Agenda for the
Regular Meeting of the
Englewood City Council
Monday, June 18, 2012
7:30 pm

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

1. Call to Order.

2. Invocation.

3. Pledge of Allegiance.

4. Roll Call.

5. Consideration of Minutes of Previous Session.

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

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

8. Communications, Proclamations, and Appointments.

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.
9. Consent Agenda Items.
   
a. Approval of Ordinances on First Reading.
   
i. Council Bill No. 35 — Recommendation from the Utilities Department to approve a bill for an ordinance approving Supplement #166 to the Connector’s Agreement Southgate Sanitation District authorizing the inclusion of land within the district. **Staff Source:** Stewart Fonda, Director of Utilities.
   
ii. Council Bill No. 36 — Recommendation from the Utilities Department to approve a bill for an ordinance approving Supplement #167 to the Connector’s Agreement Southgate Sanitation District authorizing the inclusion of land within the district. **Staff Source:** Stewart Fonda, Director of Utilities.
   
iii. Council Bill No. 38 — Recommendation from the Finance and Administrative Services Department to approve a bill for an ordinance making changes to NonEmergency Employees Retirement Plan (NERP). **Staff Sources:** Frank Gryglewicz, Director of Finance and Administrative Services.
   
iv. Council Bill No. 42 — Recommendation from Library Department to approve a bill for an ordinance authorizing an intergovernmental agreement with the Marmot Library Network. **Staff Source:** Dorothy Hargrove, Director of Library Services.
   
b. Approval of Ordinances on Second Reading.
   
i. Council Bill No. 37 — Adopting an ordinance approving the Denver Regional Council of Governments Consortium Agreement for the Sustainable Communities Initiative.
   
c. Resolutions and Motions.

10. Public Hearing Items. (None Scheduled.)

11. Ordinances, Resolutions and Motions
   
a. Approval of Ordinances on First Reading.
   
i. Council Bill No. 40 — Recommendation from the Community Development Department to adopt a bill for an ordinance authorizing the execution of two Intergovernmental Subgrantee Agreements with the Arapahoe Board of County Commissioners for the 2012 Arapahoe County Community Development Block Grant Program. **Staff Source:** Harold Stitt, Senior Planner.
   
ii. Council Bill No. 41 — Recommendation from the Utilities Department to approve a bill for an ordinance authorizing the Agreement for Temporary Lease and/or Re-Diversions of Reusable Return Flows of Water Agreement with Centennial Water and Sanitation District. **Staff Source:** Stewart Fonda, Director of Utilities.

---

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. Approval of Ordinances on Second Reading.

c. Resolutions and Motions.

i. Recommendation from Finance and Administrative Services Department to approve a resolution authorizing a transfer and supplemental appropriation of funds for the Humane Society of the South Platte Valley 2012 operations. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Services.**

ii. Recommendation from the Utilities Department to approve, by motion, Amendment #3 to the contract with Camp, Dresser, and McKee in the amount of $53,240 for additional engineering and design services to the Allen Plant Ultraviolet System Design. **Staff Source: Stewart Fonda, Director of Utilities.**

iii. Recommendation from the Utilities Department to approve, by motion, Amendment #4 to the contract with Camp, Dresser, and McKee in the amount of $272,814 for additional engineering and construction management services to the Allen Plant Ultraviolet System Design. **Staff Source: Stewart Fonda, Director of Utilities.**

12. General Discussion.

a. Mayor’s Choice.

b. Council Members’ Choice.


15. Adjournment.

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

Date: June 18, 2012
Agenda Item: 9 a i
Subject: Southgate Supplement #166

INITIATED BY:
Utilities Department

STAFF SOURCE:
Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

None.

RECOMMENDED ACTION

The Water and Sewer Board, at their April 10, 2012 meeting, recommended Council approval of a Bill for an Ordinance approving Southgate Supplement #166.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The City of Englewood provides sewage treatment to approximately 32,000 accounts outside the City through contracts with numerous connector districts. The area is defined by the natural drainage and extends south and east from Broadway to the Valley Highway and from Hampden to Lincoln Ave, excluding Highlands Ranch. By contract the City of Englewood must approve any additions of land to be served by the districts. These are usually in-fill situations that are within what the City considers to be the area it has committed to serve. Adequate capacity has been provided in the treatment plant to accommodate all such future inclusions. Annexation of this parcel of land will not increase the tap allocation of the Southgate Sanitation District.

