Agenda for the
Regular Meeting of the
Englewood City Council
Monday, March 21, 2011
7:30 pm

Englewood Civic Center - Council Chambers
1000 Englewood Parkway
Englewood, CO  80110

1. Call to Order.

2. Invocation.

3. Pledge of Allegiance.

4. Roll Call.

5. Consideration of Minutes of Previous Session.

   a. Minutes from the Regular City Council Meeting of March 7, 2011.

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

   a. City Council will recognize the young people who were nominated for this year’s Arapahoe Mayors and Commissioners Youth Award.

      • Maxwell Adams-Berger, a 12th Grader at Humanex Academy
      • Ariel Amirinoor, a 12th Grader at Colorado’s Finest Alternative High School
      • Jessica Arcand, a 12th Grader at Colorado’s Finest Alternative High School
      • Evan Buck, an 8th Grader at Englewood Middle School
      • Rebecca Erickson, a 12th Grader at Englewood High School
      • Devyn Fish, an 8th Grader at Englewood Middle School
      • Kelsey Haberman, a 12th Grader at Humanex Academy
      • Valerie Jenkins, an 11th Grader at Humanex Academy
      • Forrest Kennel, a 12th Grader at Humanex Academy
      • CJ Rel, an 8th Grader at Englewood Middle School
      • Tyler Ross, a 12th Grader at Colorado’s Finest Alternative High School
      • Daniel Schroeder, an 8th Grader at Englewood Middle School
      • Harvest Smith, a 12th Grader at Colorado’s Finest Alternative High School
      • Alicia Tafoya, a 12th Grader at Colorado’s Finest Alternative High School
      • Carl Walker, a 12th Grader at Colorado’s Finest Alternative High School
      • Alex Webster, an 11th Grader at Humanex Academy

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.
b. Paul Bravo, Rapids Technical Director and former Rapids star, will bring the Rapids' 2010 Major League Soccer Championship Cup Trophy Tour to Englewood.

7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)

Council Response to Public Comment.

8. Communications, Proclamations, and Appointments.

a. Letter from Julie Lonborg advising Council of her resignation from the Alliance for Commerce in Englewood.

9. Consent Agenda Items.

a. Approval of Ordinances on First Reading

b. Approval of Ordinances on Second Reading.

i. Council Bill No. 12, accepting a grant from the Colorado Department of Transportation to fund the child passenger safety seat program.

ii. Council Bill No. 13, approving an Addendum to the Golf Course Restaurant Concessionaire Agreement with Dadiotis Golf Enterprises, LLC.

iii. Council Bill No. 14, accepting an Emergency Management Performance Grant Special Project Grant to fund the preparation of installation plans for the upgrade of the emergency backup generator at the Police/Fire complex.

iv. Council Bill No. 15, authorizing four farm lease agreements for the farms in the Littleton/Englewood Wastewater Treatment Plant Biosolids Management Program.

v. Council Bill No. 16, authorizing an Intergovernmental Agreement with the State of Colorado to Permit Clinical Training to students of Red Rocks Community College.

c. Resolutions and Motions.

i. Recommendation by the Finance and Administrative Services Department to adopt a resolution approving a supplemental appropriation to the 2011 Budget for additional expenditures in the amount of $10,000 for security services for the Library Services Department. **STAFF SOURCE: Frank Gryglewicz, Director.**
ii. Recommendation from the Information Technology Department to approve, by motion, the purchase of replacement desktop computers. Staff recommends awarding this contract to Proactive Network Management, the lowest acceptable bidder, in the amount of $56,212. **STAFF SOURCE: Jeff Konishi, Director.**


11. Ordinances, Resolutions and Motions

   a. Approval of Ordinances on First Reading.
      i. Council Bill No. 17 — Recommendation from the Community Development Department to adopt a bill for an ordinance authorizing an amendment to the Intergovernmental Subgrantee Agreement for the 2010 Arapahoe County Community Development Block Grant Program for the Energy Efficient Englewood Project. **STAFF SOURCE: Janet Grimmett, Housing Finance Specialist, and Harold Stitt, Senior Planner.**
      
      ii. Council Bill No. 18 — Recommendation from the Fire Department to adopt a bill for an ordinance authorizing acceptance of a Hazardous Materials Emergency Planning Grant for preparedness training. **STAFF SOURCE: Michael Pattarozzi, Fire Chief.**

   b. Approval of Ordinances on Second Reading.
      i. Council Bill No. 8, authorizing the Englewood Estates Planned Unit Development Amendment No. 1, located at 1210, 1230, 1250, 1255, 1270, 1275 and 1290 West Quincy Circle in the City of Englewood.

   c. Resolutions and Motions.
      i. Recommendation from the Water and Sewer Board to approve, by motion, a marketing agreement with the Utility Service Partners. **STAFF SOURCE: Stewart H. Fonda, Director Utilities Department.**
      
      ii. Recommendation from the Englewood McLellan Reservoir Foundation to approve a resolution supporting a lease agreement with the Benjamin Franklin Charter School, LLC. for lease of approximately 10.1 acres of Planning Area 85 near McLellan Reservoir. **STAFF SOURCE: Michael Flaherty, Englewood McLellan Reservoir Foundation Board.**
      
      iii. Recommendation by the Public Works Department to approve, by motion, the purchase of a 2011 Mauldin 1750-C Asphalt Paver. Staff recommends awarding this contract in the amount of $116,700 to the lowest acceptable bidder, Faris Machinery Company. **STAFF SOURCE: Pat White, Fleet Servicenter Manager.**
iv. Recommendation by the Fire Department to approve, by motion, a construction contract for the “Englewood Police/Fire Building Generator Installation. Staff recommends awarding this contract to the lowest responsible bidder, CE Power Systems, LLC., in the amount of $119,100. **STAFF SOURCE: Kraig Stovall, Fire Training Chief.**

v. Recommendation by the Community Development Department to approve, by motion, a professional services agreement contract for the Englewood Downtown and Medical District Complete Streets Assessment Study funded by a Tri-County Health Communities Putting Prevention to Work Grant award. Staff recommends awarding this contract to Fehr and Peers in the amount of $88,388. **STAFF SOURCE: John Voboril, Planner II.**

vi. Recommendation by the Community Development Department to approve, by motion, a professional services agreement contract for the Englewood Master Bicycle Plan Route Development Study and Implementation Program funded by a Tri-County Health Communities Putting Prevention to Work Grant award. Staff recommends awarding this contract to OV Consulting in the amount of $74,950. **STAFF SOURCE: John Voboril, Planner II.**

12. General Discussion.
   a. Mayor’s Choice.
      i. Englewood Lions Club’s 85th Anniversary.
   b. Council Members’ Choice.


15. Adjournment
March 11, 2011

City Council
City of Englewood
1000 Englewood Parkway
Englewood, CO 80110

Council:

Please accept this letter as my resignation from Alliance for Commerce in Englewood (ACE). I have accepted a position outside of the City of Englewood and will be leaving the area at the end of this month. Because this council is so important to the City and to Swedish I have asked Trent Lind, the Chief Operating Officer at Swedish if he would apply for the vacancy. He is willing to do so and will work with Alan White to complete the necessary documentation.

I have thoroughly enjoyed this assignment and believe that this committee provides a valuable platform for business leaders in Englewood.

Thank you for the opportunity to serve on this council. Swedish has enjoyed such a strong relationship with the city and I am excited to see that continue.

Sincerely,

Julie G. Lonborg
Swedish Medical Center
BY AUTHORITY

ORDINANCE NO. _____ SERIES OF 2011

COUNCIL BILL NO. 12
INTRODUCED BY COUNCIL MEMBER GILLIT

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A COLORADO DEPARTMENT OF TRANSPORTATION GRANT AWARDED TO THE CITY OF ENGLEWOOD FOR THE CHILD PASSENGER SAFETY SEAT PROGRAM.

WHEREAS, the City of Englewood Fire Department is committed to reducing the injuries, disabilities and deaths caused by the improper installation of child passenger safety seats; and

WHEREAS, the City of Englewood Fire Department sought and was awarded a grant from the Colorado Department of Transportation (CDOT) Grant; and

WHEREAS, the passage of this Ordinance authorizes the acceptance of funding for Child Passenger Safety Seat Program; and

WHEREAS, the Englewood Fire Department provides child passenger safety seat installation education to the public at no charge and is committed to helping parents and/or caregivers learn how to properly install these devices; and

WHEREAS, the certified Firefighter Car Seat Technicians are available during pre-designated hours to inspect child safety seats and educate parents and/or caregivers on proper installation; and

WHEREAS, the grant will cover the cost of recertifying six Child Passenger Safety Technicians and the training of an additional Child Passenger Safety Technician and supply car seats for families in need; and

WHEREAS, the passage of this Ordinance will fund the purchase of car seats and the supplies required for installation; and

WHEREAS, this CDOT Grant awarded to the City of Englewood is $4,515.00 with no match required the Grant period ends on September 30th, 2011;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the acceptance of the Colorado Department of Transportation Grant awarded to the City of Englewood for funding the Englewood Fire Department’s Child Passenger Safety Program.

Introduced, read in full, and passed on first reading on the 7th day of March, 2011.
Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 11th day of March, 2011.

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

Read by title and passed on final reading on the 21st day of March, 2011.

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

Published by title on the City’s official website beginning on the 23rd day of March, 2011 for thirty (30) days.

__________________________  James K. Woodward, Mayor

ATTEST:

__________________________  Loucrishia A. Ellis, City Clerk

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

__________________________  Loucrishia A. Ellis
BY AUTHORITY

ORDINANCE NO. _____ SERIES OF 2011
COUNCIL BILL NO. 13
INTRODUCED BY COUNCIL
MEMBER WILSON

AN ORDINANCE APPROVING AN ADDENDUM TO THE GOLF COURSE RESTAURANT CONCESSIONAIRE AGREEMENT BETWEEN THE CITY OF ENGLEWOOD AND DADITOS GOLF ENTERPRISES, LLC.

WHEREAS, the purpose of the Agreement is to provide snack bar, grill and bar services to the golfing public and a quality, full-service restaurant facility offering breakfast, lunch and dinner for group meetings, service clubs and informal evening dining; and

WHEREAS, the Englewood City Council selected Caddie Shack as the Concessionaire to operate the Englewood Golf Course Clubhouse restaurant by the passage of Ordinance No. 53, Series of 2004; and

WHEREAS, due to the renovation of the golf course and the significant reduction in golf play in 2006, the Englewood City Council approved a revised contract for the current restaurant concessionaire which allowed the restaurant to continue operations during the golf course construction period by the passage of Ordinance No. 48, Series of 2006; and

WHEREAS, the Englewood City Council approved a golf course restaurant concessionaire agreement with Dadiotis Golf Enterprises, LLC by the passage of Ordinance No. 72, Series of 2007; and

WHEREAS, the passage of this proposed Ordinance will approve an Addendum to the 2007 Contract by the payment delay of $9,000 for rent due in 2010 and eliminate the maintenance/repair financial commitment for the restaurant repairs of $3,500 through 2011;

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

Section 1. The City Council of the City of Englewood, Colorado, hereby authorizes and approves an Addendum to the 2007 Golf Course Restaurant Concessionaire Agreement with Dadiotis Golf Enterprises, LLC., attached hereto and incorporated herein as Exhibit A.

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

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

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 11th day of March, 2011.
Published as a Bill for an Ordinance on the City’s official website beginning on the 9th day of March, 2011 for thirty (30) days.

Read by title and passed on final reading on the 21st day of March, 2011.

Published by title in the City’s official newspaper as Ordinance No. ____, Series of 2011, on the 25th day of March, 2011.

Published by title on the City’s official website beginning on the 23rd day of March, 2011 for thirty (30) days.

__________________________
James K. Woodward, Mayor

ATTEST:

__________________________
Loucrishia A. Ellis, City Clerk

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

__________________________
Loucrishia A. Ellis
ADDENDUM

THIS ADDENDUM TO THE AGREEMENT which was made on December 17, 2007, between the CITY OF ENGLEWOOD, a Colorado municipal corporation, hereinafter referred to as "City", and DADIOTIS GOLF ENTERPRISES, LLC., hereinafter referred to as "Concessionaire";

Under Section 9 ii. Maintenance, Repair and Replacement -- The first expense of any contractual maintenance costs will be paid by the concessionaire as follows:

2011 $3,500 will be eliminated

Under Section 12. Rent.

Payment delay for rent due in 2010, by the following payment plan to fulfill the remaining rent balance for 2010:

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2011</td>
<td>$ 650.00</td>
</tr>
<tr>
<td>April 2011</td>
<td>$ 1,100.00</td>
</tr>
<tr>
<td>May 2011</td>
<td>$ 1,250.00</td>
</tr>
<tr>
<td>June 2011</td>
<td>$ 1,500.00</td>
</tr>
<tr>
<td>July 2011</td>
<td>$ 1,500.00</td>
</tr>
<tr>
<td>August 2011</td>
<td>$ 1,500.00</td>
</tr>
<tr>
<td>September 2011</td>
<td>$ 1,500.00</td>
</tr>
</tbody>
</table>

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

DATED: ______________________

CITY OF ENGLEWOOD, COLORADO

"City"

By____________________

James K. Woodward, Mayor

DADIOTIS GOLF ENTERPRISES, LLC.

"Concessionaire"

By____________________

/ Jim Dadiotis

ATTEST:

____________________

Loucrishie A. Ellis, City Clerk
BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2011

COUNCIL BILL NO. 14
INTRODUCED BY COUNCIL
MEMBER GILLIT

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

WHEREAS, the current generator in the Fire/Police complex is the original generator supplied to the building in the early 1970’s, before the communications center addition and the advent of computer systems and routine dependency on electrical power; and

WHEREAS, an engineering study recommended the replacement of the current 85 KW generator with a 200 KW generator to supply the emergency needs of the Fire/Police complex; and

WHEREAS, the Englewood City Council authorized the acceptance of a 2009 FEMA U.S. Department of Homeland Security Assistance to Firefighters Grant Award for the purchase and installation of an emergency backup generator for the Police/Fire building at 3615 S. Elati and for the purchase of hazardous materials monitoring equipment with the passage of Ordinance No. 4, Series 2011; and

WHEREAS, the City of Englewood Fire Department sought and was also awarded an Emergency Management Performance Grant (EMPG) Special Project Grant which supports the Englewood City Council goals of:
• A City that provides and maintains quality infrastructure (this grant supports the upgrade of the current emergency generator at Safety Services)
• A safe, clean and attractive City (The provision of a reliable and adequate emergency power supply for fire and police operations and the City EOC enhances public safety)
• A progressive City that provides responsive and cost efficient services (This grant pays for the entire cost of the plans required to go to bid for the generator upgrade); and

WHEREAS, the EMPG Special Project Grant is administered by the State Department of Local Affairs and exists to support the emergency management functions of local governments and municipalities; and

WHEREAS, using the EMPG Special Project Grant Funds for this purpose allows the previously approved funding through the Assistance to Firefighter’s Grant to be used for the costs related to the actual purchase and installation of the generator; and

WHEREAS, this EMPG Special Project Grant is a soft match grant, meaning that the grant is matched through other emergency management expenditures, including salaries of employees involved in emergency management; and
WHEREAS, the Englewood Fire Department has already identified current expenditures adequate to match the grant funding, resulting in no additional cost to the City for accepting these funds; and

WHEREAS, the amount of the EMPG Special Projects Grant is $17,400 with the City receiving $8,700, which is the cost of the electrical plans;

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 Emergency Management Performance Grant (EMPG) Special Project Grant providing the funds for the preparation of installation plans for the upgrade of the Fire/Police Complex emergency generator, attached hereto as Attachment A.

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

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

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

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Published by title on the City’s official website beginning on the 23rd day of March, 2011 for thirty (30) days.

__________________________
James K. Woodward, Mayor

ATTEST:

__________________________
Loucrishia A. Ellis, City Clerk

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

__________________________
Loucrishia A. Ellis
AGREEMENT

Between the

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

And the

CITY OF ENGLEWOOD

Summary

| Form of Financial Assistance: | ☒ Grant | ☐ Loan | Award Amount: | $8,700.00 |
| Agreement Identification: | | | (DOLA's primary identification # for this agreement) |
| Contract Encumbrance #: | 11EM10P98 | (State of Colorado's primary identification # for this agreement) |
| Contract Management System #: | |

Project Information:

| Project/Award Number: | 11EM10P98 |
| Project Name: | City of Englewood electrical design update. |
| Performance Period: | Start Date: The Effective Date 9/30/2011  End Date: |
| Brief Description of Project / Assistance: | City of Englewood Emergency Operations Center electrical upgrades. |

Program & Funding Information:

| Program Name: | Emergency Management Performance Grant (EMPG) |
| Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): | 97.042 |
| Funding Account Codes: | 100/710/F9P0/3710/5110 | $8,700.00 |
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1. PARTIES
This Agreement (hereinafter called “Grant”) is entered into by and between the CITY OF ENGLEWOOD(hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Emergency Management (hereinafter called the “State” or “DOLA”).

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

A. ☑ The Effective Date.
B. ☐ The later to occur of the Effective Date or the date of a separate letter issued by the Department (“Release of Funds Letter”) notifying Grantee of the completion of a satisfactory environmental review and authorizing Grantee to obligate or use Grant Funds.
C. ☐ The Effective Date; provided, however, that all Project costs, if specifically authorized by the funding authority, incurred on or after _____, may be submitted for reimbursement as if incurred after the Effective Date.
D. ☐ Insert date for authorized pre-agreement costs, as defined in §4 below and/or in Exhibit B, Statement of Project. Such costs may be submitted for reimbursement as if incurred after the Effective Date.
E. ☐ The Effective Date; provided, however, that the costs identified in the checked subsections below may be submitted for reimbursement as if incurred after the Effective Date (see checked suboption(s) below):
   i. ☐ All Project costs, if specifically authorized by the funding authority, incurred on or after insert federal grant’s effective date; and
EMPG: 11EM10P98

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

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

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

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

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

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

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

A. Evaluation
“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in §6 and Exhibit B.

B. Exhibits and Other Attachments
The following are attached hereto and incorporated by reference herein:
   i. Exhibit A (Applicable Laws)
   ii. Exhibit B (Statement of Project)
   iii. Exhibit C (Grant Application Package)
   iv. Form 1 (Grant Funding Change Letter)

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

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

E. Grant Funds
“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

F. Party or Parties
“Party” means the State or Grantee and “Parties” means both the State and Grantee.

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

H. Project Budget
“Project Budget” means the budget for the Work described in Exhibit B.
I. Program
“Program” means the grant program, as specified on the first page, that provides the funding for this Grant.

J. Review
“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and Exhibit B

K. Services
“Services” means the required services to be performed by Grantee pursuant to this Grant.

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

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

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

5. TERM and EARLY TERMINATION.

A. Initial Term
Unless otherwise permitted in §2 above, the Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on 9/30/2011 unless sooner terminated or further extended as specified elsewhere herein.

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

6. STATEMENT OF PROJECT

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

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

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

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

A. Maximum Amount
The maximum amount payable under this Grant to Grantee by the State is $8,700.00, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in Exhibit B.
B. Payment
   i. Advance, Interim and Final Payments
      Any advance payment allowed under this Grant or in Exhibit B shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.
   ii. Interest
      The State shall not pay interest on Grantee invoices.
   iii. Available Funds-Contingency-Termination
      The State is prohibited by law from making fiscal commitments beyond the term of the State’s current fiscal year. Therefore, Grantee’s compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State’s performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State’s liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may terminate it in whole or to the extent of funding reduction, without further liability, after providing notice to Grantee in accordance with §16.
   iv. Erroneous Payments
      At the State’s sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

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

D. Matching Funds
   Grantee shall provide matching funds as provided in Exhibit B.

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

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

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

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

D. Subgrants
   Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.
9. GRANTEE RECORDS
Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

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

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

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

D. Final Audit Report
Grantee shall provide a copy of its audit report to DOLA as specified in Exhibit B.

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

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

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

C. Use, Security, and Retention
Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee
shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

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

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

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

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

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

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

13. INSURANCE
Grantee and its Sub-grantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.
A. Grantee
   i. Public Entities
      If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each grant with sub-grantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Sub-grantee's liabilities under the GIA.

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

B. Grantees and Sub-Grantees
   Grantee shall require each Grant with Sub-grantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:
   i. Worker's Compensation
      Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Sub-grantee employees acting within the course and scope of their employment.
   ii. General Liability
      Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: (a) $1,000,000 each occurrence; (b) $1,000,000 general aggregate; (c) $1,000,000 products and completed operations aggregate; and (d) $50,000 any one fire. If any aggregate limit is reduced below $1,000,000 because of claims made or paid, Sub-grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.
   iii. Automobile Liability
      Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.
   iv. Additional Insured
      Grantee and the State shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).
   v. Primacy of Coverage
      Coverage required of Grantee and Sub-grantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.
   vi. Cancellation
      The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and the State by certified mail.
   vii. Subrogation Waiver
      All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Sub-grantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates
   Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other
time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

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

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

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

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

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

ii. Payments
The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and
the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

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

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

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

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

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

C. Remedies Not Involving Termination
The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

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

ii. Withhold Payment
Withhold payment to Grantee until corrections in Grantee’s performance are satisfactorily made and completed.

iii. Deny Payment
Deny payment for those obligations not performed, that due to Grantee’s actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.
iv. Removal
Demand removal of any of Grantee’s employees, agents, or Sub-grantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State’s best interest.

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

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

A. State:

| Hans Kallam, Director |
| Colorado Department of Local Affairs |
| Division of Emergency Management |
| 9195 E. Mineral Ave., Ste. 200 |
| Centennial, CO 80112 |
| Email: hans.kallam@state.co.us |

B. Grantee:

| Steve Green, Emergency Management Coordinator |
| CITY OF ENGLEWOOD |
| 3615 S. Elati St. |
| Englewood, CO 80110 |
| Email: sgreen@englewoodgov.org |

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

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM
If the maximum amount payable to Grantee under this Grant is $100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.
Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-501, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System. Grantee’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee’s performance shall be part of the normal Grant administration process and Grantee’s performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee’s obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee’s obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress. Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS
This section ☑ shall ☐ shall not apply to this Grant.
Grantee must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the following:

A. Identification:
The applicant shall produce one of the following personal identifications:
   i. A valid Colorado driver’s license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S.; or
   ii. A United States military card or a military dependent's identification card; or
   iii. A United States Coast Guard Merchant Mariner card; or
   iv. A Native American tribal document.

B. Affidavit
The applicant shall execute an affidavit herein attached as Form 2, Affidavit of Legal Residency, stating:
   i. That they are United States citizen or legal permanent resident; or
   ii. That they are otherwise lawfully present in the United States pursuant to federal law.

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

B. Binding Effect
Except as otherwise provided in §21(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successors, and assigns.
C. Captions
The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

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

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

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

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

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

I. Loan Forms
If the form of financial assistance provided by the State is a loan, as specified in the table on page 1 above, Grantee shall execute a promissory note substantially equivalent to Form ___ and record a deed of trust substantially equivalent to Form 4 with the county the property resides.

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

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

iii. Grant Funding Change Letter
   The State may increase or decrease funds available under this Grant and modify selected other provisions of this agreement using a Grant Funding Change Letter substantially equivalent to Form 1. The provisions of the Grant Funding Change Letter shall become part of and be incorporated into the original agreement. The Grant Funding Change Letter is not valid until it has been approved by the State Controller or designee.
K. Order of Precedence
   i. This Grant
      The provisions of this Grant shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
      a) Colorado Special Provisions
      b) The provisions of the main body of this Grant
      c) Exhibit A
      d) Exhibit B
   ii. Loan Document
      This section shall apply if the form of financial assistance, as specified in the table on page 1 above, is a loan. In the event of conflicts or inconsistencies between this Grant and the Deed of Trust or the Promissory Note, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:
      a) Form 3, the Promissory Note
      b) This Grant

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

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

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

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

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

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COLORADO SPECIAL PROVISIONS

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

A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).
    This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).
    Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 3. GOVERNMENTAL IMMUNITY.
    No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 4. INDEPENDENT CONTRACTOR
    Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. 5. COMPLIANCE WITH LAW.
    Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. 6. CHOICE OF LAW.
    Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G. 7. BINDING ARBITRATION PROHIBITED.
    The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.
    State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

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

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

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

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

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

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

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

SPs Effective 1/1/09

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

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

GRANTEE
CITY OF ENGLEWOOD

By: James K. Woodward
Printed Name of Authorized Individual

Title: Mayor
Official Title of Authorized Individual

*Signature

Date: ______________________

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
DEPARTMENT OF LOCAL AFFAIRS

By: Reeves Brown, Executive Director

Date: ______________________

PRE-APPROVED FORM CONTRACT REVIEWER

By: William F. Archambault, Jr.,
Finance and Administration Chief

Date: ______________________

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: Barbara M. Casey,
Controller Delegate

Date: ______________________
EXHIBIT A – APPLICABLE LAWS

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

10. Section 24-34-301, et seq., Colorado Revised Statutes 1997, as amended
11. The applicable of the following:
   11.1. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
   11.2. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
   11.3. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122), and
   11.4. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133); and/or the Colorado Local Government Audit Law, 29-1-601, et seq., C.R.S., and State implementing rules and regulations.
12. Federal Emergency Management Agency, Department of Homeland Security Regulations: All Applicable Portions of 44 CFR Chapter 1, with the following Parts specially noted and applicable to all grants of FEMA/DHS funds:
12.2. Governmentwide Debarment and Suspension (Nonprocurement) and Requirements for Drug-Free Workplace, 44 C.F.R. 17.
18. EMPG 2010 –Grant Guidance
EXHIBIT B – STATEMENT OF PROJECT (SOP)

1. GENERAL DESCRIPTION OF THE PROJECT(S).
   1.1. Project Description. As detailed in Exhibit C, this project will support the electrical design required to connect a generator to the police/fire building.
   1.2. Project expenses. All expenses described in the approved grant application, Exhibit C, and categorized in the Budget Table §4.2 of this Exhibit B are eligible for reimbursement. The required non-federal match need not be provided by the Grantee on a line-item by line-item basis, but must be eligible expenditures within this grant and project. Any in-kind match must likewise be eligible as if it were a cash expenditure within the program and project.
   1.3. Identification of Subgrantee.

2. DELIVERABLES:
   2.1. Grantee shall submit narrative and financial reports describing project progress and accomplishments, any delays in meeting the objectives and expenditures to date as described in §5 of this Exhibit B.
   2.2. List additional grant deliverables. None.

3. PERSONNEL:
   3.1. Replacement. Grantee shall immediately notify the Department if any key personnel specified in §3 of this Exhibit B cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the Department and seek its approval, which shall be at the Department’s sole discretion, as the Department issued this Grant in part reliance on Grantee’s representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what his/her qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the Department, in its sole discretion, may direct Grantee to suspend work on the Project until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with §16 of the Grant.
   3.2. Responsible Administrator. Grantee’s performance hereunder shall be under the direct supervision of Mr. Steve Green, Emergency Management Coordinator, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this project.
   3.3. Other Key Personnel. None

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

4.1. Matching Funds.
   4.1.1. Requirement. The following checked option shall apply
      4.1.1.1. ☐ Matching Funds are not required under this Grant.
   4.1.1.2. ☒ Grantee’s required non-federal or state match contribution is detailed in §4.2 below. The match may:
      4.1.1.2.1. ☒ include in-kind match;
      4.1.1.2.2. ☐ not include in-kind match; or
      4.1.1.2.3. ☐ include no more than _____% in-kind match.
   4.1.2. General. Grantee’s required matching contribution, if any, need not be provided on a line-item by line-item basis, but must be at least the percentage of the total project expenditures specified in the Project Budget table.
   4.1.3. Documentation. Documentation of expenditures for the non-federal match contribution is required in the same manner as the documentation for the grant funded expenditures.
4.2. Project Budget

<table>
<thead>
<tr>
<th>Project Activity/Line Item</th>
<th>Federal Share up to: $8,700.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Matching Non-Federal Share: $8,700.00</td>
</tr>
<tr>
<td>Total for Category/Line Item Grant Funds and Grantee Matching Contribution</td>
<td>17,400.00</td>
</tr>
<tr>
<td>Supplies</td>
<td></td>
</tr>
<tr>
<td>Total Budget</td>
<td>$17,400.00</td>
</tr>
</tbody>
</table>

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

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

4.3.1.1. a notice issued by the State in accordance with §16 of the Grant; or
4.3.1.2. an amendment in accordance with the Modification subsection of the General Provisions of the Grant.

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

4.3.2.1. there are no transfers to or between administration budget lines; and
4.3.2.2. cumulative budgetary line item changes do not exceed the lesser of ten percent of the total budgeted amount or $20,000

4.4. Non-Supplanting of Grantee Funds.

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

5. PAYMENT:

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

5.1. Payment Schedule. Grantee shall submit requests for reimbursement at least quarterly using the Department provided form or by letter with documentation attached if no form is required. One original signed reimbursement request is due on the same dates as the required financial reports. All requests shall be for eligible actual expenses incurred by Grantee, as described in §1 above. Requests will be accompanied by supporting documentation totaling at least the amount requested for reimbursement and any required non-federal match contribution. Documentation requirements are described in §6.6 below. If any financial or progress reports are delinquent at the time of a payment request, the Department may withhold such reimbursement until the required reports have been submitted.

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

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

CITY OF ENGLEWOOD
3615 S. Elati St.
Englewood, CO 80110
6. ADMINISTRATIVE REQUIREMENTS:

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

6.2. Audit Report. If an audit is performed on Grantee’s records for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA, Grantee shall submit an electronic copy of the final audit report, including a report in accordance with the Single Audit Act, to dola.audit@state.co.us, or send the report to:

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

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

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

6.5. Reporting.

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

<table>
<thead>
<tr>
<th>Report Period</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>January–March</td>
<td>April 20</td>
</tr>
<tr>
<td>April–June</td>
<td>July 20</td>
</tr>
<tr>
<td>July–September</td>
<td>October 20</td>
</tr>
<tr>
<td>October–December</td>
<td>January 20</td>
</tr>
</tbody>
</table>

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

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

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

6.7. Procurement. Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantee shall refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:

6.7.1. Sole Source. Any sole source transaction in excess of $100,000 must be approved in advance by the Department.

6.7.2. Conduct. Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee must be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement must be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection must be submitted in writing to, and be approved by the authorized Grantee official.

6.7.3. Debarment. Grantee shall verify that the Contractor is not debarred from participation in state and federal programs. Sub-grantees should review contractor debarment information on http://www.epis.gov.

6.7.4. Funding Disclosure. When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subgrantees shall: (a) state the percentage of the total cost of the program or project which will be financed with grant money; (b) state the grant program name and dollar amount of state or federal funds for the project or program; and (c) use the phrase “This project was supported by the Colorado Department of Local Affairs, Division of Emergency Management.”

