Mayor and the Mayor Pro Tem of Englewood has not been held in Executive Session; and

WHEREAS, this amendment to the Rules of Order and Procedure will eliminate the secret ballot provision;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT THE COUNCIL RULES OF ORDER AND PROCEDURE ARE AMENDED AS FOLLOWS:

The presiding officer of the City Council shall be the Mayor who shall be elected ~~by secret ballot~~ by the members of the City Council at the ~~second~~ first regular meeting in November after each general municipal election. The presiding officer shall preserve strict order and decorum at all regular and special meetings of the City Council. He/she shall state every question coming before the City Council, announce the decision of the City Council on all subjects, and decide all questions of order, subject, however, to an appeal of the City Council, in which event a majority vote of those Council Members present and voting shall govern and conclusively determine such questions awarded. He/she shall vote on all questions, his/her name being called last, he/she shall sign all ordinances adopted by the City Council during his/her presence.

The Mayor Pro Tem shall be elected ~~by secret ballot~~ by the members of the City Council at the ~~second~~ first regular meeting in November after each general municipal election. The Mayor Pro Tem shall serve as Mayor during the absence or disability of the Mayor and in case of a vacancy in the office of the Mayor pending a selection of a new successor.

Introduced, read in full, and passed on first reading on the 3rd day of October, 2011.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 7th day of October, 2011.

Published as a Bill for an Ordinance on the City's official website beginning on the 5th day of October, 2011 for thirty (30) days.

Read by title and passed on final reading on the 17th day of October, 2011.

Published by title in the City's official newspaper as Ordinance No. ____, Series of 2011, on the 21st day of October, 2011.

Published by title on the City's official website beginning on the 19th day of October, 2011 for thirty (30) days.

James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis

COUNCIL COMMUNICATION

Date	Agenda Item	Subject
October 17, 2011	11 c i	Resolution of support to the Englewood McLellan Reservoir Foundation for lease of approximately 7 acres to Miller Family Real Estate, LLC.
INITIATED BY Englewood McLellan Reservoir Foundation		STAFF SOURCE Michael Flaherty, EMRF

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

In 1999, City Council authorized the creation of the Englewood McLellan Reservoir Foundation (EMRF) for the purpose of development of properties in the McLellan Reservoir land. Over the last several years, City Council has supported EMRF in the sale of parcels that have been, are being, and/or will be developed to provide additional revenue for the City of Englewood. During the October 3, 2011 Executive Session, City Council reviewed the terms of a proposed agreement in which EMRF would lease approximately 7 acres of PA 84 to the Miller Family Real Estate, LLC (MFRE).

RECOMMENDED ACTION

EMRF recommends City Council approval of the Resolution supporting the agreement between EMRF and Miller Family Real Estate (MFRE) for lease of approximately 7 acres of PA 84.

BACKGROUND

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

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

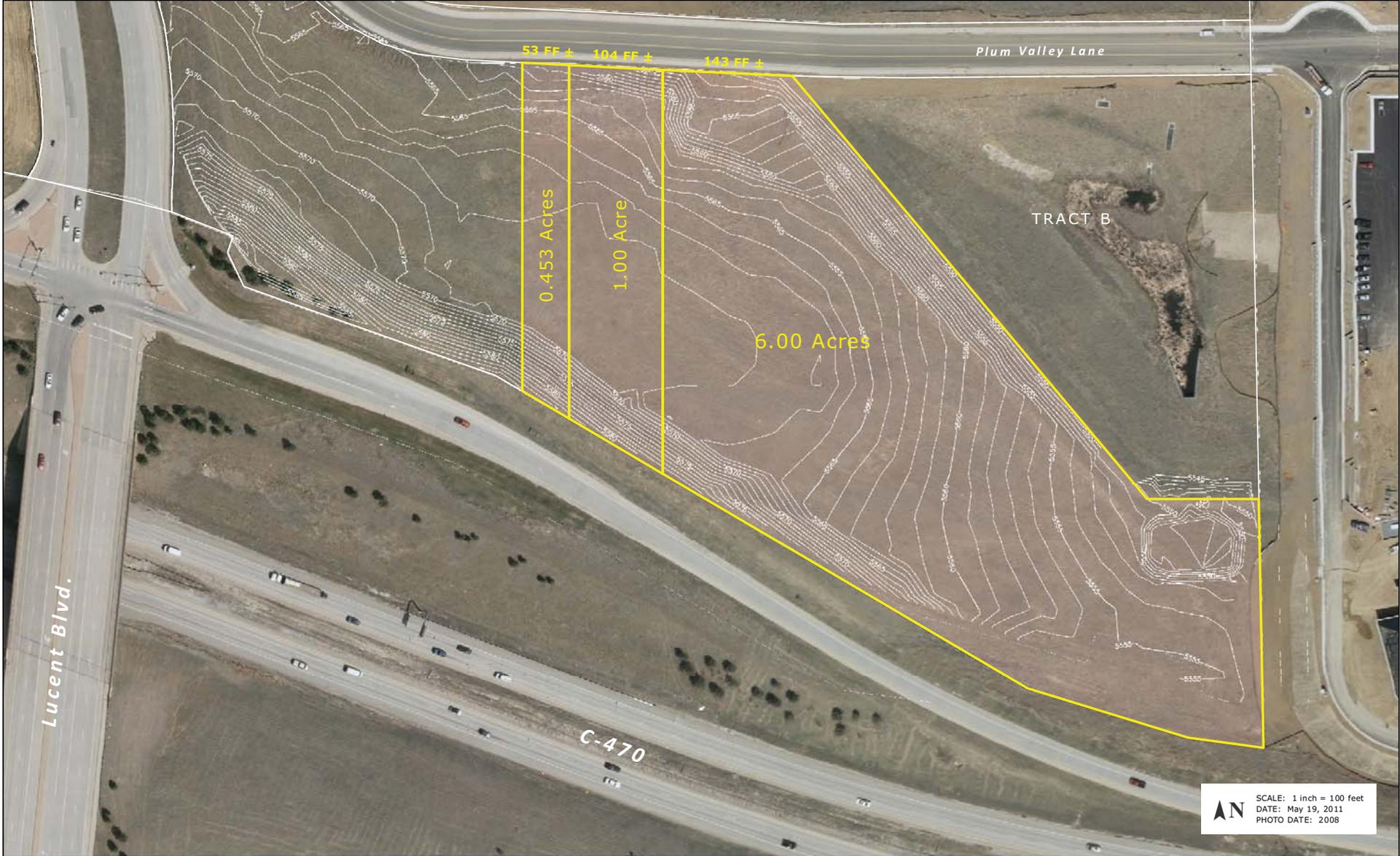
In late September, EMRF reached an agreement in principal with MFRE on lease terms. During an Executive Session on October 3, 2011, EMRF staff presented information to City Council regarding a Letter of Intent with MFRE for a proposed lease of Englewood McLellan Reservoir Foundation (EMRF) property. Since that time, using the language of the Letter of Intent as the basis, the EMRF Board and the EMRF attorney held negotiations with the broker and the attorney for MFRE.

FINANCIAL IMPACT

Initial Deposit:	\$200,000, applicable to future rental payments
Pre-Development Rent:	\$10,000/month, non-refundable, but applicable to construction rent, unless the lease is terminated.
Construction Rental:	\$9,910/month, commencing on construction start.
Base Rent:	\$229.690/year commencing on opening and increasing 10% every five (5) years, for the initial 20 year term and with a CPI adjustment at the beginning of the first (of five) five year option periods.

LIST OF ATTACHMENTS

City Council Resolution
Lease Agreement





McLellan Routes

SCALE: 1 inch = 1,000 feet
MAP DATE: May 10, 2006
PHOTO DATE: 2002



RESOLUTION NO. _____
SERIES OF 2011

A RESOLUTION SUPPORTING THE ENGLEWOOD MCLELLAN RESERVOIR
FOUNDATION (EMRF) LEASE OF A PORTION OF THE MCLELLAN PROPERTY TO
MILLER FAMILY REAL ESTATE, LLC.

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

WHEREAS, the Lease is for approximately 7 acres of the Englewood McLellan Reservoir
Foundation property; and

WHEREAS, City Council discussed the terms of the proposed agreement at the October 3rd,
2011 Executive Session; and

WHEREAS, the EMRF Board of Directors has unanimously approved the lease with Miller
Family Real Estate, LLC;

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

Section 1. The City Council of the City of Englewood, Colorado, hereby supports the
“Ground Lease” between the Englewood McLellan Reservoir Foundation and
Miller Family Real Estate, LLC. for the lease of a portion of the McLellan property, attached as
Exhibit A.

ADOPTED AND APPROVED this 17th day of October, 2011.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the
above is a true copy of Resolution No. _____, Series of 2011.

Loucrishia A. Ellis, City Clerk

GROUND LEASE

between

MILLER FAMILY REAL ESTATE, LLC

as Tenant

and

ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION

as Landlord

dated as of _____, 2011

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GROUND LEASE

This **GROUND LEASE** (the "**Lease**") is made as of the ___ day of _____, 2011, by and between **ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION**, a Colorado nonprofit corporation ("**Landlord**"), and **Miller Family Real Estate, LLC** ("**Tenant**"). The date this Lease is executed and delivered by both parties hereto shall be referred to hereinafter as the "Effective Date."

WITNESSETH:

For and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to the terms and conditions as hereinafter provided:

**Article 1
Fundamental Lease Terms**

For convenience, this Article 1 summarizes certain fundamental economic and business terms of this Lease.

Effective Date: _____, 2011.

Premises: That certain real property described on **Exhibit A** attached hereto and incorporated herein by this reference, consisting of _____ acres.

Landlord ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: President

Tenant Miller Family Real Estate, L.L.C.
9350 South 150 East
Suite 1000
Sandy, Utah 84070
Attention: Jay Francis

With a copy to:
Scott Bates, General Counsel
9350 South 150 East, Suite 1000\
Sandy, Utah 84070

Term: Twenty (20) years from the Commencement Date

Option: Five (5) renewal options of five (5) years each.

Rent: Annual amount of \$ [\$0.39 s.f.], as Construction Rent, payable monthly and commencing as provided in Article 4.

Annual amount of \$ [\$0.75 s.f.] as Base Rent commencing as provided in Article 4, increased ten percent (10%) every five (5) years during the Initial Term, increased at the start of the First Extension Option as provided in Article 4 and increased by 10% at the start of each subsequent 5-year renewal term.

This is a Net Lease.

Deposit _____, as provided in Article 4.5

Article 2 Ground Lease of Premises

1. Definitions. For purposes of this Lease, the following terms shall have the following meanings:

- A. "Adjustment Date" shall have the meaning set forth in Article 4.3.C.
- B. "Assessments" shall have the meaning set forth in Article 19.1.K.
- C. "Base Rent" shall have the meaning set forth in Article 4.2.
- D. "Base Rent Start Date" shall have the meaning set forth in Article 4.1.
- E. "Buildings" shall mean the buildings which may be constructed by the Tenant on the Premises.
- F. "Casualty" shall have the meaning set forth in Article 11.1.
- G. "Commencement Date" shall have the meaning set forth in Article 3.1.
- H. "Construction Rent" shall be the monthly amount of \$ _____ as provided in Article 4.1.
- I. "Default" or "Event of Default" shall have the meaning set forth in Article 13.1.
- J. "Default Rate" shall mean interest accruing at the rate equal to the Prime Rate plus three percent (3%), which rate shall be adjusted with each change in the Prime Rate. However, in no event shall the Default Rate be less than ten percent (10%) per annum. For purposes of this Lease, "Prime Rate" shall mean the prime rate as published in the Wall Street Journal. If the prime rate published by the Wall Street Journal becomes unavailable, Landlord shall use the prime rate as announce or published by

such other organization or publication as reasonably determined by Landlord to be comparable to the prime rate now published in the Wall Street Journal.

