Agenda for the
Regular Meeting of the
Englewood City Council
Monday, March 19, 2012
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 March 5, 2012.

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. City Council will recognize the young people who were nominated for this year's Arapahoe Mayors and Commissioners Youth Award.
      - Nate Andrews, an 8th grader at Englewood Middle School
      - Marilyn Arroyo, a 12th grader at Colorado's Finest Alternative High School
      - Mariah Bacca, a 7th grader at Englewood Middle School
      - Samantha Benner, a 10th grader at John F. Kennedy High School
      - Bryant Clark, a 12th grader at Colorado's Finest Alternative High School
      - Kaylee Coker-Moseley, an 8th grader at Englewood Middle School
      - Adrian DeLaTorre Zubia, an 8th grader at Englewood Middle School
      - Angela English, an 8th grader at Englewood Middle School
      - Tony Fierro, a 12th grader at Colorado's Finest Alternative High School
      - Tyler Hastings, an 8th grader at Englewood Middle School

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.

- Jody Herndon, an 8th grader at at Englewood Middle School
- Tiffany Inman, a 7th grader at Englewood Middle School
- Amber Loos, an 8th grader at Englewood Middle School
- Ty Lucas, an 8th grader at Englewood Middle School
- Midori Martinez-Palmer, a 7th grader at Englewood Middle School
- Liberty Nelson, an 11th grader at Colorado's Finest Alternative High School
- Thomas Romero, a 12th grader at Colorado's Finest Alternative High School
- Heather Ryan, an 8th grader at Englewood Middle School
- Kelsey Schaffer, a 7th grader at Englewood Middle School
- Jenny Sowers, a 12th grader at Colorado's Finest Alternative High School
- Sophia Vamvakias, an 8th grader at Englewood Leadership Academy
- Paige Vielbig, a 12th grader at Englewood High School
- Chase Zrnchik, a 7th grader at Englewood Middle School

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.

9. Consent Agenda Items.

   a. Approval of Ordinances on First Reading.

      i. Council Bill No. 13 – Recommendation from the Police Department to adopt a bill for an ordinance approving an Intergovernmental Agreement entitled "Federal Equitable Sharing Agreement and Certification" authorizing the acceptance of forfeiture monies from the Department of Justice and the Department of the Treasury. **Staff Source: Jeff Sanchez, Deputy Chief of Police.**

      ii. Council Bill No. 19 – Recommendation from the Police Department to adopt a bill for an ordinance authorizing the application for and acceptance of funds from Colorado Department of Transportation and National Highway Traffic Safety Administration for programs related to traffic safety education and enforcement through calendar year 2013. **Staff Source: Jeff Sanchez, Deputy Chief of Police.**

iii. Council Bill No. 14 – Recommendation from the Police Department to adopt a bill for an ordinance authorizing an intergovernmental agreement accepting $218,000 from the South Metro Drug Task Force. **Staff Source: Jeff Sanchez, Deputy Chief of Police.**

b. Approval of Ordinances on Second Reading.

i. Council Bill No. 10 – Approving an amendment to the City of Englewood Police Officers Pension Plan Document.

ii. Council Bill No. 11 – Approving an amendment to the City of Englewood Firefighters Pension Plan Document.

iii. Council Bill No. 12 – Authorizing the application for, and acceptance of, a grant from the State of Colorado to assist with the purchase of High Plains Information Systems' *PhysioControl LifePak12/15 interface* software.

iv. Council Bill No. 15 – Amending Title 5-3D of the Englewood Municipal Code pertaining to Medical Marijuana Primary Caregivers.

v. Council Bill No. 16 – Amending Title 7-6D of the Englewood Municipal Code pertaining to Medical Marijuana Primary Caregivers.

c. Resolutions and Motions.

i. Recommendation from the Department of Parks and Recreation to approve, by motion, a construction contract for the Centennial Park Trail Loop Renovations. Staff recommends awarding the contract to the lowest acceptable bidder, Standard Concrete, Inc., in the amount of $319,304. **Staff Source: Dave Lee, Manager of Open Space and Jerrell Black, Director of Parks and Recreation.**

10. Public Hearing Items.

a. A Public Hearing to gather input on the proposed sale of the Englewood Depot and the .490 acre parcel on which the Depot is located.

11. Ordinances, Resolutions and Motions

a. Approval of Ordinances on First Reading.

i. Council Bill No. 18 – Recommendation from the City Manager's office to adopt a bill for an ordinance for the sale of the Englewood Depot to Pillar Property Services, LLC for the purchase price of $50,000. **Staff Source: Michael Flaherty, Deputy City Manager.**

b. Approval of Ordinances on Second Reading.

c. Resolutions and Motions.

i. Recommendation from the South Broadway Englewood Business Improvement District to adopt a resolution approving an updated slate of the Board of Directors for the South Broadway Improvement District. **Staff Source: Darren Hollingsworth, Economic Development Coordinator.**

ii. Recommendation from the Department of Parks and Recreation to approve, by motion, a Professional Services Agreement to Major Environmental Services, Inc. for the environmental remediation and demolition of the former Duncan School building in the amount of $66,982. **Staff Source: Dave Lee, Manager of Open Space and Dave Henderson, Capital Projects Administrator.**

12. General Discussion.

a. Mayor's Choice.

b. Council Members' Choice.

13. City Manager's Report.

14. City Attorney's Report.

15. Adjournment.

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.

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
March 19, 2012	9 a i	I.G.A. re: Federal Equitable Sharing Agreement and Certification

Initiated By:	Staff Source:
Police Department	Jeff Sanchez, Deputy Chief of Police

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The Federal Equitable Sharing Program allows us to receive funds from the Federal government on a yearly basis. Our participation in this program contributes to the City's goals of a safe, clean, healthy, and attractive City and a progressive City that provides responsive and cost efficient services.

RECOMMENDED ACTION

The Police Department is recommending that City Council adopt a Bill for an Ordinance authorizing an Intergovernmental Agreement allowing the Englewood Police Department to accept forfeiture monies from the Department of Justice and the Department of the Treasury by completing the Federal "Equity Sharing Agreement and Certification" form. This request is for fiscal years 2010, 2011, 2012, and 2013.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Englewood Police Department periodically receives Federal forfeiture monies from the Justice and Treasury Departments for our participation or assistance provided to these agencies such as the Internal Revenue Service (IRS), Drug Enforcement Agency (DEA) and Federal Bureau of Investigation (FBI). These funds are used for law-enforcement purposes, such as equipment purchases and training. As part of our participation, we are required to sign a Federal Equitable Sharing Agreement and Certification which sets forth the requirements for participation in the Federal Equitable Sharing Program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies, including the Englewood Police Department.

The City of Englewood's Finance Department places this money into designated accounts and tracks deposits, expenditures, and interest on these accounts. Upon year-end, the Chief of Police and Mayor sign the Equitable Sharing Agreement and Certification, which is then submitted to the Federal Government certifying compliance with federal forfeiture guidelines. This must be done within 60 days of the end of the City's fiscal year.

FINANCIAL IMPACT

Federal forfeiture funds are deposited into the Police Donor's Fund and are used to pay for police-related equipment and training which would otherwise require City funding. For instance, one of the funded projects pays for the assignment of one of Englewood's Police Officers to the South Metro Drug Task Force. On or about June 1, 2011, the Englewood Police Officer began his assignment at the South Metro Drug Task Force.

LIST OF ATTACHMENTS

Bill for an ordinance

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 13
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT ENTITLED "FEDERAL EQUITABLE SHARING AGREEMENT AND CERTIFICATION" BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE, UNITED STATES DEPARTMENT OF TREASURY AND THE CITY OF ENGLEWOOD, COLORADO ACCEPTING FORFEITURE MONIES.

WHEREAS, this Agreement sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of the federally forfeited cash, property, proceeds and any interest earned thereon, which are equitably shared with participating law enforcement agencies; and

WHEREAS, Englewood periodically receives monies from the Justice Department and Treasury Department for participation or assistance provided to these agencies such as IRS, DEA and the FBI; and

WHEREAS, one of these federal groups is the South Metro Drug Task Force, which in exchange for the Englewood Police Department's commitment of one officer to the South Metro Drug Task Force for a 2 year period, received the funds in the amount of $218,000, these funds were to offset the Englewood Police Department's cost of the officer's salary; and

WHEREAS, to participate in the program, the City annually signs the Equitable Sharing Agreement and Certification which in turn is submitted to the federal government certifying compliance with federal forfeiture guidelines; and

WHEREAS, authorization of this Agreement is required for the City of Englewood's continuation of participation in the United States Department of Justice Federal Equitable Sharing and Certification and will authorize the City's participation in this program for 2010, 2011, 2012 and 2013.

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 "Federal Equitable Sharing Agreement and Certification" between the United States Department of Justice, United States Department of Treasury and the City of Englewood, Colorado pertaining to the disbursement, with restrictions, of federally seized or forfeited cash or other property for 2010, attached hereto as "Exhibit A".

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes the "Federal Equitable Sharing Agreement and Certification" between the United States Department of Justice, United States Department of Treasury and the City of Englewood, Colorado pertaining to the disbursement, with restrictions, of federally seized or forfeited cash or other property for 2011, attached hereto as "Exhibit B".

Section 3. The City Council of the City of Englewood, Colorado hereby authorizes the "Federal Equitable Sharing Agreement and Certification" between the United States Department of Justice, United States Department of Treasury and the City of Englewood, Colorado pertaining to the disbursement, with restrictions, of federally seized or forfeited cash or other property for 2012, which will be received in February 2013.

Section 4. The City Council of the City of Englewood, Colorado hereby authorizes the "Federal Equitable Sharing Agreement and Certification" between the United States Department of Justice, United States Department of Treasury and the City of Englewood, Colorado pertaining to the disbursement, with restrictions, of federally seized or forfeited cash or other property for 2013, which will be received in February 2014.

Section 5. The federal forfeiture funds, proceeds and or property are received from the Department of Justice and Treasury Department. The federal forfeiture funds, proceeds and or property are to be used in accordance with federal statutes and guidelines. The costs to the City are limited to the costs of processing and accounting of the funds, which costs are budgeted annually in the Police and Fire budgets.

Section 6. The City Manager is hereby authorized to sign said Intergovernmental Agreement between the United States Department of Justice and the City of Englewood, Colorado pertaining to the disbursement, with restrictions, of federally seized or forfeited cash or other property, on behalf of the City of Englewood for 2010.

Section 7. The City Manager is hereby authorized to sign said Intergovernmental Agreement between the United States Department of Justice and the City of Englewood, Colorado pertaining to the disbursement, with restrictions, of federally seized or forfeited cash or other property, on behalf of the City of Englewood for 2011.

Section 8. The City Manager is hereby authorized to sign said Intergovernmental Agreement between the United States Department of Justice and the City of Englewood, Colorado pertaining to the disbursement, with restrictions, of federally seized or forfeited cash or other property, on behalf of the City of Englewood for 2012.

Section 9. The City Manager is hereby authorized to sign said Intergovernmental Agreement between the United States Department of Justice and the City of Englewood, Colorado pertaining to the disbursement, with restrictions, of federally seized or forfeited cash or other property, on behalf of the City of Englewood for 2013.

Introduced, read in full, and passed on first reading on the 19th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 23rd day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 19th day of March, 2012.

Kerry Bush

EXHIBIT A

OMB Number 1123-0011
Expires 7-31-2011

Equitable Sharing Agreement and Certification

◉ Police Department ◯ Sheriff's Office ◯ Task Force (Complete Table A, page2)
◯ Prosecutor's Office ◯ Other (specify) _____

Agency Name: Englewood Police Department

NCIC/ORI/Tracking Number: C O 0 0 3 0 1 0 0

Street Address: 3615 S Elati St

City: Englewood **State:** CO **Zip:** 80110

Contact: Title: Chief First: Thomas Last: Vandermee

Contact: Phone: 303-762-2466 E-mail: _____

☐ Same as Contact **Preparer:** First: Kathy Last: Cassai

Preparer: Phone: 303-762-2411 E-mail: _____

Last Fiscal Year End: 12/31/2010 **Agency Current Fiscal Year Budget:** $10,667,026.00

◯ **New Participant:** Read the Equitable Sharing Agreement (page 4) and sign the Affidavit (page 5)

◯ **Existing Participant:** Complete the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5)

◉ **Amended Form:** Revise the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5).

Annual Certification Report

	Summary of Equitable Sharing Activity	Justice Funds[1]	Treasury Funds[2]
1	Beginning Equitable Sharing Fund Balance (must match Ending Equitable Sharing Fund Balance from prior FY)	$10,641.52	$0.00
2	Federal Sharing Funds Received	$0.00	$50,383.26
3	Federal Sharing Funds Received from Other Law Enforcement Agencies and Task Forces (complete Table B, page 2)		
4	Other Income	$0.00	$0.00
5	Interest Income Accrued — Non-Interest Bearing ◯ Interest Bearing ◉	$9.68	$38.71
6	Total Equitable Sharing Funds (total of lines 1 - 5)	$10,651.20	$50,421.97
7	Federal Sharing Funds Spent (total of lines a - m below)	$0.00	$0.00
8	Ending Balance (difference between line 7 and line 6)	$10,651.20	$50,421.97

[1] Justice Agencies are: FBI, DEA, ATF, USPIS, USDA, DCIS, DSS, and FDA.

[2] Treasury Agencies are: IRS, ICE, CBP, USSS, and USCG.

	Summary of Shared Monies Spent	Justice Funds	Treasury Funds
a	Total spent on salaries for new, temporary, not-to-exceed one year employees Refer to § VIII.A.2.a.3 of the *Justice Guide*	$0.00	$0.00
b	Total spent on overtime	$0.00	$0.00
c	Total spent on informants, "buy money," and rewards	$0.00	$0.00
d	Total spent on travel and training	$0.00	$0.00
e	Total spent on communications and computers	$0.00	$0.00
f	Total spent on weapons and protective gear	$0.00	$0.00
g	Total spent on electronic surveillance equipment	$0.00	$0.00
h	Total spent on buildings and improvements	$0.00	$0.00
i	Total transfers to other state and local law enforcement agencies (complete Table C, page 2)		
j	Total spent on other law enforcement expenses (complete Table D, page 3)		
k	Total Expenditures in Support of Community-based Programs (complete Table E, page 3)		
l	Total Windfall Transfers to Other Government Agencies (complete Table F, page 3)		
m	Total spent on matching grants (complete Table G, page 3)		
n	**Total**	$0.00	$0.00
o	Did your agency receive non-cash assets? ◯ Yes ◉ No If yes, complete Table H, page 3.		

Please fill out the following tables, if applicable.

Table A: Members of Task Force

Agency Name	NCIC/ORI/Tracking Number

Table B: Equitable Sharing Funds Received from other Agencies

Total the amount transferred to each agency on separate lines

Transferring Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name:		
NCIC/ORI/Tracking Number:		

Table C: Equitable Sharing Funds Transferred to Other Agencies

Total the amount transferred to each agency on separate lines

Receiving Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name:		
NCIC/ORI/Tracking Number:		

Table D: Other Law Enforcement Expenses

Description of Expense	Justice Funds	Treasury Funds

Table E: Expenditures in Support of Community-based Programs

Refer to § VIII.A.1.m and Appendix C of the *Justice Guide*

Recipient	Justice Funds	

Table F: Windfall Transfers to Other Government Agencies

Refer to § VIII.A.1.n of the *Justice Guide* and pp. 25-26 of the *Treasury Guide*

Recipient	Justice Funds	Treasury Funds

Table G: Matching Grants

Refer to § VIII.A.1.h of the *Justice Guide* and p. 22 of the *Treasury Guide*

Matching Grant Name	Justice Funds	Treasury Funds

Table H: Other Non-Cash Assets Received

Source	Description of Asset
Justice ◯	
Treasury ◯	

Table I: Civil Rights Cases

Name of Case	Type of Discrimination Alleged			
	☐ Race	☐ Color	☐ National Origin	☐ Gender
	☐ Disability	☐ Age	☐ Other _____	

Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section, Program Management and Strategic Planning Unit, 1400 New York Avenue, N.W., Second Floor, Washington, DC 20005.

Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the above-stated law enforcement agency ("Agency"), and (3) the governing body, sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By its signatures, the Agency agrees that it will be bound by the statutes and guidelines that regulate shared assets and the following requirements for participation in the federal equitable sharing program. Receipt of the signed Equitable Sharing Agreement and Certification (this "Document") is a prerequisite to receiving any equitably shared cash, property, or proceeds.

1. **Submission.** This Document must be submitted to aca.submit@usdoj.gov within 60 days of the end of the Agency's fiscal year. This Document must be submitted electronically with the Affidavit/Signature page (page 5) submitted by fax. This will constitute submission to the Department of Justice and the Department of Treasury.

2. **Signatories.** This agreement must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, chairperson, secretary, city attorney, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body's head is the person who allocates funds or approves the budget for the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, director, secretary, administrator, commissioner, and governor.

3. **Uses.** Any shared asset shall be used for law enforcement purposes in accordance with the statutes and guidelines that govern the federal Equitable Sharing Program as set forth in the current edition of the Department of Justice's *Guide to Equitable Sharing for State and Local Law Enforcement (Justice Guide)*, and the Department of the Treasury's *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Treasury Guide).*

4. **Transfers.** Before the Agency transfers cash, property, or proceeds to other state or local law enforcement agencies, it must first verify with the Department of Justice or the Department of Treasury, depending on the source of the funds, that the receiving agency is a federal Equitable Sharing Program participant and has a current Equitable Sharing Agreement and Certification on file.

5. **Internal Controls.** The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury. Funds from state and local forfeitures and other sources must not be commingled with federal equitable sharing funds. The Agency shall establish a separate revenue account or accounting code for state, local, Department of Justice, and Department of the Treasury forfeiture funds. Interest income generated must be accounted for in the appropriate federal forfeiture fund account.

The Agency agrees that such accounting will be subject to the standard accounting requirements and practices employed for other public monies as supplemented by requirements set forth in the current edition of the *Justice Guide* and the *Treasury Guide*, including the requirement in the *Justice Guide* to maintain relevant documents and records for five years.

The misuse or misapplication of shared resources or the supplantation of existing resources with shared assets is prohibited. Failure to comply with any provision of this agreement shall subject the recipient agency to the sanctions stipulated in the current edition of the *Justice or Treasury Guides*, depending on the source of the funds/property.

6. **Audit Report.** Audits will be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Circular A-133. The Department of Justice and Department of the Treasury reserve the right to conduct periodic random audits.

Affidavit - Amended Form

Under penalty of perjury, the undersigned officials certify that **they have read and understand their obligations under the Equitable Sharing Agreement** and that the information submitted in conjunction with this Document is an accurate accounting of funds received and spent by the Agency under the *Justice* and/or *Treasury Guides* during the reporting period and that the recipient Agency is in compliance with the National Code of Professional Conduct for Asset Forfeiture.

The undersigned certify that the recipient Agency is in compliance with the nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity. The Agency agrees that it will comply with all federal statutes and regulations permitting federal investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights and other applicable statutes and regulations.

During the past fiscal year: (1) has any court or administrative agency issued any finding, judgment, or determination that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above; or (2) has the Agency entered into any settlement agreement with respect to any complaint filed with a court or administrative agency alleging that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above? ○ Yes ◉ No

If you answered yes to the above question, complete Table I

Agency Head
See ¶ 2 on page

Signature: _____

Name: Thomas Vandermee

Title: Chief of Police

Date: _____

Governing Body Head
See ¶ 2 on page

Signature: _____

Name: Gary Sears

Title: City Manager

Date: _____

Subscribe to Equitable Sharing Wire:
The Equitable Sharing Wire is an electronic newsletter that gives you important, substantive, information regarding Equitable Sharing policies, practices, and procedures.

Final Instructions:

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Step 4: Fax THIS *SIGNED* PAGE ONLY to (202) 616-1344

FOR AGENCY USE ONLY
Entered by _____

Entered on _____

○ FY End: 12/31/2010

Date Printed: March 17, 2011 06:41

○ NCIC: CO0030100 Agency: Englewood Police Department Phone: 303-762-2466

◉ State: CO Contact: Thomas Vandermee E-mail:

EXHIBIT B

OMB Number 1123-0011
Expires 9-30-2014

Equitable Sharing Agreement and Certification

◉ Police Department ◯ Sheriff's Office ◯ Task Force (Complete Table A, page2)
◯ Prosecutor's Office ◯ Other (specify) _____

Agency Name: Englewood Police Department

NCIC/ORI/Tracking Number: C O 0 0 3 0 1 0 0

Street Address: 3615 S Elati St

City: Englewood **State:** CO **Zip:** 80110

Contact: Title: Chief First: John Last: Collins

Contact: Phone: 303-762-6946 E-mail:

☐ Same as Contact **Preparer:** First: Kathy Last: Cassai

Preparer: Phone: 303-762-2411 E-mail:

Last Fiscal Year End: 12/31/2011 **Agency Current Fiscal Year Budget:** $10,921,455.00

◯ **New Participant:** Read the Equitable Sharing Agreement (page 4) and sign the Affidavit (page 5)

◉ **Existing Participant:** Complete the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5)

◯ **Amended Form:** Revise the Annual Certification Report, read the Equitable Sharing Agreement (page 4), and sign the Affidavit (page 5).

Annual Certification Report

	Summary of Equitable Sharing Activity	Justice Funds[1]	Treasury Funds[2]
1	Beginning Equitable Sharing Fund Balance (must match Ending Equitable Sharing Fund Balance from prior FY)	$10,651.20	$50,421.97
2	Federal Sharing Funds Received		
3	Federal Sharing Funds Received from Other Law Enforcement Agencies and Task Forces (complete Table B, page 2)	$218,000.00	
4	Other Income		
5	Interest Income Accrued — Non-Interest Bearing ◯ Interest Bearing ◉	$812.08	$461.10
6	Total Equitable Sharing Funds (total of lines 1 - 5)	$229,463.28	$50,883.07
7	Federal Sharing Funds Spent (total of lines a - m below)	$0.00	$11,840.03
8	Ending Balance (difference between line 7 and line 6)	$229,463.28	$39,043.04

[1] Justice Agencies are: FBI, DEA, ATF, USPIS, USDA, DCIS, DSS, and FDA.

[2] Treasury Agencies are: IRS, ICE, CBP, USSS, and USCG.

	Summary of Shared Monies Spent	Justice Funds	Treasury Funds
a	Total spent on salaries for new, temporary, not-to-exceed one year employees Refer to § VIII.A.2.a.3 of the *Justice Guide*		
b	Total spent on overtime		
c	Total spent on informants, "buy money," and rewards		
d	Total spent on travel and training		$945.45
e	Total spent on communications and computers		$10,894.58
f	Total spent on weapons and protective gear		
g	Total spent on electronic surveillance equipment		
h	Total spent on buildings and improvements		
i	Total transfers to other state and local law enforcement agencies (complete Table C, page 2)		
j	Total spent on other law enforcement expenses (complete Table D, page 3)		
k	Total Expenditures in Support of Community-based Programs (complete Table E, page 3)		
l	Total Windfall Transfers to Other Government Agencies (complete Table F, page 3)		
m	Total spent on matching grants (complete Table G, page 3)		
n	**Total**	$0.00	$11,840.03
o	Did your agency receive non-cash assets? ◯ Yes ◉ No If yes, complete Table H, page 3.		

Please fill out the following tables, if applicable.

Table A: Members of Task Force

Agency Name	NCIC/ORI/Tracking Number

Table B: Equitable Sharing Funds Received from other Agencies

Total the amount transferred to each agency on separate lines

Transferring Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name: Arapahoe County Sheriff's Office NCIC/ORI/Tracking Number: C O 0 0 3 0 0 0 0	$218,000.00	

Table C: Equitable Sharing Funds Transferred to Other Agencies

Total the amount transferred to each agency on separate lines

Receiving Agency Name, City, and State	Justice Funds	Treasury Funds
Agency Name: NCIC/ORI/Tracking Number:		

Table D: Other Law Enforcement Expenses

Description of Expense	Justice Funds	Treasury Funds

Table E: Expenditures in Support of Community-based Programs

Refer to § VIII.A.1.m and Appendix C of the *Justice Guide*

Recipient	Justice Funds	

Table F: Windfall Transfers to Other Government Agencies

Refer to § VIII.A.1.n of the *Justice Guide* and pp. 25-26 of the *Treasury Guide*

Recipient	Justice Funds	Treasury Funds

Table G: Matching Grants

Refer to § VIII.A.1.h of the *Justice Guide* and p. 22 of the *Treasury Guide*

Matching Grant Name	Justice Funds	Treasury Funds

Table H: Other Non-Cash Assets Received

Source	Description of Asset
Justice ◯	
Treasury ◯	

Table I: Civil Rights Cases

Name of Case	Type of Discrimination Alleged			
	☐ Race	☐ Color	☐ National Origin	☐ Gender
	☐ Disability	☐ Age	☐ Other _____	

Paperwork Reduction Act Notice

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create accurate and easily understood forms that impose the least possible burden on you to complete. The estimated average time to complete this form is 30 minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, please write to the Asset Forfeiture and Money Laundering Section, Program Operations Unit, 1400 New York Avenue, N.W., Tenth Floor, Washington, DC 20005.

Equitable Sharing Agreement

This Federal Equitable Sharing Agreement, entered into among (1) the Federal Government, (2) the above-stated law enforcement agency ("Agency"), and (3) the governing body, sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably shared with participating law enforcement agencies. By its signatures, the Agency agrees that it will be bound by the statutes and guidelines that regulate shared assets and the following requirements for participation in the federal equitable sharing program. Receipt of the signed Equitable Sharing Agreement and Certification (this "Document") is a prerequisite to receiving any equitably shared cash, property, or proceeds.

1. **Submission.** This Document must be submitted to aca.submit@usdoj.gov within 60 days of the end of the Agency's fiscal year. This Document must be submitted electronically with the Affidavit/Signature page (page 5) submitted by fax. This will constitute submission to the Department of Justice and the Department of Treasury.

2. **Signatories.** This agreement must be signed by the head of the Agency and the head of the governing body. Examples of Agency heads include police chief, sheriff, director, commissioner, superintendent, administrator, chairperson, secretary, city attorney, county attorney, district attorney, prosecuting attorney, state attorney, commonwealth attorney, and attorney general. The governing body's head is the person who allocates funds or approves the budget for the Agency. Examples of governing body heads include city manager, mayor, city council chairperson, county executive, county council chairperson, director, secretary, administrator, commissioner, and governor.

3. **Uses.** Any shared asset shall be used for law enforcement purposes in accordance with the statutes and guidelines that govern the federal Equitable Sharing Program as set forth in the current edition of the Department of Justice's *Guide to Equitable Sharing for State and Local Law Enforcement (Justice Guide),* and the Department of the Treasury's *Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies (Treasury Guide).*

4. **Transfers.** Before the Agency transfers cash, property, or proceeds to other state or local law enforcement agencies, it must first verify with the Department of Justice or the Department of Treasury, depending on the source of the funds, that the receiving agency is a federal Equitable Sharing Program participant and has a current Equitable Sharing Agreement and Certification on file.

5. **Internal Controls.** The Agency agrees to account separately for federal equitable sharing funds received from the Department of Justice and the Department of the Treasury. Funds from state and local forfeitures and other sources must not be commingled with federal equitable sharing funds. The Agency shall establish a separate revenue account or accounting code for state, local, Department of Justice, and Department of the Treasury forfeiture funds. Interest income generated must be accounted for in the appropriate federal forfeiture fund account.

The Agency agrees that such accounting will be subject to the standard accounting requirements and practices employed for other public monies as supplemented by requirements set forth in the current edition of the *Justice Guide* and the *Treasury Guide,* including the requirement in the *Justice Guide* to maintain relevant documents and records for five years.

The misuse or misapplication of shared resources or the supplantation of existing resources with shared assets is prohibited. Failure to comply with any provision of this agreement shall subject the recipient agency to the sanctions stipulated in the current edition of the *Justice or Treasury Guides,* depending on the source of the funds/property.

6. **Audit Report.** Audits will be conducted as provided by the Single Audit Act Amendments of 1996 and OMB Circular A-133. The Department of Justice and Department of the Treasury reserve the right to conduct periodic random audits.

Affidavit - Existing Participant

Under penalty of perjury, the undersigned officials certify that **they have read and understand their obligations under the Equitable Sharing Agreement** and that the information submitted in conjunction with this Document is an accurate accounting of funds received and spent by the Agency under the *Justice* and/or *Treasury Guides* during the reporting period and that the recipient Agency is in compliance with the National Code of Professional Conduct for Asset Forfeiture.

The undersigned certify that the recipient Agency is in compliance with the nondiscrimination requirements of the following laws and their Department of Justice implementing regulations: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), which prohibit discrimination on the basis of race, color, national origin, disability, or age in any federally assisted program or activity, or on the basis of sex in any federally assisted education program or activity. The Agency agrees that it will comply with all federal statutes and regulations permitting federal investigators access to records and any other sources of information as may be necessary to determine compliance with civil rights and other applicable statutes and regulations.

During the past fiscal year: (1) has any court or administrative agency issued any finding, judgment, or determination that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above; or (2) has the Agency entered into any settlement agreement with respect to any complaint filed with a court or administrative agency alleging that the Agency discriminated against any person or group in violation of any of the federal civil rights statutes listed above? ○ **Yes** ◉ **No**

If you answered yes to the above question, complete Table I

Agency Head
See ¶ 2 on page

Signature:

Name: John Collins

Title: Chief of Police

Date: 2-2-12

Governing Body Head
See ¶ 2 on page

Signature:

Name: Gary Sears

Title: City Manager

Date: 2/14/12

Subscribe to Equitable Sharing Wire:
The Equitable Sharing Wire is an electronic newsletter that gives you important, substantive, information regarding Equitable Sharing policies, practices, and procedures.

Final Instructions:

Step 1: Click to save for your records
Step 2: Click to save in XML format
Step 3: E-mail the XML file to aca.submit@usdoj.gov
Step 4: Fax THIS *SIGNED* PAGE ONLY to (202) 616-1344

FOR AGENCY USE ONLY
Entered by _____

Entered on _____

○ FY End: 12/31/2011

Date Printed: February 02, 2012 12:46

◉ NCIC: CO0030100 Agency: Englewood Police Department Phone: 303-762-6946

○ State: CO Contact: John Collins E-mail:

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
March 19, 2012	9 a ii	I.G.A. with the Colorado Department of Transportation - Traffic Safety Education and Enforcement Projects

Initiated By:	Staff Source:
Police Department	Jeff Sanchez, Deputy Chief

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

For a number of years, the Englewood Police Department has participated in a variety of traffic safety education and enforcement programs that are either funded or sponsored by the Colorado Department of Transportation (CDOT). We expect to continue our participation in these programs for the foreseeable future.

RECOMMENDED ACTION

The Police Department is recommending that City Council adopt a Bill for an Ordinance authorizing the Englewood Police Department to accept both state and federal funding for traffic safety enforcement and education projects for calendar years 2011 through 2013.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Colorado Department of Transportation (CDOT) has solicited police departments throughout the State of Colorado, including the Englewood Police Department, to participate in traffic safety education and enforcement programs. CDOT provides both State funding and Federal pass-through funding for these programs. CDOT often gives very little notice when they announce their safety campaigns; therefore this is a comprehensive request for all CDOT projects initiated with this funding in 2011, 2012, and 2013.

We actively participate in state funded enforcement programs such as the High Visibility Impaired Driving Enforcement Program. We also participate in federally funded traffic safety education and enforcement programs such as the Mini-Grants Program and the Click It or Ticket Program.

FINANCIAL IMPACT

The State funding is from the Colorado Department of Transportation (CDOT). The Federal funding is from the U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA), State and Community Highway Safety passing through to the Colorado Department of Transportation (CDOT).

Overtime costs for city police officers are reimbursed to the Englewood Police Department by CDOT. This funding allows us to be more proactive in our enforcement efforts throughout the year, with minimal impact on the City's budget.

The amount of funding varies by year. In 2011, we received $13,108.79.

LIST OF ATTACHMENTS

Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 19
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING INTERGOVERNMENTAL AGREEMENTS FOR THE APPLICATION FOR AND ACCEPTANCE OF COLORADO DEPARTMENT OF TRANSPORTATION GRANTS AWARDED TO THE CITY OF ENGLEWOOD FOR VARIOUS PROJECTS RELATED TO TRAFFIC SAFETY EDUCATION AND ENFORCEMENT DURING CALENDAR YEARS 2011, 2012, and 2013.

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, some of the funds are State funds and some are Colorado Department of Transportation (CDOT) pass-through of Federal Funds; and

WHEREAS, CDOT often gives little notice when they announce their safety campaigns, the application and notice of awards are done by e-mail; 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, 2012, and 2013.

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 Grants awarded to the City of Englewood for funding of various projects related to traffic safety, education and enforcement during calendar years 2011, 2012, and 2013.