6.7.5. Approved Purchases. Grantee shall verify that all purchases are listed in §1.1 above. Equipment purchases, if any, shall be for items listed in the Approved Equipment List (A.E.L) for the grant period on the Responder Knowledge Base (RKB), at https://www.rkb.us

6.7.6. Assignment of Rights/Duties/Equipment. Grantee shall ensure that no rights or duties exercised under this Grant, or equipment purchased with Grant Funds having a purchase value of $5,000 or more are assigned without the prior written consent of the Department.

AN ORDINANCE AUTHORIZING FOUR (4) FARM LEASE AGREEMENTS FOR THE FARMS IN THE LITTLETON/ENGLEWOOD WASTEWATER TREATMENT PLANT BIOSOLIDS MANAGEMENT PROGRAM.

WHEREAS, the Cities of Littleton and Englewood jointly own properties near Byers, Colorado and Bennett, Colorado which are used for the Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Biosolids Management Program; and

WHEREAS, this Program uses dryland farm property for long-term applications of domestic wastewater biosolids generated by the (L/E WWTP); and

WHEREAS, the Bennett property is currently for sale so that there is no current biosolids application on those two leases; and

WHEREAS, there is ongoing biosolids application on the Byers property covered by the two proposed leases as well as an existing lease on the Meyer farm which runs through 2013; and

WHEREAS, these leases commence on January 1, 2011 and are for a term of one (1) year, renewable for five years;

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 hereby authorizes a “Farm Lease” between Progressive Farms and the cities of Littleton and Englewood commencing on January 1, 2011, for a term of one (1) year, renewable for five (5) years, ending on December 31, 2015; attached hereto as Exhibit A.

Section 2. The City Council of the City of Englewood hereby authorizes a “Farm Lease” between Craig Farms General Partnership and the cities of Littleton and Englewood commencing on January 1, 2011, for a term of one (1) year, renewable for five (5) years, ending on December 31, 2015; attached hereto as Exhibit B.

Section 3. The City Council of the City of Englewood hereby authorizes a “Farm Lease” between Kent Beichle and the cities of Littleton and Englewood commencing on January 1, 2011, for a term of one (1) year, renewable for five (5) years, ending on December 31, 2015; attached hereto as Exhibit C.

Section 4. The City Council of the City of Englewood hereby authorizes a “Farm Lease” between James Burnet and the cities of Littleton and Englewood commencing on January 1, 2011, for a term of one (1) year, renewable for five (5) years, ending on December 31, 2015, attached hereto as Exhibit D.
Section 5. The Mayor is hereby authorized to sign the four (4) Farm Lease Agreements for and on behalf of the City of Englewood.

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

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

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

Read by title and passed on final reading on the 21st day of March, 2011.

Published by title in the City’s official newspaper as Ordinance No. ____, Series of 2011, on the 25th day of March, 2011.

Published by title on the City’s official website beginning on the 23rd day of March, 2011 for thirty (30) days.

______________________________
James K. Woodward, Mayor

ATTEST:

______________________________
Loucrishia A. Ellis, City Clerk

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

______________________________
Loucrishia A. Ellis
FARM LEASE

THIS LEASE is dated as of ________________, 2011, and is made and entered into by and between the Cities of Littleton and Englewood, collectively referred to hereinafter as "Lessor", and Progressive Farms, a Colorado general partnership, referred to hereinafter as "Lessee". On this date, Lessor has leased to the Lessee, the following described premises situated in the Counties of Adams and Arapahoe, State of Colorado, to wit:

[See Exhibit A attached hereto and made a part hereof]

together with all buildings and improvements on the premises (hereinafter referred to as the "Leased Property") in accordance with the following terms:

1. This lease replaces and supersedes in its entirety, any prior lease agreement between the parties. This lease shall be for the term of one (1) year, renewable annually for five (5) years commencing on January 1, 2011, and ending on December 31, 2015 at the rent of $8.00 (Eight dollars) per acre per year on farmable acres on the Leased Property, (4993 acres) for a total annual lease payment of $39,944.00.

2. The lease payment is to be made payable to the order of:

   Littleton/Englewood WWTP

and delivered to:

   Littleton/Englewood WWTP
   c/o Operations Manager
   2900 South Platte River Drive
   Englewood, CO 80110

   by December 31 (following the harvest) of each year that this lease is in effect.

3. Lessee shall thoroughly plow, cultivate and farm in accordance with good farming practices, all lands comprising the Leased Property that are not in grass, fallowed by mutual agreement of the parties, or otherwise unfarmable.

4. Lessee shall use the Leased Property as a dryland farm and for no other purpose whatsoever, and especially will not let or permit the Leased Property to be used for any other business or purpose whatsoever.

5. Lessee shall be responsible for all costs and expenses associated with use of the Leased Property as a dryland farm, except that Lessor, at its own cost and expense, shall be responsible for furnishing, transporting, and applying all fertilizer, in the form of biosolids, to the Leased Property.

6. All fertilizer to be used on the Leased Property shall be transported, furnished, and applied
by Lessor at such times and at agronomic rates as determined by Lessor. Lessee shall not apply any fertilizer on the Leased Property without the prior written consent of Lessor. Lessor may use a portion of the Leased Property for staging areas for biosolids application. Staging area size and location will be as determined by Lessor.

7. Lessee shall not assign this lease, sublet, or relinquish the Leased Property, under the penalty of a forfeiture of all the rights of the Lessee under or by virtue of this lease, at the election of the Lessor.

8. Lessee shall protect the Leased Property, including buildings, gates, fences, shrubbery, and improvements thereon from all damages and shall keep the same in the same condition as they are now in, or may be at any time placed in by the Lessor, subject to normal wear and tear. Lessee shall do no act whereby any insurance on buildings may be invalidated and shall not remove, or allow any other person to remove, from the Leased Property any of the buildings, gates, fences, shrubbery, and improvements of any kind.

9. Lessee shall not run furrows so as to cause ditches to wash the Leased Property, unless first having a written consent of the Lessor. Lessee shall clean out and maintain in good repair, during the operation of this Lease, all ditches belonging or appertaining to the Leased Property.

10. Lessee shall well and seasonably put in and tend to the crops grown on the Leased Property, shall have all small grain harvested and threshed by October 1 of each year; and if not harvested and threshed as stated, the Lessor may proceed to do so after ten (10) days notice to the Lessee, and take enough of the Lessee’s grain to pay expense of such harvesting or threshing.

11. Lessee shall accept the fences upon said Leased Property as they now are now existing.

12. Lessee shall, at the expiration of this Lease, or upon a breach by the Lessee of any of the covenants herein contained, without further notice of any kind, quit and surrender the possession and occupancy of Leased Property in as good condition as careful use and natural wear and tear thereof will permit.

13. All goods and chattels, or any other property used or kept on the Leased Property, shall be held for the rent or damages under this Lease, whether exempt from execution or not, meaning or intending hereby to give the Lessor a valid and first lien upon any and all goods and chattels, crops and other property belonging to the Lessee.

14. Lessee shall cultivate around any structures or facilities constructed by Lessor and where applicable, and shall not impair or hinder, but shall cooperate with Lessor in the use of domestic wastewater biosolids application on the Leased Property.

15. The Lessor reserves the right to cancel the lease during its term for any of the following reasons: a) if the Lessee should take any action or fail to take any action that threatens the Lessor’s interest in the Leased Property, including the violation of any environmental laws,
rules, regulations or standards; b) if the Lessee should fail to abide by the Lessor’s instructions concerning residual nitrogen levels in the soil and agronomic rates of application of biosolids; c) if the Lessee is farming in a manner which limits the Lessor’s ability to apply biosolids to the Leased Property; d) if the Lessee is not farming in a manner that constitutes good farming practices; e) if the Lessor determines that it will no longer utilize the Leased Property for the production of crops.

16. Lessor also reserves the right for itself, its agents and its designees, including other government officials, to enter and to have access, at all reasonable times during the term of this lease, to the Leased Property for the purpose of sampling, application, monitoring, testing, screening, mapping, plotting or doing any other procedure, task or function deemed necessary by Lessor in conjunction with its biosolids production and application operation and for any other purpose including, but not limited to, inspecting the Leased Property and to make such repairs, additions, or improvements as Lessor may deem necessary.

17. It is understood and agreed that the Lessor reserves the right to cancel this lease at its sole discretion. Should Lessor elect to exercise its right of cancellation, it must do so in writing, on or before October 1 prior to the anniversary date hereof, in which event this lease shall be terminated effective on the anniversary date and neither party shall be entitled to further payments or damages as the result of said termination except for any payments due and owing at the time of cancellation.

18. All payments from the Lessee shall become due and payable upon forfeiture of said Lease, or upon abandoning said Leased Property, and if it becomes necessary for the Lessor to bring action at law to recover possession, damage or rent, the Lessee agrees to pay a reasonable attorney's fee therefore, and all costs attending the same.

19. Lessee shall indemnify, defend and hold harmless Lessor and its successors, assigns and representatives from and against any and all damages, claims, losses, costs, liabilities, and expenses of any kind whatsoever (including but not limited to reasonable attorney fees) which may be asserted against or suffered by Lessor or the Leased Property or any part thereof, as a result of, on account of or arising from (i) any breach of any covenant, representation; promise, warranty or agreement made by Lessee, or (ii) injuries or damages to person or property resulting or alleged to result from any fault or negligence of Lessee or his agents or employees, or from the possession, use, occupancy, or maintenance of the Leased Property by Lessee, his agents, employees, or affiliates.

20. This Lease shall not be sublet or assigned. Any purported sublease or assignment shall be void, and shall result in immediate termination of this lease.

21. Lessor reserves the right to sell, contract to sell, or grant easements or rights-of-way over, through, under, or on, the Leased Property at any time during the term of this lease, subject to the rights and interests of the Lessee hereunder.

22. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon
receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO LESSOR:    TO LESSEE:

Littleton/Englewood WWTP  Progressive Farms
   c/o Operations Manager c/o Mark Linnebur
   2900 South Platte River Drive  800 U.S. Highway 36
   Englewood, CO 80110       Byers, CO 80103

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

This lease shall be in effect as of the date first above written.

(Signatures follow on separate pages)
LESSOR:

CITY ENGLEWOOD

By: James K. Woodward, Mayor

CITY OF LITTLETON

By: Jim Woods, City Manager
LESSEE:

PROGRESSIVE FARMS

By: Mark Linnebur, Managing Partner
FARM LEASE

THIS LEASE is dated _______________, 2011, and is made and entered into by and between the Cities of Littleton and Englewood, collectively referred to hereinafter as “Lessor”, and Craig Farms General Partnership, referred to hereinafter as “Lessee”. On this date, Lessor has leased to the Lessee, the following described premises situated in the County of Adams, State of Colorado, to wit:

The E/2 of Section 2, Township 3 South, Range 57 West of the 6th P.M.
consisting of approximately 320 acres, more or less,
together with all buildings and improvements on the premises (hereinafter referred to as the “Leased Property”) in accordance with the following terms:

1. This lease replaces and supersedes in its entirety, any prior lease agreement between the parties. This lease shall be for the term of one (1) year, renewable annually for five (5) years commencing on January 1, 2011, and ending on December 31, 2015 at the rent of $8.00 (Eight dollars) per acre per year on farmable acres on the Leased Property, (316 acres) for a total annual lease payment of $2,528.00.

2. The lease payment is to be made payable to the order of:

Littleton/Englewood WWTP

and delivered to:

Littleton/Englewood WWTP
c/o Operations Manager
2900 South Platte River Drive
Englewood, CO 80110

by December 31 (following the harvest) of each year that this lease is in effect.

3. Lessee shall thoroughly plow, cultivate and farm in accordance with good farming practices, all lands comprising the Leased Property that are not in grass, fallowed by mutual agreement of the parties, or otherwise unfarmable.

4. Lessee shall use the Leased Property as a dryland farm and for no other purpose whatsoever, and especially will not let or permit the Leased Property to be used for any other business or purpose whatsoever.

5. Lessee shall be responsible for all costs and expenses associated with use of the Leased Property as a dryland farm, except that Lessor, at its own cost and expense, shall be responsible for furnishing, transporting, and applying all fertilizer, in the form of biosolids, to the Leased Property.
6. All fertilizer to be used on the Leased Property shall be transported, furnished, and applied by Lessor at such times and at agronomic rates as determined by Lessor. Lessee shall not apply any fertilizer on the Leased Property without the prior written consent of Lessor. Lessor may use a portion of the Leased Property for staging areas for biosolids application. Staging area size and location will be as determined by Lessor.

7. Lessee shall not assign this lease, sublet, or relinquish the Leased Property, under the penalty of a forfeiture of all the rights of the Lessee under or by virtue of this lease, at the election of the Lessor.

8. Lessee shall protect the Leased Property, including buildings, gates, fences, shrubbery, and improvements thereon from all damages and shall keep the same in the same condition as they are now in, or may be at any time placed in by the Lessor, subject to normal wear and tear. Lessee shall do no act whereby any insurance on buildings may be invalidated and shall not remove, or allow any other person to remove, from the Leased Property any of the buildings, gates, fences, shrubbery, and improvements of any kind.

9. Lessee shall not run furrows so as to cause ditches to wash the Leased Property, unless first having a written consent of the Lessor. Lessee shall clean out and maintain in good repair, during the operation of this Lease, all ditches belonging or appertaining to the Leased Property.

10. Lessee shall well and seasonably put in and tend to the crops grown on the Leased Property, shall have all small grain harvested and threshed by October 1 of each year; and if not harvested and threshed as stated, the Lessor may proceed to do so after ten (10) days notice to the Lessee, and take enough of the Lessee’s grain to pay expense of such harvesting or threshing.

11. Lessee shall accept the fences upon said Leased Property as they now are now existing.

12. Lessee shall, at the expiration of this Lease, or upon a breach by the Lessee of any of the covenants herein contained, without further notice of any kind, quit and surrender the possession and occupancy of Leased Property in as good condition as careful use and natural wear and tear thereof will permit.

13. All goods and chattels, or any other property used or kept on the Leased Property, shall be held for the rent or damages under this Lease, whether exempt from execution or not, meaning or intending hereby to give the Lessor a valid and first lien upon any and all goods and chattels, crops and other property belonging to the Lessee.

14. Lessee shall cultivate around any structures or facilities constructed by Lessor and where applicable, and shall not impair or hinder, but shall cooperate with Lessor in the use of domestic wastewater biosolids application on the Leased Property.

15. The Lessor reserves the right to cancel the lease during its term for any of the following reasons: a) if the Lessee should take any action or fail to take any action that threatens the
Lessor’s interest in the Leased Property, including the violation of any environmental laws, rules, regulations or standards; b) if the Lessee should fail to abide by the Lessor’s instructions concerning residual nitrogen levels in the soil and agronomic rates of application of biosolids; c) if the Lessee is farming in a manner which limits the Lessor’s ability to apply biosolids to the Leased Property; d) if the Lessee is not farming in a manner that constitutes good farming practices; e) if the Lessor determines that it will no longer utilize the Leased Property for the production of crops.

16. Lessor also reserves the right for itself, its agents and its designees, including other government officials, to enter and to have access, at all reasonable times during the term of this lease, to the Leased Property for the purpose of sampling, application, monitoring, testing, screening, mapping, plotting or doing any other procedure, task or function deemed necessary by Lessor in conjunction with its biosolids production and application operation and for any other purpose including, but not limited to, inspecting the Leased Property and to make such repairs, additions, or improvements as Lessor may deem necessary.

17. It is understood and agreed that the Lessor reserves the right to cancel this lease at its sole discretion. Should Lessor elect to exercise its right of cancellation, it must do so in writing, on or before October 1 prior to the anniversary date hereof, in which event this lease shall be terminated effective on the anniversary date and neither party shall be entitled to further payments or damages as the result of said termination except for any payments due and owing at the time of cancellation.

18. All payments from the Lessee shall become due and payable upon forfeiture of said Lease, or upon abandoning said Leased Property, and if it becomes necessary for the Lessor to bring action at law to recover possession, damage or rent, the Lessee agrees to pay a reasonable attorney's fee therefore, and all costs attending the same.

19. Lessee shall indemnify, defend and hold harmless Lessor and its successors, assigns and representatives from and against any and all damages, claims, losses, costs, liabilities, and expenses of any kind whatsoever (including but not limited to reasonable attorney fees) which may be asserted against or suffered by Lessor or the Leased Property or any part thereof, as a result of, on account of or arising from (i) any breach of any covenant, representation; promise, warranty or agreement made by Lessee, or (ii) injuries or damages to person or property resulting or alleged to result from any fault or negligence of Lessee or his agents or employees, or from the possession, use, occupancy, or maintenance of the Leased Property by Lessee, his agents, employees, or affiliates.

20. This Lease shall not be sublet or assigned. Any purported sublease or assignment shall be void, and shall result in immediate termination of this lease.

21. Lessor reserves the right to sell, contract to sell, or grant easements or rights-of-way over, through, under, or on, the Leased Property at any time during the term of this lease, subject to the rights and interests of the Lessee hereunder.

22. All notices, demands, or other documents required or desired to be given, made or sent to
either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO LESSOR:
Littleton/Englewood WWTP
c/o Operations Manager
2900 South Platte River Drive
Englewood, CO 80110

TO LESSEE:
Craig Farms General Partnership
c/o Jerry Craig
77201 U.S. Highway 36
Byers, CO 80103

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

This lease shall be effective as of the date first above written.

(Signatures follow on separate pages)
LESSOR:
CITY ENGLEWOOD

By: James K. Woodward, Mayor

CITY OF LITTLETON

By: Jim Woods, City Manager
LESSEE:

CRAIG FARMS GENERAL PARTNERSHIP

By: Terry J. Craig, Managing Partner
FARM LEASE

THIS LEASE is dated ______________, 2011, and is made and entered into by and between the Cities of Littleton and Englewood, collectively referred to hereinafter as “Lessor”, and Kent Bichle, referred to hereinafter as “Lessee”. On this date, Lessor has leased to the Lessee, the following described premises situated in the County of Arapahoe, State of Colorado, to wit:

That tract of land described as the W/2 and the W/2 E/2 of Section 25, all in Township 5 South; Range 63 West of the 6th P.M., containing 480 acres, more or less,

together with all buildings and improvements on the premises (hereinafter referred to as the “Leased Property”) in accordance with the following terms:

1. This lease replaces and supersedes in its entirety, any prior lease agreement between the parties. This lease shall be for the term of one (1) year, renewable annually for five (5) years commencing on January 1, 2011, and ending on December 31, 2015 at the rent of $8.00 (Eight dollars) per acre per year on farmable acres on the Leased Property, (480 acres) for a total annual lease payment of $3,840.00.

2. The lease payment is to be made payable to the order of:

Littleton/Englewood WWTP

and delivered to:

Littleton/Englewood WWTP
c/o Operations Manager
2900 South Platte River Drive
Englewood, CO 80110

by December 31 (following the harvest) of each year that this lease is in effect.

3. Lessee shall thoroughly plow, cultivate and farm in accordance with good farming practices, all lands comprising the Leased Property that are not in grass, fallowed by mutual agreement of the parties, or otherwise unfarmable.

4. Lessee shall use the Leased Property as a dryland farm and for no other purpose whatsoever, and especially will not let or permit the Leased Property to be used for any other business or purpose whatsoever.

5. Lessee shall be responsible for all costs and expenses associated with use of the Leased Property as a dryland farm.

6. Lessee shall not assign this lease, sublet, or relinquish the Leased Property, under the
penalty of a forfeiture of all the rights of the Lessee under or by virtue of this lease, at the
election of the Lessor.

7. Lessee shall protect the Leased Property, including buildings, gates, fences, shrubbery,
and improvements thereon from all damages and shall keep the same in the same condition as
they are now in, or may be at any time placed in by the Lessor, subject to normal wear and
tear. Lessee shall do no act whereby any insurance on buildings may be invalidated and shall
not remove, or allow any other person to remove, from the Leased Property any of the
buildings, gates, fences, shrubbery, and improvements of any kind.

8. Lessee shall not run furrows so as to cause ditches to wash the Leased Property, unless
first having a written consent of the Lessor. Lessee shall clean out and maintain in good
repair, during the operation of this Lease, all ditches belonging or appertaining to the Leased
Property.

9. Lessee shall well and seasonably put in and tend to the crops grown on the Leased
Property, shall have all small grain harvested and threshed by October 1 of each year; and if
not harvested and threshed as stated, the Lessor may proceed to do so after ten (10) days
notice to the Lessee, and take enough of the Lessee’s grain to pay expense of such harvesting
or threshing.

10. Lessee shall accept the fences upon said Leased Property as they now are now existing.

11. Lessee shall, at the expiration of this Lease, or upon a breach by the Lessee of any of the
covenants herein contained, without further notice of any kind, quit and surrender the
possession and occupancy of Leased Property in as good condition as careful use and natural
wear and tear thereof will permit.

12. All goods and chattels, or any other property used or kept on the Leased Property, shall
be held for the rent or damages under this Lease, whether exempt from execution or not,
meaning or intending hereby to give the Lessor a valid and first lien upon any and all goods
and chattels, crops and other property belonging to the Lessee.

13. Lessee shall cultivate around any structures or facilities on the Leased Property.

14. The Lessor reserves the right to cancel the lease during its term for any of the following
reasons: (a) if the Lessee should take any action or fail to take any action that threatens the
Lessor’s interest in the Leased Property, including the violation of any environmental laws,
rules, regulations or standards; (b) if the Lessee is not farming in a manner that constitutes good
farming practices; (c) if the Lessor determines that it will no longer utilize the Leased Property
for the production of crops.

15. Lessor also reserves the right for itself, its agents and its designees, including other
government officials, to enter and to have access, at all reasonable times during the term of this
lease, to the Leased Property for the purpose of sampling, application, monitoring, testing,
screening, mapping, plotting or doing any other procedure, task or function deemed necessary by
Lessor, including, but not limited to, inspecting the Leased Property and to make such repairs, additions, or improvements as Lessor may deem necessary.

16. It is understood and agreed that the Lessor reserves the right to cancel this lease at its sole discretion. Should Lessor elect to exercise its right of cancellation, it must do so in writing, on or before October 1 prior to the anniversary date hereof, in which event this lease shall be terminated effective on the anniversary date and neither party shall be entitled to further payments or damages as the result of said termination except for any payments due and owing at the time of cancellation.

17. All payments from the Lessee shall become due and payable upon forfeiture of said Lease, or upon abandoning said Leased Property, and if it becomes necessary for the Lessor to bring action at law to recover possession, damage or rent, the Lessee agrees to pay a reasonable attorney's fee therefore, and all costs attending the same.

18. Lessee shall indemnify, defend and hold harmless Lessor and its successors, assigns and representatives from and against any and all damages, claims, losses, costs, liabilities, and expenses of any kind whatsoever (including but not limited to reasonable attorney fees) which may be asserted against or suffered by Lessor or the Leased Property or any part thereof, as a result of, on account of or arising from (i) any breach of any covenant, representation; promise, warranty or agreement made by Lessee, or (ii) injuries or damages to person or property resulting or alleged to result from any fault or negligence of Lessee or his agents or employees, or from the possession, use, occupancy, or maintenance of the Leased Property by Lessee, his agents, employees, or affiliates.

19. This Lease shall not be sublet or assigned. Any purported sublease or assignment shall be void, and shall result in immediate termination of this lease.

20. Lessor reserves the right to sell, contract to sell, or grant easements or rights-of-way over, through, under, or on, the Leased Property at any time during the term of this lease, subject to the rights and interests of the Lessee hereunder.

21. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO LESSOR:  TO LESSEE:
Littleton/Englewood WWTP  Kent Beichle
c/o Operations Manager  7475 South County Road 145
2900 South Platte River Drive  Bennett, CO  80102
Englewood, CO 80110
The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

This lease shall be effective as of the date first above written.

*(Signatures follow on separate pages)*
LESSOR:

CITY ENGLEWOOD

By: James K. Woodward, Mayor

CITY OF LITTLETON

By: Jim Woods, City Manager
LESSEE:

Kent Beechle
FARMLEASE

THIS LEASE is dated _______________, 2011, and is made and entered into by and between the Cities of Littleton and Englewood, collectively referred to hereinafter as “Lessor”, and James Burnet, referred to hereinafter as “Lessee”. On this date, Lessor has leased to the Lessee, the following described premises situated in the County of Arapahoe, State of Colorado, to wit:

That tract of land described as the S/2 of Section 23, except the W 40 feet deeded in Book 636 at Page 9, and the SW/4 of Section 24, all in Township 5 South; Range 63 West of the 6th P.M., containing 477.5 acres, more or less,

together with all buildings and improvements on the premises (hereinafter referred to as the “Leased Property”) in accordance with the following terms:

1. This lease replaces and supersedes in its entirety, any prior lease agreement between the parties. This lease shall be for the term of one (1) year, renewable annually for five (5) years commencing on January 1, 2011, and ending on December 31, 2015 at the rent of $8.00 (Eight dollars) per acre per year on farmable acres on the Leased Property, (477.5 acres) for a total annual lease payment of $3,820.00.

2. The lease payment is to be made payable to the order of:

   Littleton/Englewood WWTP

and delivered to:

   Littleton/Englewood WWTP
   c/o Operations Manager
   2900 South Platte River Drive
   Englewood, CO 80110

by December 31 (following the harvest) of each year that this lease is in effect.

3. Lessee shall thoroughly plow, cultivate and farm in accordance with good farming practices, all lands comprising the Leased Property that are not in grass, followed by mutual agreement of the parties, or otherwise unfarmable.

4. Lessee shall use the Leased Property as a dryland farm and for no other purpose whatsoever, and especially will not let or permit the Leased Property to be used for any other business or purpose whatsoever.

5. Lessee shall be responsible for all costs and expenses associated with use of the Leased Property as a dryland farm.

6. Lessee shall not assign this lease, sublet, or relinquish the Leased Property, under the
penalty of a forfeiture of all the rights of the Lessee under or by virtue of this lease, at the
election of the Lessor.

7. Lessee shall protect the Leased Property, including buildings, gates, fences, shrubbery,
and improvements thereon from all damages and shall keep the same in the same condition as
they are now in, or may be at any time placed in by the Lessor, subject to normal wear and
tear. Lessee shall do no act whereby any insurance on buildings may be invalidated and shall
not remove, or allow any other person to remove, from the Leased Property any of the
buildings, gates, fences, shrubbery, and improvements of any kind.

8. Lessee shall not run furrows so as to cause ditches to wash the Leased Property, unless
first having a written consent of the Lessor. Lessee shall clean out and maintain in good
repair, during the operation of this Lease, all ditches belonging or appertaining to the Leased
Property.

9. Lessee shall well and seasonably put in and tend to the crops grown on the Leased
Property, shall have all small grain harvested and threshed by October 1 of each year; and if
not harvested and threshed as stated, the Lessor may proceed to do so after ten (10) days
notice to the Lessee, and take enough of the Lessee’s grain to pay expense of such harvesting
or threshing.

10. Lessee shall accept the fences upon said Leased Property as they now are now existing.

11. Lessee shall, at the expiration of this Lease, or upon a breach by the Lessee of any of the
covenants herein contained, without further notice of any kind, quit and surrender the
possession and occupancy of Leased Property in as good condition as careful use and natural
wear and tear thereof will permit.

12. All goods and chattels, or any other property used or kept on the Leased Property, shall
be held for the rent or damages under this Lease, whether exempt from execution or not,
meaning or intending hereby to give the Lessor a valid and first lien upon any and all goods
and chattels, crops and other property belonging to the Lessee.

13. Lessee shall cultivate around any structures or facilities on the Leased Property.

14. The Lessor reserves the right to cancel the lease during its term for any of the following
reasons: (a) if the Lessee should take any action or fail to take any action that threatens the
Lessor’s interest in the Leased Property, including the violation of any environmental laws,
rules, regulations or standards; (b) if the Lessee is not farming in a manner that constitutes good
farming practices; (c) if the Lessor determines that it will no longer utilize the Leased Property
for the production of crops.

15. Lessor also reserves the right for itself, its agents and its designees, including other
government officials, to enter and to have access, at all reasonable times during the term of this
lease, to the Leased Property for the purpose of sampling, application, monitoring, testing,
screening, mapping, plotting or doing any other procedure, task or function deemed necessary by
Lessor, including, but not limited to, inspecting the Leased Property and to make such repairs, additions, or improvements as Lessor may deem necessary.

16. It is understood and agreed that the Lessor reserves the right to cancel this lease at its sole discretion. Should Lessor elect to exercise its right of cancellation, it must do so in writing, on or before October 1 prior to the anniversary date hereof, in which event this lease shall be terminated effective on the anniversary date and neither party shall be entitled to further payments or damages as the result of said termination except for any payments due and owing at the time of cancellation.

17. All payments from the Lessee shall become due and payable upon forfeiture of said Lease, or upon abandoning said Leased Property, and if it becomes necessary for the Lessor to bring action at law to recover possession, damage or rent, the Lessee agrees to pay a reasonable attorney's fee therefore, and all costs attending the same.

18. Lessee shall indemnify, defend and hold harmless Lessor and its successors, assigns and representatives from and against any and all damages, claims, losses, costs, liabilities, and expenses of any kind whatsoever (including but not limited to reasonable attorney fees) which may be asserted against or suffered by Lessor or the Leased Property or any part thereof, as a result of, on account of or arising from (i) any breach of any covenant, representation; promise, warranty or agreement made by Lessee, or (ii) injuries or damages to person or property resulting or alleged to result from any fault or negligence of Lessee or his agents or employees, or from the possession, use, occupancy, or maintenance of the Leased Property by Lessee, his agents, employees, or affiliates.

19. This Lease shall not be sublet or assigned. Any purported sublease or assignment shall be void, and shall result in immediate termination of this lease.

20. Lessor reserves the right to sell, contract to sell, or grant easements or rights-of-way over, through, under, or on, the Leased Property at any time during the term of this lease, subject to the rights and interests of the Lessee hereunder.

21. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO LESSOR:

Littleton/Englewood WWTP  
c/o Operations Manager  
2900 South Platte River Drive  
Englewood, CO 80110

TO LESSEE:

James Burnet  
50155 E County Road 30  
Bennett, CO 80102-8208
The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

This lease shall be in effect as of the date first above written.

(Signatures follow on separate pages)
LENSOR:
CITY ENGLEWOOD

By: James K. Woodward, Mayor

CITY OF LITTLETON

By: Jim Woods, City Manager
LESSEE:

James Bumet
BY AUTHORITY

ORDINANCE NO. ___   COUNCIL BILL NO. 16
SERIES OF 2011
INTRODUCED BY COUNCIL
MEMBER OLSON

AN ORDINANCE AUTHORIZING THE INTERGOVERNMENTAL AGREEMENT ENTITLED
“AFFILIATION AGREEMENT TO PERMIT CLINICAL TRAINING ENGLEWOOD FIRE
DEPARTMENT” BETWEEN THE STATE OF COLORADO AND THE CITY OF ENGLEWOOD,
COLORADO.