- K. "Deposit" shall have the meaning set forth in Article 4.5.
- L. "Effective Date" shall mean the date this Lease is signed by both Parties.
- M. "Environmental Law" shall have the meaning set forth in Article 19.1.J.
- N. "Excusable Delay" shall mean any of the following events that prevents, delays, retards or hinders a party's performance of its duties hereunder: act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; any material delay caused by Landlord without fault of Tenant; or any delays due to causes beyond the control of Landlord and without its fault or negligence.
- O. "First Extension Option" shall have the meaning set forth in Article 3.2.
- P. "First Extension Option Period" shall have the meaning set forth in Article 3.2.
- Q. "Improvements" shall mean the Buildings and any other improvements constructed on the Premises.
- R. "Initial Term" shall mean the first 20 Lease Years as more specifically described in Article 3.1.
- S. "Landlord" is Englewood/McLellan Reservoir Foundation.
- T. "Leasehold Mortgage" shall have the meaning set forth in Article 18.1.
- U. "Leasehold Mortgagee" shall have the meaning set forth in Article 18.1.
- V. "Lease Year" shall have the meaning set forth in Article 3.1.
- W. "Memorandum of Lease" shall have the meaning set forth in Article 17.2.
- X. "Monetary Default" shall have the meaning set forth in Article 13.1.
- Y. "Non-Monetary Default" shall have the meaning set forth in Article 13.1.
- Z. "Pre-Development Rent" shall have the meaning set forth in Article 4.5.
- AA. "Premises" shall have the meaning set forth in Article 2.2.A
- BB. "Real Estate Taxes" shall mean all taxes, however named, assessed, levied, or collected, whether on an ad valorem basis or other taxing method on the

Premises, Improvements, Buildings, and assessments for land, betterments, and improvements that are levied or assessed on the Premises or the Improvements by any lawful authority, as finally determined in accordance with law, net of any applicable abatements, refunds, or rebates.

CC. "Rent" shall mean the amount set forth in Article 4.

DD. "Site Plan" as referred to in Article 2.2.A and attached hereto as **Exhibit A-2**.

EE. "Tenant" is Miller Family Real Estate, L.L.C., and its permitted successors or assigns.

FF. "Title Commitment" shall have the meaning set forth in Article 3.4

GG. "Title Company" shall mean Stewart Title Guaranty, or such other title company mutually agreed upon by Landlord and Tenant.

2. Premises.

A. Lease of Premises. For the term, uses, rent, and in consideration of the covenants and agreements contained herein, and for other valuable consideration, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the following terms, stipulations, provisions, and conditions, that certain real property consisting of _____ acres described in **Exhibit A-1** attached hereto and incorporated herein by this reference ("Premises"). The location of the Premises is shown on **Exhibit A-2** hereto (the "Site Plan").

B. Title. Landlord hereby warrants to Tenant that it has good, marketable and insurable title to the Premises, free and clear of any mortgages, pledges, liens, and other encumbrances, subject only to the exceptions to title shown in the Title Commitment.

3. Condition of Premises; Tenant Release. Except as otherwise expressly provided herein, the Premises are being leased in their as-is condition. Except for Landlord's representations and warranties expressly set forth in this Lease, Tenant hereby waives, releases, acquits and forever discharges Landlord and its officers, directors, shareholders, employees, agents, successors and assigns, of and from any and all suits, causes of action, claims, demands, damages (actual and punitive), losses, costs, liabilities, and expenses, including attorneys' fees, of any kind or nature, in law or in equity, known or unknown, which Tenant shall or may have or acquire or possess in any way directly or indirectly connected with, based upon, or arising out of Landlord's use, maintenance, leasing, ownership, operation, and demolition of improvements upon the Premises prior to the Effective Date of this Lease; or (ii) the condition (including environmental condition and structural fitness), status, quality, or nature of the Premises. Except as otherwise expressly provided herein, it is the intention of this Lease that any and all responsibilities and obligations of Landlord, and any and all rights or claims of Tenant against Landlord its successors and assigns and affiliates, arising by virtue of the physical condition of

the Premises, are by this release declared null and void and of no present or future effect as to such parties.

4. Improvements. Tenant, at its sole cost and expense, with its own forces or those of its contractors, may construct Improvements on the Premises. All of the Improvements shall comply in all respects with all applicable governmental requirements.

5. Easements. Landlord and Tenant agree, upon the reasonable request of either party to this Lease, the applicable governmental agency, or a public utility, to execute documents which are reasonably required to create utility easements, temporary construction easements, or other easements required to construct the Improvements, maintain and service the Improvements or any other improvements to be developed on the adjoining lands owned by Landlord, provided such easements do not unreasonably interfere with either party's use of their property. Each party will undertake to obtain the consent of its mortgagee, if any, to any easements required under this paragraph.

6. Possession. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date (as hereinafter defined).

7. Signage. Tenant shall have the right, at Tenant's expense, to erect and use pylons or monument signs on the Premises to the extent permitted by applicable government ordinances, rules and regulations.

Article 3

Lease Term; Entry; Title Insurance

1. Term; Effective Date; Commencement Date. This Lease shall become legally binding on the Effective Date. However, the lease term ("**Initial Term**") shall commence on the earlier of 1) the date Tenant commences construction of the Improvements, or 2) _____, 20____; such date shall be the "**Commencement Date**." For purposes of this Lease, "commences construction" shall mean the date when Tenant begins construction of the foundation for any Improvements. Unless extended as provided below, the Initial Term shall expire at 11:59 p.m. on the last day of the calendar month of the twentieth (20th) year Lease Year. For purposes of this Lease, the term "**Lease Year**" shall mean each twelve (12) month period beginning on the first day of the calendar month subsequent to the commencement of the Initial Term if the Initial Term does not commence on the first day of a calendar month.

2. Extension Option. Tenant shall have an option to extend the lease term ("**First Extension Option**") for an additional five (5) years ("**First Extension Option Period**"). If the First Extension Option is exercised, Tenant shall have an option to extend the lease for four additional consecutive terms, each consisting of five (5) years. The First Extension Option and each additional extension option shall be on the same terms and conditions as set forth herein (there shall be no options beyond the options granted in this Section 2), except the Base Rent at the commencement of the First Extension Option Period, will be increased as provided in Article 4.3 and will increase at the start of each additional Extension Option period as provided in Article 4.3 Section 3(c). Tenant shall have the right to exercise its options by providing Landlord written notice exercising its option to extend not less than one hundred eighty (180)

days prior to the expiration of the then current term. As a condition of Tenant's right to exercise one or more options to extend the term, at the time of the giving of its notice of exercise there shall be no uncured Event of Default.

3. Tenant's Right of Entry. Before the Commencement Date, Tenant, its agents, employees, contractors, or subcontractors, prospective lenders and investors have been given the right of access to the Premises to test, inspect, and evaluate the Premises as Tenant deemed appropriate. Tenant shall promptly restore any alterations made to the Premises by Tenant, or at Tenant's instance or request, and Tenant shall pay for all work performed by Tenant, or at Tenant's instance or request. Any and all liens on any portion of the Premises resulting from the actions or requests or otherwise at the instance of Tenant shall be removed by Tenant at its expense within thirty (30) days after notice thereof is given to Tenant. Tenant shall, at Tenant's expense, defend, indemnify, and hold harmless Landlord from and against any and all obligations, claims, loss, and damage, including costs and attorneys' fees, to the extent the same are caused by Tenant's entry upon or inspection of the Premises. Tenant shall provide Landlord in a commercially reasonable timeframe with copies of test and reports obtained by Tenant. Tenant's obligations under this subsection to restore, to pay for all work, to remove liens, and to defend indemnify and hold Landlord harmless shall survive the termination of this Lease.

4. Title Insurance. Landlord has provided Tenant with a Title Insurance Commitment ("Title Commitment") with an Effective Date of _____ issued by _____. Landlord will pay the premium for the leasehold title insurance policy described in the Commitment and may use a portion of the Deposit to make such payment and will cause the policy to be delivered to Tenant after the Commencement Date.

Article 4 **Rent**

1. Construction Rent. Tenant shall pay to Landlord, in United States Dollars, rent ("**Construction Rent**") in the annual amount of \$ [\$0.39 s.f.], payable monthly in the amount of \$ _____. Construction Rent shall be payable in equal monthly installments, commencing on the Commencement Date, and continuing until the "Base Rent Start Date, as hereinafter defined. The "**Base Rent Start Date**" shall be the earlier of (i) the date Tenant opens for business to the public on the Land or (ii) _____, 20____. Construction Rent shall be payable in advance on the first day of each calendar month, with appropriate proration for any partial calendar month, at the address given for Landlord in Section 17.

2. Base Rent. Tenant shall pay to Landlord, in United States Dollars, beginning on the Base Rent Start Date, Base Rent in the annual amount of \$ [\$0.75 s.f.], payable monthly in the amount of \$ _____. Base Rent shall be payable in monthly installments, in advance on the first day of each calendar month, with appropriate proration for any partial calendar month or Lease Year, at the address given for Landlord in Article 17 hereof, as such address may be changed in accordance with Article 17. The Base Rent shall be adjusted as provided in Paragraph 3 of this Article 4. Landlord shall apply the Deposit (including accrued interest), including any amount paid from the Deposit for the cost of the Title Policy as provided in Article 3.4, first to the Construction Rent and any excess to the Base Rent.

3. Rent Adjustments.

A. Base Rent shall be adjusted during the Initial Term as follows:

- i. Lease Year 6 thru 10—annual rent of \$_____.
- ii. Lease year 11 thru 15—annual rent of \$_____.
- iii. Lease Year 16 thru 20—annual rent of \$_____.

B. In the event Tenant exercises the First Extension Option, commencing on the first day of the First Extension Option Period, the Base Rent shall be adjusted as follows:

i. The Base Rent shall be an amount equal to \$ [Base Rent on Base Rent Start Date] multiplied by the percentage increase in the CPI Index (as defined below) from the Base Rent Start Date to the last day of the 20 year Initial Term, but in no event shall the Base Rent beginning the first day of the First Extension Option Period be less than the Base Rent for the year immediately preceding the First Extension Option Period.

ii. By way of example of the adjustment to be made under the preceding subparagraph, if assuming (A) the Premises consist of 7 acres, or 304,920 square feet, (B) Base Rent at Base Rent Start Date is \$228,690 annually (304,920 square feet times \$0.75), and (C) the CPI Index has increased 45% from the Base Rent Start Date thru the last day of the Initial Term, then the Base Rent on the first day of the First Extension Period would be \$331, 603.40 annually (\$228,690 times 45%). Based on the same assumptions, but the CPI Index only increased 30%, and the Base Rent for the last year of the Initial Term was \$304,386.39, the Base Rent commencing the first day of the First Extension Option Period would remain at \$304,386.39.

C. In the event Tenant exercises one or more additional options, the rent shall be increased effective on the first day of each five-year additional option period, (in each case, the "Adjustment Date"), by 10% of the Base Rent in effect during the prior five-year option period.

D. As used herein, the CPI Index shall mean:

i. The Consumer Price Index for all Urban Consumers, Denver, Boulder, Metro Area - All Items Index (CPI-U, 1982-84 equals 100), published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is published with numbers issued other than on a monthly basis, the CPI Index shall be the CPI Index number published for the date closest to the Commencement Date or the applicable Adjustment Date.

ii. If the CPI Index is discontinued, the CPI Index adjustment shall be made using comparable statistics on the cost of living for the Denver, Boulder metropolitan area as computed and published by any agency of the United States Government or by a responsible financial periodical or recognized authority selected in the reasonable discretion of Landlord.

4. Net Lease. This Lease is a net lease. Except as may be expressly provided otherwise in this Lease, all costs incurred in connection with the construction, operation, maintenance and leasing of the Improvements and all Real Estate Taxes and other costs incurred in connection with and in relation to the Premises shall be paid by Tenant. Landlord shall have no obligation to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Improvements or the Premises.

5. Security Deposit; Pre-Development Rent. In connection with a Letter of Intent ("Letter of Intent") between and Landlord and Tenant dated May 24, 2011, Tenant paid a security deposit ("Deposit") to Stewart Title Guaranty Company, as Escrow Agent and the Escrow Agent invested the Deposit in an interest bearing account. Subsequently, the Escrow Agent paid amounts of the Deposit to Landlord pursuant to the terms of the Letter of Intent, including, but not limited to, payments of \$10,000 a month (Pre-Development Rent"). Upon payment of the first monthly Construction Rent payment, all Pre-Development Rent shall be applied to the Construction Rent. From and after the Commencement Date, the escrow agent shall pay to the Landlord any unpaid Construction Rent from the escrow fund until such time as the escrow fund, including accrued interest is exhausted. In the event Tenant defaults under the terms of this Lease, the balance of the escrow fund, including accrued interest shall be paid to Landlord, to apply against any and all amounts due as a result of such default, including any damages, attorneys' fees or other costs due Landlord.

6. Credits Against Rent. Under the terms of the Letter of Intent, Landlord agrees to give Tenant credits against the Rent ("Rent Credit") in the amount equal to the sum of (i) \$5,000 or fifty percent (50%) of the cost incurred by Tenant for platting the Premises, whichever is less, and (ii) one half (1/2) of the commission paid by Tenant to the Broker but not to exceed one-half (1/2) of a total commission amount equal to 3.5% of the gross value of the first 20 years of this Lease. The total Rent Credit will be divided by 24 and the result will be applied against the first 24 months of Rent payable during the Initial Term before any credit for Pre-Development Rent and before payments are made from the escrow fund.