Section 2. The City Manager is hereby authorized to apply for and accept Colorado Department of Transportation grants awarded to the City of Englewood for and on behalf of the City of Englewood, Colorado for the calendar years 2011, 2012, and 2013. The applications for three of the 2012 grants are attached hereto as samples; see Exhibits A, B and C.

Section 3. The Traffic Safety and Education program funds such as mini grants for education and the Click It or Ticket program are received from the Colorado Department of Transportation which are passed through from the U.S. Department of Transportation and the National Highway of Transportation and Safety Administration - State and Community Safety. These funds are used to reimburse the City for personnel overtime costs for these projects so the costs to the City are limited to the costs of processing and accounting of the funds, which costs are budgeted annually in the Police budget.

Section 4. The funds for the "High Visibility Impaired Driving " Program are State of Colorado funds which are used to reimburse the City for personnel overtime costs for these projects so the costs to the City are limited to the costs of processing and accounting of the funds, which costs are budgeted annually in the police budget.

Introduced, read in full, and passed on first reading on the 19th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 23rd day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 19th day of March, 2012.

Kerry Bush

EXHIBIT A

2012 HIGH VISIBILITY IMPAIRED DRIVING ENFORCEMENT: JANUARY - JUNE, 2012

THE HEAT IS ON!

APPLICATION FOR FUNDS

CDOT's Office of Transportation Safety (OTS) will provide funding for overtime enforcement of Colorado's impaired driving laws for the Super Bowl*, St. Patrick's Day, High School Prom, Memorial Day, and the first two days of the July 4th holiday period. The selection and funding of participating agencies will be based on:

- **The mission, goals, strategy and objectives of CDOT,**
- **problem identification data relating to impaired driving related caused injury and fatal crashes,**
- **and statistical analysis of local, state, and federal impaired driving related statistics.**

TO APPLY FOR THE CAMPAIGNS

Your agency agrees to:

1. provide overtime to officers for enforcement of Colorado's impaired driving laws at checkpoints, saturations patrols, increased patrols, or as dedicated enforcement cars;
2. utilize only officers who are currently SFST certified to conduct roadside maneuvers;
3. Report your enforcement plans and activity to the CDOT website before the specified deadlines;
4. Contact CDOT's Public Relations Office prior to issuing a local press release to coordinate media efforts;
5. Submit claims on CDOT forms with backup documentation within 45 days after the end of each enforcement period.
6. Submit a final report on agency letterhead summarizing activity, arrests and crashes compared to last year, overall results of the enforcement, and any significant events that occurred, with each claim.

***Super Bowl funding will be limited to agencies in Adams, Arapahoe, Boulder, Broomfied, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo, and Weld counties.**

To apply for consideration of funding, return this form via email no later than: **January 9, 2012**

To: Bruce Sheetz at Phone: (303) 757-9355

(**Complete** project coordinator, secondary contact, and budget/finance information is required)

Agency:	**Englewood Police Department**		
Project Coordinator:	**Sgt. Mike O'Connor**	Phone Number:	**303-762-2432**
Email Address:			
Secondary Contact:	**Toni Arnoldy**	Phone Number:	**303-762-2490**
Email Address:			
Budget/Finance:	Kathy Cassai	Phone Number:	303-762-2411
Email Address:			

ENFORCEMENT PERIODS

HOLIDAYS	HOURS	HOURLY RATE	TOTAL
Super Bowl*		$0.00	$0.00
St. Patrick's Day	38.00	$52.00	$2,000.00
High School Prom	38.00	$52.00	$2,000.00
Memorial Day	19.00	$52.00	$1,000.00
June 29 & 30	19.00	$52.00	$1,000.00
		TOTAL FUNDING REQUEST	**$6,000.00**

CONTACT PERSON AND ADDRESS WHERE YOUR PURCHASE ORDER AND REIMBURSEMENT CHECK ARE TO BE SENT:

ADDRESS: **1000 Englewood Pkwy**
CITY: **Englewood**
ZIP CODE: **80110**
ATTENTION: **Kathy Cassai**

DRIVE SOBER OR GET PULLED OVER

Verbal

CITY OF ENGLEWOOD
POLICE DEPARTMENT

Office of Transportation Safety

2012 Mini Grants

Coalition Name: **ENGLEWOOD POLICE DEPARTMENT**

Address: **3615 S ELATI STREET**

City, State, Zip: **ENGLEWOOD, CO 80110**

County: **ARAPAHOE**

Project Director: **Toni Arnoldy**

Title: **Community Relations Specialist**

Phone: **303-762-2490**

Fax: **303-783-6909**

Email:

_____ **02/01/2012**

Signature of Project Director Date

2012 Mini Grant Application

Impaired Driving St. Patrick's Day

Please describe the following topics:

1. Problem Identification (describe the problem in your area)

The current problem in Englewood is the increasing number of driving while impaired citations, arrests and accidents.

Each year in Colorado, more than 30,000 people are arrested for DUI and nearly 200 people are killed in alcohol-related traffic crashes - representing approximately 40% of Colorado's total motor vehicle fatalities.
— filed under: Traffic Safety, Programs, Impaired Driving, Heat is On

It has also been reported that Arapahoe County and the City of Englewood are one of the few city and counties in the state where fatal DUI accidents have been on the rise.

2. Project Goals (clearly state what you want to accomplish)

The Project Goals are:

- Educate the citizens of Englewood on the danger, consequences and cost of Driving While Impaired.
- Heighten the awareness of not only the dangers, but also the increasing number of fatalities and injuries in Colorado each year during the St. Patrick's Day Holiday.
- Reduce the number of DUI citations and accidents

3. **Project Activities (describe the activities you will or hope to accomplish)**

- On St. Patrick's Day, Officers will visit the local bars and liquor stores to educate both the patrons and the staff of the possible dangers and consequences of driving while impaired.

- Increase patrol in high accident/incident areas.

- Hand out information pamphlets and flyers with the facts on Driving While Impaired.

- Give out information on the alternate modes of transpiration that are available in the city.

4. **Project Evaluation (how do you plan to measure the outcome of your activities?)**

- Will compare the number of driving while impaired citations, arrests and accidents of the first quarter 2011 to the first quarter (after event) in 2012.

Budget Summary & Narrative

Next to each category, please explain what you are using your funds for.

1. Salaries $ _496.17_

   - This request is due the fact that our department is currently at minimum staffing and cannot budget for any OT or release officers from their normal duties. This will supplement for the Overtime of one Traffic Sergeant, two Traffic officers, and Community Relations.

2. Operating Expenses $ ___258.00

   - This is for key chains that will be dispersed during the education and serve as a reminder to NOT Drink and Drive.
   - Leslie Chase stated that she would extend the award to cover the cost of the key tags.

3. Travel (mileage) $ ___0_____

4. Contractual $ ___0____

Total amount Requested $ 754.17

Verbal

motorcycle safety

EXHIBIT B

CITY OF ENGLEWOOD
POLICE DEPARTMENT

Office of Transportation Safety

2012 Mini Grants

Date of Proposal: 02/08/2012

Name of Organization/Coalition: Englewood Police Department

Mailing Address: 3615 S Elati Street

City, State, Zip: Englewood, CO 80110

County: Arapahoe

Project Title: Motorcycle Rider Awareness

Project Director: Brian Taylor

Title: Master Police Officer

Phone: (303) 783-6814

Fax: (303)761-4086

Email:

Total Dollar Amount Requested: $730.54

Project Dates: APRIL AND MAY OF 2012

02/08/2012

Signature of Project Director Date

2012 Mini Grant Application

1. **Problem Identification** (describe the problem in your area)

The problem in our area is the number of motorcycle/scooter riders that do not wear the proper equipment or have a clear understanding of the motorcycle laws and safety requirements.

2. **Project Goals** (clearly state what you want to accomplish)
   - Reduce the numbers of motorcycle crashes and fatalities.
   - Educate riders on the importance of operating a motorcycle sober and safely.
   - Educate riders on what is the proper equipment and what the law requires.
   - Provide the class participants with night eye protection.
   - Provide some participants with riding gloves for hand protection.

3. **Project Activities** (describe the activities you will or hope to accomplish)
   - Hold a class or community forum to include riders, business owners, and citizens.
   - Provide participating riders with proper safety equipment.
   - Educate the participants on what the law requires, and the importance of riding safety and riding sober.
4. **Project Evaluation** (how do you plan to measure the outcome of your activities?)
   - Reduce the number of motorcycle fatalities in Englewood.
   - Observe a reduction of the number of motorcycle crashes and DUI citations.
   - Reduction of the number of motorcycle violations cited by the officers on a daily basis.

Budget Summary & Narrative

Next to each category, please explain what you are using your funds for.

1. **Salaries** $ 505.54

   This request is due the fact that our department is currently at minimum staffing and cannot budget for any OT or release officers from their normal duties. This will supplement for the Overtime of one motorcycle sergeant, two motorcycle traffic officers, and community relations.

2. **Operating Expenses** $ 225.00

   50 pair of clear safety glasses @2.00 each = $100
   A pair for the rider, a pair for the passenger.

   25 pair of leather riding gloves @5.00 each = $125

3. **Travel (mileage)** $ 0

4. **Contractual** $ 0

Total amount Requested **$ 730.54**

EXHIBIT C

2012 *CLICK IT OR TICKET* CAMPAIGNS

RURAL, NIGHTTIME, AND MAY MOBILIZATION ENFORCEMENT WAVES

APPLICATION FOR FUNDS

Campaign Goals:

Increase compliance with Colorado's occupant protection and graduated drivers licensing (GDL) laws and increase public awareness of the likelihood of receiving a ticket and suffering serious or fatal injuries for failing to properly use occupant protection systems.

TO APPLY FOR THE CAMPAIGNS

Your agency agrees to:

1. Provide overtime enforcement of Colorado's child passenger safety, GDL, and adult occupant protection laws through speeding and other aggressive/hazardous driving contacts during authorized time periods;
2. **Strictly enforce** all child, teen, and adult driving violations with a **zero tolerance** (no warnings) stance;
3. Conduct pre and post seat belt surveys and enter results on the CDOT website by specified deadlines;
4. Report all requested enforcement activity (both overtime funded and regular duty) to the CDOT website by specified deadlines;
5. Provide CDOT with a copy of your agency's current seat belt policy (if not on file with OTS);
6. Submit claims for reimbursement on current CDOT forms with backup documentation within 45 days after the end of each enforcement period;
7. Return local benefit documentation on your agency letterhead (mandatory requirement for funding).

***Nighttime funding will be limited to agencies in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo, and Weld counties.**

#Rural funding is offered to counties not listed above in the nighttime campaign. There is no guarantee that all requests can be met. Funding will be based on available funds, the amount of the requests, unbelted fatality rates, and compliance rates in applying counties.

Allowable Charges:

1. pay for **enforcement** activities at your agency's overtime or set enforcement rate;
2. pay for conducting pre **(within 1 week prior to start of enforcement)** and post **(withing 1 week after the end of enforcement)** seat belt surveys, at a maximum of 2 hours per survey.

To apply for consideration of funding, please return this form via email by: **February 29, 2012**

To: Bruce Sheetz, OTS Law Enforcement Coordinator, at **bruce.sheetz@dot.state.co.us**

(**Complete** project coordinator **and** secondary contact information are required)

Agency: **Englewood Police Department**

Project Coordinator: **Toni Arnoldy** Phone Number: **303.762.2490**

Email Address:

Secondary Contact: **Mike O'Connor** Phone Number: **303.762.2432**

Email Address:

ENFORCEMENT WAVES	*ESTIMATED ENFORCEMENT HOURS*		*FUNDING REQUEST*
#RURAL - 04/02 - 04/08			
MAY MOBILIZATION - 05/21 - 06/03	55.00		$2,900.00
*NIGHTTIME - 07/23 - 07/29	35.00		$2,000.00
	90.00	*TOTALS*	$4,900.00

ADDRESS AND CONTACT WHERE YOUR PURCHASE ORDER AND REIMBURSEMENT CHECK ARE TO BE SENT:

PO BOX/ADDRESS: 3615 S Elati ST

ATTENTION: Karen Kennedy

EMAIL ADDRESS:

PHONE NUMBER: 303.762.2460

Toni Arnoldy

From: Sheetz, Bruce [|
Sent: Tuesday, March 06, 2012 2:17 PM
To: Sheetz, Bruce
Cc: Chase, Leslie; Gould, Carol
Subject: 2012 Click It Or Ticket Funding Allocations

This message is being bcc'd to agency contacts that applied for 2012 Click It Or Ticket enforcement funding.

Below are the agency allocations for Click It Or Ticket enforcement for rural and May Mobilization enforcement. Nighttime funding allocations will be announced at a later date, and are dependent upon CDOT receiving additional occupant protection funding from NHTSA.

No agency was funded at 100% of their request. Allocation amounts were based on the agency's past performance, their location in regards to unbelted injuries and fatalities, seat belt compliance rates, and CDOT's Problem Identification. **If your agency does not want the allocated amount, please contact me immediately so we can disperse your funds to other agencies.** Purchase orders are being created today, and should be sent out to your agency well in advance of the first enforcement period, which is rural and starts on April 2nd.

Claim forms, survey forms and instructions, and activity reporting forms will be sent out to your agency in the near future. While no enforcement plans are required for seat belt enforcement, pre and post enforcement surveys are. The pre survey should be completed prior to the start of enforcement, and the post survey should be done within the week after enforcement ends. The survey forms are not to be sent to CDOT, but kept in the agency's records. The results are required to be posted on the CDOT Traffic Safety website by specified deadlines.

AGENCY		RURAL	MAY	TOTAL	AGENCY
ADAMS COUNTY	SO		$6,000.00	$6,000.00	GILPIN COUNTY
ALAMOSA	PD		$1,200.00	$1,200.00	GLENWOOD SPRINGS
ALAMOSA COUNTY	SO	$1,000.00	$2,000.00	$3,000.00	GOLDEN
ARAPAHOE COUNTY	SO		$12,000.00	$12,000.00	GRAND JUNCTION
ARVADA	PD		$2,200.00	$2,200.00	GREENWOOD VILLAGE
AULT	PD		$1,000.00	$1,000.00	HUERFANO COUNTY
AURARIA CAMPUS	PD		$1,000.00	$1,000.00	JEFFERSON COUNTY
AURORA	PD		$14,000.00	$14,000.00	LAFAYETTE
AVON	PD	$1,200.00	$1,700.00	$2,900.00	LAKEWOOD
BAYFIELD MARSHAL	PD	$700.00	$1,400.00	$2,100.00	LAMAR
BOULDER	PD		$5,500.00	$5,500.00	LARIMER COUNTY
BRECKENRIDGE	PD	$1,000.00	$1,300.00	$2,300.00	LAS ANIMAS COUNTY
BRIGHTON	PD		$800.00	$800.00	LITTLETON
CASTLE ROCK	PD		$3,500.00	$3,500.00	LOGAN COUNTY
COLORADO SPRINGS	PD		$5,000.00	$5,000.00	LONE TREE
COMMERCE CITY	PD		$3,000.00	$3,000.00	LONGMONT

CORTEZ	PD	$350.00	$350.00	$700.00	LOVELAND
CRAIG	PD	$1,000.00	$900.00	$1,900.00	MANITOU SPRINGS
DACONO	PD		$800.00	$800.00	MANZANOLA
DENVER	PD		$5,500.00	$5,500.00	MESA COUNTY
DILLON	PD	$2,000.00	$3,500.00	$5,500.00	MINTURN
DURANGO	PD	$750.00	$1,500.00	$2,250.00	MONTE VISTA
EAGLE COUNTY	SO		$2,500.00	$2,500.00	MONTEZUMA COUNTY
EDGEWATER	PD		$500.00	$500.00	NORTHGLENN
EL PASO COUNTY	SO		$1,400.00	$1,400.00	PARKER
ENGLEWOOD	PD		$2,300.00	$2,300.00	PUEBLO
ESTES PARK	PD		$2,000.00	$2,000.00	PUEBLO COUNTY
EVANS	PD		$750.00	$750.00	SILVERTHORNE
FORT COLLINS	PD		$4,000.00	$4,000.00	STEAMBOAT SPRINGS
FORT LUPTON	PD		$750.00	$750.00	STERLING
FORT MORGAN	PD	$900.00	$1,500.00	$2,400.00	THORNTON
FRASER/WINTER PARK	PD	$500.00	$800.00	$1,300.00	WALSENBURG
FREDERICK	PD		$1,000.00	$1,000.00	WASHINGTON COUNTY
FREMONT COUNTY	SO	$500.00	$1,000.00	$1,500.00	WESTMINSTER
FRISCO	PD	$1,500.00	$2,500.00	$4,000.00	WHEAT RIDGE
GARFIELD COUNTY	SO	$500.00	$600.00	$1,100.00	WOODLAND PARK

Thank you for your interest in this program and please contact me if you have questions.

Bruce Sheetz
Law Enforcement Coordinator
Office of Transportation Safety, CDOT
4201 E. Arkansas Avenue
Denver, Colorado 80222
Office 303-757-9355
Cell 720-219-9649

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
March 19, 2012	9 a iii	IGA reference South Metro Drug Task Force Forfeiture Funding

Initiated By:	Staff Source:
Police Department	Jeff Sanchez, Deputy Chief of Police

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The Englewood Police Department has maintained a long-term commitment to the South Metro Drug Task Force by providing them with a police officer from our agency. Our participation contributes to the city's goals of a safe, clean, healthy, and attractive City and a progressive City that provides responsive and cost efficient services.

RECOMMENDED ACTION

The Police Department is recommending that City Council adopt a Bill for an Ordinance authorizing an inter-governmental agreement for the Englewood Police Department to accept $218,000.00 from the South Metro Drug Task Force.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The City of Englewood Police Department was notified on April 21, 2011, that it was selected by the Executive Board of the South Metro Drug Task Force to be one of two recipients that would receive $218,000.00. No application was required in order to receive this funding. The Englewood Police Department committed one existing officer to the South Metro Drug Task Force and in turn was awarded the $218,000.00. This award covers a two-year period for the officer to be assigned to the South Metro Drug Task Force and offsets this officer's salary and benefits. There is no further obligation for the Englewood Police Department following the two-year term. A check in the amount of $218,000.00 was received and deposited by the City of Englewood on May 26, 2011.

FINANCIAL IMPACT

The funding source is the South Metro Drug Task Force Federal Forfeiture account, but because the Task Force is not recognized as a legal law enforcement entity, the South Metro Drug Task Force transferred the money to the Arapahoe County Sheriff's Office Forfeiture Fund. The Sheriff's Office in turn accepted the money and then distributed the money to the Cities of Englewood and Littleton Police Departments. This process was approved by the 18th Judicial District Attorney's Office. On or about June 1, 2011, the Englewood Police Officer began his assignment at the South Metro Drug Task Force.

There is a personnel cost to the Englewood Police Department, however, this is offset by the $218,000.00. This existing officer's salary and benefits had already been incorporated into the Police Department's 2011 budget. The City of Englewood's commitment for assigning this officer to the Drug Task Force will end on May 31, 2013.

LIST OF ATTACHMENTS

Proposed Bill for an ordinance

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 14
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR THE ACCEPTANCE OF AN AWARD TO FUND AN ENGLEWOOD POLICE OFFICER FOR 2011 AND 2012 TO BE ASSIGNED TO THE SOUTH METRO DRUG TASK FORCE.

WHEREAS, Englewood was notified in April of 2011 that it had been selected by the Executive Board of the South Metro Drug Task Force to receive funding; and

WHEREAS, the Englewood Police Department committed and assigned one officer to the South Metro Drug Task Force for a 2 year period; and

WHEREAS, in May 2011 Englewood received the funds from the South Metro Drug Task Force, these fund were to offset the Englewood Police Department's cost of the officer's salary; and

WHEREAS, in June 2011 an Englewood Police Officer began his assignment at South Metro Drug Task Force; and

WHEREAS, with the passage of this Ordinance the Englewood City Council authorizes the Intergovernmental Agreement and acceptance of the award of funds;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the Intergovernmental Agreement for the acceptance of an award to fund an Englewood Police Officer for 2011 and 2012 to be assigned the South Metro Drug Task Force, attached hereto as "Exhibit A".

Section 2. The funds received are from the South Metro Drug Task Force Federal Forfeiture Account which, because the South Metro Drug Task Force is not recognized as a legal entity are passed through the Arapahoe County Sheriff's Office and approved by the District Attorney of the 18th Judicial District of Colorado.

Introduced, read in full, and passed on first reading on the 19th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 23rd day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 19th day of March, 2012.

Kerry Bush

EXHIBIT A

South Metro Drug Task Force

P.O. BOX 549
LITTLETON, CO 80160-549
720-748-2995 FAX 720-748-2945

AGENDA

April 21, 2011 9:00 a.m.

Arapahoe County Sheriff's Office Administration Building

SMDTF Forfeiture Board

First item of business:

Approval of below funds to be accepted as deposited into the South Metro Drug Task Force State Forfeiture Account:

1. **Proceeds from case 07-377**
   2008CV-536, *(Flores) Disbursement Check from Courts:*
   $ 1,197.50
2. **Proceeds from case 09-201**
   2009CV-2378, *(Hix) Disbursement Check from Courts:*
   $ 666.48
3. **Proceeds from case 08-229**
   2008CV-2158, *(Thortvedt) Disbursement Check from Courts*
   $ 1,425.34
4. **Proceeds from case 09-397**
   2010CV-21, *(Davis) Disbursement Check from Courts*
   $ 1,655.68

Total amount requested to be authorized for deposit -SMDTF State Forfeiture Account: $4,945.00

The request before the Board is to have $4,945.00 be accepted as deposited in the South Metro Drug Task Force State Forfeiture Account.

Second item of business:

Approval to transfer the personnel funding for two (2) FTE's out of the SMDTF Federal Forfeiture Account that was approved at the February 3, 2011 Forfeiture Board meeting, to the Arapahoe County Sheriffs Office Federal Forfeiture Account. The funds are being transferred to the Arapahoe County Sheriffs Office Federal Forfeiture Account since SMDTF is unable to enter into a contract with the selected agencies.

The costs are broken down as follows:

(2) FTE for 2 years:	2 x $100.00 per year	= $400,000.00
(2) Vehicle Leases:	2 x $13,000.00 per year	= $26,000.00
(2) Pac-set Radios:	2 x $5000.00	=$10,000.00
	Total:	=$436,000.00

The request before the Board is to move the previously approved personnel funds for two (2) FTE's, monies for their vehicle leases, and Pac-Set Radios to the Arapahoe County Sheriffs Office Federal Forfeiture Account in the amount of $436,000.00.

Third item of business:

Approval to utilize State Forfeiture Funds for 9 SMDTF Agents and 1 Sergeant, to attend the 2011 Colorado Drug Investigators Association (CDIA) 9th Annual Conference in Breckenridge.

The costs are broken down as follows:

Conference Fee:	**$175.00 each x 10**	**=$1,750.00**
Hotel Room:	**$100.00 a night x 3 nights x 10 rooms**	**= $3,000.00**
Per Diem for 3 days:	**$56.00 a day x 3 days x 10**	**= $1,680.00**

(Per Diem rate obtained from ACSO Budget and Logistics)

Total Cost: $6,430.00

The request before the Board is to have up to $6,430.00 available from the State Forfeiture Fund Account to be used for attendance at the 2011 CDIA Conference.

Arapahoe County Sheriff's Office
Forfeiture Fund Board
Telephone Board Meeting
April 26, 2011
8:00 a.m.

1. Meeting brought to order on April 26, 2011 by Gail Thrasher at 8:00 am.

2. Board Members Present: Commissioner Frank Weddig, Sheriff Grayson Robinson, and Deputy District Attorney Leslie Hansen.

3. Business Items
   a. Fund Balance Report
      i. Gail Thrasher reported that the fund balance is $60,147.63

   b. Transfer of monies from South Metro asset forfeiture to the Arapahoe County Sheriff's Office.
      i. Gail Thrasher reported that the Arapahoe County Sheriff's Office received a check from South Metro Drug Task Force in the amount of $436,000 on Friday, April 22, 2011. She told the other Board members that the Treasurer's Office should deposit the funds on Tuesday, April 26, 2011 but it may take 3 days to clear.
   c. Transfer of ½ of the funds to Englewood Police Department and the other ½ to Littleton Police Department.
      i. Gail Thrasher reported that the money will be used to fund one officer at Englewood P.D. and one officer at Littleton P.D. for a 2 year exclusive assignment at South Metro Drug Task Force.
      ii. Sheriff Robinson explained the importance of having South Metro personnel. He stated that South Metro is not a legal entity and that they serve as a subgroup of the agencies. He stated that after having discussions with Legal, they decided that the best route would be to transfer the funding to the Arapahoe County Sheriff's Office. The Arapahoe County Sheriff's Office would then distribute the funds to the two agencies. He said that an IGA would not be needed. He was going to draft a letter to the 2 Chiefs of Police. The letters will contain an area for a signed acknowledgement from each agency and that would be all that is needed.
      iii. Leslie Hansen had questions about what was being funded. The Sheriff explained that the funding will be for salary and benefits for the two officers for a two year exclusive assignment and also for radios and vehicle leases for these officers. She then asked if there were any restrictions on the use of forfeiture funds for salaries. The Sheriff stated that he received two legal opinions, one from the County Attorney's Office and one from the D.A.'s Office. The person from the D.A.'s Office is on the South Metro Asset Board. Both opinions were that it was ok to use the funds for salaries and benefits.

Arapahoe County Sheriff's Office
Forfeiture Fund Board
Telephone Board Meeting
April 26, 2011
8:00 a.m.

d. Two motions were requested to be made and two votes were taken
   i. Motion was requested to be made to accept the funds from South Metro asset forfeiture
      1. Motion made by Commissioner Weddig
      2. Motion seconded by Sheriff Robinson

   ii. Vote was taken to accept the funds from South Metro asset forfeiture
      1. All votes were in favor

   iii. Motion was requested to be made to transfer ½ of the funds received by the Sheriff's Office to Englewood P. D. and the other ½ to Littleton P.D. to fund the two agents for a two year exclusive assignment at South Metro
      1. Motion was made by Commissioner Weddig
      2. Motion seconded by Leslie Hansen

   iv. Vote was taken to transfer ½ the funds received by the Arapahoe County Sheriff's Office to Englewood P.D. and the other ½ to Littleton P. D. to fund the two agents for a two year exclusive assignment at South Metro
      1. All votes were in favor

4. Other Business

There was no other business to conduct and the meeting was adjourned at 8:08 a.m., April 26, 2011.

ARAPAHOE COUNTY SHERIFF'S OFFICE
PURCHASE ORDER REQUEST

DIVISION NUMBER:

DATE REQUESTED: 4/27/2011

REQUIRED DATE: ASAP

SHIP TO ADDRESS: Arapahoe County Sheriff's Office
13101 East Broncos Pkwy
Centennial, CO 80112

SUGGESTED VENDOR: Englewood Police Department

Vendor #2000012593

ACCOUNT NUMBER	DESCRIPTION	QT	UOM	QUOTED UNIT PRICE	TOTAL COST
227010015	We received a check in the amount of $436,000 from South Metro on Friday, April 22nd ~~$~~ The money will be used to fund one officer at Englewood P.D. and one officer at Littleton P.D. for a 2 year exclusive assignment at South Metro Drug Task Force.	1			218,000.00
					-
				TOTAL	$ 218,000.00

SPECIAL INSTRUCTIONS:
PLEASE SHIP TO 13101 EAST BRONCOS PARKWAY CENTENNIAL, 80112

BUREAU: Public Safety and Detentions

REQUESTED BY: Gail Thrasher _____ DATE: 4-28-11

APPROVED BY: _____ DATE: 4-28-11

ARAPAHOE COUNTY SHERIFF'S OFFICE
PURCHASE ORDER REQUEST

DIVISION NUMBER:

DATE REQUESTED: 4/27/2011

REQUIRED DATE: ASAP

SHIP TO ADDRESS: Arapahoe County Sheriff's Office
13101 East Broncos Pkwy
Centennial, CO 80112

SUGGESTED VENDOR: Littleton Police Department

Vendor #2000011815

ACCOUNT NUMBER	DESCRIPTION	QT	UOM	QUOTED UNIT PRICE	TOTAL COST
227010015	We received a check in the amount of $436,000 from South Metro on Friday, April 22nd 1) The money will be used to fund one officer at Englewood P.D. and one officer at Littleton P.D. for a 2 year exclusive assignment at South Metro Drug Task Force.	1			218,000.00
					-
				TOTAL	$ 218,000.00

SPECIAL INSTRUCTIONS:
PLEASE SHIP TO 13101 EAST BRONCOS PARKWAY CENTENNIAL, 80112

BUREAU: **Public Safety and Detentions**

REQUESTED BY: Gail Thrasher _____ DATE: 4-28-11

APPROVED BY: _____ DATE: 4-28-11

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 10
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE ADOPTING AMENDMENTS TO THE CITY OF ENGLEWOOD POLICE OFFICERS PENSION PLAN DOCUMENT (THE PLAN).

WHEREAS, the City of Englewood (the "Employer") established the City of Englewood Police Officers Pension Plan (the "Plan") effective as amended and restated January 1, 1999, with the passage of Ordinance No. 47, Series 1999; and

WHEREAS, the City Council of the City of Englewood, Colorado authorized adopting amendments to the City of Englewood Police Officers Pension Plan Document (the Plan) Article XV, Section 2.b with the passage of Ordinance No. 50, Series of 2011; and

WHEREAS, pursuant to Article XIII of the Plan, the Employer has the authority to amend the Plan to comply with state or federal requirements and maintain the qualified status of the Plan; and

WHEREAS, Internal Revenue Service (IRS) or the Colorado State Statutes require amending of Article II, Section 4; Article IV, Section 4; and Article VII, Section 6 of the Plan in order to comply with federal or state requirements.

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 adopts the following language to be added to Article II, Section 4 of the City of Englewood Police Officers Pension Plan effective January 1, 2008, to read as follows:

Add to Article II, Section 4 to clarify the application of Code Section 414(u) requirements that have been in effect since December 12, 1994:

> A Participant who returns to employment with the City from qualified military service during the period within which reemployment rights are guaranteed by law will receive Service with respect to the Participant's period of qualified military service (within the meaning of Section 414(u)(1) of the Code) in subsections a and b below.
>
> a. Service Necessary for a Deferred Vested Pension. A Participant's qualified military service counts toward the five years of Service required for a Deferred Vested Pension.

b. Service for All Purposes Other Than Deferred Vested Pension Requirements. For purposes other than described in subsection a. above, a Participant's qualified military service counts toward Service only to the extent the Participant elects to make contributions to the Plan for all or part of the period of qualified military service, as described in Article IV Section 4.

Section 2. The City Council of the City of Englewood, Colorado hereby adopts the following language to be added to Article IV, a new Section 4 of the City of Englewood Police Officers Pension Plan effective January 1, 2008, to read as follows:

Add a new Section 4, to Article IV to read as follows, to clarify the application of Code Section 414(u) requirements that have been in effect since December 12, 1994:

Section 4. Contributions for Periods of Qualified Military Service.

This Section applies to a Participant who returns to employment with the City from qualified military service during the period within which reemployment rights are guaranteed by law. The Participant may elect to contribute to the Plan all or a part of the contributions the Participant would have made to the Plan according to Article IV, Section 2 if the Participant had remained continuously employed by the City throughout the period of the Participant's qualified military service. The amount of contributions the Participant may make according to this Section shall be determined on the basis of the Participant's Compensation in effect immediately before the qualified military service and the terms of the Plan during the Participant's period of qualified military service.

A Participant may make such contributions during a period beginning on the Participant's reemployment with the City and lasting for the shorter of five years or three times the Participant's period of qualified military service. To the extent the Participant makes contributions permitted by this Section, the Participant will receive Service as described in Article II, Section 4.b for the period of qualified military service to which the contributions relate.

Section 3. The City Council of the City of Englewood, Colorado hereby adopts the following language to be added to Article VII, a new Section 6 of the City of Englewood Police Officers Pension Plan effective January 1, 2008, to read as follows:

Add a new Section 6, to Article VII, to read as follows, to comply with death benefit requirements of the "HEART" Act effective January 1, 2007:

Section 6. Survivor Benefits for Deaths during Military Service.

Effective January 1, 2007, if a Participant dies while performing qualified military service (within the meaning of Section 414(u)(1) of the Code), the Participant shall be treated as having terminated employment with the City due to his death for purposes of any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan.

Section 4. The Mayor and City Clerk are authorized to sign and attest the Amendments to the City of Englewood Police Pension Plan Document.

Introduced, read in full, and passed on first reading on the 5th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of March, 2012 for thirty (30) days.

Read by title and passed on final reading on the 19th day of March, 2012.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2012, on the 23rd day of March, 2012.

Published by title on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

_____
Randy P. Penn, Mayor

ATTEST:

_____
Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 2012.

_____
Kerry Bush

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 11
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE ADOPTING AMENDMENTS TO THE CITY OF ENGLEWOOD FIREFIGHTERS PENSION PLAN DOCUMENT (THE PLAN).