WHEREAS, Red Rocks Community College provides training and a degree in emergency medical
services; and

WHEREAS, as part of that training, students are required to complete clinical experience,
supervised by a preceptor; and

WHEREAS, the Dean of Red Rocks Community College and the Assistant Professor of EMS
approached the Englewood Fire Department requesting that their students be permitted to work with
the Fire Department to gain some of that clinical experience due to the volume of calls and the
expertise of the preceptors of the Englewood Fire Department;

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the IGA
entitled “Affiliation Agreement to Permit Clinical Training Englewood Fire Department” between
the State of Colorado and the City of Englewood, Colorado, as attached hereto as Exhibit A.

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

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

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

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

Read by title and passed on final reading on the 21st day of March, 2011.

Published by title in the City’s official newspaper as Ordinance No. ___, Series of 2011, on
the 25th day of March, 2011.
Published by title on the City's official website beginning on the 23rd day of March, 2011 for thirty (30) days.

___________________________
James K. Woodward, Mayor

ATTEST:

___________________________
Loucrishia A. Ellis, City Clerk

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

___________________________
Loucrishia A. Ellis
AFFILIATION AGREEMENT TO PERMIT CLINICAL TRAINING
ENGLEWOOD FIRE DEPARTMENT

THIS AFFILIATION AGREEMENT made, by and between the State of Colorado for the
use and benefit of the Department of Higher Education, State Board for Community Colleges and
Occupational Education, for the use and benefit of RED ROCKS COMMUNITY COLLEGE,
located at 13300 West Sixth Avenue, Lakewood, CO 80228-1255 (hereinafter referred to as
“RRCC”), and ENGLEWOOD FIRE DEPARTMENT, located at 3615 South Elati Street,
Englewood, CO 80110 (hereinafter referred to as the “Institution”).

WHEREAS, required approval, clearance and coordination has been accomplished from
and with appropriate agencies; and

WHEREAS the Institution has the facilities to provide the necessary learning experiences
desired,

WHEREAS the parties concur that it is to their mutual advantage and benefit that students
enrolled at RRCC utilize the Institution during their Clinical experiences; and,

WHEREAS students and faculty of RRCC provide a source of stimulus and an example of
excellent patient care,

WITNESSETH, that the Parties above-named, in consideration of the mutual promises contained
herein and other good and valuable consideration, hereby agree as follows:

THE CLINICAL SITE SHALL BE: ENGLEWOOD FIRE DEPARTMENT

TERMS AND CONDITIONS

1. Definitions. The following definitions apply.

a. “Clinical” means a program of study as part of a RRCC course or degree
requirement, conducted in cooperation with the Institution, whereby Clinical
Students under the supervision of a preceptor receive experience and instruction in a
professional setting.

b. “Preceptor” means that person employed or retained by either RRCC or the
Institution to supervise the clinical experience.

c. “Clinical Student” means a person enrolled at RRCC who is to complete the
Clinical.
2. **Purpose.**

a. As part of RRCC educational requirements or as required for the award of a degree or certificate in a particular area of study, students must complete a Clinical experience supervised by a preceptor.

b. The Institution has facilities and professional staff appropriate for this Clinical.

c. By entering into this Agreement, the parties hereto do not intend that any of the RRCC staff or any Clinical Student is to be an employee of the Institution’s for any purpose, except that to the extent that the activities performed hereunder are subject to the provisions of the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Clinical Student shall be deemed a member of the Institution’s workforce at all times while performing the Clinical duties and activities. RRCC staff and Clinical Students shall not act as the Institution’s agents or representatives in any capacity, and shall not make any commitments on behalf of the Institution. The Parties hereto are not partners, agents nor principals of one another.

3. **Term.** This contract takes effect on the date signed by the State Controller or delegate. It shall renew annually for a maximum of three (3) consecutive years unless either Party gives written notice to the other Party ninety (90) days prior to the renewal date. This contract may be terminated at any time by mutual consent of the parties hereto in writing, and signed by the authorized representative of each Party. In the event that a notice to terminate is given by either Party, this Agreement shall continue in full force and effect so as to permit the completion of all Clinicals that began prior to the Contract End Date, and with respect to such Clinicals, all terms and conditions of this Agreement shall apply until the last such Clinical is completed.

4. **RRCC Obligations.**

a. RRCC acknowledges its sole responsibility for the planning and execution of the educational program through its program personnel and community faculty.

b. RRCC shall be responsible for academic administration, curriculum content and programming, Clinical Student recruitment, admission, promotion and graduation, maintenance of all Clinical records and reports, and final determination of all grades to be awarded to Clinical Students for Clinical participation.

c. RRCC shall ensure that all Clinical Students have completed all applicable prerequisite courses and any other requirements necessary prior to Clinical placement.

d. RRCC hereby agrees to apprise Clinical Students of the confidential nature of client information.

e. RRCC will require Clinical Students to comply with rules and regulations of the Institution while present within the Institution;

f. RRCC will assure that each Clinical Student and faculty member will maintain appropriate current immunizations and evidence of the absence of tuberculosis;
g. RRCC will engage in cooperative planning with appropriate Institution personnel for the selection and assignment of student Clinical learning experiences;

h. RRCC will inform Clinical Students of their responsibility to provide any transportation, meals, and lodging related to the Clinical rotation.

i. RRCC will assure that Clinical Students will be responsible for their own medical care while within the Institution, although the Institution may be asked to render emergency care in appropriate and extraordinary circumstances;

j. RRCC recognizes the authority of the Institution to refuse the use of its facilities to any Clinical Student who does not meet the standards of the Institution;

5. **The Institution’s Obligations.**

a. The Institution will provide for the orientation of Clinical Students at the Institution, and will make available to them all of the Institution’s pertinent policies, rules and regulations;

b. The Institution will allow access to the facilities of the Institution for the clinical training of Clinical Students, including the participation of the Clinical Students in the delivery of medical services under the supervision of assigned preceptors;

c. The Institution shall have sole authority and control over all aspects of client services, including those activities wherein Clinical Students may be exposed to or interrelate with clients.

d. The Institution shall, in consultation with appropriate RRCC faculty and the Preceptor, designate those clients to whom Clinical Students may be exposed for their Clinical experience. The Institution shall determine the dates of Clinical assignments for specific duties related to the Clinical rotations.

e. The Institution, in its discretion, may at any time exclude from participation hereunder any Clinical Student whose performance is determined to be detrimental to the Institution’s clients, who fails to comply with proper channels of communication or the Institution’s established policies and procedures, or whose performance is otherwise unsatisfactory.

f. The Institution will render emergency care to Clinical Students in appropriate and extraordinary circumstances, including the use of CDC-consistent guidelines after exposure to blood or bodily fluids.

6. **Both Parties agree that:**

a. they will cooperate in the coordination of Clinical Students placement at the Institution;

b. they will notify one another of any issues involving the safety of patients, staff, Clinical Students, or faculty;

c. they will inform one another of changes in personnel, curriculum or the availability of learning opportunities at the earliest possible time;
d. upon its request, the Institution shall enjoy representation on the curriculum committee and advisory board of the program;

e. any preceptors who are employed by the Institution shall be given "Clinical Instructor" appointments within RRCC, but shall not receive financial compensation or workers' compensation coverage from RRCC as the result of their service;

7. **Liability and Insurance; Governmental Immunity.**

a. RRCC, as an entity of the State of Colorado, is entitled to certain immunities under Colorado law, including the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., and is self-insured for $150,000 per person and $600,000 per occurrence as more fully set forth in Risk Management laws, C.R.S. §§ 24-30-1501, et seq. The parties agree that such insurance shall satisfy all insurance requirements of this Agreement except as otherwise specified herein.

b. The Colorado Constitution prohibits the State of Colorado and RED ROCKS COMMUNITY COLLEGE from agreeing to indemnify any other party, public or private. In addition, the Colorado Governmental Immunity Act limits the tort liability of public entities and their employees and authorized volunteers acting in the course of authorized governmental undertakings. Any provision of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise so modified by statute. Parties to this Agreement should seek liability protection through their own insurance or otherwise.

c. Workers' Compensation insurance coverage for Clinical Students participating under this Agreement shall be provided by RRCC.

d. Clinical Student liability insurance shall be provided by RRCC in the amount of $1,000,000 each incident or occurrence and $3,000,000 in the aggregate.

8. **HIPAA Compliance.**

a. The parties agree that to the extent required under the provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 as that act may be amended from time to time, and regulations promulgated hereunder, RRCC and Institution hereby assure they will appropriately safeguard protected health information (PHI) made available to or obtained pursuant to this Agreement. Without limiting obligations otherwise set forth in this Agreement or imposed by applicable law, the parties agree to comply with applicable requirements of law relating to PHI and shall:

- Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
- Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
- Report to both parties of this agreement, any use or disclosures of PHI not provided for by this Agreement of which s/he becomes aware;
- Ensure that any subcontractors or agents to whom RRCC or Institution provides PHI agree to the same restrictions and conditions that apply to them with respect to PHI;
- Make available PHI in accordance with applicable law;
• Make available to the Secretary of the United States Health & Human Services, RRCC or Institution's internal practices, books, and records relating to the use and disclosure of PHI received pursuant to this Agreement for purposes of determining compliance with applicable law;
• Provide information required to make an accounting of disclosures pursuant to applicable law;
• At the termination of this Agreement, return or destroy all PHI in any form received pursuant to this Agreement and retain no copies of the said PHI; and
• This Agreement may be amended from time to time, if and to the extent required by the provisions of HIPAA and the regulations promulgated there under, so that this Agreement is consistent therewith.

9. **Termination.** This Agreement may be terminated as follows:

a. For Convenience. Either Party may terminate this Agreement for any reason by providing ninety (90) days written notice to the other Party of its intention to terminate, provided that Clinical Students shall be permitted to complete Clinicals that began prior to the termination notice.

b. For Default. A Party will be considered in default of its obligations under this Agreement if such Party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Contract and such failure continues for ten (10) days after the non-defaulting Party gives the defaulting Party written notice thereof. In the event of default, the non-defaulting Party, upon written notice to the defaulting Party, may terminate this Contract as of the date specified in the notice, and may seek such other and further relief as may be provided by law. To the extent reasonable, the Parties shall endeavor in good faith to prevent the early termination of any ongoing Clinical as a result of the termination of this Agreement under this section.

10. **No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement shall be strictly reserved to the parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person. It is the express intention of the parties that any person other than a party to this Agreement receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

11. **Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Denver, State of Colorado.

12. **Assignment.** No assignment of this Agreement or the rights and obligations hereunder shall be valid without the prior written approval of the parties.

13. **Waiver.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.

14. **Anti-Discrimination.** The parties agree that in the performance of this Agreement, there will be no discrimination against Clinical Students, employees, or other persons
related to race, color, sex, religion, creed, age, national origin, sexual orientation, or disability.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any previous contracts, understandings, or agreements of the parties, whether oral or written, concerning the subject matter of this Agreement.

16. **Amendment.** Any amendment to this Agreement must be in writing and must be signed by the parties.

17. **Severability.** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

18. **Commencement.** This contract shall commence on the date signed by the State Controller or delegate.

**INSTITUTION Address:** ENGLEWOOD FIRE DEPARTMENT  3615 S. Elati St.  Englewood, CO 80110  
Phone: 303-762-2476  
Fax: 303-762-2406  
Contact name: Stephen Green  
Email:

**COLLEGE Address:** RED ROCKS COMMUNITY COLLEGE  Instructional Services, Box 35  Lakewood, CO 80228-1255  
Phone: 303-914-6343  
Fax: 303-989-6285  
Contact name: Lori Burns, RN, MSN  Dean of Instruction  Also: Robert Vroman, EMS Faculty  Phone: 303-914-6552  Email:
THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

CONTRACTOR
ENGLEWOOD FIRE DEPARTMENT
By: James Woodward
Title: Mayor

*Signature

Date: ______________________

STATE OF COLORADO
Bill Ritter, Jr. GOVERNOR
State of Colorado, Department of Higher Education, State Board for Community Colleges and Occupational Education, for the use and benefit of Red Rocks Community College
C. Michele Haney, President

By: C. Michele Haney, President

Date: ______________________

2nd Contractor Signature if Needed
By: Michael Parrarozzi
Title: Fire Chief

*Signature

Date: ______________________

LEGAL REVIEW
John W. Suthers, Attorney General
NOT REQUIRED FOR THIS CONTRACT

By: ______________________
Signature - Assistant Attorney General

Date: ______________________

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: ______________________
Peggy Morgan, Vice President of Administrative Services
Or Kathy Kaoudis, Controller, Business Services
Red Rocks Community College
State Controller Delegates

Date: ______________________
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COUNCIL COMMUNICATION

Date: March 21, 2011
Agenda Item: 9 c i
Subject: Resolution for a Supplemental Appropriation to the 2011 Budget for Additional Expenditures related to Security Services for the Library Services Department

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

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council passed the 2011 Budget and Appropriations bills for ordinances on final reading October 18, 2010.

City Council discussed this supplemental appropriation at the February 22, 2011 Study Session and directed staff to prepare a supplemental appropriation for security services (security guard) in the Library.

RECOMMENDED ACTION

Staff recommends City Council approve the attached resolution for a supplemental appropriation to the 2011 Budget for Library Services for security services (security guard).

GENERAL FUND:

SOURCE OF FUNDS:
Unreserved/Undesignated Fund Balance $10,000

USE OF FUNDS:
Library Services Department – Security Services $10,000

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The supplemental appropriation for 2011 is presented for Council’s consideration at this time because the need for security in the Library has increased and is considered critical to the health and safety of City staff and the Library’s patrons.

FINANCIAL IMPACT

The General Fund’s unreserved/undesignated fund balance will decrease $10,000 with the passage of this resolution.

LIST OF ATTACHMENTS

Proposed Resolution
RESOLUTION NO. _____
SERIES OF 2011

A RESOLUTION APPROVING A SUPPLEMENTAL APPROPRIATION TO THE 2011 BUDGET FOR ADDITIONAL EXPENDITURES RELATED TO SECURITY SERVICES FOR THE LIBRARY SERVICES DEPARTMENT.

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

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

WHEREAS, the need for security in the Library has increased and considered critical to the health and safety of City staff and the Library’s patrons; and

WHEREAS, the passage of this Resolution will appropriate funds from the Unreserved/Undesignated Fund to the Library Services Department Fund to be used for security services for the Englewood Library.

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

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

2011 SUPPLEMENTAL APPROPRIATION

GENERAL FUND:

SOURCE OF FUNDS:
Unreserved/Undesignated Fund Balance $10,000

USE OF FUNDS:
Library Services Department – Security Services $10,000
Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2011 Budget for the City of Englewood.

ADOPTED AND APPROVED this 21st day of March, 2011.

ATTEST:  

________________________  
James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

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

________________________  
Loucrishia A. Ellis, City Clerk
COUNCIL COMMUNICATION

Date: March 21, 2011
Agenda Item: 9 c ii
Subject: Approval of Desktop Computers Purchase

Initiated By: Information Technology Department
Staff Source: Jeff Konishi, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has made a priority of ensuring that the City provides and maintains a quality infrastructure, including the technical infrastructure.

No previous Council action has been taken on this particular purchase.

RECOMMENDED ACTION

Approve, by motion, the purchase of replacement desktop computers from the lowest acceptable bidder, Proactive Network Management, in the amount of $56,212.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Since 2008, the strategy for replacing desktop computers was established to be every four years. Based on previous experience, desktop computers that were used in production for more than the four years were outdated and required more service. The cost of supplies and resource time to service aging desktop computers was cost prohibitive compared to dropping prices of new computers.

We have compiled our specifications for desktop computers and received three quotes. Since all quotes were based on the exact same specifications for the desktop computers, the lowest quote was chosen.

FINANCIAL IMPACT

The computer replacement budget for this purchase is $74,000 and is the Capital Projects Fund (MYCP). Based on the three bids, the one selected will allow the City to purchase the desktop computers to be replaced in 2011 and have funds available to purchase 11 additional replacement laptops and additional spare desktop computers while still remaining $3,000 under budget.

LIST OF ATTACHMENTS

Vendor Quotes
## Proactive Network Management, Inc.

**Larry Luzum**  
Phone: 303-942-1430 - Fax: 303-942-1431  
124 South 400 East, Suite 200 - Salt Lake City, Utah 84111

### QUOTATION

**Prepared For:** Andy May - City of Englewood I.T. Dept.  
Phone: 303-783-6840 - Fax: 300-000-0000  
February 18, 2011

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#### Operating System Option***
- Downgrade to Windows 7 Professional 32-bit
  - ***Memory Options***
  - Downgrade to 2gb PC3-10600 (2x1gb Memory, Subtract: $109.00)
  - Downgrade to 4gb PC3-10600 (4x1gb Memory, Subtract: $51.00)

#### Hard Drive Option***
- Upgrade to 160gb 7200rpm SATA Hard Drive, Subtract: $32.00

#### Video Upgrade Options***
- ATI Radeon HD 4550 (512mb Dual Head) PCIe x16 Video Card:
  - $62.00
  - $5,704.00

#### Video Cable Option***
- $32.00

#### Parallel Port Option***
- $3.00

#### Warranty Upgrade Options***
- $100.00
- $189.00

---

HP Saved Quote Number 5246572.

**Pricing per HP WSCA-J / NASPG State Contract***

**NOTE:** Pricing subject to change without notice per Hewlett Packard.

Thank you for the opportunity to serve you!

---

Prices subject to State Tax and Freight: $56,212.00
**SALES QUOTATION**

**QUOTE NO:** BXWM454  
**ACCOUNT NO.:** 5278729  
**DATE:** 2/11/2011

**BILL TO:** ANDY MAY  
1000 ENGLEWOOD PKWY  
**SHIP TO:** CITY OF ENGLEWOOD  
Attention To: ANDY MAY  
1000 ENGLEWOOD PKWY

Accounts Payable  
ENGLEWOOD, CO 80110-2373  
Contact: ANDY MAY  303.783.6840

Customer Phone #303.783.6840  
Customer P.O. # DESKTOPS

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**SUBTOTAL**  
**FREIGHT**  
**TAX**  

**TOTAL** 2,733.20

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CDW Government  
230 North Milwaukee Ave.  
Vernon Hills, IL 60061  
Phone: 847.371.5000  
Fax: 847-465-5188

Please remit payment to:  
CDW Government  
75 Remittance Drive  
Suite 1515  
Chicago, IL 60675-1515
Shipping Information

Shipping Address:
City of Englewood
1000 Englewood Parkway
SHERIDAN, CO 80110

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COUNCIL COMMUNICATION

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<td>Amending an Intergovernmental Agreement between the City and Arapahoe County</td>
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Initiated By: Community Development Department

Staff Source: Janet Grimmett, Housing Finance Specialist
Harold Stitt, Senior Planner

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council passed Ordinance No. 22, Series of 2009 relating to the participation in the Urban County Entitlement Program for Community Development Block Grant (CDBG) and HOME funds for Fiscal Years 2010 through 2012; and also passed Ordinance No. 34, Series of 2010 authorizing the execution of two intergovernmental agreements for the Housing Rehabilitation and Handyman Project and the Energy Efficient Englewood Project for 2010 CDBG funding.

RECOMMENDED ACTION

Approve a bill for an ordinance authorizing an amendment to the Intergovernmental Subgrantee Agreement for the 2010 Arapahoe County Community Development Block Grant Program between the Arapahoe Board of County Commissioners and the City of Englewood for the Energy Efficient Englewood Project. This amendment will increase the amount of the contract to $127,500.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Federal Community Development Block Grant (CDBG) Program provides grants to units of local government and urban counties to meet housing and community development needs. The objective of the Program is achieved through projects developed by the local government that are designed to give priority to those activities that benefit low- and moderate-income families. Funds are allocated by statutory formula to each entitlement area. Arapahoe County is an approved entitlement area. The grant funds are distributed by Arapahoe County to each participating city within the county.

In early January 2011, Arapahoe County had not yet issued the Notice to Proceed for the Housing Rehabilitation and Handyman Project (Rehab Project). The contract completion date was April 30, 2011. The Rehab Project had also received program income which by regulations must be expended before any current CDBG allocation could be utilized. Expending program income first increased the probability that the Rehab Project award would not be expended by the April 30 deadline. The E3 Project had received its Notice to Proceed on October 14, 2010 and is successfully interviewing families. The E3 project could assist nine families, but has already created a waiting list due to the demand from the community. Rather than returning the Rehab Project funding to Arapahoe County, on January 10, 2011, staff requested the $50,000 of 2010 CDBG funding approved for the Rehab
Project be reallocated to the E3 project. Arapahoe County approved the request and issued the attached amendment for Council approval.

The amendment modifies the Energy Efficient Englewood (E3) project as follows:

1. Reallocates $50,000 originally awarded to the Rehab Project to the E3 project;
2. Increases the E3 project budget from $77,500 to $127,500;
3. Increases the number of households served from 9 to 14 homes;
4. Extends the E3 project completion date from April 30, 2011 to July 31, 2011;
5. Eliminates and omits the 20% match requirement from the homeowner; and
6. Modifies the budget and performance standards to reflect this change.

FINANCIAL IMPACT

The existing employees in Community Development are available to administer the projects and their salaries and benefits are part of the City's contribution. The City will utilize a portion of the CDBG funding from the E3 Project (est. $7,500) to partially offset the costs of those salaries and benefits.

LIST OF ATTACHMENTS

Bill for an Ordinance
BY AUTHORITY

ORDINANCE NO. _____ SERIES OF 2011

COUNCIL BILL NO. 17
INTRODUCED BY COUNCIL MEMBER ________________

A BILL FOR

AN ORDINANCE AUTHORIZING AN “AMENDMENT NUMBER ONE TO THE
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT SUBGRANTEE:
CITY OF ENGLEWOOD PROJECT NAME: ENERGY EFFICIENT ENGLEWOOD (E3)
PROJECT NUMBER: ENHS 1012”.

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

WHEREAS, the Englewood City Council passed Resolution 71, Series of 2009, supporting
Housing and Community Development that authorized submitting an application for 2010 CDBG
funding; and

WHEREAS, the Englewood City Council approved Ordinance No. 34, Series of 2010
approving and authorizing the intergovernmental subgrantee agreement for 2010 CDBG Energy
Efficient Englewood Project which has been categorized as a housing rehabilitation activity; and

WHEREAS, the passage of this proposed ordinance authorizes Amendment No. 1, modifying
the Energy Efficient Englewood (E3) project as follows:

1. Reallocates $50,000 originally awarded to the Housing Rehabilitation and Handyman
Project to the E3 project.

2. Increases the E3 project budget from $77,500 to $127,500.

3. Increases the number of households served from 9 to 14 homes.

4. Extends the E3 project completion date from April 30, 2011 to July 31, 2011.

5. Eliminates and omits the 20% match requirement from the homeowner.

6. Modifies the budget and performance standards to reflect this change.

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 approved
Amendment Number One to the Community Development Block Name: Energy Efficient
Englewood (E3) Project Number: ENHS 1012, attached hereto as Exhibit A, is hereby accepted
and approved by the Englewood City Council.
Section 2. The Mayor is hereby authorized to sign said Amendment No. One for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 21st day of March, 2011.

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

Published as a Bill for an Ordinance on the City's official website beginning on the 23rd day of March, 2011 for thirty (30) days.

__________________________
James K. Woodward, Mayor

ATTEST:

__________________________
Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 21st day of March, 2011.

__________________________
Loucrishia A. Ellis
AMENDMENT NUMBER ONE TO THE COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT

SUBGRANTEE: CITY OF ENGLEWOOD
PROJECT NAME: ENERGY EFFICIENT ENGLEWOOD (E3)
PROJECT NUMBER: ENHS 1012

This First Amendment is made by and between the City of Englewood (SubGrantee) and the Board of County Commissioners of Arapahoe County, Colorado (County).

WHEREAS, the SubGrantee agreed to complete the project known as the Energy Efficient Englewood (E3) project and entered into a Community Development Block Grant Agreement (Agreement) with County, dated October 14, 2010; and

WHEREAS, the Subgrantee has requested funding from the Housing Rehabilitation & Handyman Project (ENHS 1013) be reallocated to the E3 project budget. The $50,000 reallocation increases the E3 budget from $77,500 to $127,500; and

WHEREAS, the additional $50,000 in funding will result in increasing the households served from 9 to 14; and

WHEREAS, the Subgrantee has requested a three month extension to complete the project, due to the increased funding. The extension will extend the completion date from April 30, 2011 to July 31, 2011; and

WHEREAS, the SAFE Act and HB 10-1141 have placed mortgage license requirements upon the SubGrantee that limit the SubGrantee’s ability to secure interest in the properties of participating homeowners. Both parties agree that the 20% match requirement from the homeowner shall be eliminated and omitted from the agreement due to implications raised by the SAFE Act and HB 10-1141.

NOW, THEREFORE, for the mutual consideration of the parties, the receipt and sufficiency of which are hereby acknowledged, the County and SubGrantee agree that the project budget shall be amended to $127,500. The number of households served will increase from 9 to 14. The County and SubGrantee further agree that the project budget attached to the original Agreement is considered null and void, and the budget attached hereto is now in effect under the terms of the Agreement. The County and SubGrantee further agree that the completion date shall be extended to July 31, 2011. The County and SubGrantee further agree that the 20% match requirement will be eliminated and shall be omitted from the SubGrantee Agreement.

All other terms, conditions and sections of the original Community Development Block Grant Agreement not inconsistent with this Amendment are reaffirmed and incorporated herein by this reference.
In Witness Whereof, the Parties have caused this Amendment to be duly executed this ______ day of __________________________, 20______.

SubGrantee: City of Englewood

________________________________________
Signature          James K. Woodward

____________________________
Mayor
Title

Board of County Commissioners
Arapahoe County, Colorado

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

<table>
<thead>
<tr>
<th>COLUMN A</th>
<th>COLUMN B</th>
<th>COLUMN C</th>
<th>COLUMN D</th>
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</thead>
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<tr>
<td>Project Activities (specify by line item)</td>
<td>Estimated Total Cost of Activity</td>
<td>CDBG Funds</td>
<td>Other Funds Committed</td>
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<td>$18,000</td>
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<td><strong>TOTAL:</strong></td>
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COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date:</th>
<th>Agenda Item:</th>
<th>Subject:</th>
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<tbody>
<tr>
<td>March 21, 2011</td>
<td>11 a ii</td>
<td>Hazardous Materials Emergency Planning Grant</td>
</tr>
</tbody>
</table>

Initiated By: Fire Department  
Staff Source: Michael Pattarozzi, Fire Chief

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The application for this Hazardous Materials Emergency Planning (HMEP) Grant supports the following City Council goals:

- A safe, clean and attractive City (this grant provides for the training and preparation of firefighters to respond to and protect the citizens of Englewood creating a safer community)

- A progressive City that provides responsive and cost efficient services (This grant provides for the total cost of training necessary to ensure hazmat personnel in the City are well prepared to respond to an incident at no cost to the City).

City Council has historically supported the application for and receipt of funds through various grants to enhance city infrastructure and services. The Fire Department has previously received awards through the Assistance to Firefighters Grant Program in 2002, 2003, 2004, and 2009. The Fire Department has also received Emergency Management Planning Grant funding from 2007 through 2010.

RECOMMENDED ACTION

Staff recommends City Council adopt a bill for an ordinance accepting the 2011 Hazardous Materials Emergency Planning Grant Award which funds two hazmat training courses and one hazmat exercise.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The HMEP Grant is funded through the Federal Department of Transportation (US DOT) and administered by the Colorado Department of Local Affairs and exists to support hazardous materials planning and exercise activities. The City of Englewood has three transportation routes which have been designated as hazardous materials routes. In addition, there are numerous Tier II reporting facilities within the city. Any of these facilities or routes has the potential to create accidents or incidents involving hazardous materials. Having properly trained personnel to respond to and manage the incident will greatly improve the overall outcome of the incident.
FINANCIAL IMPACT

The HMEP Grant is a 20% soft match grant, meaning that the grant is matched through other emergency management expenditures, including salaries of employees involved in emergency management. The Fire Department has already identified current expenditures adequate to match the grant funding, resulting in no additional cost to the city for accepting these funds. The total amount of the grant is $10,400. The city receives $8,320, which is the cost of conducting the two classes and one exercise.

LIST OF ATTACHMENTS

Bill for an Ordinance
BY AUTHORITY

ORDINANCE NO. ____ SERIES OF 2011 COUNCIL BILL NO. 18
INTRODUCED BY COUNCIL MEMBER ____________

A BILL FOR

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A HAZARDOUS MATERIALS EMERGENCY PLANNING GRANT (HMEP) AWARDED TO THE CITY OF ENGLEWOOD, COLORADO BY THE STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS.

WHEREAS, the Hazardous Materials Emergency Planning (HMEP) Grant is funded through the Federal Department of Transportation (US DOT) and administered by the Colorado Department of Local Affairs and exists to support hazardous materials planning and exercising activities; and

WHEREAS, the City of Englewood has three (3) transportation routes which have been designated as hazardous materials routes and there are numerous Tier II reporting facilities within the City; and

WHEREAS, any of these facilities or routes has the potential to create accidents or incidents involving hazardous materials; and

WHEREAS, having properly trained personnel to respond to and manage the incident will greatly improve the overall outcome of the incident; and

WHEREAS, the City of Englewood Fire Department sought and was also awarded an Hazardous Materials Emergency Planning Grant (HMEP) which supports the Englewood City Council goals of:

- A safe, clean and attractive City (this grant provides for the training and preparation of firefighters to respond to and protect the citizens of Englewood creating a safer community)

- A progressive City that provides responsive and cost efficient services (this grant provides for the total cost of training necessary to ensure hazmat personnel in the City are well prepared to respond to an incident at no cost to the City); and

WHEREAS, the amount of the HMEP Grant is $8,320, which is the cost of conducting two classes and one exercise;

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 Hazardous Materials Emergency Planning (HEMP) Grant which funds two hazmat training courses and one hazmat exercise, attached hereto as Attachment 1.
Introduced, read in full, and passed on first reading on the 21st day of March, 2011.

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

Published as a Bill for an Ordinance on the City’s official website beginning on the 23rd day of March, 2011 for thirty (30) days.

______________________________
James K. Woodward, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 21st day of March, 2011.

______________________________
Loucrishia A. Ellis
AGREEMENT

Between the

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

And the

CITY OF ENGLEWOOD

| Summary |
|-----------------|-----------------|-----------------|
| Form of Financial Assistance: | ☑ Grant | ☐ Loan | Award Amount: **$8,320.00** |

**Agreement Identification:**
- Contract Encumbrance #: 11EM71H98 *(DOLA's primary identification # for this agreement)*
- Contract Management System #: *(State of Colorado's primary identification # for this agreement)*

**Project Information:**
- Project/Award Number: 11EM71H98
- Project Name: City of Englewood hazmat training
- Performance Period: Start Date: The Effective Date End Date: 9/30/2011
- Brief Description of Project / Assistance: The City of Englewood will be conducting a CAMEO hazmat training and tabletop exercise for the Fire Department.