Article 5 Taxes

1. Real Estate Taxes.

A. During the term of this Lease, Tenant shall assume, pay, bear, and discharge any and all Real Estate Taxes with respect to the Premises, or any part thereof, and all other taxes in any manner applicable to or assessed against the Premises or Buildings or any part thereof, or against any of the machinery, fixtures, equipment, or other property or items. Tenant shall pay all Real Estate Taxes directly to the taxing authorities and Tenant shall be credited all reimbursements on account of abatements,

refunds, or rebates of Real Estate Taxes during the term of this Lease. Landlord hereby authorizes Tenant to file and pursue any protest of the valuation of the Premises and abatement petitions for abatement of taxes for any reason, as Tenant may deem to be appropriate. Landlord agrees to execute any form of agreement as may be necessary in connection therewith.

B. In the event the Premises are now included in a larger tax parcel owned by Landlord, Landlord shall take such actions as may be necessary to make the Premises a separate Tax Parcel. Tenant shall cooperate with Landlord in such action.

C. In the event there is a special assessment which is included within the definition of Real Estate Taxes herein, and such assessment may be paid in periodic installments, Tenant shall pay such in such periodic installments or may prepay or retire the principal indebtedness on any special assessment and Tenant shall be responsible only for those installments relating to the period included within the term of this Lease, based upon the maximum number of installments in which the same may be paid. In the event of any proposed special assessment would provide for payment extending beyond the term of this Lease (excluding and extension period), unless Tenant agrees to pay for all of such assessment, Landlord shall have the right to participate in the process of approving or rejecting such assessment.

D. Landlord shall cooperate with Tenant so that all invoices for Real Estate Taxes shall be sent directly by the taxing authority to Tenant.

E. Landlord agrees to submit to Tenant any invoices for Real Estate Taxes and notices of special assessments with respect to the Premises which are sent to Landlord within thirty (30) days after receipt by Landlord. Landlord shall furnish Tenant with copies of all Notices of Valuation of the Premises which are sent to Landlord within ten (10) days after receipt thereof and in sufficient time to allow Tenant to determine whether or not to contest any increase in Real Estate Taxes or valuation. If Tenant desires to contest such increase, Tenant shall protest such valuation or file an abatement petition within applicable statutory time periods. Landlord shall fully cooperate with Tenant in any such proceeding.

2. Proration of Taxes. If the Term shall expire on any date other than December 31st of any year, the amount payable by Tenant during the calendar year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the Term commences.

3. Personal Property Taxes. Tenant shall pay all taxes charged against trade fixtures, furnishings, equipment or any other personal property belonging to Tenant. Lessee may contest any such personal property taxes, assessments or valuations; provided, however, Tenant shall do so within the time period permitted by applicable statutes.

Article 6
Utilities

1. Utility Usage. Tenant shall assume, bear, pay, and discharge as its sole and separate obligation all of the applicable charges for all utilities consumed on the Premises. Except in the event of an emergency, neither Landlord nor Tenant shall take any action which shall interrupt or interfere with any electric, gas, water, sewage, or telephone service to the Premises or to the adjoining property owned by Landlord.

Article 7
Use, Subletting, and Assignment

1. Use. Tenant may use and occupy the Premises during the Term of the Lease for all lawful uses in accordance with the requirements of this Lease.

2. Assignment and Subletting

A. Prior to the Base Rent Start Date, Tenant shall have the right to sublet all or any part of the Premises or assign this Lease upon Landlord's prior written consent which shall not be unreasonably withheld. After the Base Rent Start Date, Tenant will have the right to sublet all or any part of the premises or assign this Lease for any lawful use without Landlord's consent.

B. In the event Tenant subleases part or all of the Premises, the rent or other consideration payable under such sublease is greater than the Base Rent due hereunder applicable to the subleased portion of the Premises, then Tenant shall pay to Landlord one half (1/2) of such excess amount, after first recovering Tenant's Transaction Costs as hereinafter provided. Any excess amount payable to Landlord shall be payable from time to time only as when Tenant receives the rent from its sub-tenant. If Tenant assigns this Lease and Tenant receives compensation in addition to the assignee's agreement to make the payments due under this Lease, Tenant shall pay to Landlord one half (1/2) of such compensation. In calculating any excess rent or compensation for a sublease or assignment under this Paragraph B, Tenant shall first be reimbursed for its costs ("Tenant's Transaction Costs") in connection with such sublease or assignment and the Premises covered thereunder, including but not limited to any site work, any approvals obtained from governmental agencies, and engineering or survey work, any development fees paid to any governmental agency and any commissions or marketing costs.

C. Any assignment or subletting shall be effective only upon delivery to Landlord of an instrument effecting an assignment or subletting of this Lease by Tenant, executed by Tenant and the assignee or sublessee. Each assignee shall agree to assume, be bound by, and perform all terms, covenants, and conditions of this Lease to be kept and performed by Tenant and which arise after the effective date of the assignment. After execution of the assignment or sublease, Tenant will forward a completed copy thereof to Landlord.

D. In the event Tenant subleases or assigns this Lease, Tenant shall remain liable for all of Tenant's obligations to Landlord arising hereunder, unless:

i. Tenant assigns all right, title and interest under this Lease to an assignee who assumes and agrees to pay and perform all of the Tenant's obligations hereunder pursuant to an Assumption Agreement reasonably satisfactory to Landlord; and

ii. The assignee provides evidence reasonably satisfactory to Landlord that it has a net worth in excess of \$100,000,000.00 and has liquid assets at least equal to the Base Rent payable under this Lease during the twenty-four (24) months following such assignment.

Article 8
[Intentionally Omitted]

Article 9
Mechanics Liens

1. Liens. Tenant shall promptly pay when due the entire cost of all work done to the Premises by or at the request of Tenant (including but not limited to work done prior to the Effective Date) and Tenant shall keep the Premises free of liens for labor or materials. Should mechanics', materialmen's, or other liens be filed against the Premises, Tenant shall cause the lien to be canceled and discharged of record, or shall file a bond in substitution of the mechanic's lien in accordance with the provisions of Colorado Revised Statute 38-22-131, *et. seq.*, within forty-five (45) days of Tenant's receipt of notice of such lien. Notwithstanding the foregoing, Tenant may contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien, provided that Tenant shall give to Landlord such security as Landlord may reasonably request ensure the payment of any amounts claimed. If the Tenant contests a lien or claimed lien, then on final determination of the lien or claimed lien, the Tenant shall cause the lien to be released and, in the event of an adverse judgment, satisfy such judgment.

2. Protection of Landlord's Interest in Premises. Nothing in this Lease shall be construed as giving Tenant or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of any mechanics' liens or other claims against the fee of the Premises or the improvements thereon. Landlord shall have the right at all reasonable times to post, and keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord and it interest in the Premises and the improvements thereon from mechanics' liens or other claims.

Article 10
Indemnity and Insurance

1. Indemnity. From and after the Effective Date and continuing at all times thereafter during the Term hereof:

A. Tenant assumes all risk of loss, damage, or destruction to the Premises, Improvements, Buildings and contents, or to any other property brought upon the Premises, Improvements, and Building by Tenant, or by any other person, with or without the consent or knowledge of Tenant. Tenant hereby indemnifies and agrees to protect and defend Landlord from all such loss, damage, or destruction including claims and causes of action asserted against Landlord.

B. Tenant shall indemnify and save harmless Landlord from any and all claims, losses, damages, or expenses, on account of injuries to or death of any and all persons whomsoever while on the Premises, and any and all loss or destruction of or damage to the Premises, the Improvements, the Building and any contents and personal property located upon the Premises and owned by, rented to, or in the care, custody, or control of the parties hereto, or any of Tenant's subtenants, arising or growing out of, or in any manner connected with: (i) any use and occupancy of the Premises by Tenant or any subtenants for a Permitted Use or otherwise; (ii) caused or occasioned, in whole or in part, by reason of or arising during the presence upon the Premises of the person or the property of the Tenant, its officers, employees, agents, subtenants, renters, customers, invitees, licensees, servants, contractors, subcontractors, materialmen, suppliers, workmen, laborers, and the employees and agents of each of the foregoing, or any and all other persons, invited or otherwise, with or without Tenant's consent, while on the Premises; (iii) arising out of or resulting from Tenant's development, sale or marketing of the Premises and/or the Improvements; and (iv) any plans or designs for the Improvements prepared by or on behalf of Tenant.

C. Tenant hereby indemnifies and saves harmless Landlord and any of its officers, members, contractors and agents from any and all claims, losses, damages, or expenses, on account of injuries to or death of any and all persons whomsoever, and any and all loss or destruction of or damage to any real or personal property adjacent to the Premises, caused by Tenant or any of its employees, managers, members, officers, contractors, subcontractors, materialmen, suppliers, workmen, laborers, subtenants, renters, licensees, servants or agents.

D. The foregoing indemnities shall not apply to any injuries, death, claims, losses, damages and expenses to the extent arising as a result of any negligence or intentional acts of Landlord or its officers, employees, contractors or agents.

E. Landlord hereby indemnifies and saves harmless Tenant, to the extent permitted by law, from any and all claims, losses, damages, or expenses, on account of injuries to or death of any and all persons whomsoever while on the Premises, and any and all loss or destruction of or damage to the Premises, the Improvements, the Building and any contents and personal property located upon the Premises and owned by, rented to, or in the care, custody, or control of the parties hereto, or any of Tenant's subtenants, arising from the negligence or willful misconduct of Landlord, its officers, employees, or agents.

2. Appear and Defend. Landlord and Tenant further agree, that if it is the indemnifying party, that it will appear and defend at its own expense, in the name and on behalf

of the indemnified party, all claims or suits for injuries to or death of persons or loss or destruction of or damage to property arising or growing out of or in any manner connected with or caused or occasioned by or in connection with its indemnities set forth in Section 1 of this Article 10.

3. Insurance.

A. Property Damage. During the period of construction, Tenant shall keep or require its general contractor to keep, a policy of builders risk insurance covering loss or damage to the Improvements for the full replacement cost of all such construction, naming Tenant's Leasehold Mortgagee, if any, as a loss payee. During the Term and all option periods, Tenant shall keep in full force and effect a policy of all risk, special form or equivalent form property insurance covering loss or damage to the Premises in the amount of the full replacement cost of the Building and other improvements on the Property, in an amount at least equal to the hard costs of construction, with a deductible that is commercially reasonable in light of Tenant's financial strength, naming Tenant's Leasehold Mortgagee, if any, as a loss payee.

B. Liability Insurance. During the Term, Tenant shall keep in full force commercial general liability insurance or garage liability insurance (collectively, "CGL"), with bodily injury and property damage coverage with respect to the Premises and business operated by Tenant, which shall name Landlord and, at Landlord's written request, Landlord's first Mortgagee as additional insureds as their respective interests may appear. The limits of such CGL policy shall be not less than \$2,000,000.00 combined single limit for bodily injury and property damage, with a deductible that is commercially reasonable in light of Tenant's financial strength. The CGL policy combined single limit for bodily injury and property damage requirement may be increased by Landlord, but not more than once in any three (3) year period, to a commercially prudent and reasonable amount, based upon the then current general liability insurance conditions prevailing in the metropolitan Denver market.

C. Workers' Compensation Insurance. To the extent required by law, Tenant shall maintain workers' compensation insurance covering its employees in statutory limits, naming Tenant's Leasehold Mortgagee, if any, as a loss payee.

D. Automobile Liability. Tenant shall maintain at all times during the Term garage liability insurance covering liability arising out of the use of (i) all Tenant owned vehicles, (ii) all vehicles hired or leased by Tenant and (iii) all non-owned and borrowed vehicles.

E. Form of Policies. All insurance required by this Section shall be with insurers licensed or otherwise permitted to conduct business in the state in which the Premises are located. Any insurance hereunder may be provided under blanket policies of insurance. Property insurance maintained by Tenant pursuant to subparagraph A of this Section shall name Tenant as insured and Landlord as additional insured, as their interests may appear in accordance with Section 11.3, and, so long as the Premises are mortgaged pursuant to a mortgage of which Tenant has received written notice, shall be subject to a

standard mortgagee clause in favor of Landlord's first mortgagee. All insurance maintained by Tenant pursuant to subparagraph B of this Section shall name Tenant as insured and Landlord as additional insured, as their interests may appear, and, so long as the Premises are mortgaged pursuant to a mortgage of which Tenant has received written notice, shall be subject to a standard mortgagee clause in favor of Landlord's first mortgagee.