WHEREAS, the City of Englewood (the "Employer") established the City of Englewood Firefighters Pension Plan (the "Plan") effective as amended and restated January 1, 1999, with the passage of Ordinance No. 46, Series of 1999; and

WHEREAS, the City Council of the City of Englewood, Colorado authorized adopting amendments to the Englewood Firefighters Pension Plan Document (the Plan) Article XIII with the passage of Ordinance No. 51, Series 2011; and

WHEREAS, pursuant to Article XIII of the Plan, the Employer has the authority to amend the Plan to comply with state or federal requirements and maintain the qualified status of the Plan; and

WHEREAS, Internal Revenue Service (IRS) or the Colorado State Statutes require amending of Article II, Section 4; Article IV, Section 4; and Article VII, Section 6 of the plan in order to comply with federal or state requirements.

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 adopts the following language to be added to Article II, Section 4, of the City of Englewood Firefighters Pension Plan effective January 1, 2008, to read as follows:

Add the following to Article II, Section 4, to clarify the application of Code Section 414(u) requirements that have been in effect since December 12, 1994:

> A Participant who returns to employment with the City from qualified military service during the period within which reemployment rights are guaranteed by law will receive Service with respect to the Participant's period of qualified military service (within the meaning of Section 414(u)(1) of the Code) in accordance with Section 414(u) of the Code and applicable regulations, and as described in subsections a and b below.
>
> a. Service Necessary for a Deferred Vested Pension. A Participant's qualified military service counts toward the five years of Service required for a Deferred Vested Pension.

b. Service for All Purposes Other Than Deferred Vested Pension Requirements. For purposes other than described in subsection a. above, a Participant's qualified military service counts toward Service only to the extent the Participant elects to make contributions to the Plan for all or part of the period of qualified military service, as described in Article IV, Section 4.

Section 2. The City Council of the City of Englewood, Colorado hereby adopts the following language to be added to Article IV, a new Section 4, of the City of Englewood Firefighters Pension Plan effective January 1, 2008, to read as follows:

Add a new Section 4, to Article IV, to read as follows, to clarify the application of Code section 414(u) requirements that have been in effect since December 12, 1994:

Section 4. Contributions for Periods of Qualified Military Service.

This Section applies to a Participant who returns to employment with the City from qualified military service during the period within which reemployment rights are guaranteed by law. The Participant may elect to contribute to the Plan all or a part of the contributions the Participant would have made to the Plan according to Article IV, Section 2 if the Participant had remained continuously employed by the City throughout the period of the Participant's qualified military service. The amount of contributions the Participant may make according to this Section shall be determined on the basis of the Participant's Compensation in effect immediately before the qualified military service and the terms of the Plan during the Participant's period of qualified military service.

A Participant may make such contributions during a period beginning on the Participant's reemployment with the City and lasting for the shorter of five years or three times the Participant's period of qualified military service. To the extent the Participant makes contributions permitted by this Section, the Participant will receive Service as described in Article II, Section 4.b for the period of qualified military service to which the contributions relate.

Section 3. The City Council of the City of Englewood, Colorado hereby adopts the following language to be added to Article VII, a new Section 6, of the City of Englewood Firefighters Pension Plan effective January 1, 2008, to read as follows:

Add a new Section 6, to Article VII, to read as follows, to comply with death benefit requirements of the "HEART" Act effective January 1, 2007:

Section 6. Survivor Benefits for Deaths During Military Service.

Effective January 1, 2007, if a Participant dies while performing qualified military service (within the meaning of Section 414(u)(1) of the Code), the Participant shall be treated as having terminated employment with the City due to his death for purposes of any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan.

Section 4. The Mayor and City Clerk are authorized to sign and attest the Amendments to the City of Englewood Firefighters Pension Plan Document.

Introduced, read in full, and passed on first reading on the 5th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of March

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of March, 2012 for thirty (30) days.

Read by title and passed on final reading on the 19th day of March, 2012.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2012, on the 23rd day of March, 2012.

Published by title on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 2012.

Kerry Bush

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 12
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE AUTHORIZING AN APPLICATION FOR AND ACCEPTANCE OF "COLORADO EMERGENCY MEDICAL AND TRAUMA SERVICES (EMTS) PROVIDER GRANT" BETWEEN THE CITY OF ENGLEWOOD, COLORADO AND THE STATE OF COLORADO.

WHEREAS, the Colorado Emergency Medical and Trauma Services (EMTS) Provider Grant program is intended to assist public and private organizations in maintaining, improving and expanding the emergency medical and trauma services in Colorado; and

WHEREAS, the City of Englewood, Colorado, desires to apply for the Colorado Emergency Medical and Trauma Services (EMTS) Provider Grant from the State of Colorado to assist with the purchase of High Plains Information Systems' PhysioControl LifePak 12/15 interface software; and

WHEREAS, the PhysioControl LifePak 12/15 interface software will greatly enhance patient outcomes; and

WHEREAS, if the City is granted the Colorado Emergency Medical and Trauma Services (EMTS) Provider Grant, which is a matching grant requiring a minimum of a 50% match, the City's share will be $1,950;

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

Section 1. The City of Englewood, Colorado, is hereby authorized to file an application for the Colorado Emergency Medical and Trauma Services (EMTS) Provider Grant program from the State of Colorado, attached hereto as Exhibit A.

Section 2. The Fire Chief is authorized to sign all necessary documents for the Colorado Emergency Medical and Trauma Services (EMTS) Provider Grant application for and on behalf of the City Council and the City of Englewood.

Section 3. The City Council of the City of Englewood, Colorado hereby authorizes the acceptance of the Colorado Emergency Medical and Trauma Services (EMTS) Provider Grant should it be awarded by the State of Colorado.

Section 4. The Grant funds will be awarded from the State of Colorado and the City's matching requirement of $1,950 will be from the Fire Department 2012 Budget for "Durable Medical Supplies".

Section 5. Upon award of the Colorado Emergency Medical and Trauma Services (EMTS) Provider Grant the Mayor is hereby authorized to sign for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 5th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of March, 2012 for thirty (30) days.

Read by title and passed on final reading on the 19th day of March, 2012.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2012, on the 23rd day of March, 2012.

Published by title on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 2012.

Kerry Bush

EXHIBIT A

Colorado EMTS Provider Grant Request

Close

Englewood Fire Department (1521) Date submitted: 2/15/2012

Agency Information

1. Legal Name of Agency:	Englewood Fire Department
2. Business Name:	Englewood Fire Department
3. Federal Tax ID:	84-6000583
4. Grant Contact:	Steve Green EMS Coordinator
5. Agency Mailing Address:	3615 S Elati St Englewood, CO 80110
6. Primary Phone Number:	303-762-2476
7. Fax:	303-762-2406
8. E-Mail:	
9. Completed by:	Steve Green

Grant Options

1. Organization Match Percentage:	50%
2. Is this a multi-organizational Application?	No
3. Select the counties that this grant project impacts:	Arapahoe

4. Please describe your overall grant request in ten sentences or less:
We are requesting grant assistance so we can purchase a software patch for our electronic patient care reporting (EPCR) system. Our goal is to include field cardiac tracings as a part of the EPCR. Paper copies of cardiac tracings are frequently separated from the rest of the patient care report and are not available to in-hospital care providers. Including it in the EPCR would allow us to ensure that field cardiac tracings would become a part of the patient's permanent record. The desired software patch would allow us to upload field cardiac tracings from our LifePak 12s to our EPCR system.

Categories Selected

Category	Total Price	Match	Agency Amount	State Amount	Amount Funded
Other Categories	$3,900.00	50%	$1,950.00	$1,950.00	
Total for All Categories	$3,900.00		1,950.00	$1,950.00	

Other Category Request

Items Requested:

Quantity	Description	Price Each	Total Price	Percent Match	Agency Amount	State Amount	Amount Funded
1	Physio-Control LifePak 12/15 Interface	$3,900.00	$3,900.00	50%	$1,950.00	$1,950.00	
	Other Category Total		$3,900.00		$1,950.00	$1,950.00	

Service Needs:

1. Briefly describe your proposed project:
   This project, the purchase of the LifePak 12/15 interface, will allow our providers to include electrocardiograph tracings (ECGs) in the electronic patient care report (EPCR). We use High Plains Fire Manager EPCR software and LifePak 12 monitors. The interface is the software needed to allow that transfer of information to take place.

2. Explain why this project should be considered in this particular category:
   We included this project in the "Other" category because it did not seem to fit in any other category. It is a form of data collection, but not related to required State of Colorado data. The project is related to our cardiac monitor, but does not meet the definition of durable medical equipment, as we understand it.

3. Describe the need for this project and how it will benefit Colorado's EMS and trauma system:
   Paper ECGs are frequently not transferred with the patient or are lost during records transfers, prior to permanent storage. Lack of field ECGs can result in ths loss of critical information, the possibility of a missed diagnosis, a reduced quality of long-term care and a reduced ability to evaluate the quality of care provided. Our medical director, field providers and automatic/mutual aid partners are all in support of our obtaining this capability. Insurance companies are beginning to ask that field cardiac tracings will be included in the patient care report, as well. By providing a higher level of documentation, a higher level of long term care is afforded the patient.

4. List the specific deliverables for this project, including the parties responsible for implementation and the proposed timeline:
   The implementation of this project will be through the EMS Coordinator and Deputy Chief's offices. The interface would be purchased immediately on approval of the requested grant and training on its use will be scheduled as soon as possible after installation, within 30 days.

5. Describe the outcome measures related to the deliverables. How will performance be measured?
   Performance will be measured on a percentage of cardiac tracings attached to EPCRs versus ECG evaluations noted in EPCRs. Our target outcome is that 100% of ECGs performed will be attached to the related EPCR. This evaluation will initially be performed by the EMS Coordinator and Deputy Chief, subsequently by the Fire Department's standing EMS Performance Improvement Committee. Long term outcome improvement is more difficult to measure, but is considered highly likely in a percentage of the patients contacted.

6. How will evaluation results and best practices be shared, if applicable:
   Our evaluation results will be shared through the Denver Metro EMS Coordinators and Medical Directors meetings through a report to that group, as well as any other information of interest that may come out of evaluating our compliance with the target outcome.

7. Describe local support for this project and how this support will help ensure successful completion:
   A letter from Kaiser Permanente related to this need is attached.

Priority to Underdeveloped or Aged Systems:

8. Explain how this proposed project addresses an underdeveloped or aged component of Colorado's EMS and trauma system:
   Our LifePak 12s are all about nine years old. We are careful to keep them well maintained, in part because of their age and high usage, but also because of the critical nature of their function. The capability of seeing ECGs in the field is not new, nor is the desire to transmit or deliver that information to the receiving facility. We are, however, well behind the standard of care in the Denver Metro area for being able to attach this information to patient care reports.

Cost Effectiveness:

9. Briefly describe the alternatives your agency considered and why this is the most cost effective alternative:
   Outside of the current procedure, the only other known alternative to a software interface is having a person assigned or a procedure established to create a scanned electronic copy of the ECG and manually attach it to the appropriate patient care report. This would be a very costly, time-consuming alternative and has a substantial potential for time delays and errors.

10. If applicable, briefly describe the process used to select the vendor(s):
    This is a sole source project. We have to use our current EPCR vendor to provide this interface.

11. How will this project be sustained financially in future years?
    There are no known costs to sustain this project. Software updates are planned for as a part of maintaining the basic EPCR system.

Applicant's qualifications:

12. Explain how adequate resources and experience are available to help ensure successful completion of this project:
    We have the hardware and EPCR system in place to allow successful installation of the interface. We have personnel experienced in the use of the High Plains EPCR system who can teach providers to use the interface successfully and we have the personnel in place to evaluate whether or not we are meeting our target goal of 100% compliance.

13. Explain how the applicant's qualifications will help ensure long term sustainability of this project:
    We have been providing EMS services for about forty years. Our field providers are becoming more and more astute regarding technology and are eager to maintain a cutting edge, state of the art EMS system. It is also our feeling that, in the near future, this capability will be considered a minimum standard for providers obtaining ECGs in the field of EMS.

Systems Integration:

14. How does this project improve system compatibility and/or reduce duplication?
    Our adjoining agencies already have the capability of attaching ECGs to EPCRs. This project would bring our capabilities in line with theirs, in this area.

Financial Need:

15. Explain why your organization needs grant funding to complete this project:
    As noted in our financial statement, the City of Englewood has had, at best, a flat revenue stream for about 14 years. This has made it extremely difficult to maintain our EMS system in general, much less as state of the art. Our return on EMS billing, between 25 and 37%, reflects the challenges that come with that flat revenue stream. Our EMS service has been required to resort to grants to fund such basics as apparatus replacement and equipment purchase, because of a lack of available funds in the City budget.

16. What would happen if these grant funds were not secured?
    We have requested funds for this interface for at least five consecutive years, without success. I do not see that outcome changing, if the grant funds are not secured.

File Attachments

17. Uploads – vendor quote required, letters of support recommended:
    Kaiser ECG letter.pdf
    LIFEPAK 12-15 Interface Quote.pdf

Organization Profile for Englewood Fire Department

Organization Data

A. Agency / Facility Information

1. **Legal Name of Organization:** Englewood Fire Department
   ID Number: 1521
   Profile Year: 2012
   Submission Date: 1/30/2012
2. **Doing Business Name of Organization:** Englewood Fire Department
3. **Physical Address:** 3615 S Elati St
   Englewood, CO 80110

Physical County:	Arapahoe
4. **Mailing Address:**	3615 S Elati St Englewood, CO 80110
5. **Person Filling out this Profile:**	Steve Green
6. **Primary Phone Number:**	303-762-2470
7. **Fax Phone:**	303-762-2406
8. **E-Mail:**	
9. **Web Site:**	englewoodgov.org
10. **RETAC Affiliated With:**	Mile-High

B. Organization Types

1. **EMS Response:**	Yes
2. **Medical Facility:**	No
3. **EMS Education Program:**	No
4. **County officials issuing ambulance licenses or County EMS Councils:**	No
5 **RETAC:**	No
6. **Association / Foundation / Other:**	No

C. Service Area

1. **In one or two short paragraphs describe the geographic area serviced by this organization:**

The City of Englewood is a full service city of about 32,000 residents in an urban area of approximately 6.4 square miles, located between Denver, Littleton, Sheridan and Cherry Hills. Housing is about half rental and half owner-occupied, resident demographic is described by the US Census as "lower middle income."

The city is traversed by two highways that are also haz-mat transportation routes, US 285 (Hampden Ave) and US 85 (Sante Fe Drive), heavy rail carrying about 44 freight trains a day, and light rail.

Englewood Fire Department provides the city with fire protection, EMS, building and fire code enforcement, public education, fire and medical related training and other safety related services, including car seat inspections and CO detector installation.

The fire department consists of 51 responders and 5 support staff. Two ambulances are equipped and staffed for 24-hour a day, seven day a week advanced life support care and provide full transport services. The fire department responded to 4,259 calls for service in 2011, with 2,752 patient contacts. About 85% of the 2,346 patients transported in 2011 were residents of the city.

The fire department is funded by the city's General Fund. The majority of revenues for this fund are generated from sales taxes. Ambulance transport fees go to the General Fund, and do not directly benefit the fire department.

The EMS budget is for expendable and durable medical supplies, charges for patient billing and training.

D. Funding

1. **Is this organization interested in EMTS Section funding programs?** Yes

EMS Contacts

A. EMS Organization

1. **EMS Organization Name:** Englewood Fire Department
2. **Licensing:**
   Is this organization a county licensed ground ambulance service? Yes
   Is this organization a Colorado licensed air ambulance service or currently applying for licensure? No

B. EMS Service Director

1. **Director's Name:** Michael Pattarozzi
   Job Title: Fire Chief
2. **Mailing Address:** 3615 S Elati St
   Englewood, CO 80110
3. **Primary Phone Number:** 303-762-2481
4. **E-Mail:**

C. EMS Alternate Contact

1. **Alternate Contact's Name:** Richard Petau
   Job Title: Deputy Fire Chief
2. **E-Mail:**

D. EMS Medical Director

1. **Medical Director's Name:**	Dylan Luyten
2. **Mailing Address:**	c/o Heatlh One EMS 300 E Hampden Ave Suite 100 Englewood, CO 80110
3. **Primary Phone Number:**	303-788-6819
4. **E-Mail:**	
5. **Colorado Medical License Number:**	40919

E. EMS Data Administrator

1. **EMS Data Administrator Name:**	Steve Green
Job Title:	EMS Coordinator
2 **Primary Phone Number:**	303-762-2476
3. **E-Mail:**	

F. Emergency 24 Hour Contact

1. **Emergency Contact Name:**	Dispatch Dispatch
Job Title:	Englewood Dispatch Center
2. **Primary Phone Number:**	303-762-2438
3. **E-Mail:**	

Services and Structure

1. **Organizational Structure:**	Fire based
2. **Corporate / Tax Status:**	government
3 **Government Type:**	Municipal - town / city
3a. **Is this EMS service established as a governmental enterprise or enterprise fund?**	No
3b. **Indicate the Type of Special District for this EMS Service:**	N/A
4. **Funding Types:**	User Fees, Tax Funding / Mill Levy, grant
5. **Billing Method:**	Contract Service
6. **Primary service provided by your EMS Organization:**	Scene response with transport
7. **Other services provided by your EMS organization:**	Scene response without transport, Rescue, Hazardous Materials Response
8. **What level of provider can your service send to EVERY call?**	Paramedic

Personnel

Category	Full Time	Part Time	Volunteer	Total
1. First Responder				
2. Emergency Medical Technician (EMT):	27			27
3. Advanced Emergency Medical Technician (AEMT):				
4. Intermediate				
5. Paramedic	24			24
6. Nurse				
7. Physician				
8. Administrative / Other				
9. Full-Time Equivalent Count:				

Requests for EMS Services

A. Requests for Services

1. **Emergency Response with Transport:**	2,346
2. **Interfacility Transports:**	
3. **Emergency Response, no Transport:**	380
4. **Emergency Response Care Transferred / Transport by Other:**	40
5. **Standby:**	
6. **Cancelled Calls:**	
7. **Total:**	2,766

B. EMS Financial Resources

1. **Total Annual EMS Budget for this Organization:**	$65,000.00
2. **Total Annual EMS Charges Billed:**	$2,028,697.00
3. **Total Annual EMS Charges Collected:**	$571,898.00
4. **Crude Collection Rate:**	28.19%

Counties Licensed In

1. **List all counties where this agency is licensed for Ground transport services:**	Arapahoe

Vehicles

Unit Number	Make / Model / Year	Box Make	Mileage	Equipped For	All Wheel Drive	Type kkk.1822	Bought with EMS Funds	Replacement Year
6482	Ford / E-450 / 1999	Wheeled Coach	79,825	ALS		III		2012
6491	Ford / E-450 / 2001	McCoy Miller	85,369	ALS		III		2012
6500	Ford / E-450 / 2005	Wheeled Coach	57,601	ALS		III		2014

EMS Ground Demographics

A. Demographics of Service Area for Ground Transport

1. **Population Density / Urbanicity:**	Urban
2. **Employment Type:**	Paid
3. **Number of stations for this Service:**	3
4. **Average Call Time (Dispatch to Back-In-Service:):**	42.00 minutes
5. **Average patient mileage per transport:**	3.60 miles
6. **Total square miles of your primary service area (land & water):**	7
7. **Estimated permanent population of your primary service area:**	32,300
8. **Population Density of Service Area:**	4,614.29

B. System Participation

1. **Is your agency National Incident Management System (NIMS) compliant?**	Yes

C. EMS Ground Billing Rates

1. **BLS Emergency - HCPCS Code A0429:**	$725.00
2. **ALS Emergency - HCPCS Code A0427:**	$725.00
3. **ALS Level 2 – HCPCS Code A0433:**	$725.00
4. **Specialty Care Transport – HCPCS Code A0434:**	$0.00
5. **Mileage Rate – HCPCS Code A0425:**	$12.00

Funding Information

1. **Legal Name of Organization:**	Englewood Fire Department
2. **Tax ID Number:**	84-6000583

Grant Management Contact

1. **Grant Management Contact Name:**	Steve Green
Job Title:	EMS Coordinator
2. **Mailing Address:**	3615 S Elati St Englewood, CO 80110
3. **Primary Phone Number:**	303-762-2476
4. **E-Mail:**	

Authorized Official

1. **Name of Authorized Official able to sign contracts:**	Michael Pattarozzi
Job Title:	Fire CHief
2. **Is the Authorized Official the chair or president of the governing board for this organization?**	No

Financial Narratives

1. **Briefly Describe how this organization is funded and why it may require EMTS grants:**	Please see the Attached Financial Narrative.
2. **Briefly describe any affiliations or partnerships this organization has with any parent or subsidiary organizations:**	N/A.
3. **File attachments:**	FY 2013 Financial narrative.pdf

Past Years Grant History

Year	Category	Total Requested	State Amount	Funded	Amount Spent
2012	Ambulance and Other Vehicles	$175,000.00	$87,500.00	$72,000.00	$0.00
2011	Ambulance and Other Vehicles	$163,047.00	$81,523.50	$77,674.00	$0.00
2009	EMS and Trauma Equipment	$47,209.52	$23,604.76	$9,270.00	$9,270.00

Additional Attachments

1. W-9, Vendor Disclosure and Attestation:

Grant Attestation.pdf
Vendor Disclosure Statement.pdf
W-9.pdf

Close

KAISER PERMANENTE Ambulance Department

Patient Care Records Request

Englewood Fire Department
3615 South Elati Street
Englewood, CO 80110

March 3, 2011

To: Denver Metro EMS agencies

The Kaiser Permanente Cardiology group recognizes that many patients with various cardiac issues are treated and transported by EMS, and, as a result of the appropriate care provided by EMS crews, the cardiac condition the patient experienced prior to arrival at the hospital has been addressed.

Of course, the in-hospital ECG readings do not reflect the cardiac condition the member experienced in the pre-hospital setting. This information is extremely important and occasionally essential to the Physicians treating the patient.

Because of this, Kaiser Permanente's Cardiology group is requesting that all EMS agencies include copies of any and all ECG tracings be submitted with the PCR when submitting claims for payment and processing.

We would appreciate this very much. It will contribute to the overall quality of patient care, which is initiated by EMS crews in the field.

Should you have any questions, comments or concerns regarding Kaiser Permanente members, I am always at your service.

Thank You,

Samuel D. Wilson BA, NREMT-P
Ambulance Liaison
Medical Services Management
Kaiser Foundation Health Plan
Colorado Region
Office: (303) 636-3345
Pager: (303) 203-3201
Fax: (303) 636-3358

High Plains Information Systems, Inc.
6465 Greenwood Plaza Blvd
Suite 1025
Centennial, CO 80111-4905

Voice: (303) 721-8100
Fax: (303) 721-8199

QUOTATION

Quote Number: 09-076
Quote Date: Mar 24, 2011
Page: 1

Quoted To:
Englewood Fire Department 3615 South Elati Street Englewood, CO 80110

Customer ID	Good Thru	Payment Terms	Sales Rep
efd	4/23/11	Net 15 Days	

Quantity	Item	Description	Unit Price	Amount
1.00		Physio-Control LIFEPAK 12/15 Interface	3,900.00	3,900.00
			Subtotal	3,900.00
			Sales Tax	
			TOTAL	3,900.00

Provider Grant Attestation

Close

1. Legal Name of Agency:	Englewood Fire Department
2. DBA (Doing Business As - If Applicable:	Englewood Fire Department
3. Federal Tax ID Number:	84-6000583
4. **Grant Contact Person:**	Steve Green EMS Coordinator

Authorized Agent

The individual whose name and signature appear below, has been designated by the agency/organization listed above as the Authorized Agent to complete and submit this grant application on its behalf. The agency/organization agrees to comply with the rules and regulations governing the State of Colorado EMTS Grants Program concerning grant requests.

Financial Information

5. The Authorized Agent attests to the agency or organization's ability to provide the matching funds (50%, 40%, 30%, 20% or 10%) to complete the purchase of the grant award, should the agency be awarded state funds.

6. The Authorized Agent is aware that EMTS vehicles and equipment purchased must be without any financial liens and without the item being used as collateral to secure a loan of any kind.

7. The Authorized Agent attests that, to the best of his/her knowledge, the information contained herein, with regard to the Agency's financial condition, is true, accurate and correctly reflects the financial condition of the agency/organization.

Notification of Affected Entities

By signing below, the Authorized Agent also attests to the fact that:

8. The agency(ies)/organization(s) affected by the possible outcome of this grant request, including but not limited to agencies/organizations listed in this application if it is a multi-agency application, has(have) been notified and has(have) agreed to its submission.

Applicant Duties and Obligations Should Funding be Awarded

Should the agency/organization listed in this application receive funding under this grant application, the agency/organization (hereinafter referred to as "grantee") shall, and affirmatively promises to, comply with all of the provisions set forth below.

9. The grantee shall use grant funds received under this grant to complete all aspects of its grant application, and shall not use such funds for purposes other than this.

10. The grantee shall submit quarterly progress reports to the Colorado Department of Public Health and Environment, EMTS Category (hereinafter referred to as 'the State').

11. Requirements for Training and Education Grants

For any training or education requests funded from this application the grantee shall comply with the following terms and conditions:

A. Reimbursement for all travel expenses associated with the training or education program shall be made in accordance with the then current state of Colorado reimbursement rates for travel as specified in the Fiscal Rules of the state of Colorado.

B. Written proof of the successful completion of any training or educational program shall be submitted at the same time as the invoice requesting reimbursement for that training or educational program.

C. Prompt billing at the end of each quarter or semester is expected.

D. If the grantee provides a training or educational program, then the grantee shall acknowledge the use of emergency medical and trauma services account grant funds in all public service announcements, program announcements, or any other printed material used for the purpose of promoting or advertising the training or educational program.

E. If the grantee provides a training or educational program, then the grantee shall develop and utilize a course evaluation tool to measure the effectiveness of that training or educational program. The grantee shall submit a copy of all evaluation reports to the State upon completion of the training or educational program.

12. Requirements for Equipment Grants

For any equipment purchases funded from this application, the grantee shall comply with the following requirements.

A. The grantee shall provide the state with written documentation of the purchase of the specified equipment.

B. All communications equipment shall be purchased from the State award for communications equipment, or from another vendor for a comparable price and quality. If the grantee desires to purchase communications equipment which is not listed on the State award then the grantee must complete, with the State's assistance if needed, an informal competitive solicitation process before purchasing that equipment. If a competitive solicitation process is used, then the grantee shall purchase the communications equipment from the lowest bidder whose bid meets the bid specifications.

C. If the grantee desires to purchase emergency vehicles other than ambulances, then the grantee must complete, with the State's assistance if needed, an informal competitive solicitation process before purchasing that equipment. The proposed specifications for these emergency vehicles must be approved by the State prior to the initiation of the informal competitive solicitation process. If a competitive solicitation process is used, then the grantee shall purchase the emergency vehicles from the lowest bidder whose bid meets the bid specifications.

D. If the grantee desires to purchase medical equipment, then the grantee must complete, with the State's assistance if needed, an informal competitive solicitation process before purchasing that equipment. If a competitive solicitation process is used, then the grantee shall purchase the medical equipment from the lowest bidder whose bid meets the bid specifications.

E. During the initial term and any renewal or extension term of the contract or purchase order issued to convey funding to the grantee, and after the cancellation, termination, or expiration date of said contract or purchase order, the grantee shall acquire and maintain personal property casualty insurance for the replacement value of all equipment it purchases under this grant for the useful life of that purchased equipment.

F. The grantee shall keep inventory control records for all equipment it purchases. The grantee shall obtain the prior, express, written consent of the State before relocating or reallocating any equipment it purchases.

G. The grantee shall provide the State with a picture of each piece of equipment it purchases. The grantee may submit a picture of a piece of purchased equipment at any time, but in no event no later than the date the grantee's final progress report is due to the State.

H. The grantee shall maintain all equipment it purchases in good working order, normal wear and tear excepted. The grantee shall perform all necessary maintenance services for all equipment it purchases in a timely manner and in accordance with all manufacturer's specifications and all manufacturer's warranty requirements. The grantee shall keep detailed and accurate records of all maintenance services it performs on all equipment it purchases.

I. The grantee shall repair or replace all purchased equipment which is damaged, destroyed, lost, stolen, or involved in any other form of casualty.

J. If the grantee ceases to provide emergency medical and trauma services in the state of Colorado, then all equipment purchased under this grant shall either be placed with another operating emergency medical services provider in the state of Colorado, or be sold at public auction for its then fair market value. That portion of the sale proceeds which equals the State's initial financial contribution towards the purchase of that equipment shall be refunded to the State by the grantee. The grantee shall obtain the prior, express written consent of the State prior to any relocation or sale of any purchased equipment.

Authorized Agent

13.	Name	Michael Pattarozzi
14.	Title	Fire CHief
15.	Daytime Phone Number	303-762-2476
16.	Date	02-15-12
17.	Signature of Authorized Agent	

VENDOR DISCLOSURE STATEMENT

Contract Performance Outside the United States or Colorado

Colorado Revised Statute 24-102-206

Contract or Purchase Order Routing Number: _____

Vendor Name: High Plains Information Systems

The person completing this form should be the business' President, Board Chairperson, Contract's Authorized Signatory or the Purchase Order's Statement of Work Signatory.

This form shall be completed and returned to the contracting agency. This applies to all state contracts and purchase orders for services executed after August 3, 2007.

1. Are any services under the contract or any subcontracts or purchase order anticipated to be performed outside the United States or Colorado?

   Yes ☐ No ☒

   If "Yes", please complete the following two questions and then sign the form.
   If "No", please sign the form.

2. Where will the services be performed under the contract, including any subcontracts or purchase order? (List country(ies) and/or state(s).

3. Explain why it is necessary or advantageous to go outside of the United States or the State of Colorado to perform the services under the contract or any subcontracts or purchase order.

Signature: _____ Printed Name Pamela S. Chelise

Title: Business Operations Manager Date: 2/15/2012

Form W-9
Substitute Form
State of Colorado 6-2007

Request For Taxpayer Identification Number and Certification

Give form to the requestor. Do not send to the IRS

EMPLOYEE N

Print or Type
See Specific Instructions on page 3.

Name
City of Englewood, Colorado

Business name, if different from above

Check appropriate box:
☐ Individual/ Sole Proprietor ☐ Corporation ☐ Partnership ☒ Other ▶ Municipal Corp ☐ Exempt from backup withholding

Address (number, street, and apt or suite no.)
1000 Englewood Parkway

CDPHE Requester Name & Extension:

City, state, and ZIP code.
Englewood, CO 80110

Phone Number.
303-762-2300

List Account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN) However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Social Security number

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number

8	4	6	0	0	0	5	8	3

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because, (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if the IRS has notified you that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 3.)

Sign Here | Signature of U.S. person ▶ Date ▶

Minority and Women-owned Businesses (M/WBEs) Self Certification (Please check all boxes that apply)

In an effort to track levels of participation by women and minorities doing business with the State of Colorado, the following information is requested. Please indicate the appropriate category of ownership for your company. "Owned" in this context means a business that is at least 51 percent owned by an individual(s) who also control(s) and operate(s) it. "Control" in this context means exercising the power to make policy decisions. "Operate" means actively involved in the day-to-day management. If your business is jointly owned by both men and women or is a publicly held corporation, please check the box labeled "Not Applicable."

Gender Information:

☐ Female-Owned ☐ Male-Owned ☒ Not Applicable

Owner Ethnicity Information

☐ African American ☐ Asian/Pacific American ☐ White (non-Hispanic) ☒ Not Applicable

☐ Hispanic American ☐ Native American ☐ Other: _____

Small Business Information

Small Business (a business that is organized for profit, is independently owned and operated, and has 25 or fewer full time equivalent employees.)

☐ Yes ☒ No

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 15
INTRODUCED BY COUNCIL
MEMBER JEFFERSON

AN ORDINANCE AMENDING TITLE 5, CHAPTER 3D, SECTIONS 3 AND 19, OF THE ENGLEWOOD MUNICIPAL CODE 2000 WHICH PERTAINS TO MEDICAL MARIJUANA AND PRIMARY CARE-GIVERS.

WHEREAS, a Constitutional Amendment and subsequent legislation provided a method for the registration of patients who wish to use Medical Marijuana and their Primary Care-Givers; and

WHEREAS, the City further wishes to protect and balance the reasonable and lawful rights of patients and Primary Care-Givers with the protection, health, safety and welfare of the people of the City through prevention and mitigation of deleterious and negative secondary effects that may occur or are likely to occur from the presence of Medical Marijuana in the City of Englewood, Colorado; and

WHEREAS, the sale or distribution of Medical Marijuana may be a taxable transaction in accordance with state and local law; and

WHEREAS, federal and state laws are binding upon home rule municipalities. However, neither this Article nor its adoption, implementation, or enforcement shall be construed as an intent of the City, its elected officials, its employees or contractors or Authority members to violate federal law, including but not limited to, the Controlled Substances Act of 1970, as amended, nor shall such adoption, implementation or enforcement be construed as acquiescence or conspiracy by the City, its elected officials, appointed Authority members, contractors, or its employees to violate such federal and state law;

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 5, Chapter 3D, by the addition of a new Section 19, of the Englewood Municipal Code 2000, to read as follows:

5-3D-19: Regulations related to Medical Marijuana Primary Care-Givers.