**Program & Funding Information:**
- Program Name: Hazardous Materials Emergency Preparedness (HMEP)
- Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): 20.703
- Funding Account Codes: 100/71H/F1TH/371H/5110

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Firm Revised: 04/2010
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1. PARTIES
This Agreement (hereinafter called "Grant") is entered into by and between the CITY OF
ENGLEWOOD (hereinafter called "Grantee"), and the STATE OF COLORADO acting by and through the
Department of Local Affairs for the benefit of the Division of Emergency Management (hereinafter called the
"State" or "DOLA").

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

A. ☐ The Effective Date.
B. ☐ The later to occur of the Effective Date or the date of a separate letter issued by the Department
   ("Release of Funds Letter") notifying Grantee of the completion of a satisfactory environmental review
   and authorizing Grantee to obligate or use Grant Funds.
C. ☐ The Effective Date; provided, however, that all Project costs, if specifically authorized by the funding
   authority, incurred on or after ____ , may be submitted for reimbursement as if incurred after the
   Effective Date.
D. ☐ insert date for authorized pre-agreement costs, as defined in §4 below and/or in Exhibit B, Statement
   of Project. Such costs may be submitted for reimbursement as if incurred after the Effective Date.
E. ☐ The Effective Date; provided, however, that the costs identified in the checked subsections below may
   be submitted for reimbursement as if incurred after the Effective Date (see checked suboption(s) below):
   i. □ All Project costs, if specifically authorized by the funding authority, incurred on or after insert
      federal grant's effective date; and
ii. ☐ Pre-award costs for insert purpose, if any, incurred on or after **insert starting date allowed under the federal award for pre-award costs**.

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

3. RECITALS

A. Authority, Appropriation, and Approval

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

B. Consideration

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

C. Purpose

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

D. References

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

4. DEFINITIONS

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

A. Evaluation

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

B. Exhibits and Other Attachments

The following are attached hereto and incorporated by reference herein:

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

C. Goods

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

D. Grant

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

E. Grant Funds

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

F. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

G. Pre-contract costs

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

H. Project Budget

“Project Budget” means the budget for the Work described in **Exhibit B**.
I. Program
“Program” means the grant program, as specified on the first page, that provides the funding for this Grant.

J. Review
“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and Exhibit B.

K. Services
“Services” means the required services to be performed by Grantee pursuant to this Grant.

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

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

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

5. TERM and EARLY TERMINATION.

A. Initial Term
Unless otherwise permitted in §2 above, the Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on 9/30/2011 unless sooner terminated or further extended as specified elsewhere herein.

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

6. STATEMENT OF PROJECT

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

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

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

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

A. Maximum Amount
The maximum amount payable under this Grant to Grantee by the State is $8,320.00, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in Exhibit B.
B. Payment

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

ii. Interest
The State shall not pay interest on Grantee invoices.

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

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

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

D. Matching Funds
Grantee shall provide matching funds as provided in Exhibit B.

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

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

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

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

D. Subgrants
Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.
9. GRANTEE RECORDS
Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

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

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

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

D. Final Audit Report
Grantee shall provide a copy of its audit report to DOLA as specified in Exhibit B.

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

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

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

C. Use, Security, and Retention
Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee
shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

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

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

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

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

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

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

13. INSURANCE
Grantee and its Sub-grantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.
A. Grantee
   i. Public Entities
      If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each grant with sub-grantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Sub-grantee's liabilities under the GIA.

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

B. Grantees and Sub-Grantees
Grantee shall require each Grant with Sub-grantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:
   i. Worker's Compensation
      Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Sub-grantee employees acting within the course and scope of their employment.

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

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

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

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

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

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

C. Certificates
Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other
time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

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

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

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

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

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

ii. Payments
The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee’s action or inaction was excusable, such termination shall be treated as a termination in the public interest and
the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

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

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

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

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

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

C. Remedies Not Involving Termination
The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

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

ii. Withhold Payment
Withhold payment to Grantee until corrections in Grantee’s performance are satisfactorily made and completed.

iii. Deny Payment
Deny payment for those obligations not performed, that due to Grantee’s actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.
iv. Removal
   Demand removal of any of Grantee’s employees, agents, or Sub-grantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State’s best interest.

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

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

A. State:

   Hans Kallam, Director
   Colorado Department of Local Affairs
   Division of Emergency Management
   9195 E. Mineral Ave., Ste. 200
   Centennial, CO 80112
   Email:

B. Grantee:

   Kraig Stovall, Battalion Chief
   City of Englewood
   Arapahoe County LEPC
   3615 S. Elati St.
   Englewood, CO 80110
   Email:

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

18. GOVERNMENTAL IMMUNITY
   Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.
19. STATEWIDE CONTRACT MANAGEMENT SYSTEM
If the maximum amount payable to Grantee under this Grant is $100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

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

20. RESTRICTION ON PUBLIC BENEFITS
This section □ shall | ✗ shall not apply to this Grant.
Grantee must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the following:

A. Identification:
The applicant shall produce one of the following personal identifications:
   i. A valid Colorado driver's license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S.; or
   ii. A United States military card or a military dependent's identification card; or
   iii. A United States Coast Guard Merchant Mariner card; or
   iv. A Native American tribal document.

B. Affidavit
The applicant shall execute an affidavit herein attached as Form 2, Affidavit of Legal Residency, stating:
   i. That they are United States citizen or legal permanent resident; or
   ii. That they are otherwise lawfully present in the United States pursuant to federal law.

21. GENERAL PROVISIONS
A. Assignment and Subgrants
Grantee’s rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or sub-grantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting arrangements and performance.
B. Binding Effect
Except as otherwise provided in §21(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

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

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

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

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

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

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

I. Loan Forms
If the form of financial assistance provided by the State is a loan, as specified in the table on page 1 above, Grantee shall execute a promissory note substantially equivalent to Form ___ and record a deed of trust substantially equivalent to Form 4 with the county the property resides.

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

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

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

i. This Grant

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

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

ii. Loan Document

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

a) Form 3, the Promissory Note
b) This Grant

L. Severability

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

M. Survival of Certain Grant Terms

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

N. Taxes

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

O. Third Party Beneficiaries

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

P. Waiver

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

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COLORADO SPECIAL PROVISIONS

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

A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).
   This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).
   Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 3. GOVERNMENTAL IMMUNITY.
   No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 4. INDEPENDENT CONTRACTOR
   Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. 5. COMPLIANCE WITH LAW.
   Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. 6. CHOICE OF LAW.
   Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G. 7. BINDING ARBITRATION PROHIBITED.
   The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.
   State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.
The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee’s services and Grantee shall not employ any person having such known interests.

J. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.
[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. 11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.
[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] Grantee certifies, warrants, and agrees that it does not knowingly employ or Grant with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant or enter into a Grant with a Sub-grantee that fails to certify to Grantee that the Sub-grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Sub-grantee and the Granting State agency within three days if Grantee has actual knowledge that a Sub-grantee is employing or Granting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Sub-grantee does not stop employing or Granting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(3), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the Granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §§17.5-101 et seq., the Granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

L. 12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.
Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

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

GRANTEE
CITY OF ENGLEWOOD

By: James K. Woodward
Printed Name of Authorized Individual

Title: Mayor
Official Title of Authorized Individual

*Signature
Date: ________________

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
DEPARTMENT OF LOCAL AFFAIRS

By: Reeves Brown, Executive Director
Date: ________________

PRE-APPROVED FORM CONTRACT REVIEWER

By: William F. Archambault, Jr.,
Finance and Administration Chief
Date: ________________

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: _______________________
Barbara M. Casey,
Controller Delegate
Date: _____________________

Page 17 of 17
EXHIBIT A – APPLICABLE LAWS

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

10. Section 24-34-301, et seq., Colorado Revised Statutes 1997, as amended
11. The applicable of the following:
   11.1. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
   11.2. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
   11.3. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122), and
   11.4. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133); and/or the Colorado Local Government Audit Law, 29-1-601, et seq., C.R.S., and State implementing rules and regulations.
   11.5. Immigration Status Cooperation with Federal Officials, CRS 29-29-101, et seq.
12. Federal Emergency Management Agency, Department of Homeland Security Regulations: All Applicable Portions of 44 CFR Chapter 1, with the following Parts specially noted and applicable to all grants of FEMA/DHS funds:
   12.1 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 44 C.F.R. 13.
   12.2. Governmentwide Debarment and Suspension (Nonprocurement) and Requirements for Drug-Free Workplace, 44 C.F.R. 17.
18. Federal Grant Guidance
EXHIBIT B – STATEMENT OF PROJECT (SOP)

1. GENERAL DESCRIPTION OF THE PROJECT(S).
   1.1. Project Description. As detailed in Exhibit C, this project aims to further train and prepare the firefighters of Englewood to respond to a hazmat incident.
   1.2. Project expenses. All expenses described in the approved grant application, Exhibit C, and categorized in the Budget Table §4.2 of this Exhibit B are eligible for reimbursement. The required 20% non-federal match need not be provided by the Grantee on a line-item by line-item basis, but must be 20% of the total overall expenditures, including any in-kind match.
   1.3. Identification of Subgrantee. Arapahoe County Local Emergency Planning Committee

2. DELIVERABLES:
   2.1. Grantee shall submit narrative and financial reports describing project progress and accomplishments, any delays in meeting the objectives and expenditures to date as described in §5 of this Exhibit B.
   2.2. List additional grant deliverables. None.

3. PERSONNEL:
   3.1. Replacement. Grantee shall immediately notify the Department if any key personnel specified in §3 of this Exhibit B cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the Department and seek its approval, which shall be at the Department’s sole discretion, as the Department issued this Grant in part reliance on Grantee’s representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what his/her qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the Department, in its sole discretion, may direct Grantee to suspend work on the Project until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with §16 of the Grant.
   3.2. Responsible Administrator. Grantee’s performance hereunder shall be under the direct supervision of Mr. Kraig Stovall, Battalion Chief, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this project.
   3.3. Other Key Personnel. None

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

4.1. Matching Funds.
   4.1.1. Requirement. The following checked option shall apply
   4.1.1.1. ☐ Matching Funds are not required under this Grant.
   4.1.1.2. ☒ Grantee’s required non-federal or state match contribution is detailed in §4.2 below. The match may:
   4.1.1.2.1. ☒ include in-kind match;
   4.1.1.2.2. ☐ not include in-kind match; or
   4.1.1.2.3. ☐ include no more than ___% in-kind match.

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

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

<table>
<thead>
<tr>
<th>Project Activity/Line Item</th>
<th>Federal Share up to 80%: $8,320.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Matching Non-Federal Share 20%: $2,080.00</td>
</tr>
<tr>
<td></td>
<td>Total for Category/Line Item Grant Funds and Grantee Matching Contribution</td>
</tr>
<tr>
<td>Supplies</td>
<td>375.00</td>
</tr>
<tr>
<td>Other</td>
<td>10,025.00</td>
</tr>
<tr>
<td>Total Budget</td>
<td>$10,400.00</td>
</tr>
</tbody>
</table>

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

4.3.1. [ ] not adjust individual budget line amounts without approval of the State. Such approval shall be in the form of:
- 4.3.1.1. a notice issued by the State in accordance with §16 of the Grant; or
- 4.3.1.2. an amendment in accordance with the Modification subsection of the General Provisions of the Grant.

4.3.2. [X] adjust individual budget line amounts without the State’s approval if:
- 4.3.2.1. there are no transfers to or between administration budget lines; and
- 4.3.2.2. cumulative budgetary line item changes do not exceed the lesser of ten percent of the total budgeted amount or $20,000

4.4. Non-Supplanting of Grantee Funds.

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

5. PAYMENT:

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

5.1. Payment Schedule. Grantee shall submit requests for reimbursement at least quarterly using the Department provided form or by letter with documentation attached if no form is required. One original signed reimbursement request is due on the same dates as the required financial reports. All requests shall be for eligible actual expenses incurred by Grantee, as described in §1 above. Requests will be accompanied by supporting documentation totaling at least the amount requested for reimbursement and any required non-federal match contribution. Documentation requirements are described in §6.6 below. If any financial or progress reports are delinquent at the time of a payment request, the Department may withhold such reimbursement until the required reports have been submitted. If the total reimbursable expenses reported for the year’s grant exceed the amount of the award, the excess expenses may be eligible for consideration for any reallocation additions made at the end of the federal grant period. If any grant end realllocation funding is available, eligibility for those funds will require timely report submittal, and strong performance demonstrated through the quarterly progress reports and through ongoing contact/monitoring.

5.2. Payment Amount. When non-federal match is required, such match must be documented with every payment request. Periodic payments will be made as requested at the same percentage of the documentation submitted as the Grant funded share of the budget up to any applicable quarterly or other pre-closeout maximums. Payment will not exceed the amount of cash expenditures documented. Excess match documented and submitted with one reimbursement request will be applied to subsequent requests as necessary to maximize the allowable reimbursement.
5.3. Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with Section 16 of the Grant:

City of Englewood
Arapahoe County LEPC
3615 S. Elati St.
Englewood, CO 80110

6. ADMINISTRATIVE REQUIREMENTS:

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

6.2. Audit Report. If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA, Grantee shall submit an electronic copy of the final audit report, including a report in accordance with the Single Audit Act, to dola.audit@state.co.us, or send the report to:

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

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

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

6.5. Reporting.

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

<table>
<thead>
<tr>
<th>Report Period</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>January – March</td>
<td>April 20</td>
</tr>
<tr>
<td>April – June</td>
<td>July 20</td>
</tr>
<tr>
<td>July – September</td>
<td>October 20</td>
</tr>
<tr>
<td>October – December</td>
<td>January 20</td>
</tr>
</tbody>
</table>

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

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

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

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

6.7. Procurement. Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantee should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:

6.7.1. Sole Source. Any sole source transaction in excess of $100,000 must be approved in advance by the Department.

6.7.2. Conduct. Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee must be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement must be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection must be submitted in writing to, and be approved by the authorized Grantee official.

6.7.3. Debarment. Grantee shall verify that the Contractor is not debarred from participation in state and federal programs. Sub-grantees should review contractor debarment information on http://www.epls.gov.

6.7.4. Funding Disclosure. When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subgrantees shall: (a) state the percentage of the total cost of the program or project which will be financed with grant money; (b) state the grant program name and dollar amount of state or federal funds for the project or program; and (e) use the phrase "This project was supported by the Colorado Department of Local Affairs, Division of Emergency Management."

6.7.5. Approved Purchases. Grantee shall verify that all purchases are listed in §1.1 above. Equipment purchases, if any, shall be for items listed in the Approved Equipment List (A.E.L) for the grant period on the Responder Knowledge Base (RKB), at https://www.rkb.us

6.7.6. Assignment of Rights/Duties/Equipment. Grantee shall ensure that no rights or duties exercised under this Grant, or equipment purchased with Grant Funds having a purchase value of $5,000 or more are assigned without the prior written consent of the Department.

BY AUTHORITY

ORDINANCE NO. _____ SERIES OF 2011
COUNCIL BILL NO. 8
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE AUTHORIZING THE ENGLEWOOD ESTATES PLANNED UNIT
DEVELOPMENT (PUD) AMENDMENT NO. 1, LOCATED AT 1210, 1230, 1250, 1255, 1270,
1275 AND 1290 WEST QUINCY CIRCLE IN THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, Distinctive Builders, L.L.C., owner of the property at 1296 West Quincy Avenue,
Englewood, Colorado, submitted an application to rezone the property from R-1-C Single-Family
Residence District to PUD and to subdivide the property contained within the PUD; and

WHEREAS, the Englewood Estates Subdivision divided the site commonly addressed at 1296
West Quincy Avenue into seven single-family building sites and establishes a private one-way
street, known as West Quincy Circle, to provide access to the proposed development; and

WHEREAS, the Englewood City Council approved Englewood Estates Planned Unit
Development (PUD) by the passage of Ordinance No. 47, Series of 2004; and

WHEREAS, in 2009 Habitat for Humanity of Metro Denver, Inc. discussed purchasing the
property from Distinctive Builders, LLC contingent upon amending the existing PUD to permit a
greater amount of dwelling units on the site; and

WHEREAS, Amendment No. 1, proposes the following changes to the original PUD:
• An increase in the number of residential units from 7 to 11 dwelling units.
• A change in the type of residential units from 7 one-unit detached dwellings, to 3 one-unit
detached dwellings and 4 two-unit attached dwellings.
• A decrease in the average lot size from 5,784 square feet to 3,454 square feet.
• Minor changes to building setbacks including 0’ side setbacks for the attached dwelling
units.
• An increase in the height from which the bulk plane begins; from a 12’ height in the
original PUD, to an 18’ height in the proposed amendment.
• A decrease in the amount of parking from 4.5 parking spaces per unit including guest
parking to 3.0 parking spaces per unit including guest parking.
• A decrease in the minimum landscaped area from 40% to 30%.
• Minor changes in the private road (Tract A) configuration to accommodate additional
parking and snow storage.
• The original PUD allowed storage sheds provided they were less than 9 feet in height.
Amendment No. 1 prohibits all storage sheds.

WHEREAS, pursuant to E.M.C. 16-2-7(F)(2)(c), 16-2-7(H)(2) and 16-2-7(H)(3), amendments
to Planned Unit Developments are reviewed under the same procedure and criteria as original PUD
applications; and

WHEREAS, the Planning and Zoning Commission held a Public Hearing on January 5, 2011
and took testimony on the subject property which is currently zoned Englewood Estates PUD; and
WHEREAS, the Commission recommends approval of this Planned Unit Development Amendment No. 1;

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

Section 1. The Englewood City Council has reviewed the Amendment No. 1 to the Englewood Estates Planned Unit Development and pursuant to 16-2-7(F)(2)(c); 16-2-7(H)(2) and 16-2-7(H)(3) E.M.C., finds that the P.U.D. amendment is in conformance with the approved Planned Unit Development requirements.

Section 2. The Englewood City Council finds that all required documents, drawings, referrals, recommendations and approvals have been received.

Section 3. The Englewood City Council finds that the amended P.U.D. site plan is consistent with adopted and generally accepted standards of development within the City.

Section 4. The amended P.U.D. site plan is substantially consistent with the goals, objectives and policies and/or any other ordinance, law or requirement of the City.

Section 5. The City Council of the City of Englewood, Colorado hereby approves Amendment No. 1 to the Planned Unit Development for Englewood Estates, attached hereto as Exhibit A.

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

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

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

A Public Hearing was held on March 7, 2011.

Read by title and passed on final reading on the 21st day of March, 2011.

Published by title in the City’s official newspaper as Ordinance No. _____, Series of 2011, on the 25th day of March, 2011.

Published by title on the City’s official website beginning on the 23rd day of March, 2011 for thirty (30) days.

__________________________
James K. Woodward, Mayor

ATTEST:

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

______________________________
Loucrishia A. Ellis
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date:</th>
<th>Agenda Item:</th>
<th>Subject:</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 21, 2011</td>
<td>11 c i</td>
<td>Endorsement for Utility Service Partners, Inc.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Initiated By:</th>
<th>Staff Source:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jim Woodward, Mayor of Englewood</td>
<td>Stewart H. Fonda, Director of Utilities</td>
</tr>
</tbody>
</table>

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The Water and Sewer Board, at their February 9, 2011 meeting, recommended that the request by Utility Service Partners, Inc. to use the City of Englewood’s logo for promoting their water and sewer service line warranty insurance be forwarded to City Council for a Study Session.

Councilperson Linda Olson requested, per Council Request 11-037, that additional references for Utility Service Partners be obtained.

This matter was presented at the February 28, 2011 City Council Study Session.

RECOMMENDED ACTION

The Mayor recommends Council approve, by motion, the contract with Utility Service Partners to allow the use of Englewood’s logo on a cover letter for promotional purposes for water and sewer service warranty insurance to Englewood water and sewer customers.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Utility Service Partners (USP) offers a warranty program to provide utility service line warranties to homeowners. The warranty program covers the cost of repairing broken or leaking water or sewer lines. Their promotional material states that USP contacts customers within one hour of filing a claim, local plumbers are used and repairs are made within 24 hours.

At their February 28, 2011 Study Session, Council received a memo from the Utilities Department outlining concerns, namely to have USP supply references, to review copies of letters approved by other municipalities, to state that the City is only forwarding information regarding a National League of Cities recommended company, that the Utilities Department not be contacted about questions or complaints about USP and that the Englewood Utilities staff will not discuss the program with customers.
If Council approves, the City will sign a contract and approve a promotional letter from USP that will use Englewood’s logo to lend credibility. This letter will be sent to Englewood’s utilities service customers. The letter and contract have been reviewed and approved by the City Attorney’s office.

FINANCIAL IMPACT

Residents who choose to subscribe to the program would pay a monthly fee. In the event there is a claim, USP states there are no deductibles or additional service fees. Each warranty is sold individually and will range between $4 and $5 a month per property.

USP pays a royalty for every resident that participates in the program. At the February 9, 2011 meeting, Mayor Woodward recommended that instead of the proposed royalty payment, that the money be used to reduce rates for Englewood customers subscribing to the USP warranty plan.

LIST OF ATTACHMENTS

Reference Survey Results
March 11, 2011

The Honorable Mayor Jim Woodward
Mayor
City of Englewood, Colorado
1000 Englewood Parkway
Englewood, CO 80110

RE: Marketing Agreement with Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America ("SLWA")

Dear Mayor Woodward:

We have discussed entering into a marketing agreement between the City of Englewood, Colorado (the "City") and SLWA.

SLWA provides affordable utility service line warranties to consumers. It is SLWA's understanding that, in consideration of SLWA offering its external sewer and water line warranties (the "Warranties") at a 10% discount from its standard rates to the Residents (as defined below) the City has agreed to cooperate with SLWA in marketing SLWA's services to City's residents and homeowners (the "Residents") as described below:

1. City hereby grants to SLWA a non-exclusive license to use City’s name and logos on letterhead and marketing materials to be sent to the Residents from time to time, and to be used in advertising, all at SLWA’s sole cost and expense and subject to City’s prior review and approval, which will not be unreasonably conditioned, delayed, or withheld.

2. As consideration for such license, SLWA shall offer the Warranties to the Residents at a rate that is 10% less than its standard rate for Warranties offered elsewhere.

3. The term of this marketing agreement will be for one year from the date of the execution of the acknowledgement below and this agreement will then renew on an annual basis unless one of the parties gives the other advance written notice of at least 90 days that it does not intend to renew this marketing agreement. City may terminate this marketing agreement 30 days after giving notice to SLWA that SLWA is in material breach of this agreement if such breach is not cured during such 30-day period. SLWA will be permitted to complete any marketing initiative initiated or planned prior to the effective date of any termination of this marketing agreement, but otherwise neither party will have any further obligations to the other and the license described in this letter will terminate.

4. SLWA shall indemnify, hold harmless, and defend City, its elected officials, appointed officials, and employees from and against any loss, claim, liability, damage, or expense that any of them may suffer, sustain or become subject to in connection with any third party claim (each a "Claim") resulting from the negligence or willfulness of SLWA in connection with, arising out of or by reason of this marketing agreement, provided that
the applicable indemnitee notifies SLWA of any such Claim within a time that does not prejudice the ability of SLWA to defend against such Claim. Any indemnitee hereunder may participate in its, his, or her own defense, but will be responsible for all costs incurred, including reasonable attorneys’ fees, in connection with such participation in such defense.

5. SLWA shall include a statement in all marketing material that while the City supports the SLWA offering, SLWA will arrange and be solely responsible for the provision of all services under the warranty programs. SLWA shall not include phone or email addresses for the Englewood Utility Department, but shall provide SLWA customers with the telephone number for SLWA’s customer call center. SLWA shall also provide the Englewood Utility Department with SLWA’s customer call center telephone number.

If City agrees that the foregoing fully and accurately describes the agreement between City and SLWA, please arrange to have a duly authorized representative of City execute and date the acknowledgement below in each of the duplicate original versions of this letter and return one to USP in the enclosed self-addressed stamped envelope.

If you have any questions or wish to further discuss this marketing agreement, please do not hesitate to contact William Diones, NW Regional Account Manager, 303.803.044 if you have any questions.

[Signed on next page]
Very truly yours,

Utility Service Partners Private Label, Inc.

By: ____________________________

Print Name: _____________________

Title: ____________________________

By: ____________________________

Print Name: _____________________

Title: ____________________________

Acknowledged and Agreed:

City hereby acknowledges and agrees that the foregoing letter fairly and accurately describes the agreement between City and SLWA as of the date of this acknowledgement.

City of Englewood, Colorado

By: ____________________________ Date: ______________________

Print Name: _____________________

Title: ____________________________

[Signature page to Marketing Agreement]
Dear [Customer Name]:

I am very pleased to tell you about a new program available for our residents — one that could potentially save you a lot of money in these difficult economic times. As you may know, as a homeowner in the City of Englewood, you are responsible for the maintenance and repair of your buried, outside water service line that runs from the utility connection to your home. If you discovered a problem with the water line in your yard, whom would you call? Would you know how to handle all the details involved in getting your water service restored?

The City of Englewood is proud to present, a National League of Cities endorsed program, to assist our residents should they be faced with this costly repair. Service Line Warranties of America (SLWA) offers a Water Line Warranty which will protect you from any repairs needed on your outside, buried water line for a small monthly fee. If you should need a repair, SLWA will have a 24-hour hotline and will dispatch a local plumber within 24-hours to perform the repair. SLWA covers repair costs up to $4,000 per incident, plus an additional $500 allowance for public sidewalk cutting, if needed with no service fees or deductibles.

An unexpected and costly outside water line repair can devastate a family’s budget and if you have not already set aside money for these types of expenses, I would encourage you to protect yourself today by enrolling in the outside water line warranty.

If you enroll by June 15, SLWA will offer a discounted price of $4.25 per month which represents a savings of over 10% on their standard monthly price. If you elect to pay annually, they will discount the cost further to $44.00 which is over a 20% savings.

SLWA has several billing frequencies and payment options available, including invoice, credit card, and direct debit from your checking account.

To enroll, or to learn more about this program, please call 1-855-270-1191 to speak with SLWA directly. Or if you prefer, you may return the bottom portion of this letter to SLWA in the enclosed, self-addressed, postage-paid envelope or visit www.utilitylineprotection.com.

Sincerely,

Mayor Name
Mayor

Complete warranty terms and conditions will be provided following enrollment. You may terminate your participation in a warranty program at any time. You have 30 days from the date you enroll to receive a full refund. After 30 days, you will be reimbursed the pro rata share of any amount you paid for any portion of the warranty period subject to cancellation.

[Customer Name]
[Customer Address]
[Customer City, State, Zip Code]

Contact ID: [Contact ID]

Please mark your selections:

☐ Yes! Please enroll me in the outside water line warranty for just $4.25 per month

☐ I want to save even more! I will pay just $44.00 per year for the water line warranty

Signature: ___________________________ Date: ________________

Enroll immediately by visiting www.utilitylineprotection.com.
Cathy Burrage

From: John Manchester [ ]
Sent: Monday, March 07, 2011 1:54 PM
To: Cathy Burrage
Cc: 'Bonita Sienkiewicz'
Subject: RE: Reference for Utility Service Partners

Cathy:

We have allowed the use of Lewisburg’s logo, and it has worked fine for us. The cover letter clearly identifies the program and the partnership and lists their number as a contact number for questions customers may have. We have been pleased with the arrangement.

John manchester

Mayor

City of Lewisburg, WV

From: Cathy Burrage [ ]
Sent: Monday, March 07, 2011 1:29 PM
To:
Cc: Cathy Burrage
Subject: Reference for Utility Service Partners
REFERENCE QUESTIONS REGARDING UTILITY SERVICE PARTNERS

1. What is your general impression of the services provided by Utility Service Partners regarding fixing service line problems? How long have you been associated with them? We have been associated with Utility Service Partners for approximately one year. They are an excellent firm and are endorsed by the West Virginia Municipal League.

2. Since your cities’ logo is being used for promotional purposes, has your staff had problems with citizens calling in with issues that should have been addressed by Utility Service Partners? We have not had any problems. There is an occasional call or letter but nothing major.

3. Have citizens come back to the municipality if an issue is not solved using Utility Service Partners? Was the issue resolved by them? I am not aware of any issue not being resolved by Utility Service Partners.

4. Does your municipality have an agreement with Utility Service Partners? Can we have a copy? We do have an agreement which is their standard agreement with other municipalities.

5. Have there been issues if the resident’s line is blocked and they only pay for repairs if a line is broken? Who pays for TVing the service line? If Utility Service Partners are called out and it is not a break, who pays for the call? We have not had that problem.

6. If you were starting over with Utility Service Partners is there anything you would add or subtract from your agreement? Any unexpected issues? We have a very successful partnership with Utility Service Partners and I would give them an unqualified recommendation.
Dear Cathy,
I have attached the completed survey, our agreement and the letter to residents.
Let me know if you need anything else.
Thank you,
John

March 7, 2011

Dear Municipality:

The City of Englewood, Colorado is considering a request from Utility Service Partners to use the City’s logo for their promotional purposes.

It would be appreciated if you would take the time to reply by March 11, 2011 to the following questions and return to: _________________. Your input is important to Englewood’s City Council in considering this matter for our community.

If you have questions or wish to call, please contact at 303-762-2643.

Sincerely,

/s/
John Bock
Manager of Administration – Utilities
City of Englewood
REFERENCE QUESTIONS REGARDING UTILITY SERVICE PARTNERS

(Response from John Daly, Village Administrator, Orland Hills, IL.)

1. What is your general impression of the services provided by Utility Service Partners regarding fixing service line problems? How long have you been associated with them?
   The Village Board approved the process in April 2010. They have been upfront and straightforward in all regards. Residents seem pleased with their service program. USP asked us for locals plumbing firms to contact for arranging contractual work. USP did this and we are pleased with the local contractor they selected.

2. Since your city's logo is being used for promotional purposes, has your staff had problems with citizens calling in with issues that should have been addressed by Utility Service Partners?
   We have had about a dozen calls from residents, initially. Most calls were to confirm the program. Some calls were asking advice. I have suggested that newer homes (under 20 years) would probably not have a need for this service now. However, I have advised residents that is their option to participate or not.

3. Have citizens come back to the municipality if an issue is not solved using Utility Service Partners? Was the issue resolved by them?
   We are unaware of any unresolved issues.

4. Does your municipality have an agreement with Utility Service Partners? Can we have a copy?
   Yes, it is attached.

5. Have there been issues if the resident's line is blocked and they only pay for repairs if a line is broken? Who pays for TVing the service line? If Utility Service Partners are called out and it is not a break, who pays for the call?
   Our understanding is that any line “Failure” is subject to the warranty service program. That includes blockages, as well as, breakages.