F. Policy Provisions. All policies of insurance (other than self-insurance) enumerated above shall be provided by insurance carriers having at policy commencement a Best rating of not less than A- VIII; provided, however, that if the rating of any such insurer falls below such level, such rating reduction shall not constitute a default hereunder provided all renewals of such policies shall be with carriers with a Best rating of not less than A- VIII at the time of such renewal. An increased coverage or "umbrella" policy may be provided and utilized by either party to increase the coverage provided by individual or blanket policies in lower amounts, and the aggregate coverage provided by all such policies with respect to the Premises and Tenant's liability hereunder shall be satisfactory provided that such policies otherwise comply with the provisions of this Section 11.

G. Waiver of Right of Recovery and Subrogation. With respect to any loss covered by insurance or required to be covered by insurance hereunder, Landlord and Tenant hereby waive any and all rights of recovery against each other for any loss or damage to the Premises or the contents contained therein, or for loss of income on account of fire or other casualty; and each party's aforesaid policies of insurance shall, to the extent available, contain appropriate provisions recognizing this mutual release and waiving all rights of subrogation by the respective insurance carriers.

H. Evidence of Insurance. On or before the Commencement Date, Tenant shall cause to be issued to Landlord certificates of insurance evidencing compliance with the applicable covenants of this Article 10. Tenant shall use commercially reasonable efforts to obtain from the insurer a certificate which provides that the certificate holder will be given at least thirty (30) days' notice prior to cancellation; provided, however, if Tenant is unable to obtain such provision, then Tenant agrees to provide to Landlord at least thirty (30) days' notice of any anticipated cancellation of an existing insurance policy.

I. Self Insurance. Tenant shall have the right to self-insure in lieu of providing the insurance required under this Article provided it complies with all of the following:

(i) Tenant shall have delivered to Landlord a certification from an independent public accountant reasonably satisfactory to Landlord that as of the end of Tenant's most recently ended fiscal year, Tenant had a net worth of at least \$100,000,000.00 computed in accordance with Generally Accepted Accounting Principles, consistently applied,

(ii) Tenant has delivered to Landlord an Agreement reasonably satisfactory to Landlord agreeing to indemnify and hold Landlord harmless from and against any loss and liability to the extent such loss and liability would have

been covered under the policies of insurance required under other provisions of this Article, and

(iii) Within 90 days after the end of each fiscal year, Tenant has delivered to Landlord a certification from an independent public accountant reasonably satisfactory to Landlord that as of the end of the fiscal year just ended, Tenant had a net worth of at least \$100,000,000.00 computed in accordance with Generally Accepted Accounting Principles, consistently applied, and if Tenant fails to deliver such certification within the time required, Tenant will immediately obtain the insurance required by, and comply with, the other provisions of this Article.

Article 11

Damage or Destruction

1. Subject to Landlord's right as provided in Section 11.3, if the Premises or any of the Improvements are damaged or destroyed during the Initial Term or any extended term by a fire or other casualty ("Casualty"), this Lease shall continue in effect, and Tenant shall continue to pay the Rent without abatement. Tenant shall remove and dispose of all hazardous materials in accordance with applicable legal requirements and take such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any damage or destruction of the Tenant's Improvements. Tenant shall not have any obligation to repair and/or rebuild the Tenant's Improvements damaged by fire or other casualty or cause. Tenant shall promptly provide a sightly barrier and shall remove all debris from the damaged portion of the Tenant's Improvements and use diligent efforts to place the Premises in an orderly and safe condition. If requested by Landlord should Tenant elect not to rebuild, Tenant shall, at its sole cost and expense, raze and remove any remaining portion of the Tenant's Improvements and fill and grade the Premises in a safe and sightly manner as existed on the Commencement Date, or seed such portion of the Premises as designated by Landlord.

2. In the event Tenant elects to repair and/or rebuild the Improvements, if the cost of such repair or restoration shall be less than the insurance proceeds paid as a result of the Casualty, Tenant shall be entitled to retain the balance of such proceeds to the extent not required to be applied to any Leasehold Mortgage. Tenant shall complete all work promptly after the occurrence of the Casualty. All repair and/or restoration work shall be performed in a good and workmanlike manner and shall be subject to all provisions of this Lease applicable to construction of the Improvements.

3. In the event a Casualty occurs and the Tenant elects not to repair and/or rebuild, Tenant shall give written notice to Landlord within one hundred twenty (120) days of the date of the Casualty of such election, and Landlord shall then have the option, exercised by written notice to Tenant on or before the earlier of (a) one hundred twenty (120) days following written notice from Tenant of its election not to repair and/or rebuild, or (b) two hundred forty (240) days following the date of the Casualty if Tenant

has failed to commence repair or rebuilding by such time (in which case Tenant shall be deemed to have elected not to repair or rebuild), to continue the Lease to the end of the then current term, in which case there shall be no abatement of rent, and the insurance proceeds shall be paid to Tenant except to the extent required to payoff and discharge any Leasehold Mortgage; provided however if the Casualty occurs during the last two (2) years of the then current term and Tenant has elected or is deemed to have elected not to repair or rebuild, Tenant shall be entitled to retain the balance of such proceeds to the extent not required to be applied to any Leasehold Mortgage; such proceeds shall be used to pay the present value of any Rent remaining during the term of the Lease and the cost of removing of the Buildings and Improvements, clearing of debris, removing foundations and footings, and restoring of the Premises to substantially the condition that existed as the commencement of the Lease; to the extent there are any remaining proceeds, such proceeds belong to the Tenant. In the event the Casualty occurs during the last two (2) years of the then current term and Tenant has elected or deemed to have elected not to repair or rebuild, Tenant shall be obligated, regardless of the availability or sufficiency of any insurance proceeds, to remove the Buildings and Improvements, clear debris, remove foundations and footings, and restore the Premises to substantially the condition that existed at the commencement of the Lease.

4. Notwithstanding any provision to the contrary set forth above in this Article 4, in the event of a Casualty and Tenant has elected or deemed to have elected not to repair or rebuild, Landlord shall cooperate and assist in efforts to lease the Premises on terms reasonably acceptable to Landlord; and nothing in this Article 11 shall in anyway limit Tenant's rights set forth in Article 7.

Article 12 Eminent Domain

1. Definition of Taking and Substantial Taking. For the purpose of this Lease, a "**Taking**" shall mean any condemnation or exercise of the power of eminent domain by any authority vested with such power or any other taking for public use, including a private purchase in lieu of condemnation by an authority vested with the power of eminent domain; the "**Date of Taking**" shall mean the earlier of the date upon which title to the Premises or any portion thereof or any right appurtenant thereto so taken is vested in the condemning authority or the date upon which possession of the Premises or any portion thereof is taken by the condemning authority; and "**Substantially All of the Premises**" shall mean so much of the Premises or the rights appurtenant thereto as, when taken, leaves the untaken portion unsuitable in Tenant's reasonable opinion for the continued feasible and economic operation of the Premises by Tenant for the same purposes as immediately prior to such Taking or as contemplated herein.

2. Tenant's Rights Upon Taking or Substantial Taking. Each party agrees to furnish the other a copy of any notice of a threatened or proposed Taking received by such party. In the event of a Taking of Substantially All of the Premises, this Lease shall terminate and both Landlord and Tenant shall be relieved from all further obligations hereunder from and after the Date of Taking. All Base Rent and other sums payable by Tenant hereunder shall be apportioned and paid through and including the Date of

Taking, and neither Landlord nor Tenant shall have any rights in any compensation or damages payable to the other in connection with such Taking.

3. Tenant's Rights Upon Less Than Substantial Taking. In the event of a Taking of less than Substantially All of the Premises, Base Rent and other charges shall be reduced fairly and equitably in accordance with the portion condemned or taken, effective as of the Date of Taking, and Tenant shall make all necessary restorations to the Improvements so that the portions of the Improvements not taken constitute a complete architectural unit, and the proceeds of the award attributable to the value of the Improvements Taken shall be retained by Tenant.

4. Rights Upon Temporary Taking. Notwithstanding the foregoing, in the event of a Taking of the Premises or any portion thereof, for temporary use (specifically one not exceeding one hundred eighty (180) days in duration), without the taking of the fee simple title thereto, this Lease shall remain in full force and effect, and there shall be no abatement of Rent during such period. All awards, damages, compensation and proceeds payable by the condemner by reason of such Taking relating to the Premises for periods prior to the expiration of the Lease shall be payable to Tenant. All such awards, damages, compensation and proceeds for periods after the expiration of the Lease shall be payable to Landlord. Anything contained in this Section 12.4 to the contrary notwithstanding, a temporary Taking for any period in excess of one hundred eighty (180) days may, at Tenant's option, be deemed a permanent Taking and shall be governed by subparagraph 12.2 or 12.3 above, as applicable.

5. Award.

(a) The award paid by the condemning authority (other than a Taking for temporary use) shall be allocated on a pro rata basis between the fair market value of the Premises and the Improvements as determined by the condemning authority or a court of competent jurisdiction.

(b) Landlord and Tenant shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a taking or intended taking by power of condemnation and to make full proof of their claims. Tenant shall have the sole right to control the defense, prosecution and settlement of its claim to the extent the condemnation proceeding or negotiation affects Tenant's leasehold interest hereunder and/or the Improvements, subject to the consent of any Leasehold Mortgagee. Landlord shall have the sole right to control the defense, prosecution and settlement of its claim to the extent the condemnation proceeding or negotiation affects Landlord's reversionary interest in the Premises and/or Improvements. Landlord and Tenant each agrees to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.

Article 13
Default

1. Events of Tenant's Default. Any of the following occurrences, conditions or acts by Tenant shall constitute an "Event of Default" under this Lease:

A. Failure to Pay Rent; Breach. (i) Tenant's failure to make any payment of money required by this Lease (including without limitation Base Rent or Real Estate Taxes) (subject to Tenant's right of good faith contest with respect to Real Estate Taxes, as set forth in and as limited by Article 5), within ten (10) days after the receipt of written notice from Landlord to Tenant that same is overdue ("**Monetary Default**"), in which event such delinquent amount shall accrue interest at the Default Rate; or (ii) Tenant's failure to observe or perform any other material provision of this Lease within thirty (30) days after receipt of written notice from Landlord to Tenant specifying such default and demanding that the same be cured ("**Non-Monetary Default**"); provided that, if such default cannot with due diligence be wholly cured within such thirty (30) day period, Tenant shall have such longer period as is reasonably necessary to cure the default, so long as Tenant proceeds promptly to commence the cure of same within such thirty (30) day period and diligently prosecutes the cure to completion. In no event shall Landlord be required to give more than one notice of a monetary default during any twelve (12) month period, and in the event one such notice has been given, Tenant shall be in default if any payment is not made when due, no notice shall be required, and interest shall accrue at the Default Rate from the date such payment was due until paid.

B. Bankruptcy. Any petition is filed by or against Tenant under any section or chapter of the Federal Bankruptcy Code, and, in the case of a petition filed against Tenant, such petition is not dismissed within sixty (60) days after the date of such filing.

C. Insolvency. Tenant becomes insolvent or transfers property in fraud of creditors.

D. Assignment for Benefit of Creditors. Tenant makes an assignment for the benefit of creditors.

E. Receivership. A receiver is appointed for any of Tenant's assets.

F. Attachment. This Lease or Tenant's interest in the Premises or any part thereof is taken by attachment, execution or other process of law, and such attachment, execution or other process has not been released within sixty (60) days thereafter.

G. Lien. Tenant fails to obtain a release of any lien against the Premises as required under the terms of this Lease.

In the event the Tenant continues to pay Rent as required under the terms of this lease, no Event of Default shall occur solely as a result of Tenant's bankruptcy, insolvency, assignment for benefit of its creditors, or the appointment of a receiver for any of Tenant's assets.

2. Landlord's Remedies. After the occurrence of an Event of Default by Tenant, Landlord shall have the right to institute from time to time an action or actions (i) to recover damages (exclusive of consequential or special damages), (ii) for injunctive and/or other equitable relief, and (iii) in the event of Monetary Default only, to recover possession of the Premises and terminate this Lease.