A. Care-Givers subject to taxation under 4-4-4-1(A) EMC shall be subject to the following regulations:

1. Zoning. The cultivation, sale or distribution of Medical Marijuana shall not be allowed as a Home Occupation in the R-1-A District under Title 16 EMC.

2. Distance restrictions in or out of City limits.

(a) Medical Marijuana shall not be cultivated, manufactured or sold within two thousand feet (2,000') of a school, an alcohol or drug treatment facility, or the principal campus of a college, university, seminary, or a residential child care facility or within two thousand five hundred feet (2,500') of an existing licensed Medical Marijuana Center, Medical Marijuana-Infused Products Manufacturer or Medical Marijuana Optional Premises Cultivation Operation.

(b) The distances referred to in this Title are to be computed by direct measurement from the nearest property line of the land used for a school, or campus or other to the nearest portion of the building in which Medical Marijuana is to be sold, cultivated or infused, using a route of direct pedestrian access.

3. Any cultivation, of Medical Marijuana plants shall be limited within the premises:

(a) A secure, defined, contiguous one hundred fifty (150) square foot area.

4. It shall be unlawful to cultivate, or permit to be cultivated, more than the following maximum number of Medical Marijuana plants:

(a) Six (6) Medical Marijuana plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each Patient of the Primary Care-Giver; or

(b) The aggregate maximum number of Medical Marijuana plants necessary to alleviate the Primary Care-Giver's Patients' chronic or debilitating disease(s) or medical condition(s) as evidenced by the patients' physicians' written medical professional opinion(s).

(c) In no event shall the maximum number of Medical Marijuana plants within a Primary Care-Giver's premises exceed thirty (30) Medical Marijuana plants regardless of size or stage or growth.

5. The facilities for the cultivation, of Medical Marijuana plants shall meet the requirements of all adopted City of Englewood building and safety codes including but not limited to Electrical, Building, Residential, Property Maintenance and Fire Codes.

6. Comply with all applicable sales tax licensing and reporting requirements set forth in the applicable provisions of the Englewood Municipal Code 2000.

7. Records to be kept for compliance verification. The licensing requirements set forth in this Englewood Municipal Code 2000, the Englewood Home Rule Charter and in the Colorado Medical Marijuana Code shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other Federal, State or local law or regulations.

8. A Primary Care-Giver shall provide the registry identification card number of each of his/her patients to employees and contractors of the City, State or Federal and to law enforcement agencies, upon inquiry in the course of their official duties while

investigating compliance with the requirements of this Article. Records should include, but are not limited to:

(a) The quantity of Medical Marijuana dispensed in each transaction.

(b The type and source of Medical Marijuana dispensed.

(c) The total amount paid by the patient for the transaction for all goods and services provided.

(d) Confirmation that the licensee confirmed the identity of the patient receiving the Medical Marijuana with valid photo identification.

(e) The date and time dispensed.

9. To the extent required by law, documentation that evidences the name, address, or other information of a Patient or Primary Care-Giver including but not limited to, applications, permits and correspondence, shall be maintained by the City as confidential. No person shall be permitted to gain access to such confidential documentation except for authorized employees and contractors of the City in the course of their official duties and authorized employees of the Federal, State or City law enforcement agencies.

B. Primary Care-Givers subject to taxation shall also comply with the provisions of 7-6D-12 EMC.

Section 2. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 5, Chapter 3D, Section 3, of the Englewood Municipal Code 2000, to read as follows:

5-3D-3: Definitions.

Any word or term used that is defined in Article XVIII, Section 14 (1)(f) of the Colorado Constitution; in § 25-1.5-101 et.seq. C.R.S. or in the Colorado Medical Marijuana Code, § 12-43.3-101 et.seq. C.R.S. shall have the same meaning that is ascribed to such word or term in those Constitutional provisions or C.R.S. sections unless the definition is amended by this section.

Direct Measurement: means a straight line from the nearest property line of the school or campus to the nearest portion of the building used for medical marijuana.

Good Cause: for purposes of refusing or denying a license renewal, reinstatement, or initial license issuance means:

1. The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of Article 43.3 of Title 12 C.R.S., and rules promulgated pursuant to this Title, or any supplemental local law, rules, or regulations;

2. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the State or Local Licensing Authority;

3. The licensed premises have been operated in a manner that adversely affects the public health, welfare or the safety of the immediate neighborhood in which the establishment is located.

License: means to grant a license or registration pursuant to this Title.

Licensed Premises: means the premises specified in an application for a license under this Title, which are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, or sell Medical Marijuana in accordance with the provisions of Article 43.3 of Title 12 C.R.S.

Licensee: means a person licensed or registered pursuant to Article 43.3 of Title 12 C.R.S. and this Title.

Local Licensing Authority: means the Englewood Local Liquor and Medical Marijuana Licensing Authority.

Local Licensing Official: means the Director of Finance and Administrative Services or designee.

Location: means a particular parcel of land that may be identified by an address or other descriptive means.

Medical Marijuana: means Marijuana that is grown and/or sold pursuant to the provisions of § 106 of Article 1.5 of Title 12 C.R.S.; Article 43.3 of Title 12 C.R.S. and for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

Medical Marijuana Center: means a person licensed pursuant to Article 43.3 of Title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S. that sells Medical Marijuana to registered patients or Primary Care-Givers as defined in Section 14 of Article XVIII of the State Constitution, but is not a Primary Care-Giver.

Medical Marijuana-Infused Product: means a product infused with Medical Marijuana that is intended for use or consumption other than by smoking, including, but not limited to, edible products, ointments, and tinctures. These products, when manufactured or sold by a licensed Medical Marijuana Center or a Medical Marijuana-Infused Product Manufacturer, shall not be considered a food or drug for the purposes of the "Colorado Food and Drug Act", Part 4 of Article 5 of Title 25, C.R.S.

Medical Marijuana-Infused Product Manufacturer: A person licensed pursuant to Article 43.3 of Title 12 C.R.S. to operate a business as described in Article 43.3 of Title 12 C.R.S.

Medical Marijuana Optional Premises Cultivation Operation: means the premises specified in an application for a Medical Marijuana Center License with related growing facilities in Colorado for which the Licensee is authorized to grow and cultivate Marijuana for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

Multi-Tenant Building: A building that is or can be occupied by more than one tenant.

Patient: a person who meets the definition of patient under Article XVIII, Section 14 (1)(d) of the Colorado Constitution and applicable law or regulation.

Person: means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

Premises: means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

Primary Care-Giver: In addition to the definitions set forth in Section 14(1) (f) of Article XVIII of the State Constitution, as used in Article 43.3 of Title 12 C.R.S., unless the context otherwise requires, "Primary Care-Giver" means a natural person, or as may be more fully defined in any applicable Federal or State law or regulation.

School: means a public or private preschool or a public or private elementary, middle, junior high, or high school, college or campus of a college.

Smoking: means the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco or Medical Marijuana as defined by Article 43.3 of Title 12 C.R.S.

State Licensing Authority: means the Authority created for the purpose of regulating and controlling the Licensing of the cultivation, manufacture, distribution, and sale of Medical Marijuana in this State, pursuant to Article 43.3 of Title 12 C.R.S.

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

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

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

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

Section 8. Medical Marijuana Care-Givers, subject to sales tax, currently legally in existence in any zone district as of the effective date of this Ordinance shall be grandfathered and shall be considered a legal use for purposes of the Zoning Ordinance.

Section 9. 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 5th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of March, 2012 for thirty (30) days.

Read by title and passed on final reading on the 19th day of March, 2012.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2012, on the 23rd day of March, 2012.

Published by title on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

_____
Randy P. Penn, Mayor

ATTEST:

_____
Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 2012.

_____
Kerry Bush

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 16
INTRODUCED BY COUNCIL
MEMBER JEFFERSON

AN ORDINANCE AMENDING TITLE 7, CHAPTER 6D, SECTION 12, OF THE ENGLEWOOD MUNICIPAL CODE 2000 WHICH PERTAINS TO MEDICAL MARIJUANA.

WHEREAS, a Constitutional Amendment and subsequent legislation provided a method for the registration of patients and responsibilities regarding cultivation or production of Medical Marijuana; and

WHEREAS, the City further wishes to protect and balance the reasonable and lawful rights of Patients and Primary Care-Givers with the protection, health, safety and welfare of the people of the City through prevention and mitigation of deleterious and negative secondary effects that may occur or are likely to occur from the presence of Medical Marijuana in the City of Englewood, Colorado; and

WHEREAS, federal and state laws are binding upon home rule municipalities. However, neither this Article nor its adoption, implementation, or enforcement shall be construed as an intent of the City, its elected officials, its employees or contractors or Authority members to violate federal law, including but not limited to, the Controlled Substances Act of 1970, as amended, nor shall such adoption, implementation or enforcement be construed as acquiescence or conspiracy by the City, its elected officials, appointed Authority members, contractors, or its employees to violate such federal and state law;

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 7, Chapter 6D, Section 12, of the Englewood Municipal Code 2000, to read as follows:

7-6D-12: Possession of Marijuana Prohibited.

A. Definitions.

Any word or term used that is defined in Article XVIII, Section 14 (1)(f) of the Colorado Constitution; in § 25-1.5-101 et.seq. C.R.S. or in the Colorado Medical Marijuana Code, § 12-43.3-101 et.seq. C.R.S. shall have the same meaning that is ascribed to such word or term in those Constitutional provisions or C.R.S. sections unless the definition is amended by this section.

Consumption or Use of Marijuana: Shall be deemed possession thereof.

Marihuana or Marijuana: All parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, if these items exist apart from any other item defined as "marijuana" herein. "Marijuana" does not include marijuana concentrate as defined below.

~~*Marijuana Concentrate*: Hashish, tetrahydrocannabinols, or any alkaloid, salt, derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols~~.

Medical Marijuana: means Marijuana that is grown and sold pursuant to the provisions of § 106 of Article 1.5 of Title 12 C.R.S.; Article 43.3 of Title 12 C.R.S. and for a purpose authorized by Section 14 of Article XVIII of the State Constitution.

Passenger area: means the area designed to seat the driver and passengers while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including, but not limited to, the glove compartment.

B. It is unlawful for any person to possess one ounce or less of marijuana, except in accordance with Section 14 of Article XVIII of the Colorado Constitution.

C. Restrictions on locations for cultivating Marijuana.

1. It shall be unlawful to cultivate Marijuana in an outdoor area or an accessory structure including but not limited to outdoor gardens, greenhouses, sheds or storage units;

2. It shall be unlawful to cultivate Marijuana within a garage, whether attached or detached, or other structure designed or intended for the keeping or storage of vehicles, equipment or goods;

3. It shall be unlawful to permit Marijuana plants to be perceptible from the exterior of any structure, including but not limited to:

   (a) Common visual observation of Marijuana.

   (b) Odors, smells, fragrances, or other olfactory stimulus generated by the cultivation, production, possession or processing of Marijuana plants that disturbs the repose of another.

   (c) Light pollution, glare, or brightness of artificial illumination associated with the cultivation, of Marijuana plants that disturbs the repose of another.

   (d) Noise from fans in excess of the limits set in Section 6-2-5(F) EMC, as amended.

4. It shall be unlawful to cultivate Medical Marijuana in the common areas of residential property;

D. It shall be unlawful to cultivate or permit to be cultivated, more than the following maximum number of Medical Marijuana plants:

1. Six (6) Medical Marijuana plants with three (3) or fewer being mature, flowering plants that are producing a useable form of marijuana for each Patient of the premises; or

2. The maximum number of Medical Marijuana plants necessary to alleviate the patient's (or patients') chronic debilitating disease(s) or medical condition(s) as evidenced by the patient's (or patients') physician's written professional opinion or recommendation.

E. Concerning Marijuana in Motor Vehicles:

1. A person while in the passenger area of a motor vehicle that is on a public street, highway or public right-of-way may not have Marijuana in his or her possession.

2. The provisions of this Section (E) shall not apply to:

(a) Passengers, other than the driver or a front seat passenger, located in the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation.

(b) Marijuana possession by a passenger, other than the driver or front seat passenger, in the living quarters of a house coach, house trailer, motor home, as defined in C.R.S. §42-1-102(57), or trailer coach, as defined in C.R.S. §42-1-102(106)(a).

(c) The possession of Marijuana in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

(d) The possession of Marijuana in an area not normally occupied by the driver of a passenger in a motor vehicle that is not equipped with a trunk.

~~C.~~ F. The maximum punishment that can be imposed for violation of this Section is as is set forth in Section 1-4-1 of this Code. However, in imposing punishment on minors for violation of this Section, the Court is limited to the restrictions of subsection 1-4-1(B) of this Code.

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 it 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 5th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 7th day of March, 2012 for thirty (30) days.

Read by title and passed on final reading on the 19th day of March, 2012.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2012, on the 23rd day of March, 2012.

Published by title on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

_____
Randy P. Penn, Mayor

ATTEST:

_____
Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 2012.

_____
Kerry Bush

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
March 19, 2012	9 c i	Centennial Park Trail Loop Renovation

Initiated By:	Staff Source:
Department of Parks and Recreation	Dave Lee, Manager of Open Space Jerrell Black, Director of Parks and Recreation

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council Goal: A City that provides diverse cultural, recreational and entertainment opportunities. Council approved funds for the development of the Centennial Park expansion in 2000. Council has supported all previous grant applications from Arapahoe County Open Space.

City Council previously approved Ordinance No. 88, Series of 2010 supporting the Arapahoe County Open Space grant application for Centennial Park Trail Loop Renovation.

On August 15, 2011, City Council approved Ordinance No. 39, Series of 2011 authorizing an intergovernmental agreement between the City of Englewood and the Arapahoe Board of County Commissioners for acceptance of the grant for the Centennial Park Trail Loop Renovation.

Staff discussed the trail renovations at the March 5, 2012 Study Session with Council.

RECOMMENDED ACTION

Staff recommends that Council approve, by motion, a contract for construction of the Centennial Park Trail Loop Renovations to the lowest bidder, Standard Concrete, Inc., in the amount of $319,304.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

In 2011, Arapahoe County voters approved the reauthorization of the Open Space Sales Tax to pay for preservation of open space, protect lands, preserve water quality and provide, maintain and improve neighborhood parks, sport fields, picnic facilities and trails. The City has received annual shareback funds generated by the tax since 2004. In 2005, the County set aside a portion of the tax revenues to fund competitive grant projects. Each year the City is eligible to apply for up to two grants. Since 2005, Englewood has received eight grants totaling $1,463,430.

The Centennial Park Trail Loop project is a renovation of an existing 8 foot wide asphalt trail that is in need of replacement due to deterioration of the asphalt. The 2006 Parks and Recreation Master Plan also called for replacement and widening of the trail around Centennial Lake. The project also includes replacement of a bridge with an ADA accessible bridge, shoreline improvements for fishing

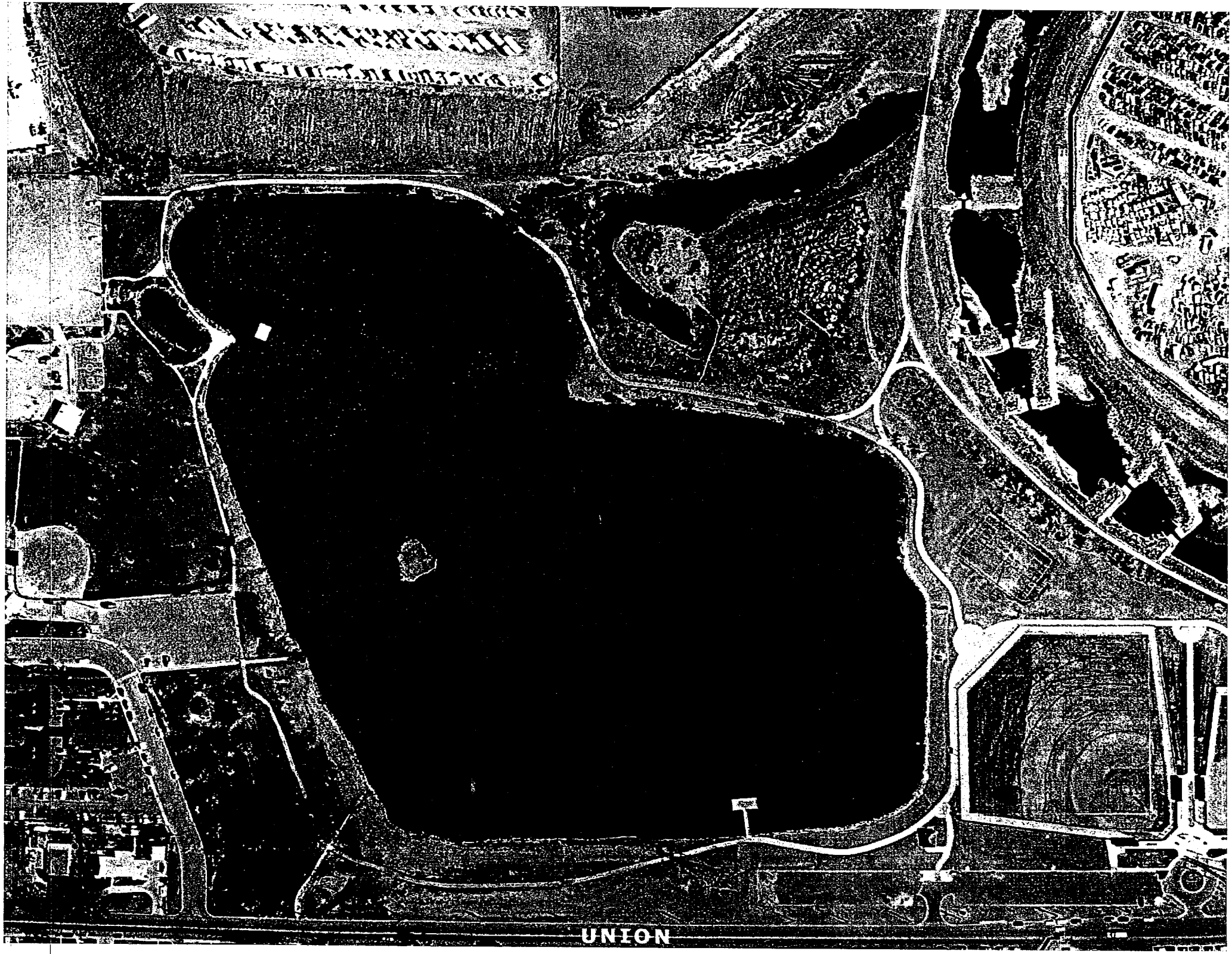
and installing landscaping around a waterfall and pond. The asphalt trail will be replaced with a 10 foot wide concrete path to match an existing 10 foot wide portion of concrete trail and connection to the Mary Carter Greenway Trail.

FINANCIAL IMPACT

Total Project Cost:	$394,800
Arapahoe County Open Space Grant:	$237,100
Open Space Fund:	$157,700

LIST OF ATTACHMENTS

Bid Proposal Tabulation
Map


UNION

City of Englewood Bid Tabulation Sheet

Bid Opening: January 19, 2012 2:00 PM MST

ITEM: ITB-12-030 Centennial Park Trail Loop Renovation Project

Apparent Low Bidder Base Bid Only
Apparent Low Bidder W/ Alt Added

Contractor	Bid Bond Y/N	Receipt of Addendum 1 Y/N	Statement of Qualifications	Total Base Bid	Add Alt Pedestrian Bridge	Total Base and Alt Bid	*Exceptions:*
RMA Group, Inc.	Y	Y	Y	$ 284,106.57	$ 58,208.82	$ 342,315.39	
1228 S Kalamath St.							
Denver, CO 80223							
303-377-6511							
Berville, Inc.	Y	Y	Y	$ 456,705.00	$ 138,595.00	$ 595,300.00	
322 Berthoud Way							
Golden, CO 80401							
720-350-1700							
Urban Farmer	Y	Y	Y	$ 268,332.07	$ 106,934.70	375,266.77	
3431 E 86th Ave.							
Thornton, CO 802296							
303-853-8585							
Jalisco International, Inc.	Y	Y	Y	$ 392,491.10	$ 67,220.20	$ 459,711.30	
6663 Colorado Blvd.							
Commerce City, CO 80022							
303-287-8905							
Goodland Construction, Inc.	Y	Y	N	$ 357,049.90	$ 61,147.00	$ 418,196.90	Statement of Qualifications was not
760 Nile St.							provided
Golden, CO 80401							
303-278-8100							
Colorado Total Maintenance	Y	Y	Y	$ 350,948.10	$ 57,357.52	$ 408,305.62	
PO Box 118							
Englewood, CO 80151							
303-995-9399							
Duran Excavating, Inc.	Y	Y	Y	$ 330,936.90	$ 57,002.00	$ 387,938.90	
418 N. 9th Ave.							
Greeley, CO 80631							
970-351-0192							

SaBells Enterprises, LLP	Y	Y	Y	$ 247,678.10	$ 81,139.35	$ 328,817.45	
5650 Ward Rd.							
Arvada, CO 80002							
303-432-1410							
Double R Excavating	Y	Y	Y	$ 311,770.85	$ 55,388.50	$ 367,159.35	
6800 N. Hwy. 85 PO Box 493							
Sedalia, CO 80135							
303-688-2703							
KECI Colorado, Inc.	Y	Y	Y	$ 328,954.80	$ 86,981.30	$ 415,936.10	
5750 W Airport Rd.							
Sedalia, CO 80135							
303-791-3759							
New Design Construction	Y	Y	Y	$ 430,713.00	$ 101,884.00	$ 532,597.00	
2350 East 70th Ave							
Denver, CO 80229							
303-286-8500							
American Civil Constructors, Inc.	Y	Y	Y	$ 260,040.00	$ 67,584.00	$ 327,624.00	
4901 S Windermere							
Littleton, CO 80120							
303-795-2582							
Lobos Structures, LLC	Y	Y	Y	$ 343,481.66	$ 62,045.50	$ 405,527.16	
8084 Sherman St.							
Denver, CO 80221							
303-669-3811							
Colorado Designscapes, Inc.	Y	Y	Y	$ 286,090.04	$ 61,901.50	$ 347,991.54	
15440 E Fremont Dr							
Centennial, CO 80112							
303-721-9003							
L & M Enterprises, Inc.	Y	Y	Y	$ 356,426.97	$ 101,133.83	$ 457,560.80	
735 E Colorado Hwy 56 PO Box W							
Berthoud, CO 80513							
303-442-7401							

Keene Concrete, Inc.	Y	Y	Y	$ 407,917.09	$ 162,299.00	$ 570,216.09	
30263 Weld County Rd 8							
Keenesburg, CO 80643							
303-227-1901							
Standard Concrete, Inc.	Y	Y	Y	$ 281,571.40	$ 37,732.40	$ 319,303.80	
2521 E 68th Pl							
Denver, CO 80229							
303-931-3608							
US Roads	Y	Y	Y	$ 379,523.80	$ 112,957.60	$ 492,481.40	
5170 N Union Blvd Ste 201							
Colorado Springs, CO 80918							
719-638-6781							

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
March 19, 2012	10 a	Public Hearing to gather public input regarding the sale of the Englewood Depot.

Initiated By:	Staff Source:
City Manager's Office	Michael Flaherty, Deputy City Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

During an Executive Session on February 13, 2012, City Council discussed the initial proposal from Pillar Property Services for the sale of the Englewood Depot. Council considered Pillar's revised proposal during the February 27, 2012 Study Session. Council accepted by motion on March 5, 2012 the proposed purchase price of $50,000 and set a public hearing for March 19, 2012 to gather public input on the proposal.

RECOMMENDED ACTION

Staff recommends that Council consider testimony during the Public Hearing regarding the proposal received from Pillar Property Services, LLC, for the purchase of the Englewood Depot.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Last fall, the City of Englewood was approached by two different parties who expressed interest in purchasing the Englewood Depot, located at 3098 South Galapago Street. Following discussion regarding the proposals, City Council requested that staff issue a Request for Proposal (RFP) to ensure that the sale of the property was open to all interested parties. The RFP was issued in late November. One proposal was received – the proposal submitted by Pillar Property Services, LLC, to purchase the Depot for $50,000.

At its March 5, 2012 meeting, City Council accepted the proposed purchase price, pending a public hearing and approval of an ordinance for sale of City property. The terms and conditions of the sale are as follows:

- The purchase price shall be $50,000.00
- The property will be sold "AS IS, WHERE IS." All warranties, expressed or implied, including fitness for purpose of use are hereby waived by buyer.
- The City will impose a deed restriction on the property that will require the buyer to maintain the historical structure for a minimum period of 30 years from the date of purchase.
- The Buyer will rehabilitate the historic elements of the structure according to the Secretary of the Interior's Standards for Rehabilitation.
- The Buyer will provide the City with the Right of First Refusal, in the event that Buyer subsequently sales the property within X years from the date of purchase.

- The City will not furnish title insurance.
- The City will arrange for the quit claim deed to be executed by the Mayor and recorded upon confirming that the City has received full purchase.
- Buyer must execute any other documents necessary to consummate the sale as provided herein.

Council is also being asked to consider a proposed bill for an ordinance on first reading (Agenda Item 11 a i) at the March 19th meeting authorizing a contract for the sale of the Englewood Depot.

LIST OF ATTACHMENTS

Public input regarding the sale of the Englewood Depot received prior to the Public Hearing
Proposed Bill for an Ordinance

Webmaster

From: Stan Brown [ ]
Sent: Monday, March 12, 2012 2:11 PM
To: Webmaster
Subject: City Councils decision on depot sale

I would encourage the city to sell the depot. The proposal would make the depot a more attractive part of the city and the city would start earning property tax off of it. Stan Brown, President, Alameda Wholesale Nursery, 1950 W. Dartmouth Ave.

Leigh Ann Hoffhines

From: Rick Gillit
Sent: Thursday, March 15, 2012 11:40 AM
To: Council
Subject: FW: Englewood Depot Sale

Leigh Ann ,

Please forward to Council,

Rick Gillit
City Council Member - District #4
Office: 303-762-2300
Direct: (303) 246-4780
Email:
Personal Web Page - www.EnglewoodCitizen.com
1000 Englewood Parkway
Englewood, CO 80110-2373

From: Steven M. Ward [ ]
Sent: Thursday, March 15, 2012 10:12 AM
To: Rick Gillit
Subject: Re: Englewood Depot Sale

Councilman Gillit,

Thank you for your email. I am a relatively new resident of the City of Englewood; I bought a home here last year, and aside from a few visits from the zoning inspector, my experience has been generally good.

My concern with this transaction is more general than specific. I do not like to see the city divesting itself of assets that are of historical value. Presumably, the impetus behind this transaction is the city's current fiscal situation. By selling the Depot, the city can not only save on maintenance costs but also generate a small windfall.

That said, I'm having trouble seeing the harm. Perhaps the price isn't ideal, but according to my reading of the article, this firm isn't planning on tearing down the Depot, but in restoring it on the inside to a useable condition and preserving it on the inside. I am having trouble understanding the problem with putting the Depot to good use - especially if it will attract another business to Englewood.

If there is some behind-the-scenes, sweetheart deal that I don't know about, then I am concerned. I wouldn't want to see the City Manager selling city properties for his friends for below-market rates. That is an abuse of authority. But, if there is not a conflict of interest, then I would encourage you to let the sale go through instead of holding it up over $130,000. Sure, $130,000 is a lot of money, but why not take the $50k now and run?

Thank you again for your time. I look forward to being an active participant in matters of City concern.

Sincerely,

Steven M. Ward

Englewood, CO 80110

Leigh Ann Hoffhines

From: Rick Gillit
Sent: Thursday, March 15, 2012 11:44 AM
To: Council
Subject: FW: Englewood Depot

Leigh Ann,

Please forward to Council.

Rick Gillit
City Council Member - District #4
Office: 303-762-2300
Direct: (303) 246-4780
Email: _____
Personal Web Page - www.EnglewoodCitizen.com
1000 Englewood Parkway
Englewood, CO 80110-2373

From: Bev Nielsen
Sent: Wednesday, March 14, 2012 9:35 PM
To: ;
Subject: Re: Englewood Depot

Hi Mr. Gillit,
I have always thought after the historical people took over the depot, that the city would go in with them to help preserve that building and turn it into something the whole community could enjoy. A coffee wii fi place that would be a meeting place for groups of people: book clubs, knitting groups, live local musicians playing there. We don't really have a "community coffee house" that does all that. I have been to other small towns that do have such a place, and even in neighborhoods around the Denver area. A lot of times it's the community members that are in those places sometimes taking turns volunteering to help out in it's operation. Why can't we think out of the box a little bit before we go off on a tangent to sell it the first bidder? I hope you will give a copy of this email to Mayor Penn and ask him if he has given us any ideas of his own in this matter, besides selling? I am definitely against selling the depot before exploring other options. It's a bit of a landmark history thing for me, as I lived here in Englewood as a child and as an adult caught the train from that depot. Also took a train out of the old Littleton depot. They didn't sell their depot either. What did they do with theirs? And didn't that turn out to be a successful endeavor? I just think we all need to look a little further to find a better solution than to just put it on the auction block to get rid of it. It has grand retro architecture that you hardly see anymore, because they have been destroyed or changed entirely into something totally different. You have my permission to put my email with my thoughts on this out there in the public if you so desire. Maybe other people in our community have good thoughts, but just haven't put them out there yet. We need their thoughts too.
Sincerely,
Bev Nielsen

Leigh Ann Hoffhines

From: Rick Gillit
Sent: Thursday, March 15, 2012 11:45 AM
To: Council
Subject: FW: Englewood Depot Sale

Leigh Ann,

Please forward to Council.

Rick Gillit
City Council Member - District #4
Office: 303-762-2300
Direct: (303) 246-4780
Email:
Personal Web Page - www.EnglewoodCitizen.com
1000 Englewood Parkway
Englewood, CO 80110-2373

From: Rick Olson [ ]
Sent: Wednesday, March 14, 2012 8:48 PM
To: Rick Gillit
Subject: Re: From your City Councilman Rick Gillit - VERY IMPORTANT! PLEASE READ AND REPLY!!!

Lets not sell it for less thje the land value.
Thanks
Rick

Leigh Ann Hoffhines

From: Rick Gillit
Sent: Thursday, March 15, 2012 11:43 AM
To: Council
Subject: FW: Englewood Depot Sale

Leigh Ann,

Please forward to Council.

Rick Gillit
City Council Member - District #4
Office: 303-762-2300
Direct: (303) 246-4780
Email:
Personal Web Page - www.EnglewoodCitizen.com
1000 Englewood Parkway
Englewood, CO 80110-2373

From:
Sent: Thursday, March 15, 2012 5:11 AM
To: Rick Gillit
Subject: Re: Englewood Depot Sale

Rick,
I would like to be kept informed on this matter. It is ridiculous that this property is being sold this way. Let me know what I can do.
Jim Sviggel

Leigh Ann Hoffhines

From: Rick Gillit
Sent: Thursday, March 15, 2012 11:42 AM
To: Council
Subject: FW: Englewood Depot Sale

Leigh Ann,

Please forward to council!

Rick Gillit
City Council Member - District #4
Office: 303-762-2300
Direct: (303) 246-4780
Email:
Personal Web Page - www.EnglewoodCitizen.com
1000 Englewood Parkway
Englewood, CO 80110-2373

From: [ ]
Sent: Thursday, March 15, 2012 7:47 AM
To: Rick Gillit
Subject: Re: Englewood Depot Sale

Rick,
I wish I had herd about the sale 50k for the land and building what a steal. The city should reject the bid. If the city really needs to sell the property then it should be for a fair price. At least 150 - 175K would be about right in this economy. Now the big question who is the buyer for 50k and who are they connected with on the city council.

Sincerely,
Mike Cravens

Leigh Ann Hoffhines

From: Rick Gillit
Sent: Thursday, March 15, 2012 11:32 AM
To: Council
Subject: FW: Englewood Depot

LeighAnn,

Please forward to Council!

Rick Gillit
City Council Member - District #4
Office: 303-762-2300
Direct: (303) 246-4780
Email:
Personal Web Page - www.EnglewoodCitizen.com
1000 Englewood Parkway
Englewood, CO 80110-2373

From: Jeff Barker
Sent: Thursday, March 15, 2012 11:29 AM
To: Rick Gillit
Subject: RE: Englewood Depot

Dear Rick,

I am an Englewood resident (1400 East Dartmouth Avenue) and my wife and I object to the sale of the Englewood Depot for $50,000 without competing bids/offers and without publicizing the intent to sell.

I would be happy to make an offer on the property exceeding $50,000.