6. If you were starting over with Utility Service Partners is there anything you would add or subtract from your agreement? Any unexpected issues?
   I believe, the simple agreement we have works well. Based on their cooperation, to date, I feel that any issue will be amicably resolved.
April 27, 2010

John Daly  
Village Administrator  
Village of Orland Hills  
16033 S 94th Ave.  
Orland Hills, IL 60487

Dear John,

Thank you for returning the marketing agreement and the letter. I received it on Monday April 26, 2010. Brad Carmichael, Vice President of Business development and Phil Riley, President and CEO signed the agreement. I have enclosed an original copy for your records. I also had the marketing department make the changes to the letter and we are working on everything to begin the campaign. I will let you know when the letters will be mailed and I will keep you up to date on the campaign to let you know the response that we receive. Thank you for allowing us the opportunity to work with you in providing our programs to your residents. We look forward to a long and successful relationship with the Village.

Sincerely,

Mike Chambers  
Business Development
March 23, 2010

John Daly, Administrator
Village of Orland Hills
16033 S 94th Ave
Orland Hills, IL 60487

RE: Marketing Agreement with Utility Service Partners, Inc. d/b/a Service Line Warranties of America (“SLWAM”)

Dear Mr. Daly:

We have discussed entering into a marketing agreement between the Village of Orland Hills (“Orland Hills”) and SLWAM.

SLWAM provides affordable utility service line warranties to consumers. It is SLWAM’s understanding that, in consideration of the License Fee (as defined below) to be paid by SLWAM to Orland Hills, Orland Hills has agreed to cooperate with SLWAM in marketing SLWAM’s services to Orland Hills’s residents and homeowners (the “Residents”) as described below:

1. Orland Hills hereby grants to each of SLWAM a non-exclusive license to use Orland Hills’s name and logos on letterhead and marketing materials to be sent to the Residents from time to time, and to be used in advertising, all at SLWAM’s sole cost and expense and subject to Orland Hills’s prior review and approval, which will not be unreasonably conditioned, delayed, or withheld.

2. As consideration for such license, SLWAM will be jointly and severally liable to pay to Orland Hills, within 30 days of the end of the final calendar quarter, 10% of the revenue from USP warranty subscriptions collected from the Residents during such calendar year (the “License Fee”), together with a statement certifying collections of such USP revenue, so long as this marketing agreement remains in effect. Orland Hills will have the right, at its expense, to conduct an annual audit, upon reasonable notice and during normal business hours, of SLWAM’s books and records pertaining to sales and rentals to the Residents while this marketing agreement is in effect and for one year after any termination of this marketing agreement.

3. The term of this marketing agreement will be for one year from the date of the execution of the acknowledgement below and this agreement will then renew on an annual basis unless one of the parties gives the other advance written notice of at least 90 days that it does not intend to renew this marketing agreement. Orland Hills may terminate this marketing agreement 30 days after giving notice to SLWAM that one or both of them are in material breach of this agreement if such breach is not cured during such 30-day period. SLWAM will be permitted to complete any marketing initiative
initiated or planned prior to the effective date of any termination of this marketing agreement and shall pay the License Fee to the Orland Hills for the calendar year in which this marketing agreement is terminated after which time, except for SLWAM’s obligation to permit Orland Hills to conduct an audit as described above, neither party will have any further obligations to the other and the license described in this letter will terminate.

4. SLWAM shall, jointly and severally, indemnify, hold harmless, and defend Orland Hills, its elected officials, appointed officials, and employees from and against any loss, claim, liability, damage, or expense that any of them may suffer, sustain or become subject to in connection with any third party claim (each a “Claim”) resulting from the negligence or willfulness of either of SLWAM in connection with, arising out of or by reason of this marketing agreement, provided that the applicable indemnitee notifies SLWAM of any such Claim within a time that does not prejudice the ability of SLWAM to defend against such Claim. Any indemnitee hereunder may participate in its, his, or her own defense, but will be responsible for all costs incurred, including reasonable attorneys’ fees, in connection with such participation in such defense.

If Orland Hills agrees that the foregoing fully and accurately describes the agreement between Orland Hills and SLWAM, please arrange to have a duly authorized representative of Orland Hills execute and date the acknowledgement below in each of the duplicate original versions of this letter and return one to me in the enclosed self-addressed stamped envelope.

If you have any questions or wish to further discuss this marketing agreement, please do not hesitate to contact me.

Very truly yours,

Utility Service Partners, Inc.

By:

Print Name:  

Title: 

By:

Print Name:  

Title:  

Acknowledged and Agreed:

Orland Hills hereby acknowledges and agrees that the foregoing letter fairly and accurately describes the agreement between Orland Hills and SLWAM as of the date of this acknowledgement.

Village of Orland Hills:

By: ___________________________ Date: 4-22-2010
Print Name: John Daly
Title: Village Administrator
May 10, 2010

Dear [Name],

I am very pleased to tell you about a new program available for our residents — one that could potentially save you a lot of money in these difficult economic times. As you know, as a homeowner in the Village of Orland Hills, you are responsible for the maintenance and repair of your buried, outside sewer service line that runs from your home to the main sewer line. If you discovered a problem with the sewer line in your yard, whom would you call? Would you know how to handle all the details involved in getting your sewer service restored?

The Village of Orland Hills has recently formed a new partnership with Service Line Warranties of America (SLWA). SLWA offers a Sewer Line Warranty which will protect you from any repairs needed on your outside, buried sewer line for a small monthly fee. If you should need a repair, they have a 24-hour hotline and will dispatch a local, licensed plumber within 24-hours to perform the repair. There are no service fees or deductibles. Repair costs are covered up to $4,000 per incident, plus an additional $4,000 allowance for public street cutting, if needed.

An unexpected and costly outside sewer line repair can devastate a family’s budget if you have not already set aside money for these types of expenses. I would encourage you to consider this protection today, by enrolling in the outside sewer line warranty.

If you enroll by June 15, 2010, SLWA will offer a discounted price of $4.75 a month which represents a savings of over 30% on their standard monthly price. If you elect to pay annually, they will discount the cost further to $48.00 which is over 20% savings.

Service Line Warranties of America has several billing frequencies and payment options available, including invoice, credit card, and direct debit from your checking account.

To enroll, or to learn more about this program, please call 1-877-529-2828 to speak with SLWA directly. Or if you prefer, you may return the bottom portion of this letter to SLWA in the enclosed, self-addressed envelope.

Sincerely,

[Signature]

Village Administrator

Complete warranty terms and conditions will be provided following enrollment. You may terminate your participation in a warranty program at any time. You have 30 days from the date you enroll to receive a full refund. After 30 days, you will be reimbursed the pro rata share of any amount you paid for any portion of the warranty period subject to cancellation.

[Signature]

Date:

Service Line Warranties of America

Orland Hills, IL 60487- [Contact ID: ]

☐ Yes! Please enroll me in the outside sewer line warranty for just $4.75 per month

☐ I want to save even more! I will pay just $48.00 per year for the sewer line warranty
LIMITATIONS AND EXCLUSIONS OF THE
SERVICE LINE WARRANTIES OF WEST VIRGINIA ("SLW")
EXTERNAL SEWER LINE REPAIR PROGRAM ("WARRANTY PROGRAM")

1. The Warranty Program covers repair or replacement of a broken single underground sewer line from the utility's main sewer line to the exterior foundation of your home. If your home is situated on a slab, your sewer line may be embedded in concrete, which may require relocating your sewer line as a means of repair or replacement. Every reasonable effort will be made to avoid cutting through the slab. Please note that approved contractors must have safe access to, and safe working conditions at and around the work area. Coverage is limited to $4,000 per occurrence, plus an additional $4,000 for public street cutting, if necessary.

2. In order for a warranty claim under this Warranty Program to be valid, you must call SLW at 1-866-922-9006 before any repair work is performed. All repair work must be performed by an authorized SLW contractor. No payments will be made for work performed by a non-SLW contractor.

3. The Warranty Program does not cover underground sewer lines that were in need of repair or damaged before you enrolled in the Warranty Program. SLW retains the right to inspect the sewer line for damage after you enroll and you agree that SLW contractors shall have the right to come on to your property to conduct such inspections or to repair or replace your sewer line under the Warranty Program.

4. Coverage under the Warranty Program starts 30 days after enrollment and continues thereafter so long as you make timely payments. Coverage may be canceled for nonpayment. Your account must be in good standing (current) to receive repair service under this program.

5. The Warranty Program does not cover:
   (a) service to any sewer line not connected to a public sewer system, including a septic system, leach field, etc.;
   (b) any sewer lines not owned by you or damage related to the backup of sewers and drains caused by Sewer Main Lines;
   (c) service to any sewer line connected to a lift station;
   (d) any branch line and any storm-water line connected to the sewer line or the Sewer Main Line;
   (e) updating and/or moving non-leaking lines to meet code, law, or ordinances or to satisfy directives of the sewer company or others;
   (f) removal of obstacles necessary to access the sewer line;
   (g) damage to your sewer line that is caused, directly or indirectly, by you, a third party, natural disasters, acts of God or by other insurable causes;
   (h) service lines owned by the utility or connected to a commercial facility, condominium, multifamily or manufactured home (also known as mobile home). If you own a condominium or a multi family home, please call 1-866-922-9006 for further enrollment information.

6. Whether a covered sewer line is to be repaired or replaced is entirely within the discretion of SLW.
7. After a sewer line is repaired or replaced, SLW will provide basic site restoration service to the affected area limited to filling in holes, mounding (to allow for settling) and seeding. If slab cutting is necessary to repair or replace a broken sewer line, the resulting trench will be patched. The Warranty Program does not provide for replacement of any floor covering (e.g. carpet, hard wood, marble, ceramic tile, etc.). Restoration does not include replacing trees or shrubs or repairing private paved and/or concrete surfaces or structures in your yard.

8. You have 30 days from the date you enroll in the Warranty Program to cancel and receive a full refund of any payments you have made. You may cancel the Warranty Program at any time, and you will be reimbursed the pro rata share of any amount you paid for any portion of the warranty period subject to cancellation, less any costs paid towards a claim filed on your account; provided, however, SLW may waive any refund which is less than $6.00, unless otherwise requested by you.

9. SLW may modify this Warranty Program by giving you 30 days' written notice and may terminate the Warranty Program for nonpayment within 30 days of the payment due date and with 90 days' written notice for any other reason. If SLW cancels the program for reasons other than nonpayment, you will be reimbursed the pro rata share of any amount you paid for any portion of the warranty period subject to cancellation.

10. By enrolling, you represent that you are not aware of any pre-existing leaks or damage to your sewer line.

IMPORTANT: Please retain this document for your records. It is the official copy of your warranty agreement.
LIMITATIONS AND EXCLUSIONS OF THE
SERVICE LINE WARRANTIES OF WEST VIRGINIA ("SLW")
EXTERNAL WELL WATER OR WATER LINE REPAIR PROGRAM ("WARRANTY PROGRAM")
FOR SINGLE FAMILY HOMES

1. The Warranty Program covers either a water line connected to a municipal water system or a well water line connected to an underground water well. The Water portion of the Warranty Program covers repair or replacement of a leaking or broken single underground water supply line from the curb box (point of connection with the utility's main line) to your water meter. It also covers a single underground service line between your water meter and the exterior foundation of your home. The Well-Water line portion of the Warranty Program covers repair or replacement of a clogged, leaking, or broken single underground well-water supply line from the point of connection between the brass fitting and the pitless adaptor to the exterior foundation of your home. If your home is situated on a slab, your water supply lines may be embedded in concrete, which may require relocating your water meter as a means of repairing or replacing your water supply line. Every reasonable effort will be made to avoid cutting through the slab. Please note that approved contractors must have safe access to, and safe working conditions at and around the work area. Coverage is limited to $4,000 per occurrence, plus an additional $500 for public sidewalk cutting, if necessary.

2. In order for a warranty claim under this Warranty Program to be valid, you must call SLW at 1-866-922-9006 before any repair work is performed. All repair work must be performed by an authorized SLW contractor. No payments will be made for work performed by a non-SLW contractor.

3. The Warranty Program does not cover underground water lines that were clogged, or water or well lines that were leaking, in need of repair or damaged before you enrolled in the Warranty Program. SLW retains the right to inspect the well or water line for damage after you enroll and you agree that SLW contractors shall have the right to come on to your property to conduct such inspections or to repair or replace your well or water service line under the Warranty Program.

4. Coverage under the Warranty Program starts 30 days after enrollment and continues thereafter so long as you make timely payments. Coverage may be canceled for nonpayment. Your account must be in good standing (current) to receive repair service under this program.

5. The Warranty Program specifically does not cover:
   (a) the cost of repairing, replacing or moving meter(s);
   (b) repairs of meter vaults;
   (c) any well equipment inside the home;
   (d) pressure tank, pressure switch, storage tank, or any branch lines;
   (e) well cap and well seal;
   (f) all components inside the well shaft from the pitless adaptor to and including the submersible pump;
   (g) electrical line that supplies power from the home to the submersible pump;
   (h) movement of a buried well to above ground;
   (i) water systems for sprinklers, pools, hot tubs and/or other outdoor systems;
   (j) updating and/or moving non-leaking lines to meet code, law, or ordinances or to satisfy directives of the water company or others;
   (k) removal of obstacles necessary to access the well or water line;
   (l) repairs for damage to or leaks caused, directly or indirectly, by you, a third party, natural disasters, acts of God or by other insurable causes;
(m) Service lines owned by the utility or connected to a commercial facility, condominium, multi-family or manufactured home (also known as mobile home). If you own a condominium or a multi-family home, please call 1-866-922-9006 for further enrollment information.

6. Whether a covered line is to be repaired or replaced is entirely within the discretion of SLW.

7. After a well or water line is repaired or replaced, SLW will test any repaired section of pipe for leaks and provide basic site restoration service to the affected area limited to filling in holes, moundng (to allow for settling) and seeding. If slab cutting is necessary to repair or replace a broken water line, the resulting trench will be panned. The Warranty Program does not provide for replacement of any floor covering (e.g. carpet, hard wood, marble, ceramic tile, etc.). Restoration does not include replacing trees or shrubs or repairing private paved and/or concrete surfaces or structures.

8. You have 30 days from the date you enroll in the Warranty Program to cancel and receive a full refund of any payments you have made. You may cancel the Warranty Program at any time, and you will be reimbursed the pro rata share of any amount you paid for any portion of the warranty period subject to cancellation. less any costs paid towards a claim filed on your account; provided, however, SLW may waive any refund which is less than $5.00, unless otherwise requested by you.

9. SLW may modify this Warranty Program by giving you 30 days' written notice and may terminate the Warranty Program for nonpayment within 30 days of the payment due date and with 90 days' written notice for any other reason. If SLW cancels the program for reasons other than nonpayment, you will be reimbursed the pro rata share of any amount you paid for any portion of the warranty period subject to cancellation.

10. By enrolling, you represent that you are not aware of any pre-existing leaks or damage to your well or water line.

IMPORTANT: Please retain this document for your records. It is the official copy of your warranty agreement.
Cathy Burrage

From: Paul K. Stevens
Sent: Monday, March 07, 2011 1:42 PM
To: Cathy Burrage
Subject: RE: Reference for Utility Service Partners
Attachments: Cathy - office letterswaxahachie.doc; Utility Service Partners Agreement.pdf

Cathy,

Here are the answers to your questions as well as a copy of our agreement. Please let me know if you have any other questions.

Sincerely,

Paul Stevens

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From: Cathy Burrage J
Sent: Monday, March 07, 2011 12:35 PM
To: Paul K. Stevens
Cc: Cathy Burrage
Subject: Reference for Utility Service Partners
March 7, 2011

Dear Municipality:

The City of Englewood, Colorado is considering a request from Utility Service Partners to use the City’s logo for their promotional purposes.

It would be appreciated if you would take the time to reply by March 11, 2011 to the following questions and return to: Your input is important to Englewood’s City Council in considering this matter for our community.

If you have questions or wish to call, please contact at 303-762-2643.

Sincerely,

/s/
John Bock
Manager of Administration – Utilities
City of Englewood
REFERENCE QUESTIONS REGARDING UTILITY SERVICE PARTNERS

1. What is your general impression of the services provided by Utility Service Partners regarding fixing service line problems? How long have you been associated with them?

We just started the program in September of 2010, so we have not had a claim filed as of yet.

2. Since your cities’ logo is being used for promotional purposes, has your staff had problems with citizens calling in with issues that should have been addressed by Utility Service Partners?

Yes. When the initial letter was sent to the residents, we discovered there should have been a few points that could have been made more clear. The main part was that many people thought it was a mandatory program. After that was explained, it was generally accepted as being a positive program.

3. Have citizens come back to the municipality if an issue is not solved using Utility Service Partners? Was the issue resolved by them?

See answer to question 1.

4. Does your municipality have an agreement with Utility Service Partners? Can we have a copy?

Yes, I will send a copy.

5. Have there been issues if the resident’s line is blocked and they only pay for repairs if a line is broken? Who pays for TVing the service line? If Utility Service Partners are called out and it is not a break, who pays for the call?

There have been no issues as of yet but this was a point of discussion before we signed the agreement. As explained to us, if the line was blocked and didn’t need a complete replacement, they would still pay for it.

6. If you were starting over with Utility Service Partners is there anything you would add or subtract from your agreement? Any unexpected issues?
I think the agreement is fine. We would have clarified the letter that was sent out to residents and we would have made sure their call center was up and running as soon as the letters were sent. For about a week, the call center wasn't taking calls and that caused a great deal of confusion and frustration.
July 14, 2010
Paul Stevens, City Manager
City of Waxahachie
401 S. Rogers
P.O. Box 757
Waxahachie, TX 75168

RE: Marketing Agreement with Utility Service Partners, Inc. d/b/a Service Line Warranties of America ("SLWA")

Dear Mr. Stevens:

We have discussed entering into a marketing agreement between the City of Waxahachie ("Waxahachie") and SLWA.

SLWA provides affordable utility service line warranties to consumers. It is SLWA's understanding that, in consideration of the License Fee (as defined below) to be paid by SLWA to Waxahachie, Waxahachie has agreed to cooperate with SLWA in marketing SLWA's services to Waxahachie's residents and homeowners (the "Residents") as described below:

1. Waxahachie hereby grants to each of SLWA a non-exclusive license to use Waxahachie's name and logos on letterhead and marketing materials to be sent to the Residents from time to time, and to be used in advertising, all at SLWA's sole cost and expense and subject to Waxahachie's prior review and approval, which will not be unreasonably conditioned, delayed, or withheld.

2. As consideration for such license, SLWA will be jointly and severally liable to pay to Waxahachie, within 30 days of the end of the final calendar quarter, 12% of the revenue from USP warranty subscriptions collected from the Residents during such calendar year (the "License Fee"), together with a statement certifying collections of such USP revenue, so long as this marketing agreement remains in effect. Waxahachie will have the right, at its expense, to conduct an annual audit, upon reasonable notice and during normal business hours, of SLWA's books and records pertaining to sales and rentals to the Residents while this marketing agreement is in effect and for one year after any termination of this marketing agreement.

3. The term of this marketing agreement will be for one year from the date of the execution of the acknowledgement below and this agreement will then renew on an annual basis unless one of the parties gives the other advance written notice of at least 90 days that it does not intend to renew this marketing agreement. Waxahachie may terminate this marketing agreement 30 days after giving notice to SLWA that one or both of them are in material breach of this agreement if such breach is not cured during such 30-day period. SLWA will be permitted to complete any marketing initiative initiated or
planned prior to the effective date of any termination of this marketing agreement and shall pay the License Fee to the Waxahachie for the calendar year in which this marketing agreement is terminated after which time, except for SLWA's obligation to permit Waxahachie to conduct an audit as described above, neither party will have any further obligations to the other and the license described in this letter will terminate.

4. SLWA shall, jointly and severally, indemnify, hold harmless, and defend Waxahachie, its elected officials, appointed officials, and employees from and against any loss, claim, liability, damage, or expense that any of them may suffer, sustain or become subject to in connection with any third party claim (each a "Claim") resulting from the negligence or willfulness of either of SLWA in connection with, arising out of or by reason of this marketing agreement, provided that the applicable indemnitee notifies SLWA of any such Claim within a time that does not prejudice the ability of SLWA to defend against such Claim. Any indemnitee hereunder may participate in its, his, or her own defense, but will be responsible for all costs incurred, including reasonable attorneys' fees, in connection with such participation in such defense.

If Waxahachie agrees that the foregoing fully and accurately describes the agreement between Waxahachie and SLWA, please arrange to have a duly authorized representative of Waxahachie execute and date the acknowledgement below in each of the duplicate original versions of this letter and return one to me in the enclosed self-addressed stamped envelope.

If you have any questions or wish to further discuss this marketing agreement, please do not hesitate to contact me.

Very truly yours,

Utility Service Partners, Inc.

By: _______________________

Print Name: Philip E. Riley, Jr.

Title: President & CEO

By: _______________________

Print Name: Chris H. Cemilcical

Title: Vice President
Acknowledged and Agreed:

Waxahachie hereby acknowledges and agrees that the foregoing letter fairly and accurately describes the agreement between Waxahachie and SLWA as of the date of this acknowledgement.

City of Waxahachie:

By: _______________________________ Date: August 17, 2010

Print Name: Paul Stevens

Title: City Manager
Who We Are

Utility Service Partners, Inc. is a leading independent provider of utility line warranties with more than 300,000 products sold in the United States. USP is a portfolio company of Macquarie Capital, which forms part of Macquarie Group Limited. Macquarie Group Limited is a diversified global financial services organization, with over $304 billion of infrastructure and other assets under management across the world.

The USP management team, with its unique range of experience and expertise in the utility products and services space, will be able to successfully develop, implement, and support Warranty Programs for NCTCOG and its member cities.

What We Do

USP provides a complete turnkey solution including promotion and marketing, customer service, claims administration, and billing and collection.

The Offer

USP will provide an external water line warranty to Texas homeowners, which covers the underground service line from the point of connection to the city main line to the water meter for $4.50 per month. USP will pay the city 12% of all revenues collected from the sale of the warranties.

USP Responsibilities

✓ Purchase list based on zip plus four codes
✓ Send letter to customer (all materials approved by the city)
✓ Provide customer service
✓ Send monthly invoice to customers
✓ Administer and manage claims

City Responsibilities

✓ Provide use of city logo on the letter to the customer
✓ City Manager will sign the letter
✓ Provide a list of zip plus four codes for mailing to customers
COUNCIL COMMUNICATION

Date: March 21, 2011
Agenda Item: 11 c ii
Subject: Resolution of support for EMRF to enter into a
lease of approximately 10.1 acres to Ben Franklin
Academy Project Development, LLC.

Initiated By: Englewood McLellan Reservoir Foundation
Staff Source: Michael Flaherty, EMRF Board Member

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

In 1999, City Council authorized the creation of the Englewood McLellan Reservoir Foundation (EMRF) for the purpose of facilitating the development of property adjacent to the City’s McLellan Reservoir. On December 17, 2007, Council supported EMRF in the sale of approximately 11 acres of Highlands Ranch Planning Area (PA) 85 to RTD for $3.2 million. On December 1, 2008, City Council supported EMRF in leasing approximately 12.8 acres of PA84 to TT Denver. On December 6, 2010, City Council, by resolution, supported EMRF in its initial negotiations with Ben Franklin Academy Project Development, LLC, for 4.9 acres of PA 82 East. And on February 22, City Council approved a second resolution of support for negotiation of a lease of 10.1 acres of an alternate location in PA 85.

RECOMMENDED ACTION

EMRF recommends City Council approve a resolution supporting the EMRF to enter into a lease with the Ben Franklin Academy Project Development, LLC, of approximately 10.1 acres of EMRF property within Highlands Ranch Planning Area 85.

BACKGROUND

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

1. Protect the quality of the City’s stored water at McLellan Reservoir.
2. Protect the reservoir ecosystem.
3. Establish and maximize a future long-term income stream to benefit the City.
4. Maintain the quality of the Highline Canal recreational facilities and the wetlands between C-470 and County Line Road.
5. Minimize development impacts on the reservoir.
6. Enhance the quality of life of the neighborhood of which it is part.
7. Enhance the quality of life for residents of the City of Englewood.
During the Executive Session of February 7, 2011, EMRF Directors informed City Council of the change of property under consideration for leasing to the Franklin Charter School. The change of location was necessitated due to the rejection of the previously proposed site plan by Douglas County. The developer had indicated a willingness to proceed with negotiations on the alternative site. On February 22, Council approved a resolution authorizing EMRF Directors to enter into such negotiations, which have resulted in this lease agreement.

Approval of this resolution acknowledges City Council’s support of the lease agreement between EMRF and Ben Franklin Academy Project Development, LLC.

FINANCIAL IMPACT

Rental income will initiate during the 6-month construction period at the rate of $4,000/month. The annual base rental rate will escalate from $108,000 in Year 1 to $189,000 in Year 5, for an aggregate total of $765,000. Depending on the school’s ability to expand its student population, revenue in Years 6 through 8 will total $647,000, with annual escalations based on the Consumer Price Index thereafter.

LIST OF ATTACHMENTS

Resolution
RESOLUTION NO. _____
SERIES OF 2011

A RESOLUTION SUPPORTING THE ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION (EMRF) LEASE OF A PORTION OF THE MCLELLAN PROPERTY TO BENJAMIN FRANKLIN ACADEMY PROJECT DEVELOPMENT, LLC.

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

WHEREAS, the Englewood City Council supported the Englewood/McLellan Reservoir Foundation in the negotiation of a lease of a portion of McLellan property with Benjamin Franklin Academy Project Development, LLC. by the passage of Resolution No. 89, Series 2010 and Resolution No. 37, Series of 2011; and

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

WHEREAS, Benjamin Franklin Academy Project Development, LLC submitted a Letter of Interest which was previously submitted to the Englewood City Council; and

WHEREAS, EMRF Board of Directors has unanimously approved the lease with Benjamin Franklin Academy Project Development, LLC;

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

Section 1. The City Council of the City of Englewood, Colorado, hereby supports the Ground Lease of property between the Englewood/McLellan Reservoir Foundation and Benjamin Franklin Academy Project Development, LLC, as shown on Exhibit A attached hereto.

ADOPTED AND APPROVED this 21st day of March, 2011.

ATTEST: James K. Woodward, Mayor

Loucrishia A. Ellis, City Clerk

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

Loucrishia A. Ellis, City Clerk
DRAFT

GROUND LEASE

between

BEN FRANKLIN ACADEMY PROJECT DEVELOPMENT, LLC

as Tenant

and

INGLEWOOD/MCLELLAN RESERVOIR FOUNDATION

as Landlord

dated as of March 1, 2011
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GROUND LEASE

This GROUND LEASE (the “Lease”) is made as of the 1st day of March, 2011 ("Effective Date"), by and between ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado nonprofit corporation ("Landlord"), and BEN FRANKLIN ACADEMY PROJECT DEVELOPMENT, LLC, a Utah limited liability company ("Tenant").

WITNESS:

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

ARTICLE 1
Fundamental Lease Terms

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

Effective Date: March 1, 2011

Premises: That certain real property described on Exhibit A attached hereto and incorporated herein by this reference, consisting of 10.135 acres at the Southwest corner of Plaza Drive and Greensborough Drive, Highlands Ranch, CO.

Landlord

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

Tenant

Ben Franklin Academy Project Development, LLC.

Attention: Glenn Hileman

Term: Twenty five (25) years from the Commencement Date and any renewal terms as provided in this Lease.

Option: Five (5) renewal options of ten (10) years each.
Rent:

a. 3/1/11 until the last day of the month following the issuance of a Certificate of Occupancy, or September 30, 2011, which ever occurs first $4,000/mo
b. Next 12 months $108,000 annually, $9,000.00/mo
c. Next 12 months $121,000 annually, $10,833.33/mo
d. Next 12 months $148,000 annually, $12,333.33/mo
e. Next 12 months $175,000 annually, $14,583.33/mo
f. Next 12 months $189,000 annually, $15,750.00/mo
g. (Provided Tenant does exercise its right under Section 2.2.C)
   Next 12 months $202,000 annually, $16,833.33/mo
h. Next 12 months $216,000 annually, $18,000.00/mo
i. Next 12 months $229,000 annually, $19,008.33/mo

and thereafter adjusted with the Consumer Price Index with a minimum increase of 1% and maximum of 3% over previous year lease amount as provided in Article 4.

This is a Net Lease.

ARTICLE 2
Ground Lease of Premises

2.1 Definitions.

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

A. “Adjustment Date” shall have the meaning set forth in Section 4.3.D.
B. “Approved Sublease” shall have the meaning set forth in Section 7.3.
C. “Assessments” shall have the meaning set forth in Section 19.19.1.K.
D. “Base Rent” shall have the meaning set forth in Section 4.2.
E. “Base Rent Start Date” shall have the meaning set forth in Section 4.2.
F. “Buildings” shall mean the buildings which may be constructed by the Tenant on the Premises.
G. “Casualty” shall have the meaning set forth in 11.1.
H. “Construction Rent” shall have the meaning set forth in Section 4.1
I. “Construction Rent Period” shall have the meaning set forth in Section 4.1.
J. “Default” or “Event of Default” shall have the meaning set forth in 13.1.

K. “Default Rate” shall mean interest accruing at the rate equal to the Prime Rate plus three percent (3%), which rate shall be adjusted with each change in the Prime Rate. However, in no event shall the Default Rate be less than ten percent (10%) per annum. For purposes of this Lease, “Prime Rate” shall mean the prime rate as published in the Wall Street Journal. If the prime rate published by the Wall Street Journal becomes unavailable, Landlord shall use the prime rate as announced or published by such other organization or publication as reasonably determined by Landlord to be comparable to the prime rate now published in the Wall Street Journal.

L. “Effective Date” shall mean March 1, 2011.

M. “Environmental Law” shall have the meaning set forth in Section 19.1.J.

N. “Excusable Delay” shall mean any of the following events that prevents, delays, retards or hinders a party’s performance of its duties hereunder: act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; any material delay caused by Landlord without fault of Tenant; or any delays due to causes beyond the control of Landlord and without its fault or negligence.

O. “First Extension Option” shall have the meaning set forth in Section 3.2.

P. “Improvements” shall mean the Buildings and any other improvements constructed on the Premises.

Q. “Initial Term” shall mean the first 25 Lease Years as more specifically described in Section 3.1.

R. “Landlord” is Englewood/McLellan Reservoir Foundation.

S. “Leasehold Mortgage” shall have the meaning set forth in 18.1.

T. “Leasehold Mortgagee” shall have the meaning set forth in 18.1.

U. “Lease Year” shall have the meaning set forth in Section 3.1.

V. “Memorandum of Lease” shall have the meaning set forth in 17.2.

W. “Monetary Default” shall have the meaning set forth in Section 13.1.

X. “Non-Monetary Default” shall have the meaning set forth in Section 13.1.

Y. “Permitted Exceptions” shall mean the title exceptions set forth on Exhibit D attached hereto.

Z. “Premises” shall have the meaning set forth in 2.2.
AA. “Real Estate Taxes” shall mean all taxes, however named, assessed, levied, or collected, whether on an ad valorem basis or other taxing method on the Premises, Improvements, Buildings, and assessments for land, betterments, and improvements that are levied or assessed on the Premises or the Improvements by any lawful authority, as finally determined in accordance with law, net of any applicable abatements, refunds, or rebates.