A. Monetary Default. In the event of a Monetary Default:

(i) Continue Lease. Landlord may, at its option, terminate Tenant's right to possession of the Premises and continue this Lease in full force and effect, in which event Landlord shall have the right to collect Base Rent and other charges when due, including any sums due for any option period for which an extension option has been exercised, together with Landlord's reasonable attorneys' fees and interest at the Default Rate from the date such payment was due until the date paid by Tenant. In the alternative, Landlord shall have the right, at its option to make any payment, such as taxes, otherwise required to be made by Tenant, in which event such payment shall not be deemed a cure of Tenant's default, and Tenant shall reimburse Landlord for any such payment, together with reasonable attorneys' fees and interest at the Default Rate from the date Landlord makes such payment to the date Landlord receives such reimbursement. Landlord shall have the right to peaceably re-enter the Premises, without such re-entry being deemed a termination of the Lease or an acceptance by Landlord of a surrender thereof. Landlord shall also have the right, at its option, from time to time, without terminating this Lease, to relet the Premises, or any part thereof, with or without legal process, as the agent, and for the account, of Tenant upon such terms and conditions as Landlord may deem advisable, in which event the rents received on such reletting shall be applied (i) first to the reasonable and actual expenses of such reletting and collection, including without limitation necessary renovation and alterations of the Premises, reasonable and actual attorneys' fees and any reasonable and actual real estate commissions and consulting fees paid, and (ii) thereafter toward payment of all sums due or to become due to Landlord hereunder. If a sufficient amount to pay such expenses and sums shall not be realized, in Landlord's exercise of commercially reasonable efforts to mitigate its damages (which Landlord hereby agrees to make), then Tenant shall pay Landlord any such deficiency monthly, and Landlord may bring an action or actions therefor as such monthly deficiency shall arise and accrue. Landlord shall not, in any event, be required to pay Tenant any sums received by Landlord on a reletting of the Premises in excess of the rent provided in this Lease, but such excess shall reduce any accrued present or future obligations of Tenant hereunder. Landlord's re-entry and reletting of the Premises without termination of this Lease shall not preclude Landlord from subsequently terminating this Lease as set forth below.

(ii) Terminate Lease. Landlord may terminate this Lease by written notice to Tenant specifying a date therefor, which shall be no sooner than thirty (30) days following receipt of such notice by Tenant, and this Lease shall then terminate on the date so specified as if such date had been originally fixed as the expiration date of the Term. In the event of such termination, Landlord shall be entitled to recover from Tenant all of the following as damages:

(A) The "worth at the time of the award payment" (defined below) of any obligation which has accrued prior to the date of termination.

(B) The "worth at the time of the award payment" of the amount by which the unpaid Base Rent and all other charges which would have accrued after termination until the time of award payment exceeds the amount of any sums (net of reletting costs and expenses) actually received by Landlord from the Premises after termination. Landlord shall have an affirmative obligation to attempt to mitigate its damages following termination, until the time of the award payment.

(C) The "worth at the time of the award payment" of the amount by which the Base Rent and all other charges which would have accrued after the time of the award payment for the remaining term of this Lease exceeds the Fair Market Rent ("FMR"), determined in the manner set forth below, for the remaining term of this Lease. The FMR, as used in this Lease, shall be the fair market rent of the Premises, net of market brokerage commissions and consulting fees, as of the time of the award for a term equal to the remaining term of this Lease subsequent to the time of the award payment (assuming this lease had not been terminated) on an "as is" basis, as determined by a licensed MAI appraiser selected by Landlord. At Tenant's option, Tenant may select an additional licensed MAI appraiser to estimate FMR and Tenant's appraiser and Landlord's appraiser shall select a third MAI appraiser to estimate the FMR, in which case the FMR shall be the median of the three appraisals. Tenant shall bear the cost of the appraisal process.

As used in this Article 13, Paragraph 2, the term, "**worth at the time of the award payment**", shall be computed by allowing simple interest at an accrual rate equal to the Default Rate for past due obligations, and a discount rate to net present value at the time of the award payment of five percent (5%) per annum on anticipated future obligations or revenues, and mitigation amounts, with no interest or discount, on the amount of the obligations payable on the date of such calculation. In the event this Lease shall be terminated as provided above, by summary proceedings or otherwise, Landlord, its agents, servants or representatives may immediately or at any time thereafter peaceably re-enter and resume possession of the Premises and, at Tenant's expense, remove all persons and property therefrom, by summary dispossession proceedings.

(iii) Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, as Additional Rent, such reasonable and actual expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing the same for reletting, and all other reasonable and actual expenses, commissions and charges incurred by Landlord in exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including without limitation reasonable attorneys' fees), provided that in no event shall Tenant be obligated to compensate Landlord for any speculative or consequential damages caused by Tenant's failure to perform its obligations under this Lease.

B. Remedies Are Cumulative. The various rights and remedies reserved to Landlord herein are cumulative, and Landlord may pursue any and all such rights and remedies, in addition to any other rights or remedies available at law or in equity, whether at the same time or otherwise (to the extent not inconsistent with specific provisions of this Lease). Notwithstanding anything herein to the contrary, Landlord expressly waives its right to forcibly dispossess Tenant from the Premises, whether peaceably or otherwise, without judicial process, such that Landlord shall not be entitled to any "commercial lockout" or any other provisions of applicable law which permit landlords to dispossess tenants from commercial properties without the benefit of judicial review.

C. Mitigation of Damages. In the event Landlord elects to terminate the Lease and seek damages from Tenant as provided herein, Landlord will use reasonable efforts to mitigate its damages. Landlord shall have the option but not the obligation to list the Premises for lease with a real estate broker. In the event Landlord elects not to so list the property but instead elects to itself market the Property for lease, such election shall not be deemed to constitute a failure by Landlord to mitigate. Landlord will not be obligated to accept less than the then current market rent for the Premises; deviate from its then established guidelines for tenants including without limitation use, experience, reputation, and creditworthiness; lease less than all of the Premises; extend the term of this Lease; or expend any money on behalf of a new tenant. Tenant will not have any independent, affirmative claim against Landlord on account of Landlord's failure to mitigate its damages; however, such failure to mitigate may be asserted by Tenant as a defense to a claim by Landlord to the extent allowed by law.

D. Waiver of Landlord's Lien. Landlord hereby waives any statutory liens and any rights of distress with respect to the Tenant's Property (as defined below) from time to time located on the Premises. This Lease does not grant a contractual lien or any other security interest to Landlord or in favor of Landlord with respect to Tenant's Property. Landlord further agrees, without cost to Tenant, to execute and deliver such instruments reasonably requested by Tenant from time to time to evidence the aforesaid waiver of Landlord. As used herein the term "Tenant's Property" shall mean all movable partitions, business and trade fixtures, machinery and equipment, automobiles, computers, furniture, satellite dish(s), signage, communications equipment and office equipment, and all furniture, furnishings and other articles of personal property owned by Tenant and located in the Premises.

3. Landlord's Default. In the event Landlord shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord hereunder and any such default shall continue for a period of sixty (60) days after written notice to Landlord (or if such default is incapable of being cured in a reasonable manner within sixty (60) days and if Landlord has not commenced to cure the same within said sixty (60) day period and thereafter diligently prosecutes the same to completion), and Landlord shall not thereafter cure such default, Tenant shall be entitled, at its election, to bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, in addition to all

remedies otherwise provided in this Lease and otherwise available at law or in equity under the laws of the United States or the State of Colorado.

4. Attorneys' Fees In the event that either Landlord or Tenant commences any suit for the collection of any amounts for which the other may be in default or for the performance of any other covenant or agreement hereunder, the prevailing party in any such action shall be awarded its costs and expenses, including, but not limited to, all attorneys' fees and expenses incurred in enforcing such obligations and/or collecting such amounts, from the other party to such action.

5. Waiver of Consequential Damages. In no event shall either Landlord or Tenant have the right to recover consequential damages of any kind from the other. Except as limited hereinabove, all rights and remedies may be exercised and enforced concurrently and whenever and as often as Landlord or Tenant shall deem necessary. In the event of a default by Tenant, nothing contained herein shall preclude, or be deemed a waiver, of Landlord's right to recover damages arising from its ownership or operation of the property owned by it adjacent to the Premises.

Article 14 Covenant of Quiet Enjoyment

Landlord agrees that Tenant shall quietly and peaceably hold, possess, and enjoy the Premises, without any hindrance or molestation by the agents or employees of Landlord, and further, Landlord shall, and any additional exceptions created by Tenant or created by Landlord and approved by Tenant, defend the title to the Premises and the use and occupancy of the same by Tenant against the lawful claims of all persons whosoever, except those claiming by or through Tenant.

Article 15 Subordination; Landlord's Right to Mortgage and Convey Premises

Landlord may mortgage its interest in the Premises, provided such mortgage expressly provides that the rights and interests of the mortgagee thereunder are subject and subordinate to the rights and interests of Tenant hereunder and the rights of any Leasehold Mortgagee under any Leasehold Mortgage then or thereafter existing. Should Landlord sell, convey, or transfer its interest in the Premises or should any mortgagee of Landlord succeed to Landlord's interest through foreclosure or deed in lieu thereof, Tenant shall attorn to such succeeding party as its landlord under this Lease promptly upon any such succession, provided such succeeding party assumes all of Landlord's duties and obligations under this Lease. Such succeeding party shall not be liable for any of Landlord's obligations and duties hereunder prior to its assumption of Landlord's duties and obligations hereunder.

Article 16 Transfers by Landlord

No transfer or sale of Landlord's interest hereunder shall release Landlord from any of its obligations or duties hereunder prior thereto. Landlord shall be released of any

If to Landlord: Englewood/McLellan Reservoir Foundation
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: President

With copies to: City of Englewood
1000 Englewood Parkway
Englewood, Colorado 80110
Attention: City Attorney

or at such other address as may be specified from time to time in writing by either party. All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

4. Successors and Assigns. All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon, apply to, and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors (including subtenants), and permitted assigns.

5. Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

6. Interpretation. In interpreting this Lease in its entirety, any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto. This Lease shall be construed without regard to any presumption or other rule requiring construction against the Parties causing this Lease to be drafted.

7. Headings, Captions, and References. The section captions contained in this Lease are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder," and "herein" shall refer to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The terms "include," "includes," and "including" incorporate the meaning "without limitation." The use of the masculine or neuter genders herein shall include the masculine, feminine, and neuter genders and the singular form shall include the plural when the context so requires.

8. Governing Law. This Lease shall be construed under the laws of the State of Colorado.

9. Execution of Documents. Landlord and Tenant shall each cooperate with the other and execute such documents as the other party may reasonably require or request so as to enable it to conduct its operations, so long as the requested conduct or execution of documents does not derogate or alter the powers, rights, duties, and responsibilities of the respective Parties.

10. Force Majeure. Whenever a party is required to perform an act under this Lease by a certain time, unless specifically provided otherwise in this Lease, such party may extend the deadline in the event of Excusable Delay. In the event a party elects to so extend a deadline, such party shall first give written notice to the other party within twenty (20) days following the commencement of the Excusable Delay setting forth the event giving rise to the Excusable Delay. The party electing to extend the deadline shall within twenty (20) days following the end of the Excusable Delay give an additional written notice to the other party setting forth the number of days the period has been extended as a result of the Excusable Delay and the details of such delay.

11. Reasonable Consent. Notwithstanding anything to the contrary contained in this Lease, in all cases where consent or approval shall be required pursuant to this Lease, the giving of each consent or approval shall not be unreasonably withheld or delayed by the party from whom such consent is required or requested.

12. Authority. No agreement, including but not limited to an agreement to amend or modify this Lease or to accept surrender of the Premises, shall be deemed binding upon either party, unless in writing and signed by an officer of the party against whom the agreement is to be enforced or by a person designated in writing by such party as so authorized to act. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction unless expressly agreed to by Landlord acting thru its authorized representative, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy then available to Landlord.

13. Estoppel Certificate. Each party agrees, from time to time, within twenty (20) days following written request from the other party, to execute and deliver an estoppel stating that this Lease is in full force and effect, and if modified or amended, setting forth such modification or amendment, that no default exists, or if a default, setting forth the same, and such other factual matters regarding the Lease as may be reasonably requested, provided such estoppel does not obligate the party to acknowledge or consent to any modifications or interpretations of this Lease not previously agreed upon by both parties in writing.

14. Holding Over. Should Tenant hold over, without Landlord's consent, after the Lease term has expired and continue to pay Rent, Tenant shall become a month to month tenant only. In no event shall such hold over constitute an extension of the term of this Lease. During such hold over, the Rent shall be an amount equal to one hundred fifty percent (150%) of the Rent during the last month of the term of the Lease, together with all other amounts payable by Tenant under the terms of the Lease. None of the terms of this Paragraph or the holding over by Tenant shall constitute a waiver of any rights of Landlord to terminate the Lease at any time and to re-enter and take possession of the Premises. Tenant shall reimburse Landlord and indemnify Landlord against all damages incurred by Landlord resulting from any delay by Tenant in surrendering possession of the Premises.