Yours truly,

Jeffrey W. Barker

Jeffrey W. Barker,
CPA, CEPA, PFS
Anton Collins Mitchell
LLP
303 E. 17th Ave.,
Suite 600 Denver,

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 18
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING A CONTRACT FOR THE SALE OF THE ENGLEWOOD DEPOT LOCATED AT 3098 SOUTH GALAPAGO STREET AND PROPERTY TO PILLAR PROPERTY SERVICES LLC BY THE CITY OF ENGLEWOOD.

WHEREAS, in 1994 the Englewood Depot received status as a historic structure on the State Register of Historic Properties; and

WHEREAS, in 1998 the City of Englewood purchased the Englewood depot and six lots at West Dartmouth and South Galapago from the Englewood Housing Authority; and

WHEREAS, Pillar Property Services LLC submitted an offer to purchase the Englewood Depot to the City of Englewood; and

WHEREAS, the Englewood City Council approved a Motion setting the proposed sales amount from Pillar Property Services, LLC to purchase the Englewood Depot and the .490 acre parcel on which the Depot is located for a purchase price of $50,000 and set a Public Hearing for March 19, 2012; and

WHEREAS, the City has included certain conditions for sale as follows:

- The purchase price shall be $50,000.00.
- The property will be sold "AS IS, WHERE IS." All warranties, expressed or implied, including fitness for purpose of use are hereby waived by buyer.
- The City will impose a deed restriction on the property that will require the buyer to maintain the historical structure for a minimum period of 30 years from the date of purchase.
- The Buyer will rehabilitate the historic elements of the structure according to the Secretary of the Interior's Standards for Rehabilitation.
- The Buyer will provide the City with the Right of First Refusal, in the event that the Buyer subsequently sells the property within 5 years from the date of purchase.
- The City will not furnish title insurance.
- The City will arrange for the quit claim deed to be executed by the Mayor and recorded upon confirming that the City has received full purchase.
- Buyer must execute any other documents necessary to consummate the sale as provided herein.

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 herby authorizes the sale of the Englewood Depot located at 3098 South Galapago Street, Englewood, Colorado to Pillar Property Services LLC as detailed in the Contract to Buy and Sell Real Estate, Exhibit A attached hereto.

Section 2. The Mayor is hereby authorized to sign said and execute documents including the Contract for Sale and Deed necessary to complete the transaction.

Introduced, read in full, and passed on first reading on the 19th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 23rd day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 19th day of March, 2012.

Kerry Bush

EXHIBIT A

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(CBS3-10-11) (Mandatory 1-12)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

(✓ Property with No Residences)

(Property with Residences-Residential Addendum Attached)

Date: March 19, 2012

AGREEMENT

1. AGREEMENT. Buyer, identified in § 2.1, agrees to buy, and Seller, identified in § 2.3, agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, Pillar Property Services, LLC, its successors and/or assigns, will take title to the Property described below as **Joint Tenants** **Tenants In Common** ✓ **Other** Severalty.

2.2. Assignability and Inurement. This Contract ✓ **Shall** **Shall Not** be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

2.3. Seller. Seller, The City of Englewood, a Colorado Municipal Corporation, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Arapahoe, Colorado:

A portion of the west half of Block 2,Taylor's Addition, City of Englewood, Arapahoe County, Colorado being more particularly described as follows: See attachment A

known as No. 3098 South Galapago St. Englewood, Colorado 80110,
Street Address City State Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Fixtures. If attached to the Property on the date of this Contract: lighting, heating, plumbing, ventilating and air conditioning fixtures, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, floor coverings, intercom systems, sprinkler systems and controls, garage door openers including any remote controls.

Other Fixtures:

None

If any fixtures are attached to the Property after the date of this Contract, such additional fixtures are also included in the Purchase Price.

2.5.2. Personal Property. If on the Property whether attached or not on the date of this Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, heating stoves, storage sheds, and all keys. If checked, the following are included: **Water Softeners** **Smoke/Fire Detectors** **Security Systems** **Satellite Systems** (including satellite dishes).

Other Personal Property:

None.

The Personal Property to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance shall be by bill of sale or other applicable legal instrument.

2.5.3. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

N/A

The Trade Fixtures to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except _____. Conveyance shall be by bill of sale or other applicable legal instrument.

2.5.4. Parking and Storage Facilities. ☐ **Use Only** ☐ **Ownership** of the following parking facilities: N/A _____; and ☐ **Use Only** ☐ **Ownership** of the following storage facilities: _____.

2.5.5. Water Rights, Water and Sewer Taps.

2.5.5.1. Deeded Water Rights. The following legally described water rights:

None.

Any water rights shall be conveyed by ☐ _____ **Deed** ☐ **Other** applicable legal instrument.

☐ **2.5.5.2. Well Rights.** If any water well is to be transferred to Buyer, Seller agrees to supply required information about such well to Buyer. Buyer understands that if the well to be transferred is a Small Capacity Well or a Domestic Exempt Water Well used for ordinary household purposes, Buyer shall, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer shall complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer shall file the form with the Division within sixty days after Closing. The Well Permit # is _____.

2.5.5.3. ☐ **Water Stock Certificates:**

N/A

2.5.5.4. ☐ **Water Tap** ☐ **Sewer Tap**

Note: Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the tap.

2.5.5.5. Other Rights:

N/A no water or sewer taps at this address.

2.6. Exclusions. The following items are excluded (Exclusions):

None.

3. DATES AND DEADLINES.

Item No.	Reference	Event	Date or Deadline
1	§ 4.2	Alternative Earnest Money Deadline	N/A
		Title and Association	N/A
2	§ 7.1	Record Title Deadline	
3	§ 7.2	Exceptions Request Deadline	
4	§ 8.1	Record Title Objection Deadline	
5	§ 8.2	Off-Record Title Deadline	
6	§ 8.2	Off-Record Title Objection Deadline	
7	§ 8.3	Title Resolution Deadline	
8	§ 7.3	Association Documents Deadline	
9	§ 7.3	Association Documents Objection Deadline	
10	§ 8.5	Right of First Refusal Deadline	N/A
		Seller's Property Disclosure	N/A
11	§ 10.1	Seller's Property Disclosure Deadline	
		Loan and Credit	
12	§ 5.1	Loan Application Deadline	N/A
13	§ 5.2	Loan Conditions Deadline	May 4, 2012
14	§ 5.3	Buyer's Credit Information Deadline	N/A
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
16	§ 5.4	Existing Loan Documents Deadline	N/A
17	§ 5.4	Existing Loan Documents Objection Deadline	N/A
18	§ 5.4	Loan Transfer Approval Deadline	N/A
		Appraisal	
19	§ 6.2	Appraisal Deadline	N/A
20	§ 6.2	Appraisal Objection Deadline	

		Survey	N/A
21	§ 9.1	Current Survey Deadline	
22	§ 9.2	Current Survey Objection Deadline	
		Inspection and Due Diligence	N/A
23	§ 10.2	Inspection Objection Deadline	
24	§ 10.3	Inspection Resolution Deadline	
25	§ 10.5	Property Insurance Objection Deadline	
26	§ 10.6	Due Diligence Documents Delivery Deadline	
27	§ 10.7	Due Diligence Documents Objection Deadline	
28	§ 10.8	Environmental Inspection Objection Deadline	
29	§ 10.8	ADA Evaluation Objection Deadline	
30	§ 11.1	Tenant Estoppel Statements Deadline	
31	§ 11.2	Tenant Estoppel Statements Objection Deadline	
		Closing and Possession	
32	§ 12.3	**Closing Date**	May 11, 2012
33	§ 17	Possession Date	May 11, 2012
34	§ 17	Possession Time	at closing
35	§ 28	**Acceptance Deadline Date**	April 3, 2012
36	§ 28	**Acceptance Deadline Time**	midnight

Note: Applicability of Terms.
Any box, blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means such provision in **Dates and Deadlines** (§ 3), including any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	$ 50,000.00 U.S.	
2	§ 4.2	Earnest Money		$ N/A
3	§ 4.5	New Loan		N/A
4	§ 4.6	Assumption Balance		N/A
5	§ 4.7	Seller or Private Financing		N/A
6				
7				
8	§ 4.3	Cash at Closing		$50,000.00
9		**TOTAL**	$ 50,000.00	$ 50,000.00

4.2. Earnest Money. The Earnest Money set forth in this section, in the form of N/A, shall be payable to and held by N/A (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** (§ 3) for its payment. If Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

4.2.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract is as set forth as the **Alternative Earnest Money Deadline** (§ 3).

4.2.2. Return of Earnest Money. If Buyer has a Right to Terminate and timely terminates, Buyer shall be entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to

execute and return to Buyer or Broker working with Buyer, written mutual instructions, i.e., Earnest Money Release form, within three days of Seller's receipt of such form.

4.3. Form of Funds; Time of Payment; Funds Available.

4.3.1. Good Funds. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, shall be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.3.2. Available Funds. All funds required to be paid at Closing or as otherwise agreed in writing between the parties shall be timely paid to allow disbursement by Closing Company at Closing **OR SUCH PARTY SHALL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract, ☑ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.4. Seller Concession. Seller, at Closing, shall credit, as directed by Buyer, an amount of $ N/A to assist with Buyer's closing costs (Seller Concession). Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. Seller Concession shall be reduced to the extent it exceeds the amount allowed by Buyer's lender as set forth in the Closing Statement, at Closing.

4.5. New Loan.

4.5.1. Buyer to Pay Loan Costs. Buyer, except as provided in § 4.4, if applicable, shall timely pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees, as required by lender.

4.5.2. Buyer May Select Financing. Buyer may pay in cash or select financing appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30 (Additional Provisions).

4.5.3. Loan Limitations. Buyer may purchase the Property using either of the following types of loan: ☐ **Conventional** ☐ **Other** N/A.

4.6. Assumption. Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption Balance set forth in § 4.1, presently payable at $_____ per _____ including principal and interest presently at the rate of _____% per annum, and also including escrow for the following as indicated: ☐ **Real Estate Taxes** ☐ **Property Insurance Premium** and ☐ _____.

Buyer agrees to pay a loan transfer fee not to exceed $_____. At the time of assumption, the new interest rate shall not exceed _____% per annum and the new payment shall not exceed $_____ per _____ principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than $_____, then Buyer shall have the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on the reduced amount of the actual principal balance.

Seller ☐ **Shall** ☐ **Shall Not** be released from liability on said loan. If applicable, compliance with the requirements for release from liability shall be evidenced by delivery ☐ **on or before Loan Transfer Approval Deadline** (§ 3) ☐ **at Closing** of an appropriate letter of commitment from lender. Any cost payable for release of liability shall be paid by _____ in an amount not to exceed $_____.

4.7. Seller or Private Financing. Buyer agrees to execute a promissory note payable to N/A, as ☐ **Joint Tenants** ☐ **Tenants In Common** ☐ **Other** _____, on the note form as indicated: ☐ **(Default Rate)** NTD81-10-06 ☐ **Other** _____ secured by a _____ (1st, 2nd, etc.) deed of trust encumbering the Property, using the form as indicated:

☐ **Due on Transfer – Strict** (TD72-8-10) ☐ **Due on Transfer – Creditworthy** (TD73-8-10) ☐ **Assumable – Not Due on Transfer** (TD74-8-10) ☐ **Other** _____.

The promissory note shall be amortized on the basis of _____ ☐ **Years** ☐ **Months**, payable at $_____ per _____ including principal and interest at the rate of _____% per annum. Payments shall commence _____ and shall be due on the _____ day of each succeeding _____. If not sooner paid, the balance of principal and accrued interest shall be due and payable _____ after Closing. Payments ☐ **Shall** ☐ **Shall Not** be increased by _____ of estimated annual real estate taxes, and ☐ **Shall** ☐ **Shall Not** be increased by _____ of estimated annual property insurance premium. The loan shall also contain the following terms: (1) if any payment is not received within _____ days after its due date, a late charge of _____% of such payment shall be due; (2) interest on lender disbursements under the deed of trust shall be _____% per annum; (3) default interest rate shall be _____% per annum; (4) Buyer may prepay without a penalty except _____; and (5) Buyer ☐ **Shall** ☐ **Shall Not** execute and deliver, at Closing, a Security Agreement and UCC-1 Financing Statement granting the holder of the promissory note a _____ (1st, 2nd, etc.) lien on the personal property included in this sale.

Buyer ☐ **Shall** ☐ **Shall Not** provide a mortgagee's title insurance policy, at Buyer's expense.

TRANSACTION PROVISIONS

5. FINANCING CONDITIONS AND OBLIGATIONS.

5.1. Loan Application. If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, shall make an application verifiable by such lender, on or before **Loan Application Deadline** (§ 3) and exercise reasonable efforts to obtain such loan or approval.

5.2. Loan Conditions. If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions, and cost of such New Loan. This condition is for the benefit of Buyer. Buyer shall have the Right to Terminate under § 25.1, on or before **Loan Conditions Deadline** (§ 3), if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion. **IF SELLER DOES NOT TIMELY RECEIVE WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY SHALL BE NONREFUNDABLE,** except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

5.3. Credit Information and Buyer's New Senior Loan. If Buyer is to pay all or part of the Purchase Price by executing a promissory note in favor of Seller, or if an existing loan is not to be released at Closing, this Contract is conditional (for the benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval shall be at Seller's sole subjective discretion. In such case: (1) Buyer shall supply to Seller by **Buyer's Credit Information Deadline** (§ 3), at Buyer's expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit condition and Buyer's New Senior Loan, defined below, if any; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; (3) any such information and documents received by Seller shall be held by Seller in confidence, and not released to others except to protect Seller's interest in this transaction; and (4) in the event Buyer is to execute a promissory note secured by a deed of trust in favor of Seller, this Contract is conditional (for the benefit of Seller) upon Seller's approval of the terms and conditions of any New Loan to be obtained by Buyer if the deed of trust to Seller is to be subordinate to Buyer's New Loan (Buyer's New Senior Loan). If the Cash at Closing is less than as set forth in § 4.1 of this Contract or Buyer's New Senior Loan changes from that approved by Seller, Seller shall have the Right to Terminate under § 25.1, at or before Closing. If Seller disapproves of Buyer's financial ability, creditworthiness or Buyer's New Senior Loan, in Seller's sole subjective discretion, Seller shall have the Right to Terminate under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline** (§ 3).

5.4. Existing Loan Review. If an existing loan is not to be released at Closing, Seller shall deliver copies of the loan documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline** (§ 3). For the benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer shall have the Right to Terminate under § 25.1, on or before **Existing Loan Documents Objection Deadline** (§ 3), based on any unsatisfactory provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline** (§ 3), this Contract shall terminate on such deadline. Seller shall have the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

6. APPRAISAL PROVISIONS.

6.1. Lender Property Requirements. If the lender imposes any requirements or repairs (Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller shall have the Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days following Seller's receipt of the Requirements, based on any unsatisfactory Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in this § 6.1 shall not apply if, on or before any termination by Seller pursuant to this § 6.1: (1) the parties enter into a written agreement regarding the Requirements; or (2) the Requirements have been completed; or (3) the satisfaction of the Requirements is waived in writing by Buyer.

6.2. Appraisal Condition. The applicable Appraisal provision set forth below shall apply to the respective loan type set forth in § 4.5.3, or if a cash transaction, i.e. no financing, § 6.2.1 shall apply.

6.2.1. Conventional/Other. Buyer shall have the sole option and election to terminate this Contract if the Property's valuation is less than the Purchase Price determined by an appraiser engaged on behalf of Buyer. The appraisal shall be received by Buyer or Buyer's lender on or before **Appraisal Deadline** (§ 3). Buyer shall have the Right to Terminate under § 25.1, on or before **Appraisal Objection Deadline** (§ 3), if the Property's valuation is less than the Purchase Price and Seller's receipt of either a copy of such appraisal or written notice from lender that confirms the Property's valuation is less than the Purchase Price.

6.3. Cost of Appraisal. Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by ☑ **Buyer** ☐ **Seller.**

7. EVIDENCE OF TITLE AND ASSOCIATION DOCUMENTS.

7.1. Evidence of Title. On or before **Record Title Deadline** (§ 3), Seller shall cause to be furnished to Buyer, at Seller's expense, a current commitment for owner's title insurance policy (Title Commitment) in an amount equal to the Purchase Price, or if this box is checked, ☐ **An Abstract** of title certified to a current date. If title insurance is furnished, Seller shall also deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract) in Seller's possession. At Seller's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. The title insurance commitment ☑ **Shall** ☐ **Shall Not** commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (effective date of commitment to date deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain this additional coverage shall be paid by ☑ **Buyer** ☐ **Seller.**

Note: The title insurance company may not agree to delete or insure over any or all of the standard exceptions. Buyer shall have the right to review the Title Commitment, its provisions and Title Documents (defined in § 7.2), and if not satisfactory to Buyer, Buyer may exercise Buyer's rights pursuant to § 8.1.

7.2. Copies of Exceptions. On or before **Record Title Deadline** (§ 3), Seller, at Seller's expense, shall furnish to Buyer and Buyer's Counsel, (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a Title Commitment is required to be furnished, and if this box is checked ☑ **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not checked, Seller shall have the obligation to furnish these documents pursuant to this section if requested by Buyer any time on or before **Exceptions Request Deadline** (§ 3). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The Abstract or Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (collectively, Title Documents).

7.3. Homeowners' Association Documents. The term Association Documents consists of all owners' associations (Association) declarations, bylaws, operating agreements, rules and regulations, party wall agreements, minutes of most recent annual owners' meeting and minutes of any directors' or managers' meetings during the six-month period immediately preceding the date of this Contract, if any (Governing Documents), most recent financial documents consisting of (1) annual balance sheet, (2) annual income and expenditures statement, and (3) annual budget (Financial Documents), if any (collectively, Association Documents).

7.3.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

7.3.2. Association Documents to Buyer.

☐ **7.3.2.1. Seller to Provide Association Documents.** Seller shall cause the Association Documents to be provided to Buyer, at Seller's expense, on or before **Association Documents Deadline** (§ 3).

☐ **7.3.2.2. Seller Authorizes Association.** Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense.

7.3.2.3. Seller's Obligation. Seller's obligation to provide the Association Documents shall be fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

Note: If neither box in this § 7.3.2 is checked, the provisions of § 7.3.2.1 shall apply.

7.3.3. Conditional on Buyer's Review. If the box in either § 7.3.2.1 or § 7.3.2.2 is checked, the provisions of this § 7.3.3 shall apply. Buyer shall have the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline** (§ 3), based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline** (§ 3), Buyer, at Buyer's option, shall have the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date** (§ 3), Buyer's Notice to Terminate shall be received by Seller on or before three days prior to **Closing Date** (§ 3). If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.5.

8. RECORD TITLE AND OFF-RECORD TITLE MATTERS.

8.1. Record Title Matters. Buyer has the right to review and object to any of the Title Documents (Right to Object, Resolution), as set forth in § 8.3. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If Buyer objects to any of the Title Documents, Buyer shall cause Seller to receive Buyer's Notice to Terminate or Notice of Title Objection on or before **Record Title Objection Deadline** (§ 3). If Title Documents are not received by Buyer, on or before the **Record Title Deadline** (§ 3), or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment shall be delivered to Buyer. Buyer shall cause Seller to receive Buyer's Notice to Terminate or Notice of Title Objection on or before ten days after receipt by Buyer of the following documents: (1) any required Title Document not timely received by Buyer, (2) any change to the Title Documents, or (3) endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.1 (Record Title Matters), any title objection by Buyer and this Contract shall be governed by the provisions set forth in § 8.3 (Right to Object, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

8.2. Off-Record Title Matters. Seller shall deliver to Buyer, on or before **Off-Record Title Deadline** (§ 3), true copies of all existing surveys in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (such as an unrecorded easement, unrecorded lease, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 13), in Buyer's sole subjective discretion, shall be received by Seller on or before **Off-Record Title Objection Deadline** (§ 3). If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.2 (Off-Record Title Matters), any title objection by Buyer and this Contract shall be governed by the provisions set forth in § 8.3 (Right to Object, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection, on or before **Off-Record Title Objection Deadline** (§ 3), Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

8.3. Right to Object, Resolution. Buyer's right to object to any title matters shall include, but not be limited to those matters set forth in §§ 8.1 (Record Title Matters), 8.2 (Off-Record Title Matters) and 13 (Transfer of Title), in Buyer's sole subjective discretion (collectively, Notice of Title Objection). If Buyer objects to any title matter, on or before the applicable deadline, Buyer shall have the choice to either (1) object to the condition of title, or (2) terminate this Contract.

8.3.1. Title Resolution. If Seller receives Buyer's Notice of Title Objection, as provided in § 8.1 (Record Title Matters) or § 8.2 (Off-Record Title Matters), on or before the applicable deadline, and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline** (§ 3), this Contract shall terminate on the expiration of **Title Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline** (§ 3).

8.3.2. Right to Terminate – Title Objection. Buyer shall have the Right to Terminate under § 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.

8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

Buyer shall have the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline** (§ 3), based on any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective discretion.

8.5. Right of First Refusal or Contract Approval. If there is a right of first refusal on the Property, or a right to approve this Contract, Seller shall promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract shall terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract shall remain in full force and effect. Seller shall promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or Contract approval has not occurred on or before **Right of First Refusal Deadline** (§ 3), this Contract shall then terminate.

8.6. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements,

leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property.** Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract [e.g., **Record Title Objection Deadline** (§ 3) and **Off-Record Title Objection Deadline** (§ 3)].

9. CURRENT SURVEY REVIEW.

9.1. Current Survey Conditions. If the box in § 9.1.1 or § 9.1.2 is checked, Buyer, the issuer of the Title Commitment or the provider of the opinion of title if an abstract, and _____ shall receive a Current Survey, i.e., Improvement Location Certificate, Improvement Survey Plat or other form of survey set forth in § 9.1.2 (collectively, Current Survey), on or before **Current Survey Deadline** (§ 3). The Current Survey shall be certified by the surveyor to all those who are to receive the Current Survey.

☐ **9.1.1. Improvement Location Certificate.** If the box in this § 9.1.1 is checked, ☐ **Seller** ☐ **Buyer** shall order or provide, and pay, on or before Closing, the cost of an **Improvement Location Certificate.**

☐ **9.1.2. Other Survey.** If the box in this § 9.1.2 is checked, a Current Survey, other than an Improvement Location Certificate, shall be an ☐ **Improvement Survey Plat** ☐ _____. The parties agree that payment of the cost of the Current Survey and obligation to order or provide the Current Survey shall be as follows:

Buyer

9.2. Survey Objection. Buyer shall have the right to review and object to the Current Survey. Buyer shall have the Right to Terminate under § 25.1, on or before the **Current Survey Objection Deadline** (§ 3), if the Current Survey is not timely received by Buyer or based on any unsatisfactory matter with the Current Survey, notwithstanding § 8.2 or § 13.

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY AND DUE DILIGENCE.

10.1. Seller's Property Disclosure Deadline. On or before **Seller's Property Disclosure Deadline** (§ 3), Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.

10.2. Inspection Objection Deadline. Unless otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "as is" condition, "where is" and "with all faults". Seller shall disclose to Buyer, in writing, any latent defects actually known by Seller. Buyer, acting in good faith, shall have the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property, e.g. heating and plumbing, (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 3):

10.2.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

10.2.2. Inspection Objection. Deliver to Seller a written description of any unsatisfactory physical condition that Buyer requires Seller to correct.

Buyer shall have the Right to Terminate under § 25.1, on or before **Inspection Objection Deadline** (§ 3), based on any unsatisfactory physical condition of the Property or Inclusions, in Buyer's sole subjective discretion.

10.3. Inspection Resolution Deadline. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** (§ 3), and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline** (§ 3), this Contract shall terminate on **Inspection Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline** (§ 3).

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or any other work performed at Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by

Seller to defend against any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this section shall survive the termination of this Contract.

10.5. Insurability. Buyer shall have the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer shall have the Right to Terminate under § 25.1, on or before **Property Insurance Objection Deadline** (§ 3), based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

10.6. Due Diligence Documents. Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline** (§ 3) to the extent such Due Diligence Documents exist and are in Seller's possession:

10.6.1. All contracts relating to the operation, maintenance and management of the Property;

10.6.2. Property tax bills for the last two years;

10.6.3. As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical, and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;

10.6.4. A list of all Inclusions to be conveyed to Buyer;

10.6.5. Operating statements for the past N/A years;

10.6.6. A rent roll accurate and correct to the date of this Contract;

10.6.7. All current leases, including any amendments or other occupancy agreements, pertaining to the Property (Leases);

10.6.8. A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

10.6.9. All insurance policies pertaining to the Property and copies of any claims which have been made for the past two years;

10.6.10. Soils reports, Surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.2);

10.6.11. Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller shall warrant that no such reports are in Seller's possession or known to Seller;

10.6.12. Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;

10.6.13. All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

10.6.14. Other Documents: None.

10.7. Due Diligence Documents Conditions. Buyer shall have the right to review and object to Due Diligence Documents, zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property (Zoning), in Buyer's sole subjective discretion, or Seller's failure to deliver to Buyer all Due Diligence Documents. Buyer shall also have the unilateral right to waive any condition herein.

10.7.1. Due Diligence Documents Objection. Buyer shall have the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline** (§ 3), based on any unsatisfactory matter with the Due Diligence Documents, in Buyer's sole subjective discretion. If, however, Due Diligence Documents are not timely delivered under § 10.6, or if Seller fails to deliver all Due Diligence Documents to Buyer, then Buyer shall have the Right to Terminate under § 25.1 on or before the earlier of ten days after **Due Diligence Documents Objection Deadline** (§ 3) or Closing.

10.7.2. Zoning. Buyer shall have the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline** (§ 3), based on any unsatisfactory zoning, in Buyer's sole subjective discretion.

10.8. Due Diligence – Environmental, ADA. Buyer shall have the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable. ☐ **Seller** ☑ **Buyer** shall order or provide ☑ **Phase I Environmental Site Assessment,** ☐ **Phase II Environmental Site Assessment** (compliant with ASTM E1527-05 standard practices for Environmental Site Assessments) and/or ☐ _____, at the expense of ☐ **Seller** ☑ **Buyer** (Environmental Inspection). In addition, Buyer may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations shall be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Objection Deadline** (§ 3) shall be extended by _____ days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date** (§ 3), the **Closing Date** (§ 3) shall be extended a like period of time.

Buyer shall have the Right to Terminate under § 25.1, on or before **Environmental Inspection Objection Deadline** (§ 3), or if applicable the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer shall have the Right to Terminate under § 25.1, on or before **ADA Evaluation Objection Deadline** (§ 3), based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

10.9. Existing Leases; Modification of Existing Leases; New Leases. Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller shall not amend, alter, modify, extend or cancel any of the Leases nor shall Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

11. TENANT ESTOPPEL STATEMENTS.

11.1. Tenant Estoppel Statements Conditions. Buyer shall have the right to review and object to any Estoppel Statements. Seller shall obtain and deliver to Buyer on or before **Tenant Estoppel Statements Deadline** (§ 3), statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of such occupant's or tenant's lease and any amendments (Lease) stating:

11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;

11.1.2. That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;

11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;

11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;

11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and

11.1.6. That the Lease to which the Estoppel is attached is a true, correct and complete copy of the Lease demising the premises it describes.

11.2. Tenant Estoppel Statements Objection. Buyer shall have the Right to Terminate under § 25.1, on or before **Tenant Estoppel Statements Objection Deadline** (§ 3), based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion or if Seller fails to deliver the Estoppel Statements on or before **Tenant Estoppel Statements Deadline** (§ 3). Buyer shall also have the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. Closing Documents and Closing Information. Seller and Buyer shall cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender shall be required to provide the Closing Company in a timely manner all required loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

12.2. Closing Instructions. Buyer and Seller agree to execute the Colorado Real Estate Commission's Closing Instructions. Such Closing Instructions ☐ **Are** ☑ **Are Not** executed with this Contract. Upon mutual execution, ☐ **Seller** ☐ **Buyer** shall deliver such Closing Instructions to the Closing Company.

12.3. Closing. Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 3) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by City of Englewood.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

13. TRANSFER OF TITLE. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient Special Warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

13.1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with **Record Title Matters** (§ 8.1),

13.2. Distribution utility easements (including cable TV),

13.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title Matters** (§ 8.2) and **Current Survey Review** (§ 9),

13.4. Inclusion of the Property within any special taxing district, and

13.5. Other See attached Adendum to Contract.

14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

15.1. Closing Costs. Buyer and Seller shall pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. Closing Services Fee. The fee for real estate closing services shall be paid at Closing by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Other** _____.

15.3. Status Letter and Transfer Fees. Any fees incident to the issuance of Association's statement of assessments (Status Letter) shall be paid by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.** Any transfer fees assessed by the Association including, but not limited to, any record change fee, regardless of name or title of such fee (Association's Transfer Fee) shall be paid by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.**

15.4. Local Transfer Tax. ☐ **The Local Transfer Tax of** _____% of the Purchase Price shall be paid at Closing by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.**

15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, shall be paid at Closing by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.**

15.6. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction shall be paid when due by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.**

16. PRORATIONS. The following shall be prorated to **Closing Date** (§ 3), except as otherwise provided:

16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on ☐ **Taxes for the Calendar Year Immediately Preceding Closing** ☑ **Most Recent Mill Levy and Most Recent Assessed Valuation**, or ☐ **Other** _____.

16.2. Rents. Rents based on ☐ **Rents Actually Received** ☐ **Accrued.** At Closing, Seller shall transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of such transfer and of the transferee's name and address. Seller shall assign to Buyer all Leases in effect at Closing and Buyer shall assume Seller's obligations under such Leases.

16.3. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association shall not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** (§ 3) by the Association shall be the obligation of ☐ **Buyer** ☑ **Seller.** Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, shall be the obligation of Seller. Seller represents that the Association Assessments are currently payable at $_____ per _____ and that there are no unpaid regular or special assessments against the Property except the current regular assessments and _____. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing Date** (§ 3) a current Status Letter.

16.4. Other Prorations. Water and sewer charges, interest on continuing loan, and _____.

16.5. Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.

17. POSSESSION. Possession of the Property shall be delivered to Buyer on **Possession Date** (§ 3) at **Possession Time** (§ 3), subject to the following Leases or tenancies:

None.

If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of $ N/A per day (or any part of a day notwithstanding § 18.1) from **Possession Date** (§ 3) and **Possession Time** (§ 3) until possession is delivered.

GENERAL PROVISIONS

18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

18.1. Day. As used in this Contract, the term "day" shall mean the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

18.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or

federal or Colorado state holiday (Holiday), such deadline [✓] **Shall** [ ] **Shall Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline shall not be extended.

19. CAUSES OF LOSS, INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND INCLUSIONS AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), Seller shall be obligated to repair the same before **Closing Date** (§ 3). In the event such damage is not repaired within said time or if the damage exceeds such sum, this Contract may be terminated at the option of Buyer. Buyer shall have the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on any Property Damage not repaired before **Closing Date** (§ 3). Should Buyer elect to carry out this Contract despite such Property Damage, Buyer shall be entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not exceed the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** (§ 3) or, at the option of Buyer, Seller shall assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance policy, but not to exceed the total Purchase Price.

19.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), systems and components of the Property, e.g., heating or plumbing, fail or be damaged between the date of this Contract and Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion, service, system, component or fixture of the Property with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion, service, system, component or fixture is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

19.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller shall promptly notify Buyer, in writing, of such condemnation action. Buyer shall have the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer shall be entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit shall not include relocation benefits or expenses, or exceed the Purchase Price.

19.4. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer and Seller acknowledge that the respective broker has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

21.1. If Buyer is in Default:

[✓] **21.1.1. Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest Money (whether or not paid by Buyer) shall be paid to Seller and retained by Seller; and Seller may recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.

21.1.2. Liquidated Damages, Applicable. This § 21.1.2 shall apply <u>unless the box in § 21.1.1. is checked</u>. All Earnest Money (whether or not paid by Buyer) shall be paid to Seller, and retained by Seller. Both parties shall thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money shall be SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

22. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date** (§ 3), the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

23. MEDIATION. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.

24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder shall release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option and sole subjective discretion, may (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpled the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of **Mediation** (§ 23). The provisions of this § 24 apply only if the Earnest Money Holder is one of the Brokerage Firms named in § 33 or § 34.

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination shall be effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate shall have accepted the specified matter, document or condition as satisfactory and waived the Right to Terminate under such provision.

25.2. Effect of Termination. In the event this Contract is terminated, all Earnest Money received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.

27. NOTICE, DELIVERY, AND CHOICE OF LAW.

27.1. Physical Delivery. All notices must be in writing, except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Seller, and delivered to Buyer shall be effective when physically received by Buyer, any signatory on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Buyer, and delivered to Seller shall be effective when physically received by Seller, any signatory on behalf of Seller, any named individual of Seller, any representative of Seller, or Brokerage Firm of Broker working with Seller (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 27.2.