BB. “Rent” shall mean the amount set forth in Article 4.

CC. “Site Plan” as referred to in Section 2.2.A and attached hereto as Exhibit A-2.

DD. “Tenant” is Ben Franklin Academy Project Development, LLC, and its permitted successors or assigns.

EE. “Tenant’s Development Partner” shall mean a company that has entered or will enter into a development agreement with Tenant or Tenant’s affiliate for the purchase, development, construction, and operation of charter schools.

FF. “Termination Parcel” shall mean the parcel of land containing 2.675 acres referred to in Section 2.2.C.

2.2 Premises.

A. **Lease of Premises.** In consideration of the covenants and agreements contained herein, and for other valuable consideration, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon the following terms, stipulations, provisions, and conditions, that certain real property consisting of 10.135 acres located at the Southwest corner of Plaza Drive and Greensborough Drive, Highlands Ranch, Douglas County, Colorado, CO Lucent Boulevard and Plum Valley Lane, more particularly described in Exhibit A-1 attached hereto and incorporated herein by this reference (“Premises”). The location of the Premises is shown on Exhibit A-2 hereto (the “Site Plan”).

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

C. **Partial Termination Right.** The Tenant shall have the right, upon written notice to Landlord no later than April 1, 2016, to remove from the Lease a portion of the Premises, consisting of 2.675 acres, described on Exhibit B-1 and depicted on Exhibit B-2 attached hereto and incorporated herein by this reference (“Termination Parcel”). The removal of the Termination Parcel from the terms of the Lease shall be effective as of 11:59 PM the last day of the 60th month following the Base Rent Start Date. As a condition of Tenant’s right to remove the Termination Parcel, Tenant shall execute and deliver to Landlord an Amendment to the Memorandum of Lease, in recordable form, amending the description of the Premises. In the event Tenant exercises its right to remove the Termination Parcel, the Base Rent shall be adjusted as provided in Section 4.2.
2.3 **Condition of Premises: Tenant Release.**

Except as otherwise expressly provided herein, the Premises are being leased in their as-is condition. Except for Landlord’s representations and warranties expressly set forth in this Lease, Tenant hereby waives, releases, acquits and forever discharges Landlord and its officers, directors, shareholders, employees, agents, successors and assigns, of and from any and all suits, causes of action, claims, demands, damages (actual and punitive), losses, costs, liabilities, and expenses, including attorneys’ fees, of any kind or nature, in law or in equity, known or unknown, which Tenant shall or may have or acquire or possess in any way directly or indirectly connected with, based upon, or arising out of Landlord’s use, maintenance, leasing, ownership, operation, and demolition of improvements upon the Premises prior to the Effective Date of this Lease; or (ii) the condition (including environmental condition and structural fitness), status, quality, or nature of the Premises. Except as otherwise expressly provided herein, it is the intention of this Lease that any and all responsibilities and obligations of Landlord, and any and all rights or claims of Tenant against Landlord its successors and assigns and affiliates, arising by virtue of the physical condition of the Premises, are by this release declared null and void and of no present or future effect as to such parties.

2.4 **Improvements.**

Tenant, at its sole cost and expense, with its own forces or those of its contractors, may construct Improvements on the Premises. Prior to commencement of construction, Tenant shall provide Landlord with evidence of the availability of sufficient funds to pay for the estimated cost of construction, including hard costs and soft costs, which evidence shall be reasonably satisfactory to Landlord. All of the Improvements shall comply in all respects with all applicable governmental requirements. Landlord acknowledges that Tenant may sublease portions of the Premises to subtenants to the extent permitted hereunder, who may construct their own Improvements. However, the parties agree that notwithstanding such arrangements, Tenant shall remain responsible to Landlord to satisfy the obligations of Tenant under the Lease with respect to such portions of the Premises.

2.5 **Title to Improvements, Fixtures and Personal Property.**

Notwithstanding anything to the contrary in this Lease, all Improvements, all fixtures incorporated in the Premises owned by Tenant, and Tenant’s Property (defined later) located in, on, or at the Premises or otherwise constituting part of the Premises shall during the Term be owned by, and belong to, Tenant. All benefits and burdens of ownership of the foregoing, including, without limitation, title, depreciation, tax credits, and all other tax items, shall be and remain in Tenant during the Term. Upon expiration of the Term, any Improvements, fixtures incorporated in the Premises or Tenant’s Property remaining on the Premises shall be the sole property of Landlord. Landlord acknowledges that Tenant shall have the right, subject to the terms of this Lease, to sell and lease Improvements to Tenant’s Development Partner without Landlord’s consent and that Tenant’s Development Partner shall have the right to enter the Premises for the purpose of conducting periodic inspections and other purposes as provided in any development agreement and related documentation between Tenant and Tenant’s Development Partner.
2.6 Easements.

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

2.7 Landlord’s Cooperation.

Provided there is no cost or liability to Landlord, Landlord agrees to cooperate with Tenant in connection with obtaining any permits and approvals from any applicable governmental authority that Tenant may deem necessary or desirable in connection with Tenant’s operations on the Premises and Landlord agrees to execute any documents that are reasonable required by the governmental authority in connection with such permits and approvals.

2.8 Possession.

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

ARTICLE 3
Lease Term and Conditions Precedent

3.1 Term; Effective Date; Commencement Date.

The lease term ("Initial Term") shall commence on the Effective Date ("Commencement Date"). Unless extended as provided below, the Initial Term shall expire at 11:59 p.m. on the last day of the sixtieth month following the issuance of a Certificate of Occupancy, but in no event later than September 30, 2036. For purposes of this Lease, the term "Lease Year" shall mean each twelve (12) month period beginning on the first day of the month following the issuance of a Certificate of Occupancy, but in no event later than October 1, 2011, and the first day of the same month of each year thereafter.

3.2 Extension Option.

Tenant shall have an option to extend the lease for five (5) additional consecutive terms, each consisting of ten (10) years. Each extension option shall be on the same terms and conditions as set forth herein (there shall be no options beyond the options granted in this Section 2), except the Base Rent shall be adjusted for increases in the Consumer Price Index as provided in Section 4.2. Tenant shall have the right to exercise its options by providing Landlord written notice exercising its option to extend not less than one hundred eighty (180) days prior to the expiration of the then current term. As a condition of Tenant right to exercise one or more options to extend the term, at the time of the giving of its notice of exercise there shall be no uncured Event of Default.
ARTICLE 4

Rent

4.1 Construction Rent.

Tenant shall pay Four Thousand Dollars ($4,000.00) rent per month ("Construction Rent") during the construction period, accruing from the Commencement date and continuing until the first to occur (a) the last day of the month following the issuance of a Certificate of Occupancy or (b) September 30, 2011 ("Construction Rent Period"); which Construction Rent shall be payable on the 15th day of each month commencing on the 15th day of the first month of the Construction Rent Period.

4.2 Base Rent.

Commencing the first day of the month following the end of the Construction Rent Period ("Base Rent Start Date"), Base Rent shall accrue as follows and shall be payable in United States Dollars on the 15th day of each month, commencing the first month following the end of the Construction Rent Period:

<table>
<thead>
<tr>
<th>Period</th>
<th>Annual</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Months 1-12 following Base Rent Start Date</td>
<td>$108,000</td>
<td>$9,000.00/mo</td>
</tr>
<tr>
<td>Months 13-24 following Base Rent Start Date</td>
<td>$121,000</td>
<td>$10,083.33/mo</td>
</tr>
<tr>
<td>Months 25-36 following Base Rent Start Date</td>
<td>$148,000</td>
<td>$12,333.33/mo</td>
</tr>
<tr>
<td>Months 37-48 following Base Rent Start Date</td>
<td>$175,000</td>
<td>$14,583.33/mo</td>
</tr>
<tr>
<td>Months 49-60 following Base Rent Start Date</td>
<td>$189,000</td>
<td>$15,750.00/mo</td>
</tr>
</tbody>
</table>

(Provided Tenant does not exercise its right to terminate the Lease as to the Termination Parcel as described in Section 2.2.C)

<table>
<thead>
<tr>
<th>Period</th>
<th>Annual</th>
<th>Monthly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Months 61-72 following Base Rent Start Date</td>
<td>$202,000</td>
<td>$16,833.33/mo</td>
</tr>
<tr>
<td>Months 73-84 following Base Rent Start Date</td>
<td>$216,000</td>
<td>$18,000.00/mo</td>
</tr>
<tr>
<td>Months 84-95 following Base Rent Start Date</td>
<td>$229,000</td>
<td>$19,008.33/mo</td>
</tr>
</tbody>
</table>

Months 96-300 (or commencing Month 61 following Base Rent Start Date if Tenant exercised its right to terminate the Lease as to the Termination Parcel)-- Rent shall be adjusted as provided in the following Section 3.

In the event Tenant has elected to terminate the Lease as to the Termination Parcel, as provided in Section 2.2.C, the Base Rent, commencing the 61st month following the Base Rent Start Date, shall be $189,000, increased by the increase in the CPI Index (defined later) from the prior Lease Year, with a minimum increase of 1% and maximum increase of 3% over the previous Lease Year amount, and thereafter shall be increased as above provided.
4.3 Rent Adjustments.

Commencing on the first day of the ninety seventh (97th) month following the Base Rent Start Date (or the first day of the sixty first (61st) month following the Base Rent if Tenant has elected to terminate the Lease as to the Termination Parcel), and as of the first day of the month each twelve(12) months thereafter (in each case, the "Adjustment Date"), the Base Rent shall be increased by an amount equal to the percentage increase in the CPI Index (as defined below) from the immediately preceding year, provided, however, such increase shall in no event be less than one percent (1%) nor more than three percent (3%) of the Base Rent of the preceding year. In the event the Tenant exercises its first extension option as provided in Section 3.2, the Base rent commencing as of the first day of Lease Year 26 (first day of the 301st month of this Lease) shall be increased by an amount equal to the percentage increase in the CPI Index (as defined below) from the Effective Date of this Lease to the first month of Lease Year 26; provided, however, in no event shall the Base Rent in Lease Year 26 be less than the Base Rent for the preceding Lease Year. Commencing with Lease Year 27 and continuing with each year thereafter during any extension option, the Base Rent shall be increased as of the Adjustment Date by an amount equal to the percentage increase in the CPI Index (as defined below) from the immediately preceding year, provided, however, such increase shall in no event be less than one percent (1%) nor more than three percent (3%) of the Base Rent of the preceding year.

As used herein, the "CPI Index" shall mean:

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

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

4.4 Payments.

Base Rent shall be payable in monthly installments, in advance on the fifteenth (15th) day of each calendar month, at the address given for Landlord in Article 17 hereof, as such address may be changed in accordance with Article 17. The Base Rent shall be adjusted as provided above in Section 4.3.

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

ARTICLE 5
Taxes

5.1 Real Estate Taxes.

A. During the term of this Lease, Tenant shall assume, pay, bear, and discharge any and all Real Estate Taxes with respect to the Premises, or any part thereof, and all other taxes in any manner applicable to or assessed against the Premises or Buildings or any part thereof, or against any of the machinery, fixtures, equipment, or other property or items. Tenant shall pay all Real Estate Taxes directly to the taxing authorities and Tenant shall be credited all reimbursements on account of abatements, refunds, or rebates of Real Estate Taxes during the term of this Lease. Landlord hereby authorizes Tenant to file and pursue any protest of the valuation of the Premises and abatement petitions for abatement of taxes for any reason, as Tenant may deem to be appropriate. Landlord agrees to execute any form of agreement as may be necessary in connection therewith.

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

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

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

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

F. Landlord acknowledges that the Premises may be eligible for tax-exempt status with the local taxing authorities that levy and collect Real Estate Taxes and that Tenant (or its subtenants) shall have the right to apply for a tax exemption in connection with the operation of a charter school on the Premises. Provided there is no cost or liability to Landlord, Landlord shall cooperate with Tenant in obtaining tax-exempt status for the Premises. If the Premises are determined to be exempt from Real Estate Taxes by the local taxing authority as a result of the operation of a charter school at the Premises, Landlord shall pass through to Tenant such reduction in the Real Estate Taxes, and Tenant shall not have to pay any Real Estate Taxes so long as such exemption remains in place.

5.2 Proration of Taxes.

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

5.3 Personal Property Taxes.

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

ARTICLE 6
Utilities

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

ARTICLE 7
Use, Subletting, and Assignment

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

7.2 Assignment and Subletting.
A. Tenant shall have the right to sublet all or any part of the Premises or assign this Lease upon Landlord’s prior written consent which shall not be unreasonably withheld.

B. Notwithstanding anything to the contrary contained in Subsection A above, Tenant shall have the right to assign the Lease and any Improvements to the following parties without Landlord’s prior written consent:

   a) A school occupying and operating from the Premises, provided 1) no uncured Event of Default then exists, 2) the school has successfully completed a bond financing sufficient to pay for the cost of the improvements, 3) the school assumes the obligations of the Tenant under this Lease, and 4) Landlord is provided with a copy of the assignment and assumption. In the event Tenant assigns the Lease as provided in the foregoing sentence, Tenant shall be immediately and automatically released from all of its obligations under this Lease from and after the effective date of such Assignment and Assumption.

   b) Tenant’s Development Partner, provided 1) no uncured Event of Default then exists, 2) Tenant’s Development Partner assumes the obligations of the Tenant under this Lease, and 3) Landlord is provided with a copy of the assignment and assumption. The assignment of the Lease to Tenant’s Development Partner will not release Tenant from Tenant’s obligations to Landlord under this Lease unless Landlord agrees in writing to such release.

   c) An entity that (A) Tenant controls, is controlled by, or is under common control with Tenant having a net worth and liquid assets at least equal to that of Tenant; (B) results from a merger or consolidation with Tenant; or (C) acquires all, or substantially all, of the assets of Tenant as a going concern (collectively, an “Related Party”), provided that in each case the Related Party fully assumes the duties of Tenant under the Lease and Landlord is provided with a copy of the assignment and assumption.

C. Notwithstanding anything to the contrary contained in Subsection A above, Tenant shall have the right to sublet the Premises and any Improvements to the following parties without Landlord’s prior written consent provided no uncured Event of Default then exists and the subtenant acknowledges that its rights are subject to the terms of this Lease:

   a) A school occupying and operating from the Premises, provided Landlord is provided with a copy of the sublease.

   b) To the original Tenant of this Lease (i.e., Ben Franklin Academy Project LLC) or its affiliate in the event the Lease has been assigned to Tenant’s Development Partner as provided in Section 2.B.b) above, provided Landlord is provided with a copy of the sublease.

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

ARTICLE 8
[Intentionally Omitted]

ARTICLE 9
Mechanics Liens

9.1 Liens. Tenant shall promptly pay when due the entire cost of all work done to the Premises by or at the request of Tenant and Tenant shall keep the Premises free of liens for labor or materials. Should mechanics', materialmen's, or other liens be filed against the Premises, Tenant shall cause the lien to be canceled and discharged of record, or shall file a bond in substitution of the mechanic's lien in accordance with the provisions of Colorado Revised Statute 38-22-131, et seq., within forty-five (45) days of Tenant's receipt of notice of such lien. Notwithstanding the foregoing, Tenant may contest, in good faith and with reasonable diligence, the validity of any such lien or claimed lien, provided that Tenant shall give to Landlord such security as Landlord may reasonably request to ensure the payment of any amounts claimed. If the Tenant contests a lien or claimed lien, then on final determination of the lien or claimed lien, the Tenant shall cause the lien to be released and, in the event of an adverse judgment, satisfy such judgment.

9.2 Protection of Landlord's Interest in Premises.

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

ARTICLE 10
Indemnity and Insurance

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

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

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

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

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

10.2 Appear and Defend.

Landlord and Tenant further agree, that if it is the indemnifying party, that it will appear and defend at its own expense, in the name and on behalf of the indemnified party, all claims or suits for injuries to or death of persons or loss or destruction of or damage to property arising or growing out of or in any manner connected with or caused or occasioned by or in connection with its indemnities set forth in 10.1 above.

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

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

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

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

E. **Form of Policies.** All insurance required by this Section shall be with insurers licensed or otherwise permitted to conduct business in the state in which the Premises are located. Any insurance hereunder may be provided under blanket policies of insurance. During the last two lease years of any extension following the expiration of the First Extension Option, all property insurance maintained by Tenant pursuant to subparagraph A of this Section shall name Tenant as insured and Landlord as additional insured, as their interests may appear in accordance with Section 11.3, and, so long as the Premises are mortgaged pursuant to a mortgage of which Tenant has received written notice, shall be subject to a standard mortgagee clause in favor of Landlord’s first mortgagee. All insurance maintained by Tenant pursuant to subparagraph B of this Section shall name Tenant as insured and Landlord as additional insured, as their interests may appear, and, so long as the Premises are mortgaged pursuant to a mortgage of which Tenant has received written notice, shall be subject to a standard mortgagee clause in favor of Landlord’s first mortgagee.
F. **Policy Provisions.** All policies of insurance (other than self-insurance) enumerated above shall be provided by insurance carriers having at policy commencement a Best rating of not less than A- VIII; provided, however, that if the rating of any such insurer falls below such level, such rating reduction shall not constitute a default hereunder provided all renewals of such policies shall be with carriers with a Best rating of not less than A- VIII at the time of such renewal. An increased coverage or "umbrella" policy may be provided and utilized by either party to increase the coverage provided by individual or blanket policies in lower amounts, and the aggregate coverage provided by all such policies with respect to the Premises and Tenant’s liability hereunder shall be satisfactory provided that such policies otherwise comply with the provisions of this Section 11.

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

H. **Evidence of Insurance.** On or before the Commencement Date, Tenant shall cause to be issued to Landlord certificates of insurance evidencing compliance with the applicable covenants of this Article 10. Each such certificate shall provide that at least thirty (30) days’ notice of cancellation shall be given to the certificate holder.

**ARTICLE 11**

**Damage or Destruction**

11.1 Subject to Landlord’s right as provide in Section 11.2, if the Premises or any of the Improvements are damaged or destroyed during the Initial Term or any extended term as provided in Section 3.2 by a fire or other casualty ("Casualty"), this Lease shall continue in effect, and Tenant shall continue to pay the Rent without abatement. Tenant shall remove and dispose of all hazardous materials in accordance with applicable legal requirements and take such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any damage or destruction of the Tenant’s Improvements. Tenant shall not have any obligation to repair and/or rebuild the Tenant’s Improvements damaged by fire or other casualty or cause. Tenant shall promptly provide a sight barrier and shall remove all debris from the damaged portion of the Tenant’s Improvements and use diligent efforts to place the Premises in an orderly and safe condition. If requested by Landlord should Tenant elect not to rebuild, Tenant shall, at its sole cost and expense, raze and remove any remaining portion of the Tenant’s Improvements and fill and grade the Premises in a safe and sightly manner as existed on the Commencement Date, or seed such portion of the Premises as designated by Landlord.

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

11.3 In the event a Casualty occurs and the Tenant elects not to repair and/or rebuild, Tenant shall give written notice to Landlord within one hundred twenty (120) days of the date of the Casualty of such election, Landlord shall have the option, exercised by written notice to Tenant on or before the earlier of (a) one hundred twenty (120) days following written notice from Tenant of its election not to repair and/or rebuild, or (b) two hundred forty (240) days following the date of the Casualty if Tenant has failed to commence repair or rebuilding by such time (in which case Tenant shall be deemed to have elected not to repair or rebuild, to (i) continue the Lease to the end of the then current term, in which case there shall be no abatement of rent, and the insurance proceeds shall be paid to Tenant except to the extent required to pay off and discharge any Leasehold Mortgage; provided however if the Casualty occurs during the last two (2) years of the then current term and Tenant has elected or is deemed to have elected not to repair or rebuild, the insurance proceeds shall be paid to Landlord except to the extent required to pay off and discharge any Leasehold Mortgage, or (ii) to terminate the Lease effective as of one hundred twenty (120) days following the date of the Casualty, in which case the insurance proceeds shall be paid to Landlord except to the extent required to pay off and discharge any Leasehold Mortgage.

ARTICLE 12
Eminent Domain

12.1 Definition of Taking and Substantial Taking.

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

12.2 Tenant’s Rights Upon Taking or Substantial Taking.

Each party agrees to furnish the other a copy of any notice of a threatened or proposed Taking received by such party. In the event of a Taking of Substantially All of the Premises, this Lease shall terminate and both Landlord and Tenant shall be relieved from all further obligations hereunder from and after the Date of Taking. All Base Rent and other sums payable by Tenant hereunder shall be apportioned and paid through and including the Date of Taking, and neither Landlord nor Tenant shall have any rights in any compensation or damages payable to the other in connection with such Taking.

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

12.4 Rights Upon Temporary Taking.

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

12.5 Award.

The award paid by the condemning authority (other than a Taking for a temporary use) shall be allocated as follows:

A. First to the Landlord in an amount equal to the value of the Premises (on the basis of unimproved land not encumbered by this Lease)

B. Next to the Tenant in an amount equal to the value of the Tenant’s leasehold interest and Improvements, subject to the rights of any Leasehold Mortgagee, plus Tenant’s moving expenses and any damages related to Tenant’s loss of business. If this Lease is not terminated, the award for the cost of restoring the Improvements shall be payable to Tenant, subject to the rights of any Leasehold Mortgagee.

C. Any other award permitted by law shall be payable to Landlord and Tenant as their respective interests may appear.

Landlord and Tenant shall each have the right to represent their respective interests in each proceeding or negotiation with respect to a taking or intended taking by power of condemnation and to make full proof of their claims. Tenant shall have the sole right to control the defense, prosecution and settlement of its claim to the extent the condemnation proceeding or negotiation affects Tenant’s leasehold interest hereunder and/or the Improvements, subject to the consent of any Leasehold Mortgagee. Landlord shall have the sole right to control the defense, prosecution and settlement of its claim to the extent the condemnation proceeding or negotiation affects Landlord’s reversionary interest in the Premises and/or Improvements. Landlord and Tenant each agrees to execute and deliver to the other any instruments that may be reasonably required to effectuate or facilitate the provisions of this Lease relating to condemnation.
ARTICLE 13
Default

13.1 Events of Tenant’s Default.

Any of the following occurrences, conditions or acts by Tenant shall constitute an “Event of Default” under this Lease:

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

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

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

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

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

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

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

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

Subject to the provisions of Section 18 of this Lease, after the occurrence of an Event of Default by Tenant, Landlord shall have the right to institute from time to time an action or actions (i) to recover damages (exclusive of consequential or special damages), (ii) for injunctive and/or other equitable relief, and (iii) in the event of Monetary Default only, to recover possession of the Premises and terminate this Lease.

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

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

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

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

(B) The “worth at the time of the award payment” of the amount by which the unpaid Base Rent and all other charges which would have accrued after termination until the time of award payment exceeds the amount of any sums (net of reletting costs and expenses) actually received by Landlord from the Premises after termination.

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

As used in this Section 13.2, the term, “worth at the time of the award payment”, shall be computed by allowing simple interest at an accrual rate equal to the Default Rate for past due obligations, and a discount rate to net present value at the time of the award payment of eight percent (8%) per annum on anticipated future obligations or revenues, and mitigation amounts, with no interest or discount, on the amount of the obligations payable on the date of such calculation. In the event this Lease shall be terminated as provided above, by summary proceedings or otherwise, Landlord, its agents, servants or representatives may immediately or at any time thereafter peaceably re-enter and resume possession of the Premises and, at Tenant’s expense, remove all persons and property therefrom, by summary dispossession proceedings. Landlord shall never be entitled to dispossess Tenant of the Premises pursuant to any “lock-out” or other nonjudicial remedy.

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

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

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

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

E. **Applicability of Article 18.** Notwithstanding anything to the contrary contained in this Lease, all of Landlord’s remedies set forth in Section 13.2 shall be subject to the provisions of Article 18 of this Lease. If any provision of Section 13.2 is in conflict with any provisions of Article 18, the terms of Article 18 shall control.

13.3 **Landlord’s Default.**

. In the event Landlord shall at any time be in default in the observance or performance of any of the covenants and agreements required to be performed and observed by Landlord
hereunder and any such default shall continue for a period of forty five (45) days after written notice to Landlord (or if such default is incapable of being cured in a reasonable manner within forty five (45) days and if Landlord has not commenced to cure the same within said forty five (45) day period and thereafter diligently prosecutes the same to completion), and Landlord shall not thereafter cure such default, Tenant shall be entitled, at its election, to bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement devolving upon Landlord, in addition to all remedies otherwise provided in this Lease and otherwise available at law or in equity under the laws of the United States or the State of Colorado.

13.4 Attorneys’ Fees.

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

13.5 Waiver of Consequential Damages.

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

ARTICLE 14
Covenant of Quiet Enjoyment

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

ARTICLE 15
Subordination; Landlord’s Right to Mortgage and Convey Premises

Landlord may mortgage its interest in the Premises, provided such mortgage expressly provides that the rights and interests of the mortgagee hereunder are subject to the rights and interests of Tenant hereunder and, provided that Tenant is not in default following the expiration of any applicable cure periods under any provision of the Lease and Tenant (or its permitted sublessee) is then in possession of the Premises, the mortgagee shall agree not to terminate the Lease or otherwise disturb Tenant’s right of possession in accordance with the terms and conditions of the Lease. Should Landlord sell, convey, or transfer its interest in the Premises or should any mortgagee of Landlord succeed to Landlord’s interest through foreclosure or deed in lieu thereof, Tenant shall attorn to such succeeding party as its landlord.
under this Lease promptly upon any such succession, provided such succeeding party assumes all of Landlord’s duties and obligations under this Lease. Such succeeding party shall not be liable for any of Landlord’s obligations and duties hereunder prior to its assumption of Landlord’s duties and obligations hereunder. The subordination of this Lease to the mortgage of Landlord, and the agreement of Tenant to attorn to any mortgagee of Landlord who succeeds to Landlord’s interest through foreclosure or deed in lieu thereof, are conditioned upon the mortgagee providing Tenant with a written non-disturbance agreement, with commercially reasonable terms, pursuant to which such mortgagee agrees not to disturb Tenant’s possession of the Premises under and pursuant to the terms of this Lease (so long as Tenant is not in default hereunder following the expiration of any applicable cure periods) in the event such mortgagee acquires title to the Premises through foreclosure (judicial or non-judicial), deed in lieu of foreclosure or otherwise.

ARTICLE 16
Transfers by Landlord

No transfer or sale of Landlord’s interest hereunder shall release Landlord from any of its obligations or duties hereunder prior thereto. Landlord shall be released of any ongoing obligations hereunder from and after the date of such transfer and only upon the assumption of all such obligations and duties by the transferee of Landlord. Notwithstanding anything contained herein to the contrary, in no event shall Landlord have the right to transfer, in any manner whatsoever, or to sell its interest hereunder prior to delivery of possession of the Premises to Tenant.

ARTICLE 17
Miscellaneous

17.1 Non-Waiver of Default. No acquiescence by either party to any default by the other party shall operate as a waiver of its rights with respect to any other breach or default, whether of the same or any other covenant or condition.

17.2 Recording. This Lease shall not be recorded. The parties shall execute, acknowledge, and deliver to each other duplicate originals of a short form or memorandum of this Lease (“Memorandum of Lease”) in substantially the form of Exhibit C attached hereto and incorporated herein, describing the Premises and setting forth the Term of this Lease. The recording shall be at Tenant’s expense. In the event Tenant records this Lease (rather than a Memorandum of Lease) without the prior written approval of Landlord, this Lease shall automatically be deemed terminated and of no further force or effect.
17.3 **Notice.**

Any notice, request, offer, approval, consent, or other communication required or permitted to be given by or on behalf of either party to the other shall be given or communicated in writing by personal delivery, reputable overnight courier service which keeps receipts of deliveries (i.e., Federal Express), or United States certified mail (return receipt requested with postage fully prepaid) or express mail service addressed to the other party as follows:

If to Tenant:

______________________________
______________________________
Attention: ________________

With copies to:

______________________________
______________________________
Attention: ________________

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

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

And  Berenbaum Weinshienk PC
370 17th Street, 48th floor
Denver, Colorado 80202
Attention: H. Michael Miller, Esq.

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

17.4 **Successors and Assigns.**

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

17.5 **Partial Invalidity.**

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

17.6 Interpretation.

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

17.7 Headings, Captions, and References.

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

17.8 Governing Law.

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

17.9 Execution of Documents.

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

17.10 Force Majeure.

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

17.11 Reasonable Consent.

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

17.12 Authority.

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

17.13 Estoppel Certificate.

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

17.14 Holding Over.

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

ARTICLE 18
Leasehold Financing

18.1 Mortgage by Tenant.

Tenant may, from time to time, hypothecate, mortgage, pledge, or alienate the Improvements and/or Tenant’s leasehold estate and rights hereunder. Such lien shall be referred to herein as a “Leasehold Mortgage” and the holder or holders of any such lien shall be referred to herein as a “Leasehold Mortgagee.” The Leasehold Mortgagee’s interest in the Premises and this Lease shall be subordinate, junior and subject to Landlord’s ownership of the Premises and
interest in this Lease. A Leasehold Mortgagee shall encumber no interest in the Premises other than Tenant’s interest in the Lease and the Improvements located on the Premises, including any personal property of Tenant, and any subleases of portions of the Premises. A Leasehold Mortgagee or its assigns may enforce such lien and acquire title to the leasehold estate in any lawful way and, pending foreclosure of such lien, the Leasehold Mortgagee may take possession of and operate the Premises, performing all obligations performable by Tenant, and upon foreclosure of such lien by power of sale, judicial foreclosure, or acquisition of the leasehold estate by deed in lieu of foreclosure, the Leasehold Mortgagee may sell and assign the leasehold estate hereby created. Notwithstanding anything herein contained to the contrary, the Leasehold Mortgagee or any person or entity acquiring such leasehold estate shall be liable to perform the obligations imposed on Tenant by this Lease only during the period such person has ownership of said leasehold estate or possession of the Premises; provided further that, except as expressly provided herein, in no event shall Landlord’s rights be impaired to exercise its remedies following an Event of Default prior to Leasehold Mortgagee’s possession or ownership. Landlord agrees to provide an estoppel to any Leasehold Mortgagee upon written request therefor, provided such estoppel does not obligate Landlord to acknowledge or consent to any modifications or interpretations of this Lease not previously agreed upon by both parties in writing except as otherwise provided in Section 2.1 below.