Article 18
Leasehold Financing

1. Mortgage by Tenant. Tenant may, from time to time, hypothecate, mortgage, pledge, or alienate the Improvements and/or Tenant's leasehold estate and rights hereunder. Such lien shall be referred to herein as a "**Leasehold Mortgage**" and the holder or holders of any such lien shall be referred to herein as a "**Leasehold Mortgagee.**" The Leasehold Mortgagee's interest in the Premises and this Lease shall be subordinate, junior and subject to Landlord's ownership of the Premises and interest in this Lease. A Leasehold Mortgage shall encumber no interest in the Premises other than Tenant's interest in the Lease and the Improvements located on the Premises, including any personal property of Tenant, and any subleases of portions of the Premises. A Leasehold Mortgagee or its assigns may enforce such lien and acquire title to the leasehold estate in any lawful way and, pending foreclosure of such lien, the Leasehold Mortgagee may take possession of and operate the Premises, performing all obligations performable by Tenant, and upon foreclosure of such lien by power of sale, judicial foreclosure, or acquisition of the leasehold estate by deed in lieu of foreclosure, the Leasehold Mortgagee may sell and assign the leasehold estate hereby created. Notwithstanding anything herein contained to the contrary, the Leasehold Mortgagee or any person or entity acquiring such leasehold estate shall be liable to perform the obligations imposed on Tenant by this Lease only during the period such person has ownership of said leasehold estate or possession of the Premises; provided further that, except as expressly provided herein, in no event shall Landlord's rights be impaired to exercise its remedies following an Event of Default prior to Leasehold Mortgagee's possession or ownership. Landlord agrees to provide an estoppel to any Leasehold Mortgagee upon written request therefor, provided such estoppel does not obligate Landlord to acknowledge or consent to any modifications or interpretations of this Lease not previously agreed upon by both parties in writing.

2. Notice To and Rights Of Leasehold Mortgagees.

A. When giving notice to Tenant with respect to any default hereunder, Landlord shall also serve a copy of such notice upon any Leasehold Mortgagee who shall have given Landlord a written notice specifying its name and address. No such notice shall be effective against any Leasehold Mortgagee unless and until served on any Leasehold Mortgagee as herein provided. In the event Tenant shall default in the performance of any of the terms, covenants, agreements, and conditions of this Lease to be performed on Tenant's part, any Leasehold Mortgagee shall have the right, within the grace period available to Tenant for curing such default or such additional time as may be granted to any Leasehold Mortgagee herein, to cure or make good, such default or to cause the same to be cured or made good, whether the same consists of the failure to pay rent or the failure to perform any other obligation, and Landlord shall accept such performances on the part of any Leasehold Mortgagee as though the same had been done or performed by Tenant.

B. In the case of a Monetary Default by Tenant, Landlord will take no action to effect a termination of this Lease by reason thereof unless such default has continued beyond forty-five (45) days after Landlord shall have served a copy

of such notice upon Tenant and any Leasehold Mortgagee who has given Landlord notice as provided in 0.0.0 above, it being the intent hereof and the understanding of the parties that any Leasehold Mortgagee shall be allowed not less than fifteen (15) days in addition to the thirty (30) days granted to Tenant to cure any Monetary Default of Tenant.

C. In the case of any Non-Monetary Default by Tenant, a Leasehold Mortgagee shall be allowed, in addition to any grace period granted to Tenant, an additional time as hereinafter specified to cure such Non-Monetary Default within which either:

a) if such default is a monetary default or is otherwise susceptible of being cured by the Leasehold Mortgagee without obtaining possession of the Premises, to commence and diligently proceed to cure such Non-Monetary Default within thirty (30) days following the expiration of any grace period granted to Tenant, or if such default can not reasonably be cured within thirty (30) days, to commence such cure within thirty (30) days following the expiration of any grace period granted to Tenant and to diligently prosecute the cure to completion;

b) if such default is a non-monetary default and is not susceptible of being cured by the Leasehold Mortgagee without obtaining possession of the Premises, to commence proceedings to obtain possession of the Premises within thirty (30) days following the expiration of any grace period granted to Tenant and diligently prosecute such action to completion (including possession by a receiver) and to cure such default within thirty (30) days following possession or the appointment of a receiver in the case of a default which is susceptible of being cured within thirty (30) days when the Leasehold Mortgagee has obtained possession thereof. If such default can not reasonably be cured within thirty (30) days following possession or appointment of a receiver, to commence such cure within thirty (30) days following possession or appointment of a receiver and to diligently prosecute the cure to completion.

D. In the event that this Lease is terminated by Landlord on account of any default, Landlord shall give prompt notice thereof to each Leasehold Mortgagee who has given notice to be notified. Landlord, within thirty (30) days after receiving a written request therefor, which shall be given within sixty (60) days after such termination, will execute and deliver a new lease of the Premises to the Leasehold Mortgagee or its nominee or to the purchaser, assignee, or transferee, as the case may be, for the remainder of the term of this Lease, containing the same covenants, agreements, terms, provisions, and limitations as are contained herein, provided that the Leasehold Mortgagee shall (i) pay to Landlord, simultaneously with the delivery of such new lease, all unpaid rental due under this Lease up to and including the date of the commencement of the term of such new lease and all expenses including, without limitation, reasonable attorneys' fees and disbursements and court costs incurred by Landlord in connection with the default by Tenant and the

termination and the preparation of the new lease, and (ii) the Leasehold Mortgagee shall commence and diligently proceed to cure all defaults existing under this Lease which are susceptible to cure.

E. The time available to a Leasehold Mortgagee to initiate foreclosure proceedings as aforesaid shall be deemed extended by the number of days of delay of occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond the Leasehold Mortgagee's control.

F. During the period that a Leasehold Mortgagee shall be in possession of the Premises and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all charges of whatsoever nature payable by Tenant hereunder which have been accrued and are unpaid and which will thereafter accrue during said period. Following the acquisition of Tenant's leasehold estate by the Leasehold Mortgagee or its designee, either as a result of foreclosure or acceptance of an assignment in lieu of foreclosure, the Leasehold Mortgagee or party acquiring title to Tenant's leasehold estate, whereon Landlord's right to effect a termination of this Lease based upon the default in question shall be deemed waived. Any default not susceptible of being cured by the Leasehold Mortgagee or party acquiring title to Tenant's leasehold estate shall be and shall be deemed to have been waived by Landlord upon completion of the foreclosure proceedings or acquisition of Tenant's interest in this Lease by any purchaser (who may, but need not be, the Leasehold Mortgagee) at the foreclosure sale, or who otherwise acquires Tenant's interest from the Leasehold Mortgagee or by virtue of a Leasehold Mortgagee's Exercise of its remedies. Any such purchaser, or successor of purchaser, shall not be liable to perform the obligations imposed on Tenant by this Lease incurred or accruing after such purchaser or successor no longer has ownership of the leasehold estate or possession of the Premises.

G. Nothing herein shall preclude Landlord from exercising any of Landlord's rights or remedies with respect to any other default by Tenant during any period of any such forbearance, subject to the rights of any Leasehold Mortgagee as herein provided.

H. In the event two or more Leasehold Mortgagees each exercise their rights hereunder and there is a conflict which renders it impossible to comply with all such requests, the Leasehold Mortgagee whose leasehold mortgage would be senior in priority if there were a foreclosure shall prevail. In the event any Leasehold Mortgagee pays any rental or other sums due hereunder which relate to periods other than during its actual ownership of the leasehold estate, such Leasehold Mortgagee shall be subrogated to any and all rights which may be asserted against Landlord with respect to such period of time.

I. Upon the reasonable request of any Leasehold Mortgagee, Landlord and Tenant shall cooperate in including in this Lease by suitable amendment or separate agreement from time to time any provision for the

purpose of implementing the protective provisions contained in this Lease for the benefit of such Leasehold Mortgagee in allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of its proposed Leasehold Trust Deed on the occurrence of a default under the terms of the Lease. Landlord and Tenant shall execute, deliver, and acknowledge any amendment or separate agreement reasonably necessary to effect any such requirement; provided, however, that any such amendment or separate agreement shall not in any way affect the term or rental under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

J. Tenant shall reimburse Landlord any attorneys' fees or other direct out of pocket costs incurred in connection with any lease amendments or other documentation or review in connection with Tenant's proposed Leasehold Mortgage.

Article 19

Representations of Landlord and Tenant

1. Representations of Landlord. Except as otherwise disclosed on Schedule 1 attached hereto, Landlord represents and warrants to Tenant that, as of the Effective Date:

A. Landlord is a non-profit corporation validly organized and existing under the laws of the State of Colorado. Landlord has the full right, power and authority to enter into this Agreement and to perform Landlord's obligations hereunder.

B. This Agreement (i) has been duly authorized, executed, and delivered by Landlord; and (ii) is the binding obligation of Landlord;

C. Landlord has not granted, other than to Tenant, any outstanding option, right of first refusal or any preemptive right with respect to the purchase of all or any portion of the Premises.

D. To the best of Landlord's knowledge, the Premises and use and occupancy thereof is not in violation of any laws and no written notice of such violation has been received by Landlord and is not the subject of any existing, pending, or threatened investigation or inquiry by any governmental authority or subject to any remedial obligations under any laws pertaining to or relating to hazardous materials or other environmental conditions.

E. There are no unrecorded easements or rights-of-way affecting any or all of the Premises except the sanitary sewer interceptor lines as previously disclosed by Landlord to Tenant.

F. No lawsuit has been filed against Landlord regarding the Premises.

G. There are no other leases, agreements or contracts in existence relating to the Premises, including, without limitation, tenant leases, service contracts, or management agreements.

H. Landlord has received no notice from any insurance company with respect to the cancellation of any policy concerning the Premises or refusal of the insurance company to insure the Premises.

I. There are no oral agreements affecting the Premises.

J. There is no litigation pending with respect to the Premises relating to any Environmental Law violations. Except as disclosed in writing by Landlord or disclosed in environmental reports delivered to Tenant, Landlord has no actual knowledge of an Environmental Law violation and has received no notice or other written communication from a governmental agency or any other person or entity alleging or suggesting an Environmental Law violation on the Premises. The term "**Environmental Law**," as used in this Agreement, shall include: (1) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A. §9601, et seq. ("**CERCLA**"); (2) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C.A. §6901, et seq.; (3) Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C.A. §1251, et seq.; (4) Toxic Substances Control Act of 1976, as amended, 15 U.S.C.A. §2601, et seq.; (5) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001, et seq.; (6) Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C.A. §7401, et seq.; (7) National Environmental Policy Act of 1970, as amended, 42 U.S.C.A. §4321, et seq.; (8) Rivers and Harbors Act of 1899, as amended, 33 U.S.C.A. §401, et seq.; (9) Endangered Species Act of 1973, as amended, 16 U.S.C.A. §1531, et seq.; (10) Occupational Safety and Health Act of 1970, as amended, 29 U.S.C.A. §651, et seq.; (11) Safe Drinking Water Act of 1974, as amended, 42 U.S.C.A. §300(f), et seq.; and (12) all applicable standards, rules, policies and other governmental requirements.

K. There are no agreements, commitments or understandings by or between Landlord and any third party pursuant to which (i) Landlord agrees to make the Premises part of any special assessments, special district, or taxing district ("**Assessments**"), or (ii) Landlord or its successors in interest are required to sell, grant or dedicate any part of the Premises or to grant any easement, water rights, rights-of-way, road or license for ingress and egress or other use in respect to any part of the Premises, whether on account of the development of adjacent or nearby real property or otherwise. Landlord has no knowledge of any Assessments being contemplated.

L. Landlord has no knowledge of any fact, condition, or action, present, contemplated, or threatened, which would or may result in the termination or impairment of access to and from the Premises as such access presently exists, and

Landlord is not in violation of any easements, rights-of-way, conditions, covenants and restrictions, licenses, or other agreements burdening the Premises.

M. Landlord owns the Premises free and clear of any mortgage or deed of trust.

that:
2. Representations of Tenant. Tenant represents, warrants and covenants to Landlord.

A. Tenant's Authority. Tenant is a duly constituted limited liability company organized under the laws of the State of Colorado, it has the power to enter into this Lease and perform Tenant's obligations hereunder; and the person executing this Lease on Tenant's behalf has the right and lawful authority to do so.