27.2. Electronic Delivery. As an alternative to physical delivery, any document, including any signed document or written notice may be delivered in electronic form only by the following indicated methods: ☐ **Facsimile** ☐ **Email** ☐ **Internet** ☑ **No Electronic Delivery**. If the box "No Electronic Delivery" is checked, this § 27.2 shall not be applicable and § 27.1 shall govern notice and delivery. Documents with original signatures shall be provided upon request of any party.

27.3. Choice of Law. This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for property located in Colorado.

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** (§ 3) and **Acceptance Deadline Time** (§ 3). If accepted, this document shall become a contract

between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith, including but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations** (§ 5), **Record Title and Off-Record Title Matters** (§ 8), **Current Survey Review** (§ 9) and **Property Disclosure, Inspection, Indemnity, Insurability and Due Diligence** (§ 10).

ADDITIONAL PROVISIONS AND ATTACHMENTS

30. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

The property will be sold "as is, where is". Seller provides no warranties, guarantees of title or otherwise, express or implied, including fitness for purpose of use. Seller will not provide title insurance, but Buyer may purchase same. See Addendum to Contract and Exhibit A attached hereto and incorporated herein by this reference.

31. ATTACHMENTS. The following are a part of this Contract:

Addendum to Contract and Exhibit A.

Note: The following disclosure forms **are attached** but are **not** a part of this Contract:

None.

SIGNATURES

Buyer's Name:	Pillar Property Services, LLC	Buyer's Name:	
Buyer's Signature	Date	Buyer's Signature	Date
Address:	2480 W. 26th Ave. #140B Denver, Colorado 80211	Address:	
Phone No.:	(303) 477-5117	Phone No.:	
Fax No.:	(303) 477-4167	Fax No.:	
Electronic Address:		Electronic Address:	

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Seller's Name:	City of Englewood, Colorado	Seller's Name:	
Seller's Signature	Date	Seller's Signature	Date
Address:	1000 Englewood Parkway Englewood, CO 80110	Address:	
Phone No.:	303-762-2314	Phone No.:	
Fax No.:		Fax No.:	
Electronic Address:		Electronic Address:	

32. COUNTER; REJECTION. This offer is ☐ **Countered** ☐ **Rejected.**
Initials only of party (Buyer or Seller) who countered or rejected offer _____

END OF CONTRACT TO BUY AND SELL REAL ESTATE

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker ☐ **Does** ☐ **Does Not** acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money shall be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Buyer as a ☐ **Buyer's Agent** ☐ **Seller's Agent** ☐ **Transaction-Broker** in this transaction.
☐ This is a **Change of Status.**

Brokerage Firm's compensation or commission is to be paid by ☐ **Listing Brokerage Firm** ☐ **Buyer** ☐ **Other** _____.

Brokerage Firm's Name: N/A
Broker's Name: _____

_____
Broker's Signature Date

Address: _____

Phone No.: _____
Fax No.: _____
Electronic Address: _____

34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker ☐ **Does** ☐ **Does Not** acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money shall be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Seller as a ☐ **Seller's Agent** ☐ **Buyer's Agent** ☐ **Transaction-Broker** in this transaction.
☐ This is a **Change of Status.**

Brokerage Firm's compensation or commission is to be paid by ☐ **Seller** ☐ **Buyer** ☐ **Other** _____.

Brokerage Firm's Name: N/A
Broker's Name: _____

_____
Broker's Signature Date

Address: _____

Phone No.: _____
Fax No.: _____
Electronic Address: _____

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Clear Form

LEGAL DESCRIPTION FOR

3098 South Galapago St. Englewood, Colorado

Lots 18 and 19; the vacated portion of the east-west alley described in Ord. #29 Series of 1996 of the City of Englewood; Lots 20 through 24, except the triangular-shaped parcel conveyed to the Colorado Department of Transportation, recorded in Book 7691 Page 270 of Arapahoe county Records.

The above described parcel contains 21,338 square feet, or 0.490 Acres, more or less.

ATTACHMENT B

TO CONTRACT TO BUY AND SELL REAL ESTATE FOR

3098 SOUTH GALAPAGO STREET, ENGLEWOOD, CO 80110

The following provisions are to be inserted under Paragraph 31 of the Contract:

1. The property will be sold "ASIS, WHERE IS." All warranties, expressed or implied, including fitness for purpose of use are hereby waived by buyer.

2. The City will impose a deed restriction on the property that will require the buyer to maintain the historical structure for a minimum period of 30 years from the date of purchase.

3. The buyer will rehabilitate the historic elements of the structure according to the Secretary of the Interior's Standards for Rehabilitation.

4. The Buyer will provide the City with the Right of First Refusal, in the event that the Buyer subsequently sells the property within 5 years from the date of the purchase.

5. The City will not furnish Title Insurance.

Initialed by Buyer _____

Initialed by Seller _____

ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE
By and Between

THE CITY OF ENGLEWOOD,
a Colorado Municipal Corporation
("Seller")
And
PILLAR PROPERTY SERVICES, LLC,
a Colorado limited liability company
("Buyer")

THIS ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE (the "**Addendum**") is entered into simultaneously with and is part of that certain Contract to Buy and Sell Real Estate dated March 19, 2012 (the "**Form Contract**") between Seller and Buyer (this Addendum and the foregoing Form Contract, collectively the "**Contract**"). In the event of any conflict or inconsistency between the provisions of the Form Contract and the provisions of this Addendum, the provisions of this Addendum shall govern and control. Capitalized terms used in this Addendum which are not defined herein shall have the meanings ascribed to such terms in the Form Contract.

30.1 Use Restrictions. The parties acknowledge and agree that Seller is willing to convey the Property to Buyer, and Buyer is willing to accept the Property, with the express understanding and requirement that (a) at all times the Property shall be used subject to the "Covenants" (as such terms are defined and described in the form of quit claim deed (the "**Deed**"); (b) the Deed evidencing the conveyance of the Property by Seller to Buyer, and any subsequent deeds of conveyance of the Property (collectively, "**Subsequent Deeds**"), shall include and be subject to the Covenants; (c) all Subsequent Deeds shall include an express reference to the Covenants and the recording information for the Deed, and shall contain an acknowledgement by the transferee of the Property of, and such transferee's agreement to remain bound by, the terms and conditions of the Covenants; and (d) any sale, conveyance, gift or transfer of the Property in any manner in violation of the aforesaid restrictions shall be void ab initio.

30.2 Inspections. Prior to performing any inspections, tests, surveys, engineering reports, studies, designs, or any other work on the Property pursuant to Section 10 of the Form Contract (collectively, the "**Inspections**"), (a) Buyer shall provide at least one (1) day's prior written notice thereof to Seller; (b) Seller and/or its agent may be present for all such Inspections; and (c) Buyer shall secure and keep in full force and effect throughout the term of this Contract, the following insurance coverage, at Buyer's sole cost and expense: (i) commercial general liability insurance, including contractual liability (to specifically include coverage for Buyer's indemnification obligations under this Contract), with such coverage and such limits as may be reasonably requested by Seller; (ii) worker's compensation insurance for the employees of Buyer and Buyer's agents and contractors in accordance with applicable state law; and (iii) such other insurance coverage and limits as may reasonably be requested by Seller; *provided, however*, that limits of liability can be provided in a combination of comprehensive general liability and umbrella liability policies. Buyer shall also cause all of its agents and

contractors to secure and keep in full force and effect during the period in which they have access to the Property insurance coverage of customary types and limits.

As part of the Inspections, Buyer, in its discretion and at its own expense, may procure a market study, a noise study and a schematic design for the development of the Property and may undertake additional pre-development activities (including, without limitation, the procurement of geotechnical studies and architectural plans), and all such activities shall be deemed "Inspections" hereunder.

All products and materials resulting from such Inspections (collectively, the "**Materials**"), shall be the property of Buyer; *provided, however*, that if Buyer terminates this Contract (other than as a result of a Seller default hereunder), upon Seller's sole option and its reimbursement to Buyer of the out-of-pocket costs incurred by Buyer for procurement of the Materials, Buyer shall deliver all of the Materials to Seller and, to the extent assignable, Buyer shall promptly assign to Seller all of Buyer's right, title and interest in and to such Materials.

30.3 Condition of Property.

EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN SELLER'S CLOSING DELIVERIES, SELLER HAS NOT MADE ANY REPRESENTATION, WARRANTY, STATEMENT OR PROMISE TO BUYER CONCERNING THE PROPERTY, THE HABITABILITY, QUALITY, VALUE, PHYSICAL ASPECTS OR CONDITION THEREOF, ANY DIMENSIONS OR SPECIFICATIONS OF THE PROPERTY, THE FEASIBILITY, DESIRABILITY, CONVERTIBILITY OF THE PROPERTY FOR OR INTO ANY PARTICULAR USE, OR ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND THAT IN ENTERING INTO THIS CONTRACT, EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN SELLER'S CLOSING DELIVERIES, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION AND HAS NOT RELIED UPON ANY REPRESENTATION, STATEMENT OR WARRANTY OF SELLER AND IS THEREBY ACCEPTING THE CONVEYANCE OF THE PROPERTY IN ITS "AS IS" "WITH ALL FAULTS" CONDITION. THE PROVISIONS OF THIS SECTION 30.3 SHALL SURVIVE CLOSING.

30.4 Closing Deliveries. In addition to other documents and items required to be delivered at Closing pursuant to the terms of this Contract, the parties acknowledge and agree that they shall execute and deliver at Closing or as otherwise provided below the following documents and items:

(a) ***Seller Deliveries***: At Closing, Seller shall deliver (i) the Deed; (ii) a duly executed customary "non-foreign" certificate, as required by Section 1445 of the Internal Revenue Code, in substantially the form attached hereto and incorporated herein as Exhibit B; and (iii) such duly executed documents as may be reasonably requested by a title company selected by Seller (the "**Title Company**") and/or any other party in connection with the Transaction (defined below) (all of the foregoing, collectively, "**Seller's Closing Deliveries**").

(b) ***Buyer Deliveries***: At Closing, Buyer shall (i) pay the Purchase Price in the amount set forth in Section 4.1 of the Form Contract; and (ii) deliver such duly executed

documents as may be reasonably requested by the Title Company and/or any other party in connection with the Transaction (all of the foregoing, collectively, "**Buyer's Closing Deliveries**").

30.5 Assessments. Payment of any special improvement assessments due and payable for the Property for any period prior to Closing shall be paid by Seller. Any special improvement assessments payable for the year of Closing shall be prorated between Buyer and Seller as of the Closing Date in the same manner as general property taxes are to be prorated under Section 16.1 of the Form Contract. Payment of any special improvement assessments due for the Property for subsequent years shall be the responsibility of Buyer. The provisions of this Section 30.5 shall survive Closing.

30.6 Notices. All notices required or permitted to be given under this Contract shall be given in the manner set forth in Section 31 of the Form Contract, addressed as follows or to such other address as the party entitled to receive such notice may, from time to time hereinafter, designate by giving written notice pursuant hereto:

Buyer: Pillar Property Services, LLC
2480 W. 26th Ave. #140B
Denver, Colorado 80211
Attention: Paul Malinowski, Member
Phone: (303) 477-5117
Fax: (303) 477-4167
Email:

with a copy to:	The Law Office of Mark Berry 1 Wren Littleton, Colorado 80127 Attention: Mark Berry Phone: (303) 932-2909 Fax: (303) 973-9153 Email:
Seller:	The City of Englewood 1000 Englewood Parkway Englewood, Colorado 80110 Attention: Mike Flaherty, Deputy City Manager Phone: (303) 762-2314 Fax: _____ Email:
with a copy to:	Office of the City Attorney Attention: Nancy Reid, Esq. Phone: 303-762-2320 Fax: 303-783-6892 Email:
If to Title Company:	_____ _____ _____ Attention: _____ Phone: _____ Fax: _____ Email: _____

30.7 Form 1099. The parties agree that the Title Company is hereby designated as the entity responsible for filing a Form 1099 with the Internal Revenue Service promptly after Closing as required under Internal Revenue Code Reg. § 1.6045 4 or any other regulation or reporting requirement.

30.8 Brokers. Each of the parties represents and warrants to the other that notwithstanding any provision contained in this Contract, neither party has dealt with, negotiated through or communicated with any broker in connection with the Transaction, and each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made against the indemnified party by any broker claiming a commission or fee by, through or under the indemnifying party or otherwise. The parties' obligations under this Section 30.9 shall survive Closing or termination of this Contract.

30.9 Personal Liability. Notwithstanding anything to the contrary provided in this Contract, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Contract by the parties, that (a) there shall be absolutely no personal

liability on the part of any shareholder, director, officer, manager, member or employee of any party hereto with respect to any of the terms, covenants and conditions of this Contract; and (b) each party hereby waives any and all claims, demands and causes of action against the shareholders, directors, officers, managers, members or employees of the other party hereto in the event of any breach by any such party of any of the terms, covenants and conditions of this Contract to be performed by such other party. The provisions of this Section 30.9 shall survive Closing.

30.10 Further Assurances. Each of the parties agrees, whenever and as often as reasonably requested so to do by the other party or the Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the intent and purpose of this Contract. The provisions of this Section 30.10 shall survive Closing.

30.11 Assignment. Notwithstanding any provision contained in this Contract, including without limitation, Section 2.2 of the Form Contract, Buyer may not assign its interest in this Contract without Seller's prior written consent, such consent not to be unreasonably withheld; *provided, however*, that, without Seller's prior written consent, Buyer may assign this Contract to an entity which is an Affiliate (defined below) of Buyer provided that (a) Buyer gives Seller written notice of such assignment; (b) any such assignee expressly assumes the obligations and liabilities of Buyer under this Contract from and after the date of such assignment; and (c) Buyer remains liable for all obligations and liabilities of Buyer arising or accruing prior to the date of assignment (unless otherwise agreed to by the assignee and approved by Seller). For purposes hereof, an entity shall be deemed to be an **"Affiliate"** of Buyer if Buyer shall, directly or indirectly through one or more intermediaries, control such entity and own at least fifty percent (50%) of the stock, membership or partnership units of such entity. Any purported assignment without Seller's required consent or to an entity other than an Affiliate shall be null and void ab initio.

_____ initial by Seller

_____ initial by Buyer

[Remainder of page intentionally left blank; signature page(s) to follow]

SELLER:

THE CITY OF ENGLEWOOD,
a Colorado Municipal Corporation

By: _____

Name: _____

Title: _____

BUYER:

PILLAR PROPERTY SERVICES, LLC,
a Colorado limited liability company

By: _____

Name: Paul Malinowski

Title: Managing Member

Exhibits:

FIRPTA Affidavit

FIRPTA AFFIDAVIT

STATE OF _____)
) SS.
COUNTY OF _____)

NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a United States real property interest must withhold tax if the transferor (seller) is a foreign person. For the purpose of informing the transferee that withholding of tax is not required upon the disposition of a United States real property interest by _____, a _____ (the "Transferor"), the undersigned hereby affirms the following:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person, as those terms are defined in the Internal Revenue Code (the "Code") and the Income Tax Regulations.

2. The office address of the Transferor is _____, Denver, Colorado _____.

3. The United States taxpayer identification number of the Transferor is: _____.

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained hereby could be punished by fine, imprisonment, or both. The Transferor further understands that the transferee is relying on this affidavit in determining whether withholding tax is required.

Under penalties of perjury, the undersigned hereby certifies that to the best of its knowledge and belief, this Affidavit is true, correct and complete and I further declare that I have authority to sign this document on behalf of the Transferor.

_____,
a _____

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
): ss
COUNTY OF _____)

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

Witness my hand and official seal.

[seal]

_____
Notary Public

Address:_____
_____

My commission expires:_____

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
March 19, 2012	11 a i	Ordinance approving the sale of the Englewood Depot.

Initiated By:	Staff Source:
City Manager's Office	Michael Flaherty, Deputy City Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council discussed the initial proposal from Pillar Property Services for the sale of the Englewood Depot during an Executive Session on February 13, 2012. Council considered Pillar's revised proposal during the February 27, 2012 Study Session. Council accepted by motion on March 5, 2012 the proposed purchase price of $50,000 and set a public hearing for March 19, 2012 to gather public input on the proposal.

RECOMMENDED ACTION

Staff seeks Council's approval of a bill for an ordinance for the sale of the Englewood Depot to Pillar Property Services, LLC. The purchase includes the Depot structure and the .490 acre parcel on which the Depot is located. (Note: the sale does not include the adjacent .390 acre parcel on which the community garden is located.)

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Last fall, the City of Englewood was approached by two different parties who expressed interest in purchasing the Englewood Depot, located at 3098 South Galapago Street. Following discussion regarding the proposals, City Council requested that staff issue a Request for Proposal (RFP) to ensure that the sale of the property was open to all interested parties. The RFP was issued in late November. One proposal was received - the proposal submitted by Pillar Property Services, LLC.

The initial proposal offered a purchase price of $31,215 for the property. After discussion and consideration, Council asked staff to approach the representative from Pillar to determine if there was any room for negotiation on the offer. Pillar returned a revised proposal to purchase the property for $50,000. City Council accepted the proposed purchase price, pending a public hearing and approval of an ordinance for sale of City property. The terms and conditions of the sale are as follows:

- The purchase price shall be $50,000.00
- The property will be sold "AS IS, WHERE IS." All warranties, expressed or implied, including fitness for purpose of use are hereby waived by buyer.
- The City will impose a deed restriction on the property that will require the buyer to maintain the historical structure for a minimum period of 30 years from the date of purchase.

- The Buyer will rehabilitate the historic elements of the structure according to the Secretary of the Interior's Standards for Rehabilitation.
- The Buyer will provide the City with the Right of First Refusal, in the event that Buyer subsequently sales the property within 5 years from the date of purchase.
- The City will not furnish title insurance.
- The City will arrange for the quit claim deed to be executed by the Mayor and recorded upon confirming that the City has received full purchase.
- Buyer must execute any other documents necessary to consummate the sale as provided herein.

FINANCIAL IMPACT

If this ordinance is approved, the City will receive $50,000 for sale of the property.

LIST OF ATTACHMENTS

Parcel Map
Proposed Bill for an Ordinance

City of Englewood, Colorado

Depot Property Parcel Map

0.490 Acres

Parcel Lot Lines

Revised: 29 Feb 2012

0 50 100 150

Feet

PRINTED: 2012-02-29 16:28:58

DRAWN BY: JDL

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2012

COUNCIL BILL NO. 18
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING A CONTRACT FOR THE SALE OF THE ENGLEWOOD DEPOT LOCATED AT 3098 SOUTH GALAPAGO STREET AND PROPERTY TO PILLAR PROPERTY SERVICES LLC BY THE CITY OF ENGLEWOOD.

WHEREAS, in 1994 the Englewood Depot received status as a historic structure on the State Register of Historic Properties; and

WHEREAS, in 1998 the City of Englewood purchased the Englewood depot and six lots at West Dartmouth and South Galapago from the Englewood Housing Authority; and

WHEREAS, Pillar Property Services LLC submitted an offer to purchase the Englewood Depot to the City of Englewood; and

WHEREAS, the Englewood City Council approved a Motion setting the proposed sales amount from Pillar Property Services, LLC to purchase the Englewood Depot and the .490 acre parcel on which the Depot is located for a purchase price of $50,000 and set a Public Hearing for March 19, 2012; and

WHEREAS, the City has included certain conditions for sale as follows:

- The purchase price shall be $50,000.00.
- The property will be sold "AS IS, WHERE IS." All warranties, expressed or implied, including fitness for purpose of use are hereby waived by buyer.
- The City will impose a deed restriction on the property that will require the buyer to maintain the historical structure for a minimum period of 30 years from the date of purchase.
- The Buyer will rehabilitate the historic elements of the structure according to the Secretary of the Interior's Standards for Rehabilitation.
- The Buyer will provide the City with the Right of First Refusal, in the event that the Buyer subsequently sells the property within 5 years from the date of purchase.
- The City will not furnish title insurance.
- The City will arrange for the quit claim deed to be executed by the Mayor and recorded upon confirming that the City has received full purchase.
- Buyer must execute any other documents necessary to consummate the sale as provided herein.

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 herby authorizes the sale of the Englewood Depot located at 3098 South Galapago Street, Englewood, Colorado to Pillar Property Services LLC as detailed in the Contract to Buy and Sell Real Estate, Exhibit A attached hereto.

Section 2. The Mayor is hereby authorized to sign said and execute documents including the Contract for Sale and Deed necessary to complete the transaction.

Introduced, read in full, and passed on first reading on the 19th day of March, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 23rd day of March, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 21st day of March, 2012 for thirty (30) days.

_____
Randy P. Penn, Mayor

ATTEST:

_____
Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy 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 19th day of March, 2012.

_____
Kerry Bush

EXHIBIT A

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
(CBS3-10-11) (Mandatory 1-12)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL)

(☑ Property with No Residences)

(☐ Property with Residences-Residential Addendum Attached)

Date: March 19, 2012

AGREEMENT

1. AGREEMENT. Buyer, identified in § 2.1, agrees to buy, and Seller, identified in § 2.3, agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, Pillar Property Services, LLC, its successors and/or assigns, will take title to the Property described below as ☐ **Joint Tenants** ☐ **Tenants In Common** ☑ **Other** Severalty.

2.2. Assignability and Inurement. This Contract ☑ **Shall** ☐ **Shall Not** be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

2.3. Seller. Seller, The City of Englewood, a Colorado Municipal Corporation, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Arapahoe, Colorado:

A portion of the west half of Block 2,Taylor's Addition, City of Englewood, Arapahoe County, Colorado being more particularly described as follows: See attachment A

known as No. 3098 South Galapago St. Englewood, Colorado 80110,
Street Address City State Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Fixtures. If attached to the Property on the date of this Contract: lighting, heating, plumbing, ventilating and air conditioning fixtures, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, floor coverings, intercom systems, sprinkler systems and controls, garage door openers including any remote controls.

Other Fixtures:

None

If any fixtures are attached to the Property after the date of this Contract, such additional fixtures are also included in the Purchase Price.

2.5.2. Personal Property. If on the Property whether attached or not on the date of this Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, heating stoves, storage sheds, and all keys. If checked, the following are included: ☐ **Water Softeners** ☐ **Smoke/Fire Detectors** ☐ **Security Systems** ☐ **Satellite Systems** (including satellite dishes).

Other Personal Property:

None.

The Personal Property to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance shall be by bill of sale or other applicable legal instrument.

2.5.3. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

N/A

The Trade Fixtures to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except _____. Conveyance shall be by bill of sale or other applicable legal instrument.

2.5.4. Parking and Storage Facilities. ☐ **Use Only** ☐ **Ownership** of the following parking facilities: N/A _____; and ☐ **Use Only** ☐ **Ownership** of the following storage facilities: _____.

2.5.5. Water Rights, Water and Sewer Taps.

2.5.5.1. Deeded Water Rights. The following legally described water rights:

None.

Any water rights shall be conveyed by ☐ _____ **Deed** ☐ **Other** applicable legal instrument.

☐ **2.5.5.2. Well Rights.** If any water well is to be transferred to Buyer, Seller agrees to supply required information about such well to Buyer. Buyer understands that if the well to be transferred is a Small Capacity Well or a Domestic Exempt Water Well used for ordinary household purposes, Buyer shall, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer shall complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer shall file the form with the Division within sixty days after Closing. The Well Permit # is _____.

2.5.5.3. ☐ **Water Stock Certificates:**

N/A

2.5.5.4. ☐ **Water Tap** ☐ **Sewer Tap**

Note: Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the tap.

2.5.5.5. Other Rights:

N/A no water or sewer taps at this address.

2.6. Exclusions. The following items are excluded (Exclusions):

None.

3. DATES AND DEADLINES.

Item No.	Reference	Event	Date or Deadline
1	§ 4.2	Alternative Earnest Money Deadline	N/A
		Title and Association	N/A
2	§ 7.1	Record Title Deadline	
3	§ 7.2	Exceptions Request Deadline	
4	§ 8.1	Record Title Objection Deadline	
5	§ 8.2	Off-Record Title Deadline	
6	§ 8.2	Off-Record Title Objection Deadline	
7	§ 8.3	Title Resolution Deadline	
8	§ 7.3	Association Documents Deadline	
9	§ 7.3	Association Documents Objection Deadline	
10	§ 8.5	Right of First Refusal Deadline	N/A
		Seller's Property Disclosure	N/A
11	§ 10.1	Seller's Property Disclosure Deadline	
		Loan and Credit	
12	§ 5.1	Loan Application Deadline	N/A
13	§ 5.2	Loan Conditions Deadline	May 4, 2012
14	§ 5.3	Buyer's Credit Information Deadline	N/A
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
16	§ 5.4	Existing Loan Documents Deadline	N/A
17	§ 5.4	Existing Loan Documents Objection Deadline	N/A
18	§ 5.4	Loan Transfer Approval Deadline	N/A
		Appraisal	
19	§ 6.2	Appraisal Deadline	N/A
20	§ 6.2	Appraisal Objection Deadline	

		Survey	N/A
21	§ 9.1	Current Survey Deadline	
22	§ 9.2	Current Survey Objection Deadline	
		Inspection and Due Diligence	N/A
23	§ 10.2	Inspection Objection Deadline	
24	§ 10.3	Inspection Resolution Deadline	
25	§ 10.5	Property Insurance Objection Deadline	
26	§ 10.6	Due Diligence Documents Delivery Deadline	
27	§ 10.7	Due Diligence Documents Objection Deadline	
28	§ 10.8	Environmental Inspection Objection Deadline	
29	§ 10.8	ADA Evaluation Objection Deadline	
30	§ 11.1	Tenant Estoppel Statements Deadline	
31	§ 11.2	Tenant Estoppel Statements Objection Deadline	
		Closing and Possession	
32	§ 12.3	**Closing Date**	May 11, 2012
33	§ 17	Possession Date	May 11, 2012
34	§ 17	Possession Time	at closing
35	§ 28	**Acceptance Deadline Date**	April 3, 2012
36	§ 28	**Acceptance Deadline Time**	midnight

Note: Applicability of Terms.
Any box, blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means such provision in **Dates and Deadlines** (§ 3), including any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	$ 50,000.00 U.S.	
2	§ 4.2	Earnest Money		$ N/A
3	§ 4.5	New Loan		N/A
4	§ 4.6	Assumption Balance		N/A
5	§ 4.7	Seller or Private Financing		N/A
6				
7				
8	§ 4.3	Cash at Closing		$50,000.00
9		**TOTAL**	$ 50,000.00	$ 50,000.00

4.2. Earnest Money. The Earnest Money set forth in this section, in the form of N/A, shall be payable to and held by N/A (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** (§ 3) for its payment. If Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

4.2.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract is as set forth as the **Alternative Earnest Money Deadline** (§ 3).

4.2.2. Return of Earnest Money. If Buyer has a Right to Terminate and timely terminates, Buyer shall be entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to

execute and return to Buyer or Broker working with Buyer, written mutual instructions, i.e., Earnest Money Release form, within three days of Seller's receipt of such form.

4.3. Form of Funds; Time of Payment; Funds Available.

4.3.1. Good Funds. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, shall be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.3.2. Available Funds. All funds required to be paid at Closing or as otherwise agreed in writing between the parties shall be timely paid to allow disbursement by Closing Company at Closing **OR SUCH PARTY SHALL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract, ☑ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.4. Seller Concession. Seller, at Closing, shall credit, as directed by Buyer, an amount of $ N/A to assist with Buyer's closing costs (Seller Concession). Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. Seller Concession shall be reduced to the extent it exceeds the amount allowed by Buyer's lender as set forth in the Closing Statement, at Closing.

4.5. New Loan.

4.5.1. Buyer to Pay Loan Costs. Buyer, except as provided in § 4.4, if applicable, shall timely pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees, as required by lender.

4.5.2. Buyer May Select Financing. Buyer may pay in cash or select financing appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 or § 30 (Additional Provisions).

4.5.3. Loan Limitations. Buyer may purchase the Property using either of the following types of loan: ☐ **Conventional** ☐ **Other** N/A _____.

4.6. Assumption. Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption Balance set forth in § 4.1, presently payable at $_____ per _____ including principal and interest presently at the rate of _____% per annum, and also including escrow for the following as indicated: ☐ **Real Estate Taxes** ☐ **Property Insurance Premium** and ☐ _____.

Buyer agrees to pay a loan transfer fee not to exceed $_____. At the time of assumption, the new interest rate shall not exceed _____% per annum and the new payment shall not exceed $_____ per _____ principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than $_____, then Buyer shall have the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on the reduced amount of the actual principal balance.

Seller ☐ **Shall** ☐ **Shall Not** be released from liability on said loan. If applicable, compliance with the requirements for release from liability shall be evidenced by delivery ☐ **on or before Loan Transfer Approval Deadline** (§ 3) ☐ **at Closing** of an appropriate letter of commitment from lender. Any cost payable for release of liability shall be paid by _____ in an amount not to exceed $_____.

4.7. Seller or Private Financing. Buyer agrees to execute a promissory note payable to N/A _____, as ☐ **Joint Tenants** ☐ **Tenants In Common** ☐ **Other** _____, on the note form as indicated: ☐ **(Default Rate)** NTD81-10-06 ☐ **Other** _____ secured by a _____ (1st, 2nd, etc.) deed of trust encumbering the Property, using the form as indicated:

☐ **Due on Transfer – Strict** (TD72-8-10) ☐ **Due on Transfer – Creditworthy** (TD73-8-10) ☐ **Assumable – Not Due on Transfer** (TD74-8-10) ☐ **Other** _____.

The promissory note shall be amortized on the basis of _____ ☐ **Years** ☐ **Months**, payable at $_____ per _____ including principal and interest at the rate of _____% per annum. Payments shall commence _____ and shall be due on the _____ day of each succeeding _____. If not sooner paid, the balance of principal and accrued interest shall be due and payable _____ after Closing. Payments ☐ **Shall** ☐ **Shall Not** be increased by _____ of estimated annual real estate taxes, and ☐ **Shall** ☐ **Shall Not** be increased by _____ of estimated annual property insurance premium. The loan shall also contain the following terms: (1) if any payment is not received within _____ days after its due date, a late charge of _____% of such payment shall be due; (2) interest on lender disbursements under the deed of trust shall be _____% per annum; (3) default interest rate shall be _____% per annum; (4) Buyer may prepay without a penalty except _____; and (5) Buyer ☐ **Shall** ☐ **Shall Not** execute and deliver, at Closing, a Security Agreement and UCC-1 Financing Statement granting the holder of the promissory note a _____ (1st, 2nd, etc.) lien on the personal property included in this sale.

Buyer ☐ **Shall** ☐ **Shall Not** provide a mortgagee's title insurance policy, at Buyer's expense.

TRANSACTION PROVISIONS

5. FINANCING CONDITIONS AND OBLIGATIONS.

5.1. Loan Application. If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, shall make an application verifiable by such lender, on or before **Loan Application Deadline** (§ 3) and exercise reasonable efforts to obtain such loan or approval.

5.2. Loan Conditions. If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions, and cost of such New Loan. This condition is for the benefit of Buyer. Buyer shall have the Right to Terminate under § 25.1, on or before **Loan Conditions Deadline** (§ 3), if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion. **IF SELLER DOES NOT TIMELY RECEIVE WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY SHALL BE NONREFUNDABLE,** except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

5.3. Credit Information and Buyer's New Senior Loan. If Buyer is to pay all or part of the Purchase Price by executing a promissory note in favor of Seller, or if an existing loan is not to be released at Closing, this Contract is conditional (for the benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval shall be at Seller's sole subjective discretion. In such case: (1) Buyer shall supply to Seller by **Buyer's Credit Information Deadline** (§ 3), at Buyer's expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit condition and Buyer's New Senior Loan, defined below, if any; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; (3) any such information and documents received by Seller shall be held by Seller in confidence, and not released to others except to protect Seller's interest in this transaction; and (4) in the event Buyer is to execute a promissory note secured by a deed of trust in favor of Seller, this Contract is conditional (for the benefit of Seller) upon Seller's approval of the terms and conditions of any New Loan to be obtained by Buyer if the deed of trust to Seller is to be subordinate to Buyer's New Loan (Buyer's New Senior Loan). If the Cash at Closing is less than as set forth in § 4.1 of this Contract or Buyer's New Senior Loan changes from that approved by Seller, Seller shall have the Right to Terminate under § 25.1, at or before Closing. If Seller disapproves of Buyer's financial ability, creditworthiness or Buyer's New Senior Loan, in Seller's sole subjective discretion, Seller shall have the Right to Terminate under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline** (§ 3).