18.2 Notice To and Rights Of Leasehold Mortgagees.

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

B. In the case of a Monetary Default by Tenant, Landlord will take no action to effect a termination of this Lease by reason thereof unless such default has continued beyond sixty (60) days after Landlord shall have served a copy of such notice upon Tenant and any Leasehold Mortgagee who has given Landlord notice as provided in 0.18.2.A above, it being the intent hereof and the understanding of the parties that any Leasehold Mortgagee shall be allowed not less than thirty (30) days in addition to any grace period granted to Tenant under this Lease to cure any Monetary Default of Tenant.

C. In the case of any Non-Monetary Default by Tenant, a Leasehold Mortgagee shall be allowed, in addition to any grace period granted to Tenant, an additional time as hereinafter specified to cure such Non-Monetary Default within which either:
a) If such default is a Non-Monetary default or is otherwise susceptible of being cured by the Leasehold Mortgagee without obtaining possession of the Premises, to commence and diligently proceed to cure such Non-Monetary Default within thirty (30) days following the expiration of any grace period granted to Tenant or thirty (30) days after Landlord shall have served a copy of Tenant’s default upon the Leasehold Mortgagee, whichever is later, or if such default can not reasonably be cured within thirty (30) days, to commence such cure within thirty (30) days following the expiration of any grace period granted to Tenant or thirty (30) days after Landlord shall have served a copy of Tenant’s default upon the Leasehold Mortgagee, whichever is later, and to diligently prosecute the cure to completion;

b) If such default is a non-monetary default and is not susceptible of being cured by the Leasehold Mortgagee without obtaining possession of the Premises, to commence proceedings to obtain possession of the Premises within thirty (30) days following the expiration of any grace period granted to Tenant or thirty (30) days after Landlord shall have served a copy of Tenant’s default upon the Leasehold Mortgagee, whichever is later, and diligently prosecute such action to completion (including possession by a receiver) and to cure such default within thirty (30) days following possession or the appointment of a receiver in the case of a default which is susceptible of being cured within thirty (30) days when the Leasehold Mortgagee has obtained possession thereof. If such default can not reasonably be cured within thirty (30) days following possession or appointment of a receiver, to commence such cure within thirty (30) days following possession or appointment of a receiver and to diligently prosecute the cure to completion. However, Leasehold Mortgagee’s right to cure a non-monetary default shall in no event extend later that the expiration of nine (9) months following the date Landlord served a copy of Tenant’s default upon the Leasehold Mortgagee, provided however, during the cure period Leasehold Mortgagee shall keep or cause to be kept current all monetary obligations due under the Lease.

D. In the event that this Lease is terminated by Landlord on account of any default, Landlord shall give prompt notice thereof to each Leasehold Mortgagee who has given notice to be notified. Landlord, within thirty (30) days after receiving a written request therefor, which shall be given within sixty (60) days after such termination, will execute and deliver a new lease of the Premises to the Leasehold Mortgagee or its nominee or to the purchaser, assignee, or transferee, as the case may be, for the remainder of the term of this Lease, containing the same covenants, agreements, terms, provisions, and limitations as are contained herein, provided that the Leasehold Mortgagee shall (i) pay to Landlord, simultaneously with the delivery of such new lease, all unpaid rental due under this Lease up to and including the date of the commencement of the term of such new lease and all expenses including, without limitation, reasonable attorneys' fees and disbursements and court costs incurred by Landlord in connection with the default by Tenant and the termination and the preparation of the new lease, and (ii) the Leasehold Mortgagee shall commence and diligently proceed to cure all defaults existing under this Lease which are susceptible to cure. Nothing in this Lease shall obligate any Leasehold Mortgagee to enter into a new lease with Landlord.
E. Landlord acknowledges and agrees that the cure of certain Non-Monetary Defaults may require possession or control of the Premises, and the prompt and diligent exercise of its rights and remedies under the Leasehold Mortgage to obtain such possession or control shall constitute diligent action by Leasehold Mortgagee to cure the default. If Leasehold Mortgagee cannot reasonably remedy a Non-Monetary Default until after Leasehold Mortgagee obtains either possession of the Premises, Landlord may not terminate or cancel the Lease or assert a partial or total eviction by reason of such Non-Monetary Default until the expiration of a reasonable period necessary to obtain either possession of the Premises and remedy such non-monetary default. The time available to a Leasehold Mortgagee to initiate foreclosure proceedings as aforesaid shall be deemed extended by the number of days of delay of occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond the Leasehold Mortgagee’s control. Notwithstanding any provision of this subparagraph E to the contrary, Landlord shall have the right to terminate or cancel this Lease or to assert a partial or total eviction in accordance with the terms of this Lease at any time after the expiration of nine (9) months following the date Landlord served a copy of Tenant’s default upon the Leasehold Mortgagee, provided however, during the cure period Leasehold Mortgagee shall keep or cause to be kept current all monetary obligations due under the Lease.

F. Notwithstanding anything to the contrary contained in this Lease, Leasehold Mortgagee shall have no obligation hereunder to remedy any default, act or omission of Tenant under the Lease. Furthermore, Leasehold Mortgagee shall have no obligation to cure any Non-Monetary Default or other event or obligation of Tenant which is a personal obligation of Tenant and cannot be cured by Leasehold Mortgagee.

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

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

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

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

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

L. Provided there is no cost or liability to Landlord, Landlord shall reasonably cooperate with Tenant in connection with any actual or proposed leasehold loan or any other potential source of financing available to Tenant. By way of example but not limitation, Landlord shall promptly provide information related to this Lease as reasonably requested by the actual or potential financing source or necessary for Tenant to complete any application for such financing; within twenty (20) days after being requested by a current or proposed Leasehold Mortgagee execute and deliver a Landlord an estoppel on commercially reasonable terms; and execute a standard "owner’s affidavit" for the benefit of Tenant’s title company and provide such Landlord organization documents, consents or resolutions as may be reasonably required by Tenant’s title company in connection with any title insurance policies issued to Tenant or its Leasehold Mortgagee in connection with the Premises.

M. If any prospective Leasehold Mortgagee requires any modifications to this Lease as a condition to providing a loan to Tenant, Landlord shall not unreasonably withhold its consent to such modifications, provided that Landlord shall not be required to consent to any such modification pertaining to the Base Rent, the Term, or any other material economic provision of this Lease, nor to any modification which would materially decrease Landlord’s rights or materially increase Landlord’s burdens or obligations hereunder as reasonably determined by Landlord.
ARTICLE 19
Representations of Landlord and Tenant

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

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

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

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

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

E. To the best of Landlord’s knowledge, there are no unrecorded easements or rights-of-way affecting any or all of the Premises.

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

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

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

I. There are no oral agreements affecting the Premises.

J. There is no litigation pending with respect to the Premises relating to any Environmental Law violations. Except as disclosed in writing by Landlord, no notice of an Environmental Law violation or other written communication has been received by Landlord from a governmental agency or any other person or entity alleging or suggesting an Environmental Law violation on the Premises. The term “Environmental Law,” as used in this Agreement, shall include: (1) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A. §9601, et seq. (“CERCLA”); (2) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments

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

L. Landlord has no knowledge of any fact, condition, or action, present, contemplated, or threatened, which would or may result in the termination or impairment of access to and from the Premises as such access presently exists, and Landlord is not in violation of any easements, rights-of-way, conditions, covenants and restrictions, licenses, or other agreements burdening the Premises.

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

19.2 Representations of Tenant.

Tenant represents, warrants and covenants to Landlord that:

A. Tenant is a limited liability company validly organized and existing under the laws of the State of Utah. Tenant has the full right, power and authority to enter into this Agreement and to perform Tenant’s obligations hereunder.

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

C. Tenant’s Covenant as to Hazardous or Toxic Materials.

i. Tenant hereby covenants that Tenant shall not cause or permit any "Hazardous Substances" (as hereinafter defined) to be placed, held, located or disposed of in, on or at the Premises or any part thereof except in accordance with all applicable laws, statutes, ordinances, and regulations.
ii. Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, damages, injuries, expenses, including reasonable attorneys’ fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency as a result of the escape, seepage, leakage, spillage, discharge, emission, discharging or release from, the Premises of any Hazardous Substance, provided, however, that the foregoing indemnity is limited to matters arising solely from Tenant’s violation of the covenant contained in the preceding subparagraph 2.C.i.

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

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

D. Broker. Tenant acknowledges that it has retained RE/MAX Masters, Inc., Jay Hannon (collectively the “Broker”) as its real estate agent and broker and agrees to pay such Broker any and all compensation due it as a result of this transaction. Landlord has agreed to reimburse Tenant a portion of such compensation in accordance with a letter agreement executed prior to this Lease. Except for Jay Hammon acting as a broker associate on behalf of RE/MAX Masters, Inc., each party hereby indemnifies and agrees to hold the other party harmless from all damages, claims, liabilities or expenses, including reasonable and actual attorneys’ fees (through all levels of proceedings), resulting from any claims that may be asserted against the other party by any real estate broker or finder with whom the indemnifying party either has or is purported to have dealt.

[Remainder of this page intentionally left blank]
IN WITNESS WHEREOF, this Lease has been executed as of the date written above.

LANDLORD:

ENGLEWOOD/MCLELLAN RESERVOIR FOUNDATION, a Colorado non profit corporation

By: ________________________________

_______________________________
Name

_______________________________
Title

TENANT:

BEN FRANKLIN ACADEMY PROJECT LLC, a Utah limited liability company.

By: ________________________________

_______________________________
Name

_______________________________
Title
EXHIBIT A-1
LEGAL DESCRIPTION OF PREMISES
EXHIBIT A

A PART OF "PARCEL 1-A" AS RECORDED IN BOOK 1777 AT PAGE 1404, DOUGLAS COUNTY RECORDS, ALSO BEING LOCATED IN THE NORTHWEST ONE-PARTER (NW 1/4) OF SECTION 4, TOWNSHIP 6 SOUTH, RANGE 68 WEST OF THE 6th PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS::

BEGINNING AT THE WEST ONE-PARTER CORNER OF SAID SECTION 4; THENCE N00°35'19"W, ALONG THE WEST LINE OF SAID NORTHWEST ONE-PARTER OF SAID SECTION 4, A DISTANCE OF 818.74 FEET TO A POINT ON SOUTH RIGHT-OF-WAY EASEMENT LINE OF PLAZA DRIVE, AS RECORDED AT RECEPTION NO. 2007045572, DOUGLAS COUNTY RECORDS, THENCE ALONG SAID SOUTH RIGHT-OF-WAY EASEMENT LINE THE FOLLOWING FIVE (5) COURSES:

1. S53°49'50"E, A DISTANCE OF 42.28 FEET;
2. N36°10'19", A DISTANCE OF 12.00 FEET;
3. S53°49'50"E, A DISTANCE OF 760.93 FEET;
4. ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 21°34'35", A RADIUS OF 800.00 FEET, AND AN ARC LENGTH OF 301.26 FEET;
5. S32°15'15"E, A DISTANCE OF 153.77 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTHWEST ONE-PARTER OF SECTION 4; THENCE S89°40'01"W, ALONG SAID SOUTH LINE A DISTANCE OF 933.57 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 10.135 ACRES (441,467 SQUARE FEET) OF LAND, MORE OR LESS.
EXHIBIT A-2
SITE PLAN OF PREMISES

The parties acknowledge that a Site Plan of the Premises is attached as page 1 of Exhibit A-2.
**EXHIBIT B-1**

**SCALE: 1" = 200 FEET**

**REGIONAL TRANSPORTATION DISTRICT**
**REC. NO. 2008019179**
**DOUGLAS COUNTY RECORDS**

**PARCEL 1-A**
**ENGLEWOOD / McLellan RESERVOIR FOUNDATION**
**REC. NO. 99095663, BK. 1777, PG. 1404**
**DOUGLAS COUNTY RECORDS**

**DENVER WATER BOARD EASEMENT**
BK. 237, P. 322 (10/27/1972)
**DOUGLAS COUNTY RECORDS**

**POINT OF COMMENCEMENT**
**WEST 1/4 CORNER**
SECTION 4, T.6S., R.56W.,
3-1/4 CDOT ALUM. CAP,
CAP STAMPED AS SHOWN.

**REGIONAL TRANSPORTATION DISTRICT**
**REC. NO. 2008019179**
**DOUGLAS COUNTY RECORDS**

**NORTHWEST CORNER**
SECTION 4, T.6S., R.66W.,
SET 3-1/4" ALUM. CAP IN CONC.
IN MEDIAN STAMPED AS SHOWN

**PLAZA DRIVE ESMT.**
**REC. NO. 200824872**
**DOUGLAS COUNTY RECORDS**

**N53°49'50"W**

**N5°19'59"E**

**439.45'**

**2.676 Acres**

**CENTER CORNER**
**SECTION 4**
**T5S., R66W. 5th P.M.**
**FOUND 3-1/4" ALUM CAP IN RANGE BOX**
**CAP STAMPED AS SHOWN**

**HIGHLANDS RANCH - FILING NO. 134-A**
**REC. NO. 9986875 (10/29/1998)**
**DOUGLAS COUNTY RECORDS**

**THIS EXHIBIT IS A GRAPHIC DEPICTION OF THE PARCEL DESCRIBED**
**ON THE ATTACHED LEGAL DESCRIPTION AND IS NOT INTENDED TO**
**INCLUDE SURVEY PLAT REQUIREMENTS AS DEFINED IN CRS 38-51-106.**

**JOB NO. 418-0309**
**BOOK 1777, PAGE 1404**
**DOUGLAS COUNTY RECORDS**
**NW 1/4 SEC. 4, T. 6 S., R. 66 W., 6TH P.M.**
**DOUGLAS COUNTY, COLORADO**

**P:\559\0101\dwg\Exhibits\Remainder Lot.dwg, 3/15/2011 12:15:03 PM, JAC**
EXHIBIT C
MEMORANDUM OF LEASE

The parties agree to insert an agreed upon form of Memorandum of Lease within ten (10) days following mutual execution of the Lease.
EXHIBIT D
PERMITTED EXCEPTIONS
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date:</th>
<th>Agenda Item:</th>
<th>Subject:</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 21, 2011</td>
<td>11 c iii</td>
<td>Approval of Purchase of Mauldin Paver</td>
</tr>
</tbody>
</table>

Initiated By: Department of Public Works

Staff Source: Pat White, Fleet Servicenter Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council approved the purchase of an asphalt paver in the 2011 Capital Equipment Replacement Fund (CERF).

RECOMMENDED ACTION

Staff recommends City Council approve, by motion, the purchase of a 2011 Mauldin 1750-C Asphalt Paver in the amount of $116,700. Staff recommends awarding the bid to the lowest acceptable bidder, Faris Machinery Company.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The asphalt paver to be replaced, unit no. 3224, meets the requirements for years of service and hours of use, and is included in the 2011 CERF. The lowest bidder, Faris Machinery Company, meets all specifications. Staff reviewed all bids and conducted an on-site inspection of the unit.

FINANCIAL IMPACT

The City received three bids. Faris Machinery provided the low bid of $116,700, and funds are available through the CERF.

LIST OF ATTACHMENTS

Bid Tabulation Sheet
Summary Specification Sheet
Equipment Specification Sheet
<table>
<thead>
<tr>
<th>Vendor</th>
<th>Make/Model of Paver</th>
<th>Asphalt Paver</th>
<th>Parts/Operator Manuals x2</th>
<th>Shop Service Manual</th>
<th>Total Bid</th>
<th>Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wagner Equipment Company</td>
<td>Weiler P355</td>
<td>$134,867.00</td>
<td>Included</td>
<td>Included</td>
<td>$134,867.00</td>
<td>No exceptions listed</td>
</tr>
<tr>
<td>18000 Smith Rd</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Aurora, CO 80011</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Andy Kratt 303-739-3299</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Faris Machinery Company</td>
<td>Mauldin 1750C</td>
<td>$116,700.00</td>
<td>did not list</td>
<td>did not list</td>
<td>$116,700.00</td>
<td>Note: Vendor did not use the Bid Proposal Form Provided.</td>
</tr>
<tr>
<td>5770 E 77th Ave</td>
<td></td>
<td></td>
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<tr>
<td>Commerce City, CO 80022</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Joe Keefe 303-870-9354</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Honnen Equipment</td>
<td>No Bid</td>
<td>No Bid</td>
<td>No Bid</td>
<td>No Bid</td>
<td>No Bid</td>
<td>No Bid</td>
</tr>
<tr>
<td>5055 E 72nd Ave</td>
<td></td>
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<tr>
<td>Commerce City, CO 80022</td>
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<tr>
<td>Steve Stoltz 303-286-4819</td>
<td></td>
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</tr>
<tr>
<td>Macdonald Equipment Company</td>
<td>LeeBoy 8500B</td>
<td>$133,489.00</td>
<td>No Charge</td>
<td>No Charge</td>
<td>$133,489.00</td>
<td>No exceptions listed</td>
</tr>
<tr>
<td>7333 Highway 85</td>
<td></td>
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<tr>
<td>Commerce City, CO 80037-5011</td>
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<td></td>
</tr>
<tr>
<td>Ken Owens 303-287-7401</td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SERVICENTER GARAGE

SUMMARY SPECIFICATION SHEET
FOR
NEW VEHICLES

STATE AWARD # _________________________________

ENGLEWOOD BID# IFB-11-006 ________________________

MANUFACTURER OF VEHICLE Mauldin __________________

MODEL OF VEHICLE _______ 1750C Paver __________

AIR CONDITIONING YES NO

AUTOMATIC TRANSMISSION YES NO

POWER WINDOWS YES NO

POWER DOOR LOCKS YES NO

4 WHEEL DRIVE YES NO

FLEX FUEL OPTION YES NO

CERF REPLACEMENT YES NO

NEW ADDITION TO FLEET YES NO

DEPARTMENT VEHICLE ASSIGNED TO ______ Streets Division _________

COMMENTS: This unit has met the minimum requirements for replacement in both years of service and hours of use. It replaces unit 3224, a 2000 LeeBoy 8000D paver. Funds are available through CERF and was approved in the 2011 budget.
1750-C

- Dual operator's stations with full machine controls, including automatic sonic feed control
- 80 HP John Deere diesel engine
- Fully enclosed, sound proof engine compartment
- Pre-wired for screed automation
- Full set of instrument gauges
- Two-speed polyurethane crawler track drive system
- Seamless paving up to 16

"Before we purchased our new Mauldin 1750-C, we owned a 1985 Fortress/Manitowoc. There are many differences between the two machines. We appreciate the increased productive capabilities of the new Mauldin paver. It will enable us to complete projects faster on a more timely basis. We are a small regional contractor and this permits us to undertake more larger projects."

- Mannix Marion, President of Marion Asphalt of St. Paul de Joliette (Quebec)
COUNCIL COMMUNICATION

Date: March 21, 2011
Agenda Item: 11 c iv
Subject: Award Contract for Police/Fire Building Generator Installation

Initiated By: Fire Department
Staff Source: Kraig Stovall, Fire Training Chief

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Staff discussed the FEMA “Assistance to Firefighters Grant” at the June, 21, 2010, Study Session.

Staff discussed the “Emergency Management Performance Grant (EMPG) Special Project Grant” at the January 10, 2011, Study Session.

Council approved Ordinance No. 4, Series 2011 accepting a FEMA “Assistance to Firefighters Grant”. This grant is for the construction (supply and installation) of the generator.

Council approved on first reading and is considering on second reading March 21 a Bill for an Ordinance accepting the 2010 EMPG Special Project Grant. This grant is for design drawings and specifications.

RECOMMENDED ACTION

Staff recommends that City Council approve, by motion, a construction contract for “Englewood Police/Fire Building Generator Installation”, in the amount of $119,100 to the lowest responsible bidder, CE Power Systems, LLC.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Electrical requirements for the Police/Fire Complex have changed substantially since the building was originally constructed in 1971. The facility has been expanded for a new communications center, the Emergency Operations Center (EOC) has been located in the building, computers and other electrical systems have been added, all contributing to the demand on our electrical system and backup generator requirements.

The existing 85 Kilowatt generator at the Police/Fire Complex is 40 years old and is not adequately sized to backup the facility. A 200 Kilowatt generator is required to support the building.

In May, 2010, staff contracted with Avenue L Architects to perform a code review, preliminary drawings, and estimates for a secure generator and enclosure. Based on the estimates provided, we have eliminated the secure enclosure from the scope of work.
In December 2010, staff contracted with an electrical engineer (JCN Engineering) to provide electrical design drawings and specifications. The design was completed in January and the project was advertised on February 8th. Twelve electrical firms attended a pre-bid meeting and walk-through on February 17th.

**FINANCIAL IMPACT**

Six Bids were received and opened on February 28th as detailed in the attached Bid Proposal Tabulation. CE Power Systems, LLC. submitted the lowest bid. This firm has not worked for Englewood in the past. Our reference check and research finds their qualifications acceptable. They have successfully completed a similar generator installation project for the Denver Sheriff Department.

Because the bid came in at a higher amount than estimated, it is necessary for us to contribute a higher percentage match to fund the project. Funds are available in the Public Improvement Fund and in the Fire and Police budgets to cover the portion of the costs not funded by the grant.

Costs associated with the project are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CE Power Systems (Construction)</td>
<td>$119,100</td>
</tr>
<tr>
<td>Xcel (Electrical terminations in the cabinet)</td>
<td>1,500</td>
</tr>
<tr>
<td>Construction contingency</td>
<td>4,400</td>
</tr>
<tr>
<td><strong>Total Estimated Cost</strong></td>
<td><strong>$125,000</strong></td>
</tr>
</tbody>
</table>

Funding for the project is proposed as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEMA Assistance to Firefighters grant</td>
<td>$ 90,000</td>
</tr>
<tr>
<td>Public Improvement Fund (Miscellaneous Infrastructure account)</td>
<td>16,000</td>
</tr>
<tr>
<td>Englewood Fire and Police Departments</td>
<td>19,000</td>
</tr>
<tr>
<td><strong>Total Proposed Funding</strong></td>
<td><strong>$125,000</strong></td>
</tr>
</tbody>
</table>

**LIST OF ATTACHMENTS**

Bid Tabulation
Contract
CONTRACT
CITY OF ENGLEWOOD, COLORADO

THIS CONTRACT and agreement, made and entered into this 21st day of March, 2011, by and between the City of Englewood, a municipal corporation of the State of Colorado hereinafter referred to as the "City", and C E Power Systems, LLC whose address is 5454 Washington St. #3, Denver, CO 80216, ("Contractor"), commencing on the 8th day of February, 2010, and continuing for at least ten (10) days thereafter the City advertised that sealed proposals would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the following:

PROJECT: Englewood Police/Fire Building Generator Installation

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

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

NOW THEREFORE, in consideration of the compensation to be paid the Contract, the mutual agreements hereinafter contained:

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

   Invitation to Bid
   Contract (this instrument)
   Insurance
   Performance Payment Maintenance Bond
   Drawing sheets E1.0
   Addendum No. 1, issued on February 24, 2011

B. **Scope of Work:** The Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials and everything necessary for and required to do, perform and complete all the work described, drawn, set forth, shown and included in said Contract Documents.

C. **Terms of Performance:** The Contractor agrees to undertake the performance of the work under this Contract within 10 (ten) calendar days from being notified to commence work by the Director of Public Works and agrees to fully complete said work within 120 (one-hundred twenty) calendar days, plus such extension or extensions of time as may be granted by the Director of Public Works in accordance with the provisions of the Contract Documents and Specifications.
D. **Indemnification:** The City cannot and by this Agreement/Contract does not agree to indemnify, hold harmless, exonerate or assume the defense of the Vendor or any other person or entity, for any purpose. The Vendor shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature including Worker's Compensation claims, in any way resulting from or arising out of this Agreement/contract: provided, however, that the Vendor need not indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and Employees.

E. **Termination of Award for Convenience:** The City may terminate the award at any time by giving written notice to the successful vendor of such termination and specifying the effective date of such termination, at least thirty (30) days before the effective date of such termination. In that event all finished or unfinished service, reports, material(s) prepared or furnished by the successful firm after the award shall, at the option of the City, become its property. If the award is terminated by the City as provided herein, the successful firm will be paid that amount which bears the same ratio to the total compensation as the services actually performed or material furnished bear to the total services/materials the successful firm covered by the award, less payments of compensation previously made. If the award is terminated due to the fault of the successful firm, the clause relating to termination of the award for cause shall apply.

F. **Termination of Award for Cause:** If, through any cause, the successful firm shall fail to fulfill in a timely and proper manner its obligations or if the successful firm shall violate any of the covenants, agreements or stipulations of the award, the City shall have the right to terminate the award by giving written notice to the successful firm of such termination and specifying the effective date of termination. In that event, all furnished or unfinished services, at the option of the City, become its property, and the successful firm shall be entitled to receive just, equitable compensation for any satisfactory work documents, prepared completed or materials as furnished.

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

G. **Terms of Payment:** The City agrees to pay the Contractor for the performance of all the work required under this contract, and the Contractor agrees to accept as his full and only compensation therefore, such sum or sums of money as may be proper in accordance with the price or prices set forth in the Contractor's proposal attached and made a part hereof, the total estimated cost thereof being **one-hundred nineteen thousand one-hundred dollars and no cents** $(119,100.00)$.

H. ** Appropriation of Funds:** At present, $119,100.00 has been appropriated for the project. Notwithstanding anything contained in this Agreement to the contrary, in the event no funds or insufficient funds are appropriated and budgeted by the governing body or are otherwise unavailable in any following fiscal period for which appropriations were received without penalty or expense except as to those portions of the Agreement or other amounts for which funds have already been appropriated
or are otherwise available. The City shall immediately notify the contractor or its assignee of such occurrence in the event of such termination.

I. **Liquidated Damages:** Owner and Contractor recognize that time is of the essence in this Agreement because of the public interest in health and safety, and that the Owner will suffer financial loss, inconvenience, and level of treatment degradation if the Work is not complete within the time specified in the bid documents, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by Owner if the Work is not complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay, but not as a penalty, **Contractor shall pay Owner $200 for each day in excess of the time specified for completion of Work.**

J. **Assignment:** Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of Owner, specifically including, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law). Any attempted assignment which is not in compliance with the terms hereof shall be null and void. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the Assignor from any duty or responsibility under the Contract Documents.

K. **Contract Binding:** It is agreed that this Contract shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, assigns, and successors.

L. **Contractors Guarantee:** The Contractor shall guarantee that work and associated incidentals shall remain in good order and repair for a period of 1 (one) year from all causes arising from defective workmanship and materials, and to make all repairs arising from said causes during such period without further compensation; plus a standard 2 (two) year Generator Manufactures Warranty. The determination of the necessity for the repair or replacement of said project, and associated incidentals or any portion thereof, shall rest entirely with the Director of Public Works, whose decision upon the matter shall be final and obligatory upon the Contractor.

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties have caused these presents to be signed personally or by their duly authorized officers or agents and their seals affixed and duly attested the day and year first above written.

This Contract is executed in 2 counterparts.

CE Power Systems
Contractor

by: Vahid Habibi
Party of the Second Part

President

ATTEST:

Secretary

CITY OF ENGLEWOOD

by: ______________________________________________
Mayor
Party of the First Part

ATTEST:

City Clerk

03-15-11

CRAIG ADAM GARDNER
NOTARY PUBLIC
STATE OF COLORADO
MY COMMISSION EXPIRES 09/11/2013
# City of Englewood Bid Tabulation Sheet

Bid Opening: 2/28/11 10:00 a.m.

ITB-11-003, Englewood Police/Fire Building Generator Installation

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Bid Bond Y/N</th>
<th>Receipt of Addendum #1</th>
<th>Lump Sum</th>
<th>Exceptions</th>
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<tr>
<td>C E Power Systems</td>
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<td>Y</td>
<td>$ 119,100.00</td>
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<td>5454 Washington St. #3</td>
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<tr>
<td>Denver, CO 80216</td>
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<td>Bergelectric Corp</td>
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<td>2695 W. 3rd Avenue</td>
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<td>Denver, CO 80219</td>
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<td>Sturgeon Electric Company, Inc.</td>
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<td>12150 East 112th Avenue</td>
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<td>Henderson, CO 80640</td>
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<td>National Electric Construction, Inc.</td>
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<td>8278 South Newport Court</td>
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<td></td>
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<tr>
<td>Centennial, CO 80112</td>
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<td>Kennerly Construction Corp.</td>
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<td>2390 S Kalamath Street, Unit F</td>
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<tr>
<td>Denver, CO 80223</td>
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<td>Frontier Mechanical, Inc.</td>
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<td>3800 S. Federal Blvd.</td>
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<tr>
<td>Englewood, CO 80504</td>
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</table>
COUNCIL COMMUNICATION

Date: March 21, 2011  
Agenda Item: 11 cv  
Subject: Tri-County Health Communities Putting Prevention to Work Grant Professional Services Agreement – Englewood Downtown and Medical District Complete Streets Assessment Study

Initiated By: Community Development Department  
Staff Source: John Voboril, Planner II

PREVIOUS COUNCIL ACTION

City Council was briefed on health-oriented grant funding proposals submitted by Community Development to Tri-County Health Department for funding under the Communities Putting Prevention to Work (CPPW) program at Council Study Sessions held on June 21 and November 22, 2010. Council passed a bill for an ordinance at the December 20, 2010 regular Council meeting establishing an Intergovernmental Agreement with Tri-County Health in order to receive grant funding for the Englewood Downtown and Medical District Complete Streets Assessment Study.

RECOMMENDED ACTION

Staff recommends Council approve, by motion, a professional services agreement contract awarded to Fehr and Peers for the Englewood Downtown and Medical District Complete Streets Assessment Study through a competitive RFP process.

BACKGROUND AND ANALYSIS

Tri-County Health Department applied for and was granted federal stimulus funds authorized by the 2009 American Recovery and Reinvestment Act to be used to fund the Communities Putting Prevention to Work (CPPW) program. These funds are to be distributed locally in support of health-oriented projects aimed at curbing obesity through the promotion of healthy exercise and eating habits.

Community Development submitted an application to receive grant funding for the Downtown and Medical District Complete Streets Assessment Study. The Downtown and Medical District Complete Streets Assessment Study is intended to take a close look at the Broadway and Old Hampden Avenue corridors in order to make recommendations on how to make the two corridors more pedestrian-friendly in order to encourage area residents, visitors, and employees to walk more frequently within and between the Downtown and Medical Districts.

Two firms were shortlisted for interviews from a total of three submitted proposals. After ranking each proposal and conducting interviews, the City interview panel consisting of Community Development and Public Works staff determined that the consulting firm Fehr and Peers is the best fit for the project. Fehr and Peers proposal for $88,388 is within the advertised budgeted RFP contract amount.
FINANCIAL IMPACT

The CPPW funds cover all expenses incurred by the project. No City matching funds were required and none have been budgeted toward the project.

ATTACHMENTS

Fehr and Peers Professional Services Agreement
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this 21st day of March, 2011, (the "Effective Date") by and between Fehr and Peers, a California based, employee owned corporation with a local Colorado office ("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 maskworks, (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.


   (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 ensure 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.