B. Tenant's Covenant as to Hazardous or Toxic Materials.

i. Tenant hereby covenants that Tenant shall not cause or permit any "**Hazardous Substances**" (as hereinafter defined) to be placed, held, located or disposed of in, on or at the Premises or any part thereof except in accordance with all applicable laws, statutes, ordinances, and regulations.

ii. Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency as a result of the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the Premises of any Hazardous Substance, provided, however, that the foregoing indemnity is limited to matters arising solely from Tenant's violation of the covenant contained in the preceding subparagraph 2.B.i.

iii. For purposes of this Lease, "**Hazardous Substances**" shall mean and include those elements or compounds which are contained in the list of hazardous substances now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the list of toxic pollutants designated by Congress or the EPA or which are now or hereafter defined as hazardous, toxic, pollutants, infectious or radioactive by any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect. "Hazardous Substances," for the purposes of this Paragraph 16, shall include petroleum products, asbestos, and polychlorinated biphenyls, and underground storage tanks unless installed, maintained, and closed in compliance with all applicable laws.

iv. In the event Hazardous Substances are present on the Premises in violation of Tenant's covenant in subparagraph 2.B.i hereof, and Tenant fails to

clean up, remove, resolve, minimize the impact of, or otherwise remediate such contamination in compliance with all applicable laws and regulations and to obtain a "no further action" or similar closure letter from the governmental authorities with jurisdiction over such Hazardous Substances permitting the development and use of the Premises as contemplated herein without further remediation (collectively, "Remediate," which term shall include obtaining such approvals as are required from applicable governmental authorities prior to the commencement of Remediation activities on the Premises), then Landlord shall have the right, but not the obligation, thirty (30) days after notice to Tenant and Tenant's failure to Remediate, or, if Tenant cannot Remediate within thirty (30) days, then upon Tenant's failure to commence preparation of a plan to Remediate within such thirty (30) day period and diligently pursue the approval of such plan and the completion of the remediation work authorized by the approved plan to completion, to enter upon the Premises to Remediate such contamination. Notwithstanding the foregoing, in no event shall Tenant be afforded more than two (2) years after the approval of Tenant's remediation plan by the appropriate governmental agency or agencies, or any shorter time required for the completion of such remediation by the agencies in granting such approval, to complete such remediation. Tenant agrees to commence preparation of such plan promptly upon receipt of notice that such Hazardous Substances are present, to apply for approval of such plan promptly, and to pursue such approval diligently. All reasonable costs and expenses incurred by Landlord in the exercise of any such rights, which costs and expenses result from Tenant's violation of the covenants contained herein, shall be deemed Additional Rent under this Lease and shall be payable by Tenant upon demand.

C. Douglas County Deposit. Tenant acknowledges that Landlord has made a refundable security deposit with Douglas County, Colorado in the amount of \$17,534.60 to secure that grading, erosion and storm sewer control is maintained according to the applicable governmental requirements ("GESC Deposit"). All refunds of the GESC Deposit shall be paid to Landlord. In the event there is a loss, in whole or in part, of the GESC Deposit as a result of Tenant's failure to maintain the Premises as required for a full refund of the GESC Deposit, Tenant shall reimburse Landlord for the amount of such loss.

D. Broker. Tenant acknowledges that it has retained Newmark Knight Frank Frederick Ross ("Broker") as its real estate agent and broker and agrees to pay Broker any and all compensation due it as a result of this transaction. Except for Broker, each party hereby indemnifies and agrees to hold the other party harmless from all damages, claims, liabilities or expenses, including reasonable and actual attorneys' fees (through all levels of proceedings), resulting from any claims that may be asserted against the other party by any real estate broker or finder with whom the indemnifying party either has or is purported to have dealt.

1.

IN WITNESS WHEREOF, this Lease has been executed as of the date written above.

LANDLORD:

**ENGLEWOOD/MCLELLAN RESEVOIR
FOUNDATION**

A Colorado non profit corporation

By: _____

Name

Title

TENANT:

MILLER FAMILY REAL ESTATE, L.L.C.
a Utah limited liability company

By: _____

Name

Title

EXHIBIT A-1
LEGAL DESCRIPTION OF PREMISES

EXHIBIT A-2
SITE PLAN OF PREMISES

EXHIBIT B
MEMORANDUM OF LEASE

COUNCIL COMMUNICATION

Date: October 17, 2011	Agenda Item: 11 c ii	Subject: A Resolution to Appropriate Funds for the Replacement of Street Lights on S. Santa Fe Drive
Initiated By: Department of Finance and Administrative Services		Staff Source: Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The City Council discussed the deterioration of the South Santa Fe light poles during a Study Session in May and again at the October 10 Study Session. Council has made the maintenance of the City's infrastructure a major priority for many years.

RECOMMENDED ACTION

Because no funding was budgeted in 2011 for this project, City staff recommends City Council approve the attached resolution for a transfer of funds and supplemental appropriation to replace deteriorating light poles on South Santa Fe Drive.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The light poles on South Santa Fe Drive were installed in approximately 1995/1996. Xcel Energy notified the City of Englewood in April, 2011 that the majority of the street light poles along South Santa Fe Drive were deteriorating and posed a hazard to the public. Xcel Energy is responsible for providing maintenance of the poles and consequently is liable for damages that could be caused by the deteriorating poles. By contract, the individual cities are responsible for the costs of replacing the poles in their jurisdictions.

The original Xcel Energy estimate to replace the decorative poles with the same product was approximately \$644,000. Public Works staff, working with Xcel Energy, found a satisfactory replacement product (galvanized steel poles) at a total estimated cost of \$127,000.

Public Works recommends replacing the poles in a timely manner to avert possible harm caused by poles that could fall into the roadway.

The following illustrates the transfer and use of funds:

GENERAL FUND

SOURCE OF FUNDS:

Unreserved/Undesignated Fund Balance	\$127,000.00
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USE OF FUNDS:

Transfer Out to the Public Improvement Fund	\$127,000.00
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PUBLIC IMPROVEMENT FUND

SOURCE OF FUNDS:

Transfer In From General Fund \$127,000.00

USE OF FUNDS:

South Santa Fe Streetlight Replacement \$127,000.00

FINANCIAL IMPACT

This supplemental appropriation will reduce the unreserved/undesignated fund balance in the General Fund by \$127,000.00

LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. _____
SERIES OF 2011

A RESOLUTION APPROVING AN APPROPRIATION TO THE 2011 BUDGET FOR THE REPLACEMENT OF THE SOUTH SANTA FE DRIVE STREET LIGHTS.

WHEREAS, the City of Englewood is required by City Charter to ensure that expenditures do not exceed legally adopted appropriations; and

WHEREAS, the 2011 Budget was submitted and approved by the Englewood City Council on October 18, 2010; and

WHEREAS, light poles on South Santa Fe Drive were installed in approximately 1995/1996; and

WHEREAS, the South Santa Fe light poles have physically deteriorated to the point where they are hazardous to the public; and

WHEREAS, the passage of this resolution will appropriate the funds to allow replacing the poles in a timely manner to avert possible harm caused by poles that could fall into the roadway;

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

Section 1. The Budget for the Public Improvement Fund of the City of Englewood, Colorado, is hereby amended for the year 2011, as follows:

GENERAL FUND:

SOURCE OF FUNDS:

Unreserved/Undesignated Fund Balance \$127,000

USE OF FUNDS:

Transfer Out to the Public Improvement Fund \$127,000

PUBLIC IMPROVEMENT FUND:

SOURCE OF FUNDS:

Transfer in from General Fund \$127,000

USE OF FUNDS:

South Santa Fe Streetlight Replacement \$127,000

Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2011 Budget for the City of Englewood.

ADOPTED AND APPROVED this 17th day of October, 2011.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2011.

Loucrishia A. Ellis, City Clerk

COUNCIL COMMUNICATION

Date: October 17, 2011	Agenda Item: 11 c iii	Subject: Transfer of Funds and Supplemental Appropriation for Landscape and Fine Arts Funds Projects (Paseo and Broadway Holiday Lighting) in the Public Improvement Fund
Initiated By: Department of Finance and Administrative Services	Staff Source: Frank Gryglewicz, Director	

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The City Council initially discussed the issues regarding the Paseo Project at the June 15, 2009 Study Session; City Council directed staff to prepare a supplemental appropriation of \$12,011.04 for improvements to the Paseo Project. Council also discussed helping the South Broadway Englewood Business Improvement District (SBEBID) in their holiday decorating efforts but funds in the Landscape and Fine Arts Funds Project (PIF) were not adequate to cover all costs to make the improvements resulting in a negative balance.

RECOMMENDED ACTION

Currently, the Landscape and Fine Arts Project in the PIF has a \$6,506.71 negative balance. To reduce the deficit to zero, staff recommends City Council approve the attached resolution transferring and appropriating \$5,866.60 from the General Fund's unrestricted/undesignated reserves. This represents funds provided by the SBEBID for holiday decorating expenditures which were inadvertently deposited in the General Fund instead of the PIF. The remaining \$640.11 will be transferred from the Landscape and Fine Arts Fund collected and held in General Fund to bring the Project balance to zero.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The SBEBID provided the City \$5,866.60 to help offset the cost of holiday decorations on Broadway in 2009. The check was inadvertently put in the General Fund but should have been put in the PIF where project expenditures were made and accounted for.

The Landscape and Fine Arts Fund was created to account for funds collected from property owners in lieu of providing landscaping as required by Ordinance 2, Series of 1984. The funds accumulated can be used for "beautification of the public areas as determined by the legislative body."

The following illustrates the transfer and use of funds:

GENERAL FUND

SOURCE OF FUNDS:

Unreserved/Undesignated Fund Balance	\$5,866.60
Landscape and Fine Arts Fund Balance	\$640.11

USE OF FUNDS:

Transfer Out to the Public Improvement Fund	\$6,506.71
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PUBLIC IMPROVEMENT FUND

SOURCE OF FUNDS:

Transfer In From General Fund	\$6,506.71
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USE OF FUNDS:

Landscape and Fine Arts Funds (Paseo/Broadway Improvements)	\$6,506.71
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FINANCIAL IMPACT

This supplemental appropriation will reduce the unreserved/undesignated fund balance in the General Fund by \$5,866.60 and reduce the balance (\$11,889.45) in the Landscape and Fine Arts Fund by \$640.11. The Landscape and Fine Arts Project in the PIF will have a zero balance after the transfer is made.

LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. _____
SERIES OF 2011

A RESOLUTION APPROVING A TRANSFER AND SUPPLEMENTAL APPROPRIATION TO THE 2011 BUDGET FOR IMPROVEMENTS TO THE LANDSCAPE AND FINE ARTS FUNDS PROJECTS – PASEO/BROADWAY HOLIDAY LIGHTING.

WHEREAS, the City of Englewood is required by City Charter to ensure that expenditures do not exceed legally adopted appropriations; and

WHEREAS, the 2011 Budget was submitted and approved by the Englewood City Council on October 18, 2010; and

WHEREAS, the South Broadway Englewood Business Improvement District (SBEBID) requested help in financing their holiday decorating along South Broadway; and

WHEREAS, the Landscape and Fine Arts Fund was created to account for funds collected from property owners in lieu of providing landscaping as required by Ordinance No. 2, Series of 1984; and

WHEREAS, the Landscape and Fine Arts Funds intent was to accumulate the funds and to use the funds for “beautification of the public areas as determined by the legislative body”; and

WHEREAS, the South Broadway Englewood Business Improvement District (SBEBID) provided the City a check for \$5,866.60 to help offset the cost of holiday decorations on Broadway in 2009; and

WHEREAS, the SBEBID 2009 check was inadvertently put in the General Fund but should have been put in the Public Improvement Fund (PIF) where project expenditures were made and accounted for; and

WHEREAS, an additional \$640.11 from the Landscape and Fine Arts Fund is needed to cover the remaining deficit in the Public Improvement Fund; and

WHEREAS, this expenditure could not be foreseen and therefore was not included in the 2011 Budget.

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

Section 1. The Budget for the City of Englewood, Colorado, is hereby amended for the year ending 2011, as follows:

GENERAL FUND

SOURCE OF FUNDS:

Unreserved/Undesignated Fund Balance	\$5,866.60
Landscape and Fine Arts Fund Balance	\$ 640.11

USE OF FUNDS:

Transfer Out to the Public Improvement Fund	\$6,506.71
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PUBLIC IMPROVEMENT FUND

SOURCE OF FUNDS:

Transfer In From General Fund	\$6,506.71
-------------------------------	------------

USE OF FUNDS:

Landscape and Fine Arts Funds (Paseo/Broadway Improvements)	\$6,506.71
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Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2011 Budget for the City of Englewood.