5.4. Existing Loan Review. If an existing loan is not to be released at Closing, Seller shall deliver copies of the loan documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline** (§ 3). For the benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer shall have the Right to Terminate under § 25.1, on or before **Existing Loan Documents Objection Deadline** (§ 3), based on any unsatisfactory provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline** (§ 3), this Contract shall terminate on such deadline. Seller shall have the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

6. APPRAISAL PROVISIONS.

6.1. Lender Property Requirements. If the lender imposes any requirements or repairs (Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller shall have the Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days following Seller's receipt of the Requirements, based on any unsatisfactory Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in this § 6.1 shall not apply if, on or before any termination by Seller pursuant to this § 6.1: (1) the parties enter into a written agreement regarding the Requirements; or (2) the Requirements have been completed; or (3) the satisfaction of the Requirements is waived in writing by Buyer.

6.2. Appraisal Condition. The applicable Appraisal provision set forth below shall apply to the respective loan type set forth in § 4.5.3, or if a cash transaction, i.e. no financing, § 6.2.1 shall apply.

6.2.1. Conventional/Other. Buyer shall have the sole option and election to terminate this Contract if the Property's valuation is less than the Purchase Price determined by an appraiser engaged on behalf of Buyer. The appraisal shall be received by Buyer or Buyer's lender on or before **Appraisal Deadline** (§ 3). Buyer shall have the Right to Terminate under § 25.1, on or before **Appraisal Objection Deadline** (§ 3), if the Property's valuation is less than the Purchase Price and Seller's receipt of either a copy of such appraisal or written notice from lender that confirms the Property's valuation is less than the Purchase Price.

6.3. Cost of Appraisal. Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by ☑ **Buyer** ☐ **Seller.**

7. EVIDENCE OF TITLE AND ASSOCIATION DOCUMENTS.

7.1. Evidence of Title. On or before **Record Title Deadline** (§ 3), Seller shall cause to be furnished to Buyer, at Seller's expense, a current commitment for owner's title insurance policy (Title Commitment) in an amount equal to the Purchase Price, or if this box is checked, ☐ **An Abstract** of title certified to a current date. If title insurance is furnished, Seller shall also deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract) in Seller's possession. At Seller's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. The title insurance commitment ☑ **Shall** ☐ **Shall Not** commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (effective date of commitment to date deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain this additional coverage shall be paid by ☑ **Buyer** ☐ **Seller.**

Note: The title insurance company may not agree to delete or insure over any or all of the standard exceptions. Buyer shall have the right to review the Title Commitment, its provisions and Title Documents (defined in § 7.2), and if not satisfactory to Buyer, Buyer may exercise Buyer's rights pursuant to § 8.1.

7.2. Copies of Exceptions. On or before **Record Title Deadline** (§ 3), Seller, at Seller's expense, shall furnish to Buyer and Buyer's Counsel, (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a Title Commitment is required to be furnished, and if this box is checked ☑ **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not checked, Seller shall have the obligation to furnish these documents pursuant to this section if requested by Buyer any time on or before **Exceptions Request Deadline** (§ 3). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The Abstract or Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (collectively, Title Documents).

7.3. Homeowners' Association Documents. The term Association Documents consists of all owners' associations (Association) declarations, bylaws, operating agreements, rules and regulations, party wall agreements, minutes of most recent annual owners' meeting and minutes of any directors' or managers' meetings during the six-month period immediately preceding the date of this Contract, if any (Governing Documents), most recent financial documents consisting of (1) annual balance sheet, (2) annual income and expenditures statement, and (3) annual budget (Financial Documents), if any (collectively, Association Documents).

7.3.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

7.3.2. Association Documents to Buyer.

☐ **7.3.2.1. Seller to Provide Association Documents.** Seller shall cause the Association Documents to be provided to Buyer, at Seller's expense, on or before **Association Documents Deadline** (§ 3).

☐ **7.3.2.2. Seller Authorizes Association.** Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense.

7.3.2.3. Seller's Obligation. Seller's obligation to provide the Association Documents shall be fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

Note: If neither box in this § 7.3.2 is checked, the provisions of § 7.3.2.1 shall apply.

7.3.3. Conditional on Buyer's Review. If the box in either § 7.3.2.1 or § 7.3.2.2 is checked, the provisions of this § 7.3.3 shall apply. Buyer shall have the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline** (§ 3), based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline** (§ 3), Buyer, at Buyer's option, shall have the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date** (§ 3), Buyer's Notice to Terminate shall be received by Seller on or before three days prior to **Closing Date** (§ 3). If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.5.

8. RECORD TITLE AND OFF-RECORD TITLE MATTERS.

8.1. Record Title Matters. Buyer has the right to review and object to any of the Title Documents (Right to Object, Resolution), as set forth in § 8.3. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If Buyer objects to any of the Title Documents, Buyer shall cause Seller to receive Buyer's Notice to Terminate or Notice of Title Objection on or before **Record Title Objection Deadline** (§ 3). If Title Documents are not received by Buyer, on or before the **Record Title Deadline** (§ 3), or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment shall be delivered to Buyer. Buyer shall cause Seller to receive Buyer's Notice to Terminate or Notice of Title Objection on or before ten days after receipt by Buyer of the following documents: (1) any required Title Document not timely received by Buyer, (2) any change to the Title Documents, or (3) endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.1 (Record Title Matters), any title objection by Buyer and this Contract shall be governed by the provisions set forth in § 8.3 (Right to Object, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

8.2. Off-Record Title Matters. Seller shall deliver to Buyer, on or before **Off-Record Title Deadline** (§ 3), true copies of all existing surveys in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (such as an unrecorded easement, unrecorded lease, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 13), in Buyer's sole subjective discretion, shall be received by Seller on or before **Off-Record Title Objection Deadline** (§ 3). If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.2 (Off-Record Title Matters), any title objection by Buyer and this Contract shall be governed by the provisions set forth in § 8.3 (Right to Object, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection, on or before **Off-Record Title Objection Deadline** (§ 3), Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

8.3. Right to Object, Resolution. Buyer's right to object to any title matters shall include, but not be limited to those matters set forth in §§ 8.1 (Record Title Matters), 8.2 (Off-Record Title Matters) and 13 (Transfer of Title), in Buyer's sole subjective discretion (collectively, Notice of Title Objection). If Buyer objects to any title matter, on or before the applicable deadline, Buyer shall have the choice to either (1) object to the condition of title, or (2) terminate this Contract.

8.3.1. Title Resolution. If Seller receives Buyer's Notice of Title Objection, as provided in § 8.1 (Record Title Matters) or § 8.2 (Off-Record Title Matters), on or before the applicable deadline, and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline** (§ 3), this Contract shall terminate on the expiration of **Title Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline** (§ 3).

8.3.2. Right to Terminate – Title Objection. Buyer shall have the Right to Terminate under § 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.

8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

Buyer shall have the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline** (§ 3), based on any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective discretion.

8.5. Right of First Refusal or Contract Approval. If there is a right of first refusal on the Property, or a right to approve this Contract, Seller shall promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract shall terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract shall remain in full force and effect. Seller shall promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or Contract approval has not occurred on or before **Right of First Refusal Deadline** (§ 3), this Contract shall then terminate.

8.6. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements,

leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property.** Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract [e.g., **Record Title Objection Deadline** (§ 3) and **Off-Record Title Objection Deadline** (§ 3)].

9. CURRENT SURVEY REVIEW.

9.1. Current Survey Conditions. If the box in § 9.1.1 or § 9.1.2 is checked, Buyer, the issuer of the Title Commitment or the provider of the opinion of title if an abstract, and _____ shall receive a Current Survey, i.e., Improvement Location Certificate, Improvement Survey Plat or other form of survey set forth in § 9.1.2 (collectively, Current Survey), on or before **Current Survey Deadline** (§ 3). The Current Survey shall be certified by the surveyor to all those who are to receive the Current Survey.

☐ **9.1.1. Improvement Location Certificate.** If the box in this § 9.1.1 is checked, ☐ **Seller** ☐ **Buyer** shall order or provide, and pay, on or before Closing, the cost of an **Improvement Location Certificate.**

☐ **9.1.2. Other Survey.** If the box in this § 9.1.2 is checked, a Current Survey, other than an Improvement Location Certificate, shall be an ☐ **Improvement Survey Plat** ☐ _____. The parties agree that payment of the cost of the Current Survey and obligation to order or provide the Current Survey shall be as follows:

Buyer

9.2. Survey Objection. Buyer shall have the right to review and object to the Current Survey. Buyer shall have the Right to Terminate under § 25.1, on or before the **Current Survey Objection Deadline** (§ 3), if the Current Survey is not timely received by Buyer or based on any unsatisfactory matter with the Current Survey, notwithstanding § 8.2 or § 13.

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY AND DUE DILIGENCE.

10.1. Seller's Property Disclosure Deadline. On or before **Seller's Property Disclosure Deadline** (§ 3), Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.

10.2. Inspection Objection Deadline. Unless otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "as is" condition, "where is" and "with all faults". Seller shall disclose to Buyer, in writing, any latent defects actually known by Seller. Buyer, acting in good faith, shall have the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property, e.g. heating and plumbing, (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 3):

10.2.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

10.2.2. Inspection Objection. Deliver to Seller a written description of any unsatisfactory physical condition that Buyer requires Seller to correct.

Buyer shall have the Right to Terminate under § 25.1, on or before **Inspection Objection Deadline** (§ 3), based on any unsatisfactory physical condition of the Property or Inclusions, in Buyer's sole subjective discretion.

10.3. Inspection Resolution Deadline. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** (§ 3), and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline** (§ 3), this Contract shall terminate on **Inspection Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline** (§ 3).

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or any other work performed at Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by

Seller to defend against any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this section shall survive the termination of this Contract.

10.5. Insurability. Buyer shall have the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer shall have the Right to Terminate under § 25.1, on or before **Property Insurance Objection Deadline** (§ 3), based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

10.6. Due Diligence Documents. Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline** (§ 3) to the extent such Due Diligence Documents exist and are in Seller's possession:

10.6.1. All contracts relating to the operation, maintenance and management of the Property;

10.6.2. Property tax bills for the last two years;

10.6.3. As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical, and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;

10.6.4. A list of all Inclusions to be conveyed to Buyer;

10.6.5. Operating statements for the past N/A years;

10.6.6. A rent roll accurate and correct to the date of this Contract;

10.6.7. All current leases, including any amendments or other occupancy agreements, pertaining to the Property (Leases);

10.6.8. A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

10.6.9. All insurance policies pertaining to the Property and copies of any claims which have been made for the past two years;

10.6.10. Soils reports, Surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.2);

10.6.11. Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller shall warrant that no such reports are in Seller's possession or known to Seller;

10.6.12. Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;

10.6.13. All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

10.6.14. Other Documents: None.

10.7. Due Diligence Documents Conditions. Buyer shall have the right to review and object to Due Diligence Documents, zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property (Zoning), in Buyer's sole subjective discretion, or Seller's failure to deliver to Buyer all Due Diligence Documents. Buyer shall also have the unilateral right to waive any condition herein.

10.7.1. Due Diligence Documents Objection. Buyer shall have the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline** (§ 3), based on any unsatisfactory matter with the Due Diligence Documents, in Buyer's sole subjective discretion. If, however, Due Diligence Documents are not timely delivered under § 10.6, or if Seller fails to deliver all Due Diligence Documents to Buyer, then Buyer shall have the Right to Terminate under § 25.1 on or before the earlier of ten days after **Due Diligence Documents Objection Deadline** (§ 3) or Closing.

10.7.2. Zoning. Buyer shall have the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline** (§ 3), based on any unsatisfactory zoning, in Buyer's sole subjective discretion.

10.8. Due Diligence – Environmental, ADA. Buyer shall have the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable. ☐ **Seller** ☑ **Buyer** shall order or provide ☑ **Phase I Environmental Site Assessment,** ☐ **Phase II Environmental Site Assessment** (compliant with ASTM E1527-05 standard practices for Environmental Site Assessments) and/or ☐ _____, at the expense of ☐ **Seller** ☑ **Buyer** (Environmental Inspection). In addition, Buyer may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations shall be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Objection Deadline** (§ 3) shall be extended by _____ days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date** (§ 3), the **Closing Date** (§ 3) shall be extended a like period of time.

Buyer shall have the Right to Terminate under § 25.1, on or before **Environmental Inspection Objection Deadline** (§ 3), or if applicable the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer shall have the Right to Terminate under § 25.1, on or before **ADA Evaluation Objection Deadline** (§ 3), based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

10.9. Existing Leases; Modification of Existing Leases; New Leases. Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller shall not amend, alter, modify, extend or cancel any of the Leases nor shall Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

11. TENANT ESTOPPEL STATEMENTS.

11.1. Tenant Estoppel Statements Conditions. Buyer shall have the right to review and object to any Estoppel Statements. Seller shall obtain and deliver to Buyer on or before **Tenant Estoppel Statements Deadline** (§ 3), statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of such occupant's or tenant's lease and any amendments (Lease) stating:

11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;

11.1.2. That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;

11.1.3. The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;

11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;

11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and

11.1.6. That the Lease to which the Estoppel is attached is a true, correct and complete copy of the Lease demising the premises it describes.

11.2. Tenant Estoppel Statements Objection. Buyer shall have the Right to Terminate under § 25.1, on or before **Tenant Estoppel Statements Objection Deadline** (§ 3), based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion or if Seller fails to deliver the Estoppel Statements on or before **Tenant Estoppel Statements Deadline** (§ 3). Buyer shall also have the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. Closing Documents and Closing Information. Seller and Buyer shall cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender shall be required to provide the Closing Company in a timely manner all required loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

12.2. Closing Instructions. Buyer and Seller agree to execute the Colorado Real Estate Commission's Closing Instructions. Such Closing Instructions ☐ **Are** ☑ **Are Not** executed with this Contract. Upon mutual execution, ☐ **Seller** ☐ **Buyer** shall deliver such Closing Instructions to the Closing Company.

12.3. Closing. Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 3) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by City of Englewood.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

13. TRANSFER OF TITLE. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient Special Warranty deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

13.1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with **Record Title Matters** (§ 8.1),

13.2. Distribution utility easements (including cable TV),

13.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title Matters** (§ 8.2) and **Current Survey Review** (§ 9),

13.4. Inclusion of the Property within any special taxing district, and

13.5. Other See attached Adendum to Contract.

14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

15.1. Closing Costs. Buyer and Seller shall pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. Closing Services Fee. The fee for real estate closing services shall be paid at Closing by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Other** _____.

15.3. Status Letter and Transfer Fees. Any fees incident to the issuance of Association's statement of assessments (Status Letter) shall be paid by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None**. Any transfer fees assessed by the Association including, but not limited to, any record change fee, regardless of name or title of such fee (Association's Transfer Fee) shall be paid by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.**

15.4. Local Transfer Tax. ☐ **The Local Transfer Tax** of _____% of the Purchase Price shall be paid at Closing by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.**

15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, shall be paid at Closing by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.**

15.6. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction shall be paid when due by ☐ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **None.**

16. PRORATIONS. The following shall be prorated to **Closing Date** (§ 3), except as otherwise provided:

16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on ☐ **Taxes for the Calendar Year Immediately Preceding Closing** ☑ **Most Recent Mill Levy and Most Recent Assessed Valuation**, or ☐ **Other** _____.

16.2. Rents. Rents based on ☐ **Rents Actually Received** ☐ **Accrued.** At Closing, Seller shall transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of such transfer and of the transferee's name and address. Seller shall assign to Buyer all Leases in effect at Closing and Buyer shall assume Seller's obligations under such Leases.

16.3. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association shall not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** (§ 3) by the Association shall be the obligation of ☐ **Buyer** ☑ **Seller.** Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, shall be the obligation of Seller. Seller represents that the Association Assessments are currently payable at $_____ per _____ and that there are no unpaid regular or special assessments against the Property except the current regular assessments and _____. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing Date** (§ 3) a current Status Letter.

16.4. Other Prorations. Water and sewer charges, interest on continuing loan, and _____.

16.5. Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.

17. POSSESSION. Possession of the Property shall be delivered to Buyer on **Possession Date** (§ 3) at **Possession Time** (§ 3), subject to the following Leases or tenancies:

None.

If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of $ N/A per day (or any part of a day notwithstanding § 18.1) from **Possession Date** (§ 3) and **Possession Time** (§ 3) until possession is delivered.

GENERAL PROVISIONS

18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

18.1. Day. As used in this Contract, the term "day" shall mean the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

18.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or

federal or Colorado state holiday (Holiday), such deadline ☑ **Shall** ☐ **Shall Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline shall not be extended.

19. CAUSES OF LOSS, INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND INCLUSIONS AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), Seller shall be obligated to repair the same before **Closing Date** (§ 3). In the event such damage is not repaired within said time or if the damage exceeds such sum, this Contract may be terminated at the option of Buyer. Buyer shall have the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on any Property Damage not repaired before **Closing Date** (§ 3). Should Buyer elect to carry out this Contract despite such Property Damage, Buyer shall be entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not exceed the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** (§ 3) or, at the option of Buyer, Seller shall assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance policy, but not to exceed the total Purchase Price.

19.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), systems and components of the Property, e.g., heating or plumbing, fail or be damaged between the date of this Contract and Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion, service, system, component or fixture of the Property with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion, service, system, component or fixture is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

19.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller shall promptly notify Buyer, in writing, of such condemnation action. Buyer shall have the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer shall be entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit shall not include relocation benefits or expenses, or exceed the Purchase Price.

19.4. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer and Seller acknowledge that the respective broker has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

21.1. If Buyer is in Default:

☑ **21.1.1. Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest Money (whether or not paid by Buyer) shall be paid to Seller and retained by Seller; and Seller may recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.

21.1.2. Liquidated Damages, Applicable. This § 21.1.2 shall apply <u>unless the box in § 21.1.1. is checked</u>. All Earnest Money (whether or not paid by Buyer) shall be paid to Seller, and retained by Seller. Both parties shall thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money shall be SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

22. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date** (§ 3), the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

23. MEDIATION. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.

24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder shall release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option and sole subjective discretion, may (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpled the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of **Mediation** (§ 23). The provisions of this § 24 apply only if the Earnest Money Holder is one of the Brokerage Firms named in § 33 or § 34.

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination shall be effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate shall have accepted the specified matter, document or condition as satisfactory and waived the Right to Terminate under such provision.

25.2. Effect of Termination. In the event this Contract is terminated, all Earnest Money received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.

27. NOTICE, DELIVERY, AND CHOICE OF LAW.

27.1. Physical Delivery. All notices must be in writing, except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Seller, and delivered to Buyer shall be effective when physically received by Buyer, any signatory on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Buyer, and delivered to Seller shall be effective when physically received by Seller, any signatory on behalf of Seller, any named individual of Seller, any representative of Seller, or Brokerage Firm of Broker working with Seller (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 27.2.

27.2. Electronic Delivery. As an alternative to physical delivery, any document, including any signed document or written notice may be delivered in electronic form only by the following indicated methods: ☐ **Facsimile** ☐ **Email** ☐ **Internet** ☑ **No Electronic Delivery.** If the box "No Electronic Delivery" is checked, this § 27.2 shall not be applicable and § 27.1 shall govern notice and delivery. Documents with original signatures shall be provided upon request of any party.

27.3. Choice of Law. This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for property located in Colorado.

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** (§ 3) and **Acceptance Deadline Time** (§ 3). If accepted, this document shall become a contract

between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith, including but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations** (§ 5), **Record Title and Off-Record Title Matters** (§ 8), **Current Survey Review** (§ 9) and **Property Disclosure, Inspection, Indemnity, Insurability and Due Diligence** (§ 10).

ADDITIONAL PROVISIONS AND ATTACHMENTS

30. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

The property will be sold "as is, where is". Seller provides no warranties, guarantees of title or otherwise, express or implied, including fitness for purpose of use. Seller will not provide title insurance, but Buyer may purchase same. See Addendum to Contract and Exhibit A attached hereto and incorporated herein by this reference.

31. ATTACHMENTS. The following are a part of this Contract:

Addendum to Contract and Exhibit A.

Note: The following disclosure forms **are attached** but are **not** a part of this Contract:

None.

SIGNATURES

Buyer's Name:	Pillar Property Services, LLC	Buyer's Name:	
Buyer's Signature	Date	Buyer's Signature	Date
Address:	2480 W. 26th Ave. #140B Denver, Colorado 80211	Address:	
Phone No.:	(303) 477-5117	Phone No.:	
Fax No.:	(303) 477-4167	Fax No.:	
Electronic Address:		Electronic Address:	

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Seller's Name:	City of Englewood, Colorado	Seller's Name:	
Seller's Signature	Date	Seller's Signature	Date
Address:	1000 Englewood Parkway Englewood, CO 80110	Address:	
Phone No.:	303-762-2314	Phone No.:	
Fax No.:		Fax No.:	
Electronic Address:		Electronic Address:	

32. COUNTER; REJECTION. This offer is ☐ **Countered** ☐ **Rejected.**
Initials only of party (Buyer or Seller) who countered or rejected offer _____

END OF CONTRACT TO BUY AND SELL REAL ESTATE

33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker ☐ **Does** ☐ **Does Not** acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money shall be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Buyer as a ☐ **Buyer's Agent** ☐ **Seller's Agent** ☐ **Transaction-Broker** in this transaction.
☐ This is a **Change of Status.**

Brokerage Firm's compensation or commission is to be paid by ☐ **Listing Brokerage Firm** ☐ **Buyer** ☐ **Other** _____.

Brokerage Firm's Name: N/A
Broker's Name: _____

_____
Broker's Signature Date

Address: _____

Phone No.: _____
Fax No.: _____
Electronic Address: _____

34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker ☐ **Does** ☐ **Does Not** acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money shall be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Seller as a ☐ **Seller's Agent** ☐ **Buyer's Agent** ☐ **Transaction-Broker** in this transaction.
☐ This is a **Change of Status.**

Brokerage Firm's compensation or commission is to be paid by ☐ **Seller** ☐ **Buyer** ☐ **Other** _____.

Brokerage Firm's Name: N/A
Broker's Name: _____

_____
Broker's Signature Date

Address: _____

Phone No.: _____
Fax No.: _____
Electronic Address: _____

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Clear Form

LEGAL DESCRIPTION FOR

3098 South Galapago St. Englewood, Colorado

Lots 18 and 19; the vacated portion of the east-west alley described in Ord. #29 Series of 1996 of the City of Englewood; Lots 20 through 24, except the triangular-shaped parcel conveyed to the Colorado Department of Transportation, recorded in Book 7691 Page 270 of Arapahoe county Records.

The above described parcel contains 21,338 square feet, or 0.490 Acres, more or less.

ATTACHMENT B

TO CONTRACT TO BUY AND SELL REAL ESTATE FOR

3098 SOUTH GALAPAGO STREET, ENGLEWOOD, CO 80110

The following provisions are to be inserted under Paragraph 31 of the Contract:

1. The property will be sold "ASIS, WHERE IS." All warranties, expressed or implied, including fitness for purpose of use are hereby waived by buyer.

2. The City will impose a deed restriction on the property that will require the buyer to maintain the historical structure for a minimum period of 30 years from the date of purchase.

3. The buyer will rehabilitate the historic elements of the structure according to the Secretary of the Interior's Standards for Rehabilitation.

4. The Buyer will provide the City with the Right of First Refusal, in the event that the Buyer subsequently sells the property within 5 years from the date of the purchase.

5. The City will not furnish Title Insurance.

Initialed by Buyer _____

Initialed by Seller _____

ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE
By and Between

THE CITY OF ENGLEWOOD,
a Colorado Municipal Corporation
("Seller")
And
PILLAR PROPERTY SERVICES, LLC,
a Colorado limited liability company
("Buyer")

THIS ADDENDUM TO CONTRACT TO BUY AND SELL REAL ESTATE (the "**Addendum**") is entered into simultaneously with and is part of that certain Contract to Buy and Sell Real Estate dated March 19, 2012 (the "**Form Contract**") between Seller and Buyer (this Addendum and the foregoing Form Contract, collectively the "**Contract**"). In the event of any conflict or inconsistency between the provisions of the Form Contract and the provisions of this Addendum, the provisions of this Addendum shall govern and control. Capitalized terms used in this Addendum which are not defined herein shall have the meanings ascribed to such terms in the Form Contract.

30.1 Use Restrictions. The parties acknowledge and agree that Seller is willing to convey the Property to Buyer, and Buyer is willing to accept the Property, with the express understanding and requirement that (a) at all times the Property shall be used subject to the "Covenants" (as such terms are defined and described in the form of quit claim deed (the "**Deed**"); (b) the Deed evidencing the conveyance of the Property by Seller to Buyer, and any subsequent deeds of conveyance of the Property (collectively, "**Subsequent Deeds**"), shall include and be subject to the Covenants; (c) all Subsequent Deeds shall include an express reference to the Covenants and the recording information for the Deed, and shall contain an acknowledgement by the transferee of the Property of, and such transferee's agreement to remain bound by, the terms and conditions of the Covenants; and (d) any sale, conveyance, gift or transfer of the Property in any manner in violation of the aforesaid restrictions shall be void ab initio.

30.2 Inspections. Prior to performing any inspections, tests, surveys, engineering reports, studies, designs, or any other work on the Property pursuant to Section 10 of the Form Contract (collectively, the "**Inspections**"), (a) Buyer shall provide at least one (1) day's prior written notice thereof to Seller; (b) Seller and/or its agent may be present for all such Inspections; and (c) Buyer shall secure and keep in full force and effect throughout the term of this Contract, the following insurance coverage, at Buyer's sole cost and expense: (i) commercial general liability insurance, including contractual liability (to specifically include coverage for Buyer's indemnification obligations under this Contract), with such coverage and such limits as may be reasonably requested by Seller; (ii) worker's compensation insurance for the employees of Buyer and Buyer's agents and contractors in accordance with applicable state law; and (iii) such other insurance coverage and limits as may reasonably be requested by Seller; *provided, however*, that limits of liability can be provided in a combination of comprehensive general liability and umbrella liability policies. Buyer shall also cause all of its agents and

contractors to secure and keep in full force and effect during the period in which they have access to the Property insurance coverage of customary types and limits.

As part of the Inspections, Buyer, in its discretion and at its own expense, may procure a market study, a noise study and a schematic design for the development of the Property and may undertake additional pre-development activities (including, without limitation, the procurement of geotechnical studies and architectural plans), and all such activities shall be deemed "Inspections" hereunder.

All products and materials resulting from such Inspections (collectively, the "**Materials**"), shall be the property of Buyer; *provided, however*, that if Buyer terminates this Contract (other than as a result of a Seller default hereunder), upon Seller's sole option and its reimbursement to Buyer of the out-of-pocket costs incurred by Buyer for procurement of the Materials, Buyer shall deliver all of the Materials to Seller and, to the extent assignable, Buyer shall promptly assign to Seller all of Buyer's right, title and interest in and to such Materials.

30.3 Condition of Property.

EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN SELLER'S CLOSING DELIVERIES, SELLER HAS NOT MADE ANY REPRESENTATION, WARRANTY, STATEMENT OR PROMISE TO BUYER CONCERNING THE PROPERTY, THE HABITABILITY, QUALITY, VALUE, PHYSICAL ASPECTS OR CONDITION THEREOF, ANY DIMENSIONS OR SPECIFICATIONS OF THE PROPERTY, THE FEASIBILITY, DESIRABILITY, CONVERTIBILITY OF THE PROPERTY FOR OR INTO ANY PARTICULAR USE, OR ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND THAT IN ENTERING INTO THIS CONTRACT, EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN SELLER'S CLOSING DELIVERIES, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION AND HAS NOT RELIED UPON ANY REPRESENTATION, STATEMENT OR WARRANTY OF SELLER AND IS THEREBY ACCEPTING THE CONVEYANCE OF THE PROPERTY IN ITS "AS IS" "WITH ALL FAULTS" CONDITION. THE PROVISIONS OF THIS SECTION 30.3 SHALL SURVIVE CLOSING.

30.4 Closing Deliveries. In addition to other documents and items required to be delivered at Closing pursuant to the terms of this Contract, the parties acknowledge and agree that they shall execute and deliver at Closing or as otherwise provided below the following documents and items:

(a) ***Seller Deliveries***: At Closing, Seller shall deliver (i) the Deed; (ii) a duly executed customary "non-foreign" certificate, as required by Section 1445 of the Internal Revenue Code, in substantially the form attached hereto and incorporated herein as Exhibit B; and (iii) such duly executed documents as may be reasonably requested by a title company selected by Seller (the "**Title Company**") and/or any other party in connection with the Transaction (defined below) (all of the foregoing, collectively, "**Seller's Closing Deliveries**").

(b) ***Buyer Deliveries***: At Closing, Buyer shall (i) pay the Purchase Price in the amount set forth in Section 4.1 of the Form Contract; and (ii) deliver such duly executed

documents as may be reasonably requested by the Title Company and/or any other party in connection with the Transaction (all of the foregoing, collectively, **"Buyer's Closing Deliveries"**).

30.5 Assessments. Payment of any special improvement assessments due and payable for the Property for any period prior to Closing shall be paid by Seller. Any special improvement assessments payable for the year of Closing shall be prorated between Buyer and Seller as of the Closing Date in the same manner as general property taxes are to be prorated under Section 16.1 of the Form Contract. Payment of any special improvement assessments due for the Property for subsequent years shall be the responsibility of Buyer. The provisions of this Section 30.5 shall survive Closing.

30.6 Notices. All notices required or permitted to be given under this Contract shall be given in the manner set forth in Section 31 of the Form Contract, addressed as follows or to such other address as the party entitled to receive such notice may, from time to time hereinafter, designate by giving written notice pursuant hereto:

Buyer: Pillar Property Services, LLC
2480 W. 26th Ave. #140B
Denver, Colorado 80211
Attention: Paul Malinowski, Member
Phone: (303) 477-5117
Fax: (303) 477-4167
Email:

with a copy to:	The Law Office of Mark Berry 1 Wren Littleton, Colorado 80127 Attention: Mark Berry Phone: (303) 932-2909 Fax: (303) 973-9153 Email:
Seller:	The City of Englewood 1000 Englewood Parkway Englewood, Colorado 80110 Attention: Mike Flaherty, Deputy City Manager Phone: (303) 762-2314 Fax: _____ Email:
with a copy to:	Office of the City Attorney Attention: Nancy Reid, Esq. Phone: 303-762-2320 Fax: 303-783-6892 Email:
If to Title Company:	_____ _____ _____ Attention: _____ Phone: _____ Fax: _____ Email: _____

30.7 Form 1099. The parties agree that the Title Company is hereby designated as the entity responsible for filing a Form 1099 with the Internal Revenue Service promptly after Closing as required under Internal Revenue Code Reg. § 1.6045 4 or any other regulation or reporting requirement.

30.8 Brokers. Each of the parties represents and warrants to the other that notwithstanding any provision contained in this Contract, neither party has dealt with, negotiated through or communicated with any broker in connection with the Transaction, and each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made against the indemnified party by any broker claiming a commission or fee by, through or under the indemnifying party or otherwise. The parties' obligations under this Section 30.9 shall survive Closing or termination of this Contract.

30.9 Personal Liability. Notwithstanding anything to the contrary provided in this Contract, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Contract by the parties, that (a) there shall be absolutely no personal

liability on the part of any shareholder, director, officer, manager, member or employee of any party hereto with respect to any of the terms, covenants and conditions of this Contract; and (b) each party hereby waives any and all claims, demands and causes of action against the shareholders, directors, officers, managers, members or employees of the other party hereto in the event of any breach by any such party of any of the terms, covenants and conditions of this Contract to be performed by such other party. The provisions of this Section 30.9 shall survive Closing.

30.10 Further Assurances. Each of the parties agrees, whenever and as often as reasonably requested so to do by the other party or the Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the intent and purpose of this Contract. The provisions of this Section 30.10 shall survive Closing.

30.11 Assignment. Notwithstanding any provision contained in this Contract, including without limitation, Section 2.2 of the Form Contract, Buyer may not assign its interest in this Contract without Seller's prior written consent, such consent not to be unreasonably withheld; *provided, however*, that, without Seller's prior written consent, Buyer may assign this Contract to an entity which is an Affiliate (defined below) of Buyer provided that (a) Buyer gives Seller written notice of such assignment; (b) any such assignee expressly assumes the obligations and liabilities of Buyer under this Contract from and after the date of such assignment; and (c) Buyer remains liable for all obligations and liabilities of Buyer arising or accruing prior to the date of assignment (unless otherwise agreed to by the assignee and approved by Seller). For purposes hereof, an entity shall be deemed to be an "**Affiliate**" of Buyer if Buyer shall, directly or indirectly through one or more intermediaries, control such entity and own at least fifty percent (50%) of the stock, membership or partnership units of such entity. Any purported assignment without Seller's required consent or to an entity other than an Affiliate shall be null and void ab initio.