(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. Notwithstanding 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 three million dollars ($3,000,000) per occurrence.

(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.


   (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 affect 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)
   ____________________________________________________________________
   (Print Name)

Title: ____________________________________________________________________

Date: ____________________________________________________________________

ATTEST:

________________________________________________________________________
City Clerk

________________________________________________________________________
(Consultant Name)

Address

City, State Zip Code

By: ____________________________________________________________________
   (Signature)
   ____________________________________________________________________
   (Print Name)

Title: ____________________________________________________________________

Date: ____________________________________________________________________
SCHEDULE A

STATEMENT OF WORK

Englewood Downtown and Medical District Complete Streets Assessment Study

Funded through Tri-County Health Communities Putting Prevention to Work Grant

PROJECT MANAGEMENT/PROJECT ADMINISTRATION/METINGS

Project Management / Administration / QA/QC

Jeremy Klop, Fehr & Peers Project Manager, will coordinate with the City on a bi-weekly basis to ensure the project scope, schedule, and task budgets are effectively managed. Fehr & Peers expects to be in Englewood at least every month during critical project execution periods and will be accessible to the City’s Project Manager at any time with a commitment to return calls / emails as soon as possible and within one day of receipt. Fehr & Peers will prepare monthly progress reports summarizing tasks completed during the previous month.

This task includes:

- Project Management and Coordination with City Staff
- Project Initiation and Scoping
- QA/QC of Deliverables
- Electronic Submittal of All Deliverables (unless otherwise noted)

Meeting Attendance

Fehr & Peers will prepare for and attend up to 8 project meetings. Except where noted, at least two Fehr & Peers team staff will be in attendance at all meetings over the project’s 8 month duration.

- Kick-Off Meeting (1) – The Fehr & Peers team will attend a kick-off meeting in Englewood at the initiation of the project.
- Project Team Meetings (6) – Assumes in-person meetings would take place six times during the approximately 8 month project schedule. The Fehr & Peers Project Manager will attend all meetings, and one Fehr & Peers staff will attend up to two Project Team meetings.

Subconsultants will attend select meetings based on their involvement with specific project tasks.

- Project workshops (2)
- City Council Meetings (2)

TASK 1 – DEVELOP PUBLIC INVOLVEMENT PLAN

Task 1.1: Public Involvement Plan

The Fehr & Peers team will work with the City to develop a brief (2-3 pages) Draft and Final Public Involvement Plan. The Public Involvement Plan will provide specifics about outreach, including identification of key stakeholder groups such as South Broadway BID, the Alliance for Commerce in Englewood, Swedish Medical
Center, Craig Hospital, and the Mailey Senior Center, as well as area residents, and interested members of the general public. The Draft Public Involvement Plan will be reviewed by city staff before being finalized.

We assume the City’s Public Outreach Department staff will secure meeting locations, provide meeting announcement materials, and notify members of the public using the City’s telephone call out system and email list developed for the project.

**Deliverables:**

- Draft Public Involvement Plan
- Final Public Involvement Plan

**Task 1.2: Website and Media Coordination**

Fehr & Peers and the City will collaborate to develop a project website for the project. The main project website will be developed, hosted, and maintained by Fehr & Peers. Fehr & Peers will develop a separate website using the wordpress software program that will be linked to the City’s website. The project site will contain a project calendar, a weblog, and several interactive features to survey or poll visitors to the site. While part of the site will be open to the public and used to obtain public comments and suggestions, it will also be used for project team collaboration and the posting of interim products and deliverables.

Fehr & Peers will also develop up to two project newsletters and press releases summarizing the latest Plan efforts and announcing Workshop dates. Press releases and newsletters will be provided to the City in digital format for distribution by the City.

**Deliverables:**

- Project website
- Project newsletters in digital format (2)
- Press releases in digital format (2)

**Task 1.3: Project Workshops**

The Fehr & Peers team will lead a highly participatory series of workshops that will allow project stakeholders to play a key role in developing the Plan. The workshops will be divided into topic areas.

The format of workshops will allow for the presentation of broad mobility concepts and ideas. Joint City Council/Planning Commission workshops will be designed to present more detailed concepts and mobility alternatives as they apply to specific project recommendations.

**Deliverables:**

- Workshop materials (Boards and PowerPoint presentations)
TASK 2 – MULTI-MODAL TRANSPORTATION DATA COLLECTION AND ANALYSIS

Task 2.1: Baseline Conditions Assessment

At the outset of the project, the Fehr & Peers team will work with City staff to focus efforts within a project study area generally including the Broadway and Old Hampden corridors in the Downtown and Medical District. We will review the prior study work products and perform a windshield survey of existing travel conditions within the project study area and the adjacent neighborhoods. Topics that will be addressed in a summary document include:

- **Parking Conditions**: We will summarize the previous planning efforts which provide baseline information about existing parking and transportation demand management efforts and conditions in the downtown, and also provide some information about conditions citywide, in areas such as household vehicle ownership.

- **Vehicle Travel Conditions**: Vehicle travel conditions will be initially assessed based on information presented in previous studies. This will inform locations where additional data should be collected as part of subsequent tasks. Further analysis of specific locations is included in other tasks.

- **Transit Conditions**: To assess existing conditions for transit, Fehr & Peers will evaluate the existing major transit service corridors in terms of up to five variables of transit quality: frequency, span, operating speed, reliability, and loading. Maps will be prepared to provide the basis for highlighting key locations where improvements to protect transit speed and reliability are most urgently needed.

- **Bicycle Conditions**: We will draw heavily upon the concurrent Bicycle Master Plan update effort. Fehr & Peers will summarize information from the Bicycle Master Plan Update to assess current bicycling conditions within the project area.

- **Pedestrian Conditions**: We will use information presented in the Downtown Mobility and Parking Plan as well as information from Walk Score GIS on-line data.

Task 2.1 includes the following subtasks:

**Task 2.1.1: Review Prior Studies and Reports**

The Fehr & Peers team will review available prior studies, which will form the basis upon which to begin the more focused planning effort that will comprise the Mobility Plan. Prior reports and studies to be reviewed will include the following:

- Englewood Downtown and Medical District Small Area Plan

- Roadmap Englewood: The 2003 Englewood Comprehensive Plan

- Ready, Set, Action! An Urban Design Action Plan for the Englewood Downtown and Medical District
Task 2.1.2 Existing Policies and Standards Review

The Fehr & Peers team will conduct a review of the City’s existing transportation policies and standards. These will include policies articulated in the above documents and related transportation guidelines / standards used in the City. This review will be summarized in a technical working paper.

The working paper will focus on identifying conflicting policies and documenting existing Citywide objectives for each travel mode.

Deliverable:

• Baseline Conditions Assessment

Task 2.2: Conduct Transportation Data Collection

Based on the findings in the Baseline Conditions Assessment, additional data collection options will be reviewed with City staff. A Data Collection Plan will be summarized based on the outcome of this discussion. Approximately $5,000 is budgeted for data collection as part of this task.

Data collection may include: daily and peak hour vehicle traffic counts, bicycle and pedestrian volume counts at key locations, transit occupancy and schedule adherence checks, or vehicle origin-destination surveys. Data collection could also include collection of key transportation hotspots location from the public through a geographic interface (such as Google Earth) and/or basic web-based transportation survey administration (such as SurveyMonkey).

Deliverable:

• Data Collection Plan

• Data Collection (up to $5,000)

TASK 3 – IDENTIFICATION AND ANALYSIS OF POTENTIAL CIRCULATION MODIFICATIONS

Task 3.1: Pedestrian Circulation Element

The pedestrian circulation element will include the development of a detailed Walkability Plan that address travel along sidewalks, trails, and other pedestrian pathways in the project study area. The Walkability Plan will be fully integrated in and in harmony with other components of the Plan and include the following elements:

• Designated Pedestrian Districts and Routes: A key focus of the Walkability Plan will be to designate the highest-priority pedestrian areas within the study area. As a general rule, those corridors that will attract the greatest number of pedestrians due to their location, prominence, and connectivity should receive added design details, including enhanced streetcapping, attention to adjacent land uses, and high connectivity into neighborhoods. These areas will be referred to and mapped as either “A” or “B” quality walking routes. Designated pedestrian districts would be areas where pedestrian movement is prioritized and given special status in harmony with other travel modes, which may include extra-wide sidewalks, designation of “wooners,” slow zones or other pedestrian-priority streets, pedestrian “scramble” signal phasing, high-quality crosswalk and streetscape enhancements, placemaking and
space for pedestrian seating and plaza areas. Up to five maps of designated pedestrian districts and routes will be developed for inclusion in the Walkability Plan.

- **Pedestrian Access, Comfort and Safety Guidelines:** Guidelines will be developed to district walkability, paying close attention to utility, comfort, access and safety. Guidelines will present planning, engineering, streetscaping, education, enforcement and implementation recommendations, ensuring streets are safe, comfortable, enjoyable, functional and practical for all users of all ages and abilities. The objective is to provide Complete Streets approach, allowing people to switch modes seamlessly in the great majority of locations. Over time, district's high dependency on motor vehicle travel will diminish, especially in and around neighborhoods and the medical district.

- **Prioritized Pedestrian Improvements:** A set of short and long term pedestrian improvements will be identified and prioritized as part of this task. Projects may include:
  - Barrier elimination projects
  - Pedestrian connectivity projects
  - Street crossing improvements
  - New sidewalk installation
  - Pedestrian-oriented streetscape enhancements
  - Traffic calming and related traffic behavior modifications to support walking

**Deliverables:**

- **Walkability Plan, including**
  - Maps of walking districts and routes
  - Pedestrian Access, Comfort, and Safety Guidelines
  - Prioritized list of pedestrian improvements

**Task 3.2: Bicycle Circulation Element**

The Bicycle Circulation element will consist of the Citywide Bicycle Master Plan Update which is currently being updated as part of a separate project. The Fehr & Peers team will ensure consistency and a high level of coordination is achieved between this plan and the Bicycle Plan throughout the project. This will include, but not be limited to policies affecting bicycle mobility, designated bicycling routes, and street design guidelines.

**Deliverable:**

- **Coordination with Citywide Bicycle Master Plan consultant (being developed as part of separate project)**

- **Bicycle Master Plan (content dependent on input from City’s selected consultant)**

**Task 3.3: Motor Vehicle Circulation Element**

The Motor Vehicle Circulation element will accomplish three purposes: assess future vehicle mobility needs within the district, develop recommendations for accommodating all types of motor vehicles, and develop a set of prioritized roadway improvements that should be accomplished over the next 20 years to balance the needs of future increases in travel demand in the project study area. Future travel demand estimates will either be based on the DRCOG's existing model or prior studies provided by the City.

We envision this process for analyzing future motor vehicle needs as including several steps:

**Step 1: Define Baseline Conditions**

Baseline traffic conditions will be taken from the data collected in Task 2 and, where appropriate, any recent traffic impact studies in the study area. We will present baseline conditions at up to 10 study intersections.
Step 2: Forecast Future Traffic

Future traffic forecasts will be developed assuming existing mode shares within the City are continued. Traffic forecasts will be based on the Roadmap Englewood: The 2003 Englewood Comprehensive Plan.

Step 3: Define Future Conditions

Future traffic conditions will be evaluated at up to 10 "critical" intersections, to be identified on the basis of future delay estimates. Evaluation will use techniques consistent with the Transportation Research Board’s Highway Capacity Manual or the Intersection Capacity Utilization methodology the City currently uses.

Step 4: Mitigate Future Conditions Assuming Current Mode Share

This step will determine what will be required to mitigate critical intersections to a given level of service (LOS) threshold. Some of the necessary roadway improvements under this scenario are described in the Roadmap Englewood: The 2003 Englewood Comprehensive Plan. Additional roadway improvements, if necessary, will also be identified.

Step 5: Mitigate Future Conditions Based on Mode Shifts and Alternate Modes Strategies

It will be possible to build complete streets if mode split objectives can reduce the future demand for vehicle travel. Allocating some roadway space to serve alternate modes (such as dedicated transit lanes or bike lanes) could be one option evaluated in this step to determine future travel conditions. This would maintain (or increase) person-carrying capacities of roadways but reduce vehicle capacity. Using the best practice research and industry standards, we will determine what mode split would necessary to reduce vehicle travel demand to a given LOS threshold at each critical intersection.

Step 6: Use Mitigation Results for Public Workshops

With the results of Steps 4 and 5 forming the two extremes in traffic conditions (non-auto emphasis/higher vehicle congestion versus auto emphasis/lower congestion), the Project Team will conduct a breakout session in the second series of Workshops to obtain information and feedback about the district’s place on the spectrum. We will also place this information on the project’s web site to get additional public feedback about how much future congestion will be acceptable and how much emphasis should be placed on achieving desired complete street objectives.

Step 7: Evaluate Final Future Conditions Based on Public Feedback

The final evaluation step will be to determine the future traffic conditions with the preferred option that emerges from the Workshops. This point will be somewhere on the spectrum between complete auto emphasis and complete street emphasis. The results of this task will also form the basis for setting a district wide Level of Service standard for all modes of travel.

The Motor Vehicle Circulation Element will include the following:

- **Assessment of Future Vehicle Mobility Needs**: As described above, mobility needs will be evaluated to determine the design and function of Englewood’s major thoroughfares. The needs assessment will determine where additional roadway connections are most needed within the City.
- **Safety and Access Management**: Motor vehicle safety and access management strategies will be developed.
- **Truck Corridors and Emergency Vehicle Access**: The Project Team will assess opportunities to designate formal truck movement corridors through the City and improve emergency vehicle access along major thoroughfares.
- **Traffic Signal System**: Traffic system operations will be evaluated, including; traffic signal optimization opportunities, use of traffic-adaptive signal control, and transit signal preemption and/or priority.
• Accommodations for Low Speed Vehicles: Low speed vehicles (or Neighborhood Electric Vehicles) are becoming commonplace in many Colorado cities. Current legislation prohibits these vehicles from traveling along roadways with moderately high speed limits, even if roadway space is designated for their use. The Fehr & Peers team will assess the current and future demand for low-speed vehicles within the City, and, if necessary, develop recommendations for their accommodation on designated roadways. We will also recommend strategies for pursuing enabling legislation that may be needed to effectively plan for future low-speed vehicle travel needs.

• Roadway Improvements: Key roadway improvements will be identified and developed into a 20-year action plan. The Project Team will make recommendations about projects that will have the greatest short-term benefit and those that should be implemented over the longer term.

**Deliverables:**

• Motor Vehicle Circulation Element, including
  - Future vehicle operations assessment for 3 scenarios
  - Designated truck corridors and emergency vehicle access guidelines
  - Prioritized roadway improvements, including rough costs and implementation timeline

**Task 3.4: Street Typologies**

The Fehr & Peers team will evaluate opportunities street typologies as part of this task. We will use the thoroughfare types information presented in the Roadmap Englewood: The 2003 Englewood Comprehensive Plan as a starting point upon which to develop a more refined set of street typologies that emphasize the unique modal function of each thoroughfare in the district.

As part of this task, the Project Team will prepare a white paper describing example street types and functions that have been used in other cities, such as Lakewood, Ft. Collins, and Aurora, Colorado. Initial diagrams and text discussion on street and corridor typologies will also be developed. Street typologies will potentially include prototypical neighborhood streets, alleys, connector/collector/avenues, commercial/main streets with parallel or angled parking, and a number of corridor/arterial/ boulevard types, including transit-preferential streets.

**Deliverables:**

• Example street typology presentation with examples from up to 3 other cities

• Draft cross sections for up to 6 proposed street typologies

**TASK 4 – SELECTION OF PREFERRED CORRIDOR MODIFICATIONS**

**Task 4.1: Develop Admin Draft Complete Streets Plan**

Subsequent to preparation of the draft circulation elements and street typology plans, an administrative draft Plan will be prepared. The Admin Draft Complete Streets Plan will be comprised of an updated set of Goals and Policies, Street Typologies, and Conceptual Street Corridor Plans. The individual modal circulation elements (Transit, Bicycle, Pedestrian, Motor Vehicle) will be incorporated into the Plan.

**Deliverables:**

• Administrative Draft Complete Streets Plan

• Final Draft Complete Streets Plan
Task 4.2: Implementation Action Plan

After identifying the long-term infrastructure and operational goals for the transportation system in the district, the Project Team will distill those needs and make recommendations that will have the greatest impacts over the next one to three years (immediate action steps) and over the next 10 years (10-year action plan) in achieving the long-term goals.

Implementing major changes to street network in the district will impact other transportation modes and needs served within the street network. For example, transit or street operations modifications may affect bicycle lane routing, pedestrian movements, or parking structure entrance/exit operations, on-street parking, loading zones and other uses of the street system. Potential impacts will be identified and considered when preparing the action plan. The impact of any changes on the current configuration of freeway interchange access/egress will also be evaluated.

Deliverable:

- Draft Implementation Action Plan
- Final Implementation Action Plan

Task 4.3: Policy Changes

While most policies and recommendations in the Plan will be consistent with the existing city policies, amendments may be needed. This task will summarize any amendments that will be required as part of adoption of the Complete Street Plan. Potential amendments could include:

- Revisions to City street functional classifications and design standards
- Amending land use development requirements in the district
- Clarification of or revisions to district level transportation actions
- Adoption of new multimodal level of service standards and study criteria

Deliverable:

- The product of this task will be a detailed PowerPoint summary of proposed Plan amendments and special legislation, including necessary justification.
# FEE SCHEDULE

## FEHR & PEERS TASKS

- **Project Management / Project Administration / Meetings**: $3,120
- **Task 1: Develop Public Involvement Plan**: $15,560
- **Task 2: Multi-modal Transportation Data Collection and Analysis**: $11,000
- **Task 3: Identification and Analysis of Potential Circulation Modifications**: $27,780
- **Task 4: Selection of Preferred Corridor Modifications**: $9,000

**Total Fees**: $66,460

**Expenses Total**: $6,646

**Total Fees**

## SUBCONSULTANT SUPPORT

- **Britina Design Group**: $10,500
- **P.U.M.A**: $5,000

**Total Fee**: $88,606
COUNCIL COMMUNICATION

Date:  
March 21, 2011

Agenda Item:  
11 c vi

Subject:  
Tri-County Health Communities Putting Prevention to Work Grant Professional Services Agreement - Englewood Master Bicycle Plan Route Development Study and Implementation Program

Initiated By:  
Community Development Department

Staff Source:  
John Voboril, Planner II

PREVIOUS COUNCIL ACTION

City Council was briefed on health-oriented grant funding proposals submitted by Community Development to Tri-County Health Department for funding under the Communities Putting Prevention to Work (CPPW) program at Council Study Sessions held on June 21 and November 22, 2010. Council passed a bill for an ordinance at the December 20, 2010 regular Council meeting establishing an Intergovernmental Agreement with Tri-County Health in order to receive grant funding for the Englewood Master Bicycle Plan Route Development Study and Implementation Program.

RECOMMENDED ACTION

Staff recommends Council approve, by motion, a professional services agreement contract awarded to OV Consulting for the Englewood Master Bicycle Plan Route Development Study and Implementation Program through a competitive RFP process.

BACKGROUND AND ANALYSIS

Tri-County Health Department applied for and was granted federal stimulus funds authorized by the 2009 American Recovery and Reinvestment Act to be used to fund the Communities Putting Prevention to Work (CPPW) program. These funds are to be distributed locally in support of health-oriented projects aimed at curbing obesity through the promotion of healthy exercise and eating habits.

Community Development submitted an application to receive grant funding for the Englewood Master Bicycle Plan Route Development Study and Implementation Program. The Englewood Master Bicycle Plan Route Development Study and Implementation Program will allow the City to implement the 2004 Master Bicycle Plan by designating a complete set of signed City-wide on-street bicycle routes as well as miscellaneous bicycle infrastructure that will promote bicycling as a healthy and attractive mode of transportation throughout the community.

Four firms were shortlisted for interviews from a total of seven submitted proposals. After ranking each proposal and conducting interviews, the City interview panel consisting of Community Development and Public Works staff determined that the firm OV Consulting is the best fit for the project. OV Consulting’s proposal for $74,950 is within the advertised budgeted RFP contract amount.
FINANCIAL IMPACT

The CPPW funds cover all expenses incurred by the project. No City matching funds were required and none have been budgeted toward the project.

ATTACHMENTS

OV Consulting Professional Services Agreement
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this 21st day of March, 2011, (the "Effective Date") by and between OV Consulting, a Colorado limited liability company ("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 maskworks, (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.


   (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 (exceise, 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 notice 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 assure 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 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.


(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. Notwithstanding 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 three million dollars ($3,000,000) per occurrence.

(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.


(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 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 or 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, 18, 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. [C.R.S. 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 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)

_______________________________
    (Print Name)

Title: ______________________________

Date: ______________________________

ATTEST:

_______________________________
City Clerk

OV Consulting
(Consultant Name)

1701 Wynkoop Street Suite 127
Address

Denver, CO 80222
City, State, Zip Code

By: ________________________________
    (Signature)

Beth Vogelgang
    (Print Name)

Title: Principal

Date: March 14, 2011
SCHEDULE A

STATEMENT OF WORK

Englewood Master Bicycle Plan Route Development Study and Implementation Program

Funded through Tri-County Health Communities Putting Prevention to Work Grant

Task 1: Develop Involvement Plans with Schools and General Public

A unique element of our proposal is the inclusion of Bicycle Colorado on our team. Dan Grunig of Bicycle Colorado has worked on Safe Routes to Schools around the State of Colorado and has extensive experience in developing promotional and educational materials for schools and in engaging students, teachers, and parents to encourage bicycling and to solicit input on infrastructure or policy modifications that make bicycling safer and more enjoyable. Over the past five years, Bicycle Colorado worked with over 25,000 students in over 50 schools throughout Colorado. Bicycle Colorado has also conducted teacher trainings and community workshops in Durango, Steamboat Springs, Golden and Denver. Each community has unique challenges related to students biking and walking to school. Bicycle Colorado has developed vast and diverse experience in conducting school outreach, fostering community involvement and providing programs customized for each setting. In addition to education, outreach and event planning, each program receives promotional materials on safe ways to get more kids biking and walking to school.

The focus of Bicycle Colorado’s Safe Routes to School program is sustainability. The programs strive to affect permanent cultural change within each school and throughout each community. It is essential that parents, teachers and administrators, in addition to students, receive bicycle and pedestrian education. This empowers both adults and students to find sustainable ways to get more kids biking and walking to school. Bicycle Colorado accomplishes this through surveying parents to identify and address specific concerns, organizing walking school buses and bicycle trains, conducting bike and walk site audits and creating school-specific safe routes maps with recommended biking and walking routes to school.

Bicycle Colorado also worked closely with the Englewood School District on their most recent Safe Routes to Schools application to CDOT and has relationships with the school district that will make our efforts more effective and efficient. Our focus on this portion of the involvement task will result in real and tangible benefits to the City of Englewood and the elementary schools.

In order to engage the public effectively and provide project information we propose to work closely with the City, Tri-County Health, Bicycle Colorado, and the consulting firm chosen for the Downtown and Medical District Complete Streets Assessment Study to develop a coordinated, joint public involvement plan that identifies key stakeholder groups and corresponding strategies to engage these groups. We understand that the Tri-County Health grant requires public meetings and documentation of those meetings. We are proposing two public meetings. The goal of the first public meeting will be to present the existing conditions and to solicit ideas and input on prioritization and travel patterns/needs. Materials such as large format maps of the existing pedestrian and bike conditions, project overview and schedule, and comment forms will be available at the meeting. The goal of the second meeting will be to share the Draft Plan and to
gather input and comment on the elements. A key element of this meeting will be the availability of large format maps of the bike route plan elements to allow for easy comment and feedback.

We would discuss meeting advertisement strategies with the City prior to Implementation. At the completion of the public meetings we will provide a report including the date and location of the meeting, attendance sheets, and a summary of input with photos of the meeting for the City's use.

**Task 1 Tangible Deliverables**
- Involvement Plans for Schools and General Public
- Public meeting summaries
- Promotional materials and events to encourage bicycling by parents, students, and teachers

**Task 1 Level of Effort and Cost Estimate**
- Chris Vogelsang, PE: 8 hours x $145/hour = $ 1,160
- Beth Vogelsang, AICP: 40 hours x $145/hour = $ 5,800
- Dan Grunig: 140 hours x $75/hour = $10,500
- Graphics Support: 24 hours x $85/hour = $ 2,040
- Admin Support: 8 hours x $45/hour = $ 360
- **Task 1 Total Dollars:** $19,860

**Task 2: Detailed Study of Routes Proposed in the 2004 Bicycle Plan**

How this task is handled is critical to the success of the overall project and the immediate implementation plan. Based on our knowledge of Englewood, challenges to bicycle route implementation, and the previous work done in the City we propose the following process to arrive at realistically feasible and immediately implementable bicycle route improvements.

**Step 1:** **Hold a two-hour workshop with City staff** to review the routes shown in the 2004 Bicycle Plan and to determine which routes or parts of routes appear feasible, which routes or parts of routes have challenges, and which routes or parts of routes are not feasible without significant investments. We understand that at the conclusion of the 2004 Bicycle Plan process the initial routes were discussed with Public Works and some safety concerns related to individual routes or parts of routes were expressed. We believe it would be most efficient and effective to gather that information directly from City Staff and to build on that information rather than starting from scratch. The goal of the workshop is to arrive at a determination of which routes appear most feasible and to focus our efforts on those routes.

**Step 2:** A detailed evaluation of the most feasible routes will be conducted with a particular emphasis on safety issues and implementation affordability. Factors such as the routes synergies with the elementary schools, employment centers, or shopping areas will be considered as well but the primary driver will be implementability within the City's budget.

**Step 3:** Hold a two-hour workshop to present the findings of the detailed evaluation, any potential safety hazards, and any potential design alternatives to mitigate those hazards. The goal of the workshop is to arrive at agreed upon immediate implementation routes that meet planning and public works requirements and needs within the budget available. The results of this workshop will drive the immediate implementation plan elements.

**Step 4:** Develop and share the immediate implementation plan that meets the City's requirements and are affordable.
Task 2: Tangible Deliverables

- Finalized Route Study and Selection Report
- Immediate Implementation Plan

Task 2 Level of Effort and Cost Estimate

Chris Vogelsang, PE: 80 hours x $145/hour = $11,600
Beth Vogelsang, AICP: 16 hours x $145/hour = $ 2,320
Graphics Support: 22 hours x $85/hour = $ 1,870
Admin Support: 8 hours x $45/hour = $ 360
Task 2 Total Dollars: $ 16,150

Task 3: Develop Finalized Route Signage and Infrastructure Improvement Plans

The purpose of this task is to take the immediate implementation plan and develop a final route signage and infrastructure improvement plan to guide the activities of Task 4. Based on our knowledge of Englewood and the $75,000 implementation budget we anticipate that the improvements will consist primarily of signing and potentially some striping elements such as crosswalks. Finalization of these plans will be contingent on approval of the elements and designs by City staff.

Another element of Task 3 is to develop a citywide bicycle parking plan. We anticipate that the parking plan will be driven by the schools needs, the immediate implementation route selection, and other critical nodes such as Civic Center, the LRT station, Downtown, and the medical district.

Detailed budgets for each element of this task will be produced.

Task 3 Tangible Deliverables

- Detailed Route Signage Plan
- Bicycle Parking Plan
- Budget
- Maintenance Strategy

Task 3 Level of Effort and Cost Estimate

Chris Vogelsang, PE: 80 hours x $145/hour = $11,600
Beth Vogelsang, AICP: 16 hours x $145/hour = $ 2,320
Aaron Heumann, PE, PTOE: 40 hours x $135/hour = $ 5,400
AutoCAD Support: 80 hours x $65/hour = $ 5,200
Admin Support: 8 hours x $45/hour = $ 360
Task 3 Total Dollars: $24,880

Task 4: Manage Acquisition and Installation of Signage and Infrastructure Improvements

Once the finalized route signage and bicycle parking plan are completed and approved by City staff, we will determine an appropriate sub-contractor to perform the work, get detailed costs estimates from that contractor, and manage the acquisition of the elements and the installation work of the sub-contractor. It is important not to choose a sub-contractor before the plan elements are known and the most appropriate and cost effective sub-contractor can be chosen. This process would involve getting detailed cost estimates and implementation timeframes from several
contractors and choosing the best value that meets the projects needs. We would manage the entire sub-contractor selection process and installation.

**Task 4 Tangible Deliverables**
- Purchase and Installation of Signage and Infrastructure

**Task 4 Level of Effort and Cost Estimate**
- Chris Vogelsang, PE: 20 hours x $145/hour = $2,900
- Aaron Heumann, PE, PTOE: 80 hours x $135/hour = $10,800
- Admin Support: 8 hours x $45/hour = $360

Task 4 Total Dollars: $14,060

**Cost Estimate Summary**

Tasks 1 through 4 result in an overall total consulting budget of $74,950. An additional $75,000 will be required for material acquisition and installation by a subcontractor resulting in a total overall project budget of $149,950.
### Englewood Master Bicycle Plan Route Development Study and Implementation Program

#### Project Schedule

<table>
<thead>
<tr>
<th>Activity</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Begin Work</td>
<td>March, 2011</td>
</tr>
<tr>
<td>1. Develop Involvement Plans with the Schools and General Public</td>
<td>March 2011 through March 2012*</td>
</tr>
<tr>
<td>Public Meeting #1</td>
<td>April, 2011</td>
</tr>
<tr>
<td>Public Meeting #2</td>
<td>June, 2011</td>
</tr>
<tr>
<td>2. Detailed Study of Routes proposed in 2004 Bicycle Plan</td>
<td>March through Mid-June 2011</td>
</tr>
<tr>
<td>Staff Workshop #1</td>
<td>March, 2011</td>
</tr>
<tr>
<td>Staff Workshop #2</td>
<td>May, 2011</td>
</tr>
<tr>
<td>Finalized Route Study and Selection Report and Immediate Implementation Plan</td>
<td>June, 2011</td>
</tr>
<tr>
<td>3. Develop Finalized Route Signage and Infrastructure Improvement Plans</td>
<td>Mid-June through July 2011</td>
</tr>
<tr>
<td>Detailed Route Signage Plan, Bicycle Parking Plan, Maintenance Strategy, and Budgets</td>
<td>July, 2011</td>
</tr>
<tr>
<td>4. Manage Acquisition and Installation of Signage and Infrastructure Improvements</td>
<td>August 2011 through March 2012</td>
</tr>
<tr>
<td>Solicit Cost Estimates and Procurement/Installation Schedule</td>
<td>August, 2011</td>
</tr>
<tr>
<td>Select Subcontractor</td>
<td>September, 2011</td>
</tr>
<tr>
<td>Procure Materials</td>
<td>October through December, 2011</td>
</tr>
<tr>
<td>Install Materials</td>
<td>January through March 2012</td>
</tr>
</tbody>
</table>

*Public involvement activities will end by August 2011 but school education and outreach efforts may continue into the 2011-2012 school year.