ADOPTED AND APPROVED this 17th day of October, 2011.

ATTEST:

James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2011.

Loucrishia A. Ellis, City Clerk

COUNCIL COMMUNICATION

Date October 17, 2011	Agenda Item 11 c iv	Subject Approval of South Broadway Englewood Business Improvement District (BID) Operating Plan and proposed 2012 Budget.
INITIATED BY South Broadway Englewood Business Improvement District	STAFF SOURCE Darren Hollingsworth, Economic Development Coordinator	

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

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

RECOMMENDED ACTION

Approve, by motion, the South Broadway Englewood Business Improvement District Operating Plan and proposed 2012 Budget.

BACKGROUND

In accordance with State Statute the South Broadway Englewood Business Improvement District submitted, on September 27, 2011, their Operating Plan and proposed 2012 Budget to the Englewood City Clerk for Council's approval.

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

FINANCIAL IMPACT

None

LIST OF ATTACHMENTS

South Broadway Englewood Business Improvement District (BID) Operating Plan and proposed 2012 Budget.



**SOUTH BROADWAY
ENGLEWOOD BID**

PRESIDENT

Ted Vasilas

Ted's Clothiers
3476 S. Broadway 80113
303.781.1382

VICE PRESIDENT

Bob Laughlin

Acoustic Music Revival
3445 S. Broadway 80113
303.744.1737

SECRETARY

Vicki Skigen

PawnBank
2815 S. Broadway 80113
720.280.5092

TREASURER

Brian A. Hart

Frame De Art II
3065 S. Broadway 80113
303.722.1525

MEMBERS

Bryan Reid

Edward's Tobacco Shop
3439 S. Broadway 80113
303.781.7662

Gary Oxman

Wagner's Furniture
3400 S. Broadway 80113
303.789.4206

Joe Kubik

Jimano's Pizzeria
2950 S. Broadway 80113
303.789.0909

3476 SOUTH BROADWAY
ENGLEWOOD, CO 80013

RECEIVED
CITY OF ENGLEWOOD, CO
SEP 27 2011

**OFFICE OF
THE CITY CLERK**

September 21, 2011

Dear Englewood City Council:

Pursuant to State of Colorado Statutes 31-25-1211, the South Broadway Englewood Business Improvement District (SBEBID) is forwarding its approved 2012 Budget and Operating Plan. These documents were approved by the SBEBID Board of Directors at a meeting on Wednesday, September 21, 2011. There are no changes to the Operating Plan for 2012.

Our South Broadway Englewood Business Improvement District had a successful and a productive year. We successfully branded the BID area as "The South Broadway Mile", by re-doing the website and holding our first ever festival, "Eats and Beats". Our brochure/business directory is on display at DIA and at Visit Denver, as well as in thousands of hotel rooms in the Denver area. We look forward to working with Council on the event for next year, and working together to grow business in "The Mile" and in the City of Englewood as a whole.

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

Sincerely,

Ted Vasilas, President

SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT
DISTRICT

**SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT
2012 BUDGET MESSAGE**

DISTRICT SERVICES:

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

A. Marketing, Promotions and Image Enhancement

Public relations to project a positive image of the South Broadway corridor.

Collaborative advertising among South Broadway businesses.

Production and packaging of marketing materials including South Broadway map, directory and website.

A newsletter and other BID communications.

Market research and stakeholder surveys

Special events including themed events, historical events and ongoing events programming.

B. Enhanced Safety and Maintenance

Enhanced safety patrols

Improved communication with City of Englewood Police Dept.

Video Monitoring

Community and Business Watch Programs

Graffiti Clean-up

Sidewalk Power Washing

C. Special Projects

Banners

Gateways

Signage

Public Art

Cosmetic Improvements

Other projects as appropriate

BASIS OF ACCOUNTING

The basis of accounting utilized in the preparation of the 2012 Budget for the District is the cash basis method. The District's 2012 Budget includes projected revenues and expenditures for its general operating fund.

IMPORTANT FEATURES OF THE BUDGET

The 2012 Budget does not result in a violation of any applicable property tax or fiscal year spending limitations. Emergency reserves have been provided in 2012 (3% of the District's fiscal year spending excluding bonded debt service).

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

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

- B. Emergency Fund/Expenditures: The emergency fund for fiscal year 2012 will be equal to 3% of the District's fiscal year spending, excluding those expenditures for bonded debt services, spending from gifts, federal funds, collections from another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

ANTICIPATED PROJECTS:

The District anticipates work in the areas of marketing, maintenance and safety, and special projects to include banners, gateways, signage, public art and cosmetic improvements within the District boundaries in 2012.

**CERTIFIED COPY OF RESOLUTION TO ADOPT 2012 BUDGET
SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT**

COMES NOW, the Secretary of the South Broadway Englewood Business Improvement District, and certifies that at a special meeting of the Board of Directors of the District, held Wednesday, the 21st day of September, 2011, at 8:30 a.m., at Acoustic Music Revival, 3445 S. Broadway, Englewood, Colorado, the following Resolution was adopted by the affirmative vote of a majority of the Board of Directors, to-wit:

A RESOLUTION SUMMARIZING REVENUES AND EXPENDITURES FOR THE DISTRICT'S GENERAL OPERATING FUND, ADOPTING A BUDGET IMPOSING SPECIAL ASSESSMENTS FOR THE YEAR 2012 TO HELP DEFRAY THE COSTS OF GOVERNMENT, AND APPROPRIATING SUMS OF MONEY TO THE GENERAL FUND IN THE AMOUNTS AND FOR THE PURPOSES SET FORTH HERIN FOR THE SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT, CITY OF ENGLEWOOD, ARAPAHOE COUNTY, COLORADO, FOR THE CALENDAR YEAR BEGINNING ON THE FIRST DAY OF JANUARY, 2012, AND ENDING ON THE LAST DAY OF DECEMBER, 2012.

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

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

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

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

Section 1. 2012 Budget Revenues. That the estimated revenues for the General fund as more specifically set out in the budget attached hereto are accepted and approved.

Section 2. 2012 Budget Expenditures. That the estimated expenditures for the general fund as more specifically set out in the budget Attached hereto are accepted and approved.

Section 3. Adoption of Budget for 2012. That the budget as submitted, and attached hereto and incorporated herein by this reference, and

if amended, then as amended, is hereby approved and adopted as the budget of the South Broadway Englewood Business Improvement District for calendar year 2012.

Section 5. Designation of Ending Fund Balances as Reserves. That Pursuant to Const. Colo. Article X, Section 20, the December 31, 2011 ending fund balance to the General Fund, the exact amount to be determined as part of the audit of the December 31, 2011 financial statements, is designated as a general reserve for future contingencies.

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

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

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

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

SOUTH BROADWAY ENGLEWOOD
BUSINESS IMPROVEMENT DISTRICT

Secretary _____

(SEAL)

SOUTH BROADWAY ENGLEWOOD BID
OPERATION BUDGET/ WORK PROGRAM
2012

Revenue

BID Assessments	\$100,000.00
Interest, sponsorships Other Income	\$ 10,000.00
Total	\$110,000.00

Expenditures

Marketing **\$50,000.00**

Options include

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

Maintenance & Safety **\$15,000.00**

Options include

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

Special Projects **\$30,000.00**

Options include

- New pole for gateway banner
- Banner replacement
- Signage
- Public Art
- Cosmetic Improvements/ Grants

Legal/ Accounting **\$5,000.00**

Total Expenditures **\$100,000.00**

Operating Reserve (5%) \$5,000.00

Capital Reserve (5%) \$5,000.00

Total Reserves **\$10,000.00**

TOTAL **\$110,000.00**

SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT OPERATING PLAN AND BUDGET

I. SUMMARY

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

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

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

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

Marketing, Promotions and Image Enhancement:

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

Enhanced Safety & Maintenance

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

Special Projects

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

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

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

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

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

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

- Term:** A term of ten (10) years is recommended for the South Broadway Englewood BID.
- City Services:** A base level of services agreement between the BID and the City of Englewood will outline the City's current level of services in the BID area, as the City will maintain its existing services. BID services will be *in addition to any* City services currently provided downtown.
- District Formation:** The formation of a BID in Colorado requires submission of petitions from owners of real and personal property representing more than 50% of total acreage and assessed value within the district, a public hearing and a City Council ordinance forming the BID.
- Financial Approval:** In order to allow for a BID assessment, a majority of qualified electors within the proposed district who actually vote must approve the assessment in an election to be held in November 2006.
- Governance:** The BID will be managed by a Board of Directors consisting of five (5) to seven (7) members, all of whom shall be voting members and BID ratepayers. One additional seat (in addition to the 5-7 voting members) shall be reserved for an ex-officio member that shall be a representative of the City of Englewood. The board will determine annual BID priorities and oversee ongoing management of BID programs. The board shall consist of a majority of real property owners, shall equitably represent geographic areas of the BID and a variety of size and type of property and businesses.
- A slate of board nominees shall be submitted by a nominating committee to City Council for approval. City Council may, at its discretion, decline to appoint the slate of nominees but if it does so it shall return the entire slate to the nominating committee which shall submit another slate of nominees for consideration by City Council.
- Dissolution:** The BID may be dissolved if property owners representing more than 50% of total acreage and assessed value within the District submit petitions to dissolve it, or if the BID fails to submit an operating budget to City Council for two successive years.

II. WHY FORM A BID?

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

- **Increase Sales, Occupancies and Property Values:** More than 1,000 BIDs have been formed throughout North America and are acknowledged as a critical ingredient in commercial area revitalization. BIDs are proven to work by funding improvements and services that enhance the overall vitality of a business district. Success is measured by higher occupancies, sales and property values. Nationally, the BID renewal rate is 99%.
- **Strengthen the South Broadway Corridor's Competitiveness in the Regional Marketplace:** The BID supports a results-oriented set of programs that will produce both short-term and long-term tangible improvements. These improvements and services will help accelerate efforts to attract and retain consumers, visitors, new businesses and investment to South Broadway.
- **Create a Reliable Source of Funding for South Broadway:** A BID will provide a reliable, multi-year source of funding to ensure these programs can continue to showcase and benefit the South Broadway corridor.
- **Leverage Positive Changes along the South Broadway corridor:** There are exciting changes in Englewood— with new businesses and investment creating an eclectic and exciting business mix. The BID will help to ensure that the benefits of the new investment and energy will be spread throughout the South Broadway corridor.
- **Broaden Private Sector Control and Accountability:** The South Broadway Englewood BID will be governed by a board of district property and business owners. Annual BID work plans and budgets will be developed by the board, ensuring that the BID will be directly accountable to those who pay an assessment. New programs will be subject to private sector performance standards and controls.
- **Create a Unified Voice for the South Broadway Corridor in Englewood:** A BID will help broaden the foundation for developing a viable and unified private sector voice for the South Broadway corridor. A BID will unify and enhance the current merchant association efforts, and act as an advocate for the healthy growth and development of the entire BID area.

III. PROCESS TO CREATE THE BID OPERATING PLAN

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

- **BID Steering Committee:** To guide the consultant team and test the viability of the BID concept, a Steering Committee composed of district property owners and business owners was created. Steering Committee members include: Ted Vasilas, Jon Cook, Doug Cohn, Beth Minnick, Bob Voth, Rick Reese, Brian Verbeck, Steve Schalk and Bob Laughlin.
- **One-On-One Meetings with Key Property Owners:** A series of one-on-one meetings were held with business and property owners in the BID study area to determine their willingness to support a BID.
- **Stakeholder Focus Groups:** To involve property and business owners in the design and development of the plan, two stakeholder focus groups were held in November, 2005. The focus groups included a survey designed to assess service priorities and whether there was an appetite to support various BID improvements and activities.
- **Direct Mail Survey:** A direct mail survey was sent to property owners within the Englewood BID study area in November, 2005. Fifty-five (55) surveys were returned providing additional input for the design of the BID work plan.
- **Plan Review Workshops/Final Plan:** The draft BID work plan and budget were reviewed by the BID Steering Committee and then presented to property and business owners in two workshops held in early February, 2006. Input from the workshops and Steering Committee led to the completion of the final plan.

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

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

IV. SOUTH BROADWAY ENGLEWOOD BID OPERATING PLAN

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

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

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

BID PROGRAMS

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

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

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

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

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

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

V. **BID BUDGET**

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

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

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

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

VI. ASSESSMENT METHODOLOGY

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

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

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

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

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

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

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

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

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

VII. BID GOVERNANCE AND PROGRAM MANAGEMENT

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

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

The BID board will have the following responsibilities:

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

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

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

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

VIII. CITY SERVICES

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

IX. TERM

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