_____ initial by Seller

_____ initial by Buyer

[Remainder of page intentionally left blank; signature page(s) to follow]

SELLER:

THE CITY OF ENGLEWOOD,
a Colorado Municipal Corporation

By: _____

Name: _____

Title: _____

BUYER:

PILLAR PROPERTY SERVICES, LLC,
a Colorado limited liability company

By: _____

Name: Paul Malinowski

Title: Managing Member

Exhibits:

FIRPTA Affidavit

FIRPTA AFFIDAVIT

STATE OF _____)
) SS.
COUNTY OF _____)

NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a United States real property interest must withhold tax if the transferor (seller) is a foreign person. For the purpose of informing the transferee that withholding of tax is not required upon the disposition of a United States real property interest by _____, a _____ (the "Transferor"), the undersigned hereby affirms the following:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person, as those terms are defined in the Internal Revenue Code (the "Code") and the Income Tax Regulations.

2. The office address of the Transferor is _____, Denver, Colorado _____.

3. The United States taxpayer identification number of the Transferor is: _____.

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained hereby could be punished by fine, imprisonment, or both. The Transferor further understands that the transferee is relying on this affidavit in determining whether withholding tax is required.

Under penalties of perjury, the undersigned hereby certifies that to the best of its knowledge and belief, this Affidavit is true, correct and complete and I further declare that I have authority to sign this document on behalf of the Transferor.

_____,
a _____

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
): ss
COUNTY OF _____)

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

Witness my hand and official seal.

[seal]

_____
Notary Public

Address:_____
_____

My commission expires:_____

COUNCIL COMMUNICATION

DATE:	AGENDA ITEM:	SUBJECT:
March 19, 2012	11 c i	South Broadway Englewood Business Improvement District – Board of Directors

INITIATED BY:	STAFF SOURCE:
South Broadway Englewood Business Improvement District	Darren Hollingsworth, Economic Development Coordinator

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION:

On August 7, 2006, Council made the initial appointment of the Board of Directors for the South Broadway Englewood Business Improvement District (SBEBID).

RECOMMENDED ACTION:

South Broadway Englewood Business Improvement District requestes Council consider the attached resolution approving an updated Board of Directors. In order for SBEBID to have a full slate of Directors, Englewood City Council would need to approve a resolution adopting an updated slate of the Board of Directors.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED:

The South Broadway Englewood Business Improvement District (SBEBID) is a special assessment district designed to improve the economic vitality and overall commercial appeal of the South Broadway corridor in the City of Englewood. The SBEBID provides programs to businesses and commercial properties which include: district marketing, promotions, enhanced safety, and maintenance.

The SBEBID is managed by a Board of Directors, all of whom are voting members and rate payers. One additional seat is reserved for an ex-officio member who is a representative of the City of Englewood. The board of the SBEBID determines annual priorities and oversees the ongoing management of the SBEBID programs. The board consists of a majority of real property owners who represent the various geographic areas of the SBEBID. The directors shall serve a three (3) year term.

With the recent resignation of Mrs. Vicki Skigen the SBEBID Directors would like to submit for Council approval a revised slate of Directors. State statutes require that City Council appoint the Board of Directors for a Business Improvement District. The following slate for the Board of Directors was nominated by their nominating committee:

Dominique Cook - Colorado Capital, l.l.c. (new appointee)
Josef J. Kubik, Jimano's Pizzeria
Gary Oxman - Wagner's Furniture
Ted Vasilas - Teds Clothiers
Bob Laughlin - Acoustic Music Revival
Bryan Reid - Edward's Tobacco Shop, Inc.
Brian Hart - Frame de Art II

FINANCIAL IMPACT:

There are no increased financial impacts associated with this Resolution.

LIST OF ATTACHMENTS:

Letter from the BID
Resignation from Mrs. Vicki Skigen

February 21, 2012

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

City of Englewood, Colorado
Mayor Randy Penn
City Council

RE: South Broadway Englewood Business Improvement District

Dear Mayor Penn,

The SBEBID has received a *Letter of Resignation from the Board of Directors* by Vicki Skigen, who has held the post of Secretary of the BID. We are very grateful for Mrs. Skigen's service to our community and the BID has accepted, with regret, her letter of resignation.

The Board has nominated Dominique G. Cook, Esq., also a property and business owner from the North end of our District to replace Vicki.

We hope that the City Council will join with us in accepting Vicki's resignation and Dominique's nomination.

As always, we deeply appreciate the support that we continue to receive from the City and look forward to continuing to make great changes together.

Sincerely,

Ted Vasilas
President, Board of Directors
South Broadway Englewood Business Improvement District

Vicki Skigen
2805 South Broadway
Englewood, CO 80113
(720) 280 5092

January 17, 2012

TO: SBEBID Board of Directors

ATTN Ted Vasilas, President

Dear Ted and Fellow Board Members,

Please consider this letter my written notice that I will step down from my membership on the Board of Directors of the Business Improvement District in 30 days, effective February 17, 2012.

While I continue to wholeheartedly support the Business Improvement District, the reality is that I am unable to give the time necessary to serve on the Board, and the time that I am spending is coming at too high of a cost to my businesses.

I will attend meetings and do what I can to be supportive, and hopefully in the next few years, I can become more involved again.

Best regards

Vicki Skigen

RESOLUTION NO. _____
SERIES OF 2012

A RESOLUTION APPOINTING THE SOUTH BROADWAY ENGLEWOOD BUSINESS IMPROVEMENT DISTRICT BOARD OF DIRECTORS.

WHEREAS, the South Broadway Englewood Business Improvement District is a special assessment district designed to improve the economic vitality and overall commercial appeal of the South Broadway corridor in the City of Englewood, Colorado and to provide programs to businesses and commercial properties that will include district marketing, promotions, enhanced safety and maintenance; and

WHEREAS, the South Broadway Englewood Business Improvement District (SBEBID) is managed by a Board of Directors consisting of seven members, all of whom shall be South Broadway Englewood Business Improvement District voting members and rate payers, who serve for a three (3) year term; and

WHEREAS, one additional seat, in addition to the seven (7) voting members, is reserved for an ex-officio member who is a representative of the City of Englewood; and

WHEREAS, the Board of Directors determines annual SBEBID priorities and oversees ongoing management of SBEBID programs; and

WHEREAS, the Board of Directors shall consist of a majority of real property owners, shall be an equitable representation of geographic areas, size, type of property and businesses; and

WHEREAS, the Englewood City Council established the SBEBID Board of Directors by the passage of Resolution No. 74, Series of 2006; and

WHEREAS, there is a vacancy on the SBEBID Board of Directors; and

WHEREAS, the SBEBID Board has nominated Dominique Cook to the Englewood City Council for approval; and

WHEREAS, the remainder of the current Board has been nominated for reappointment.

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

Section 1. The Englewood City Council hereby appoints the following to the South Broadway Englewood Business Improvement District Board of Directors:

Dominique Cook – Colorado Commercial Capital, LLC.
Josef J. Kubik – Jimano's Pizzeria
Brian Hart – Frame de Art II
Bob Laughlin – Acoustic Music Revival
Gary Oxman – Wagner's Furniture
Bryan Reid – Edwards Tobacco Shop, Inc.
Ted Vasilas – Ted's Clothiers [BID President]

Section 2. The South Broadway Englewood Business Improvement District Board of Directors terms will be effective immediately and will expire December 31, 2014.

ADOPTED AND APPROVED this 19th day of March, 2012.

ATTEST:

_____
Randy P. Penn, Mayor

_____
Kerry Bush, Deputy City Clerk

I, Kerry Bush, Deputy City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2012.

_____
Kerry Bush, Deputy City Clerk

COUNCIL COMMUNICATION

Date March 19, 2012	Agenda Item 11 c ii	Subject Duncan School Environmental Remediation and Demolition
Initiated By Department of Parks and Recreation	Staff Source Dave Lee, Manager of Open Space Dave Henderson, Capital Projects Administrator	

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

- Council approved by motion, a professional services agreement on August 15, 2011, with Britina Design for design of improvements to Duncan Park.
- Council Bill # 20, Series of 2011 an ordinance authorizing the agreement between the City of Englewood and the State Board of the Great Outdoors Colorado Trust Fund for the Duncan Park planning grant.
- Resolution #75, Series of 2010 in support of the City's GOCO grant application for Duncan Park planning grant.
- Council Bill #6, Series of 2008 authorizing an Intergovernmental Agreement regarding the 2007 grant of Great Outdoors Colorado between the State Board of the Great Outdoors Colorado Trust Fund and the City of Englewood, Colorado for Duncan Park Acquisition.
- Council Bill #52, Series of 2007 authorizing an Intergovernmental Agreement regarding the 2007 grant of Arapahoe County Open Space between Arapahoe County and the City of Englewood, Colorado for Duncan Park Acquisition.
- Council Gill #41, Series of 2007 authorizing a Contract of Deed for the purchase of Duncan Park located at 4846 South Pennsylvania Street between the City of Englewood and Arapahoe County School District No. 1 (Englewood Schools).
- Ordinance #35, Series of 1978 – Intergovernmental Agreement between the City of Englewood and Englewood Schools for the lease of Duncan School/property for park and recreational purposes.

RECOMMENDED ACTION

Staff recommends that City Council award, by motion, a Professional Services Agreement to Major Environmental Services, Inc. for the environmental remediation and demolition of the former Duncan School building located at 4800 South Pennsylvania Street in the amount of $66,982.00 and authorize the Director of Public Works to sign the Professional Services Agreement.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Council authorized a phased, three-year purchase of Duncan Park from Englewood Schools. The final payment for Parcel #3 was completed in 2010. Redevelopment of Duncan Park, including the removal of the old school building is supported by the 2006 Parks Master Plan. Council approved Resolution No. 75, series of 2010 approving the grant with GOCO for Duncan Park planning grant.

The city was successful in receiving the $75,000 grant to fund the planning process for the park. Britina Design Group is scheduled to complete their design for Duncan Park in the spring of 2012.

The Englewood Parks and Recreation Department completed a Phase I environmental study in March 2008. The Public Works and Parks and Recreation Departments completed a Phase II environmental study in January 2012. The Phase II study highlighted additional areas for remediation. The State will require a demolition plan and air sampling during the demolition process. The environmental remediation process will include lead paint testing, removal and disposal of regulated building materials and some soil cleanup. The demolition plan includes mobilization, utility disconnects, demolition and disposal and rough grading of the site.

Major Environmental completed the environmental cleanup and monitoring of the landfill that now serves as the Rockies Brent Mayne Field. Major Environmental also completed environmental work at the CityCenter site and Broken Tee golf course. These projects were approved by the Colorado Department of Public Health and Environment.

FINANCIAL IMPACT

Environmental remediation and demolition of the Duncan School building is expected to cost $66,982.00. Funds for the demolition have been budgeted in the 2012 Open Space Fund.

LIST OF ATTACHMENTS

Environmental Remediation and Demolition Proposal
Professional Services Agreement

Major Environmental Services, Inc.

Environmental, Consulting and Contracting

Proposal

February 6, 2012 propduncan2012

Mr. Dave Lee
Dept. of Parks and Recreation
City of Englewood
1155 W. Oxford Ave.
Englewood CO 80110

RE: Proposal for Environmental Remediation and Demolition of the Former Duncan Elementary School located at 4800 S. Pennsylvania Street Englewood, Colorado.

Dear Dave,

Please find listed below our price for the environmental remediation and demolition of the former Duncan school. As per my conversation with Mr. Curtis Burns with the Colorado Dept. of Health and Environment we will be able to dispose of non regulated asbestos containing building waste i.e. the drywall finishing mud and mastic on concrete as construction waste. This represents considerable savings from our original cost projections. We will however be required to provide a demolition plan to the State and conduct air sampling during the demolition process. I have highlighted the items below that I believe you may be able to use grant money for. I will separate those items in the final billing. Also included in the price is to visually inspect the soils and provide cursory clean up levels.

Environmental: $ 28,572.00 (15 days to Complete with permitting)
Remove and Dispose of Regulated Building Materials (ballasts /switches)
TCLP Testing for lead
Draft and submit Demolition Plan
Sign and Submit Demolition Permits
Remove and Dispose of Friable Asbestos Containing Building Materials (ACBM)
Conduct Air Sampling during Demolition
Provide for Minimal Soil Clean up

Demolition: $38,410.00 (18 Days to complete with permitting)

Provide for Demolition Permits
Utility Locates and Disconnects
Fence
Mobilization
Complete Demolition and Disposal of Building
Rough grade to Drain
De-Mobilization

TOTAL PRICE NOT TO EXCEED: $66,982.00

Terms: 15% down upon award for mobilization, Balance upon completion

The permitting process will take 10 to 15 days including the development of the demolition plan. We will be able to overlap some of the work and should be able to complete the project start to finish in approximately in 4 weeks.

If you have any questions or need further clarification please do not hesitate to call. As always it is our sincere pleasure working with you and the City of Englewood.

Respectfully

William A. Major
President,
Major Environmental Services, Inc.

Approved By:

_____

Date:_____

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this **19th** day of **March, 2012**, (the "Effective Date") by and between **Major Environmental Services, Inc.**, a Colorado corporation ("Consultant"), and The City of Englewood, Colorado, a municipal corporation organized under the laws of the State of Colorado ("City").

City desires that Consultant, from time to time, provide certain consulting services, systems integration services, data conversion services, training services, and/or related services as described herein, and Consultant desires to perform such services on behalf of City on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Definitions. The terms set forth below shall be defined as follows:

(a) "Intellectual Property Rights" shall mean any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

(b) "Work Product" shall mean all patents, patent applications, inventions, designs, mask works, processes, methodologies, copyrights and copyrightable works, trade secrets including confidential information, data, designs, manuals, training materials and documentation, formulas, knowledge of manufacturing processes, methods, prices, financial and accounting data, products and product specifications and all other Intellectual Property Rights created, developed or prepared, documented and/or delivered by Consultant, pursuant to the provision of the Services.

2. Statements of Work. During the term hereof and subject to the terms and conditions contained herein, Consultant agrees to provide, on an as requested basis, the consulting services, systems integration services, data conversion services, training services, and related services (the "Services") as further described in Schedule A (the "Statement of Work") for City, and in such additional Statements of Work as may be executed by each of the parties hereto from time to time pursuant to this Agreement. Each Statement of Work shall specify the scope of work, specifications, basis of compensation and payment schedule, estimated length of time required to complete each Statement of Work, including the estimated start/finish dates, and other relevant information and shall incorporate all terms and conditions contained in this Agreement

3. Performance of Services.

(a) Performance. Consultant shall perform the Services necessary to complete all projects outlined in a Statement of Work in a timely and professional manner consistent with the specifications, if any, set forth in the Statement of Work, and in accordance with industry standards. Consultant agrees to exercise the highest degree of professionalism, and to utilize its expertise and creative talents in completing the projects outlined in a Statement of Work.

(b) Delays. Consultant agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Consultant's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement or any Statement of Work. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

(c) Discrepancies. If anything necessary for the clear understanding of the Services has been omitted from the Agreement specifications or it appears that various instructions are in conflict, Vendor shall secure written instructions from City's project director before proceeding with the performance of the Services affected by such omissions or discrepancies.

4. Invoices and Payment. Unless otherwise provided in a Statement of Work, City shall pay the amounts agreed to in a Statement of Work within thirty (30) days following the acceptance by City of the work called for in a Statement of Work by City. Acceptance procedures shall be outlined in the Statement of Work. If City disputes all or any portion of an invoice for charges, then City shall pay the undisputed portion of the invoice by the due date and shall provide the following notification with respect to the disputed portion of the invoice. City shall notify Consultant as soon as possible of the specific amount disputed and shall provide reasonable detail as to the basis for the dispute. The parties shall then attempt to resolve the disputed portion of such invoice as soon as possible. Upon resolution of the disputed portion, City shall pay to Consultant the resolved amount.

5. Taxes. City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be included in quoted prices. City shall not be obligated to pay or reimburse Consultant for any taxes attributable to the sale of any Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Consultant. Upon written notification by City and subsequent verification by Consultant, Consultant shall reimburse or credit, as applicable, City in a timely manner, for any and all taxes erroneously paid by City. City shall provide Consultant with, and Consultant shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

6. Out of Pocket Expenses. Consultant shall be reimbursed only for expenses which are expressly provided for in a Statement of Work or which have been approved in advance in writing by City, provided Consultant has furnished such documentation for authorized expenses as City may reasonably request.

7. Audits. Consultant shall provide such employees and independent auditors and inspectors as City may designate with reasonable access to all sites from which Services are performed for the purposes of performing audits or inspections of Consultant's operations and compliance with this Agreement. Consultant shall provide such auditors and inspectors any reasonable assistance that they may require. Such audits shall be conducted in such a way so that the Services or services to any other customer of Consultant are not impacted adversely.

8. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall continue unless this Agreement is terminated as provided in this Section 8.

(a) Convenience. City may, without cause and without penalty, terminate the provision of Services under any or all Statements of Work upon thirty (30) days prior written notice. Upon such termination, City shall, upon receipt of an invoice from Consultant, pay Consultant for Services actually rendered prior to the effective date of such termination. Charges will be based on time expended for all incomplete tasks as listed in the applicable Statement of Work, and all completed tasks will be charged as indicated in the applicable Statement of Work.

(b) No Outstanding Statements of Work. Either party may terminate this Agreement by providing the other party with at least thirty (30) days prior written notice of termination if there are no outstanding Statements of Work.

(c) Material Breach. If either party materially defaults in the performance of any term of a Statement of Work or this Agreement with respect to a specific Statement of Work (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting party may terminate this Agreement or any or all outstanding Statements of Work by providing ten (10) days prior written notice of termination to the defaulting party.

(d) Bankruptcy or Insolvency. Either party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency laws is filed against that other party and is not dismissed within sixty (60) days after it was filed.

(e) TABOR. The parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period ending upon the next succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

(f) Return of Property. Upon termination of this Agreement, both parties agree to return to the other all property (including any Confidential Information, as defined in Section 11) of the other party that it may have in its possession or control.

9. City Obligations. City will provide timely access to City personnel, systems and information required for Consultant to perform its obligations hereunder. City shall provide to Consultant's employees performing its obligations hereunder at City's premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services. With respect to all third party hardware or software operated by or on behalf of City, City shall, at no expense to Consultant, obtain all consents, licenses and sublicenses necessary for Consultant to perform under the Statements of Work and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

10. Staff. Consultant is an independent consultant and neither Consultant nor Consultant's staff is, or shall be deemed to be employed by City. City is hereby contracting with Consultant for the Services described in a Statement of Work and Consultant reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by Consultant or Consultant's staff, and City shall not be required to hire, supervise or pay any assistants to help Consultant perform the Services under this Agreement. Except to the extent

that Consultant's work must be performed on or with City's computers or City's existing software, all materials used in providing the Services shall be provided by Consultant.

11. Confidential Information.

(a) Obligations. Each party hereto may receive from the other party information which relates to the other party's business, research, development, trade secrets or business affairs ("Confidential Information"). Subject to the provisions and exceptions set forth in the Colorado Open Records Act, CRS Section 24-72-101 et. seq., each party shall protect all Confidential Information of the other party with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Without limiting the generality of the foregoing, each party hereto agrees not to disclose or permit any other person or entity access to the other party's Confidential Information except such disclosure or access shall be permitted to an employee, agent, representative or independent consultant of such party requiring access to the same in order to perform his or her employment or services. Each party shall insure that their employees, agents, representatives, and independent consultants are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section 11. Further, each party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other party. A party hereto shall undertake to immediately notify the other party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall restrict either party with respect to information or data identical or similar to that contained in the Confidential Information of the other party but which (1) that party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that party; (3) is subsequently furnished rightfully to that party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure.

(b) Know-How. For the avoidance of doubt neither City nor Consultant shall be prevented from making use of know-how and principles learned or experience gained of a non-proprietary and non-confidential nature.

(c) Remedies. Each of the parties hereto agree that if any of them, their officers, employees or anyone obtaining access to the Confidential Information of the other party by, through or under them, breaches any provision of this Section 11, the non-breaching party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching party, its officers or employees directly or indirectly realize or may realize as a result of or growing out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section 11, the parties agree that the non-breaching party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching party arising from a violation of this Section 11 would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the parties agree that the non-breaching party shall be entitled to temporary and permanent injunctive relief against the breaching party, its officers or employees and such other rights and remedies to which the non-breaching party may be entitled to at law, in equity or under this Agreement for any violation of this Section 11. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.

12. Project Managers. Each party shall designate one of its employees to be its Project Manager under each Statement of Work, who shall act for that party on all matters under the Statement of

Work. Each party shall notify the other in writing of any replacement of a Project Manager. The Project Managers for each Statement of Work shall meet as often as either one requests to review the status of the Statement of Work.

13. Warranties.

(a) Authority. Consultant represents and warrants that: (1) Consultant has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (2) the execution of this Agreement by Consultant, and the performance by Consultant of its obligations and duties hereunder, do not and will not violate any agreement to which Consultant is a party or by which it is otherwise bound under any applicable law, rule or regulation; (3) when executed and delivered by Consultant, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (4) Consultant acknowledges that City makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement

(b) Service Warranty. Consultant warrants that its employees and consultants shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

(c) Personnel. Unless a specific number of employees is set forth in the Statement of Work, Consultant warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement or as set forth in the Statement of Work.. During the course of performance of Services, City may, for any or no reason, request replacement of an employee or a proposed employee. In such event, Consultant shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. Consultant shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies.

(d) Compensation and Benefits. Consultant shall provide for and pay the compensation of employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Consultant or to any employee for Consultant's failure to perform its compensation, benefit, or tax obligations. Consultant shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

14. Indemnification.

(a) Consultant Indemnification. Consultant shall indemnify, defend and hold harmless City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the "City Indemnitees") from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable fees and disbursements of legal counsel and accountants), bodily and other personal injuries, damage to tangible property, and other damages, of any kind or nature, suffered or incurred by a City Indemnitee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by Consultant or its representatives in the performance of Consultant's obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of Consultant contained in this Agreement.

(b) Infringement. Consultant will indemnify, defend, and hold City harmless from all Indemnifiable Losses arising from any third party claims that any Work Product or methodology

supplied by Consultant infringes or misappropriates any Intellectual Property rights of any third party; provided, however, that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on: (1) use of the Work Product in combination with products or services not provided by Consultant to the extent that such infringement or misappropriation would have been avoided if such other products or services had not been used; (2) any modification or enhancement to the Work Product made by City or anyone other than Consultant or its sub-consultants; or (3) use of the Work Product other than as permitted under this Agreement.

(c) Indemnification Procedures. Notwith-standing anything else contained in this Agreement, no obligation to indemnify which is set forth in this Section 14 shall apply unless the party claiming indemnification notifies the other party as soon as practicable to avoid any prejudice in the claim, suit or proceeding of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge and gives the other party the opportunity to control the response thereto and the defense thereof; provided, however, that the party claiming indemnification shall have the right to participate in any legal proceedings to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys, all at such party's cost and expense; provided further, however, that no settlement or compromise of an asserted third-party claim other than the payment/money may be made without the prior written consent of the party claiming indemnification.

(d) Immunity. City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to City, its officers, or its employees.

15. Insurance.

(a) Requirements. Consultant agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance during the term of this Agreement:

(1) The Consultant shall comply with the Workers' Compensation Act of Colorado and shall provide compensation insurance to protect the City from and against any and all Workers' Compensation claims arising from performance of the work under this contract. Workers' Compensation insurance must cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, as well as the Employers' Liability within the minimum statutory limits.

(2) Commercial General Liability Insurance and auto liability insurance (including contractual liability insurance) providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars ($1,000,000) per occurrence. *In addition, the contractor will require subcontractors for both the Demolition and Abatement phases of the project shall provide and keep in full force and effect, at its sole cost and expense, the same type of insurance in the amount of not less than one million dollars ($1,000,000) per occurrence; with the City named as an additional insured. Copies of these policies shall be provided to the City prior to the commencement of any work on the project.*

(3) Professional Liability/Errors and Omissions Insurance covering acts, errors and omissions arising out of Consultant's operations or Services in an amount not less than one million dollars ($1,000,000) per occurrence.

(4) Employee Dishonesty and Computer Fraud Insurance covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Consultant personnel, acting alone or with others, in an amount not less than one million dollars ($1,000,000) per occurrence.

(b) Approved Companies. All such insurance shall be procured with such insurance companies of good standing, permitted to do business in the country, state or territory where the Services are being performed.

(c) Certificates. Consultant shall provide City with certificates of insurance evidencing compliance with this Section 15 (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Certificates of insurance will list the City of Englewood as an additional insured. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially change the insurance afforded under the above policies unless thirty (30) days' notice of such cancellation, reduction or material change has been provided to City.

16. Rights in Work Product.

(a) Generally. Except as specifically agreed to the contrary in any Statement of Work, all Intellectual Property Rights in and to the Work Product produced or provided by Consultant under any Statement of Work shall remain the property of Consultant. With respect to the Work Product, Consultant unconditionally and irrevocably grants to City during the term of such Intellectual Property Rights, a non-exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, to reproduce, create derivative works of, distribute, publicly perform and publicly display by all means now known or later developed, such Intellectual property Rights.

(b) Know-How. Notwithstanding anything to the contrary herein, each party and its respective personnel and consultants shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information of the other party.

17. Relationship of Parties. Consultant is acting only as an independent consultant and does not undertake, by this Agreement, any Statement of Work or otherwise, to perform any obligation of City, whether regulatory or contractual, or to assume any responsibility for City's business or operations. Neither party shall act or represent itself, directly or by implication, as an agent of the other, except as expressly authorized in a Statement of Work.

18. Complete Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the matters covered herein.

19. Applicable Law. Consultant shall comply with all applicable laws in performing Services but shall be held harmless for violation of any governmental procurement regulation to which it may be subject but to which reference is not made in the applicable Statement of Work. This Agreement shall be construed in accordance with the laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Arapahoe County, Colorado and each party hereto consents to jurisdiction and venue before such courts.

20. Scope of Agreement. If the scope of any provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.

21. Additional Work. After receipt of a Statement of Work, City, with Consultant's consent, may request Consultant to undertake additional work with respect to such Statement of Work. In such event, City and Consultant shall execute an addendum to the Statement of Work specifying such additional work and the compensation to be paid to Consultant for such additional work.

22. Sub-consultants. Consultant may not subcontract any of the Services to be provided hereunder without the prior written consent of City. In the event of any permitted subcontracting, the agreement with such third party shall provide that, with respect to the subcontracted work, such sub-consultant shall be subject to all of the obligations of Consultant specified in this Agreement.

23. Notices. Any notice provided pursuant to this Agreement shall be in writing to the parties at the addresses set forth below and shall be deemed given (1) if by hand delivery, upon receipt thereof, (2) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested or (3) one (1) day after deposit with a nationally-recognized overnight courier, specifying overnight priority delivery. Either party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other party hereto.

24. Assignment. This Agreement may not be assigned by Consultant without the prior written consent of City. Except for the prohibition of an assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

25. Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the parties hereto and shall not confer any rights upon any person or entity not a party to this Agreement.

26. Headings. The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth on the first page of this Agreement are incorporated into the body of this Agreement. The exhibits referred to throughout this Agreement and any Statement of Work prepared in conformance with this Agreement are incorporated into this Agreement.

27. Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

28. Force Majeure. If performance by Consultant of any service or obligation under this Agreement is prevented, restricted, delayed or interfered with by reason of labor disputes, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communications failures, earthquakes, war, revolution, civil commotion, acts of public enemies, blockade, embargo or any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any governmental or judicial authority or representative of any such government, or any other act whether similar or dissimilar to those referred to in this clause, which are beyond the reasonable control of Consultant, then Consultant shall be excused from such performance to the extent of such prevention, restriction, delay or interference. If the period of such delay exceeds thirty (30) days, City may, without liability, terminate the affected Statement of Work(s) upon written notice to Consultant.

29. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

30. Permits. Consultant shall at its own expense secure any and all licenses, permits or certificates that may be required by any federal, state or local statute, ordinance or regulation for the

performance of the Services under the Agreement. Consultant shall also comply with the provisions of all Applicable Laws in performing the Services under the Agreement. At its own expense and at no cost to City, Consultant shall make any change, alteration or modification that may be necessary to comply with any Applicable Laws that Consultant failed to comply with at the time of performance of the Services.

31. Media Releases. Except for any announcement intended solely for internal distribution by Consultant or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Consultant, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Consultant or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of City, shall be coordinated with and approved in writing by City prior to the release thereof. Consultant shall not represent directly or indirectly that any Services provided by Consultant to City has been approved or endorsed by City or include the name, trade mark, or symbol of City on a list of Consultant's customers without City's express written consent.

32. Nonexclusive Market and Purchase Rights. It is expressly understood and agreed that this Agreement does not grant to Consultant an exclusive right to provide to City any or all of the Services and shall not prevent City from acquiring from other suppliers services similar to the Services. Consultant agrees that acquisitions by City pursuant to this Agreement shall neither restrict the right of City to cease acquiring nor require City to continue any level of such acquisitions. Estimates or forecasts furnished by City to Consultant prior to or during the term of this Agreement shall not constitute commitments.

33. Survival. The provisions of Sections 5, 8(g), 10, 11, 13, 14, 16, 17, 19, 23, 25 and 31 shall survive any expiration or termination for any reason of this Agreement.

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

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

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

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

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

(2) terminate the subcontract with the sub-consultant if, within three days of receiving notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract

with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

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

(e) Damages for Breach of Contract: The City may terminate this contract for a breach of contract, in whole or in part, due to Consultant's breach of any section of this paragraph or provisions required pursuant to CRS 8-17.5-102. Consultant shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract under this Paragraph 34.

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY OF ENGLEWOOD, COLORADO

By: _____
(Signature)
Rick Kahm
(Print Name)

Title: Public Works Director

Date: _____

ATTEST:

_____
City Clerk - Loucrishia A. Ellis

Major Environmental Serv, Inc
(Consultant Name)

17761 W. Alameda Pkwy
Address

Golden, Co 80401
City, State, Zip Code

By: _____
(Signature)
William A. Major
(Print Name)

Title: President

Date: _____

SCHEDULE A

OUTLINE OF STATEMENT OF WORK

1. GENERAL
The City of Englewood and Major Environmental Services, Inc. enter into this Agreement as outlined in the attached proposal letter dated February 6, 2012.

The City and Major Environmental enter into a Professional Services Contract dated March 19, 2012.

2. NAMES OF PROJECT COORDINATORS

For the City:	**Dave Henderson, Engineering/Capital Projects Coordinator**
	Dave Lee, Open Space Manager
For the Consultant:	**William Major, President, Major Environmental Services, Inc.**

3. SUMMARY OF PURPOSE FOR STATEMENT OF WORK
Environmental Remediation and Demolition of the Former Duncan Elementary School Building located at 4800 S. Pennsylvania St., Englewood, Colorado

4. DESCRIPTION OF WORK PRODUCT AND DELIVERABLES
Consultant will provide Environmental Remediation and Demolition services as detailed in the attached proposal. All work and required documentation will be provided per applicable state and local laws, ordinances, and rules.

Consultant will deliver the site ready for future park development and provide copies of reports, inspections, tests, or other documentation conducted during the course of performance.

"Complete Demolition and Disposal of the building" includes removal of the entire existing foundation below grade.

5. SPECIAL TERMS, IF ANY
Major Environmental Services, Inc. agrees to deliver the site, ready for future park development, at a cost "Not to Exceed" $66,982.00.

6. MODE OF PAYMENT
Payment to Consultant will be made by check.

7. PAYMENT SCHEDULE
City will pay Consultant for the work in accordance with the following payment schedule. All payments to Consultant are contingent on Consultant's satisfying the Deliverables/Milestones set forth in the Payment Schedule. Payments shall be made upon City's written confirmation to Consultant that the Deliverables-Milestones have been satisfied.

15% ($10,047.30) is due upon award for mobilization. The balance is due upon completion or as approved by the City. Payments will be made per Section 4 of the Professional Services Agreement.

8. SCHEDULE AND PERFORMANCE MILESTONES

Performance Milestone	Responsible Party	Target Date
Begin Permitting Process	**Major Environmental**	**14 days from Notice of Award**
Complete Project	**Major Environmental**	**6 weeks form Notice of Award**

Extensions may be granted for unforeseen delays per Section 3.(b) of the Professional Services Agreement.

9. ACCEPTANCE AND TESTING PROCEDURES
Consultant will obtain final acceptance by required State and Local Agencies.

10. LOCATION OF WORK FACILITIES
Substantially all of the work will be conducted by Consultant at the worksite and at its regular office located in Golden, Colorado.

Consultants and subcontractors may stage equipment at the worksite (proposed staging locations must be approved by City staff).

IN WITNESS WHEREOF, pursuant and in accordance with the Professional Services Agreement between the parties hereto dated _____, 20__, the parties have executed this Statement of Work as of this _____ day of _____, 20__.

CITY OF ENGLEWOOD, COLORADO

By: _____
(Signature)
Rick Kahm
(Print Name)

Title: Public Works Director

Date: _____

MAJOR ENVIRONMENTAL SERV, INC.
Company Name

By: _____
(Signature)
William A. Major
(Print Name)

Title: President

Date: 3/2/12