A request was made by the Southgate Sanitation District representing the owner, Gareth and Natalie Nichol, for inclusion of Supplement #166 consisting of a parcel totaling 2.5 acres into the Southgate Sanitation District for residential use. The property is currently zoned Residential. The purpose of the inclusion is to install a sewer line and connect to the existing sewer main in the street. The legal is attached as Exhibit “A”. The property is located on the southeast corner of E. Belleview and S. Holly St.

FINANCIAL IMPACT

None.

LIST OF ATTACHMENTS

Water and Sewer Board Minutes from April 10, 2012
Proposed Bill for Ordinance
Roll Call

Present: Clyde Wiggins, Jo Lay, Chuck Habenicht, Tom Burns, Wayne Oakley, Kells Waggoner, Linda Olson, Jim Woodward, Stewart Fonda, Cathy Burrage

Absent/Excused: Randy Penn, John Moore

1. MINUTES OF THE MARCH 13, 2012 MEETING.

Motion: Approve the Minutes of the March 13, 2012 Water and Sewer Board meeting.

Moved: Burns Seconded: Habenicht
Abstain: Woodward

Motion passed unanimously.

2. LETTER FROM STATE OF COLORADO DATED MARCH 28, 2012 RE: ALLEN FILTER PLANT RESIDUALS DISPOSAL.

The Board received a letter from the State of Colorado dated March 28, 2012 regarding the City of Englewood’s Allen Water Filtration Plant residuals disposal. Stu discussed the potential cost and approved disposal sites.

3. SOUTHGATE SUPPLEMENT #166.

The Board received a request from Gareth and Natalie Nichol for inclusion of Supplement #166 to include a parcel of 2.5 acres into the Southgate Sanitation District for residential use. The purpose of the inclusion is to install a sewer line and connect to the existing sewer main in the street.
Motion: Waggoner     Seconded: Habenicht

Motion passed unanimously.

4. INTRODUCTION OF YASSER ABOUAISH – UTILITIES ENGINEER IV AND THE WATER CONSERVATION PLAN.

Mr. Fonda introduced Yasser Abouaish, the new Utilities Engineer IV to the Board. Mr. Abouaish discussed the Water Conservation Plan project.

5. UNSCHEDULED VISITORS.

Ryan Laird appeared as an unscheduled visitor. Mr. Laird noted that the Water Board Minutes and audio portion has not been posted on the City website. He also requested that agenda attachments also be posted on the website. Staff noted that they will make sure they are posted. Mr. Laird also requested an index of past Water Board meetings be part of the web site.

6. OTHER

Stu reviewed discussions between David Hill, water attorney for Englewood and Jim Lockhead, with the Denver Water Board, regarding a proposal.

City Council, at the April 9, 2012 study session, approved up to $7 million for GO bonds for water system projects. Total amount of various projects will be forthcoming.

Meeting adjourned 5:25 p.m.

The next Water and Sewer Board meeting will be May 8, 2012 at 5:00 in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary
BY AUTHORITY

ORDINANCE NO. ______ SERIES OF 2012
COUNCIL BILL NO. 35
INTRODUCED BY COUNCIL
MEMBER ____________

A BILL FOR

AN ORDINANCE APPROVING SUPPLEMENT NO. 166 TO THE SOUTHGATE SANITATION DISTRICT CONNECTOR'S AGREEMENT FOR THE INCLUSION OF LAND WITHIN THE DISTRICT BOUNDARIES.

WHEREAS, Southgate Sanitation District recommends the inclusion of approximately 2.5 acres into the District; and

WHEREAS, said inclusion is located on the Southeast corner of East Belleview and South Holly Street in Greenwood Village; and

WHEREAS, the proposed inclusion is to install a sewer line and connect to the existing sewer main in the street; and

WHEREAS, the zoning of this property in Greenwood Village is currently zoned Residential which is the proposed use of this property; and

WHEREAS, said annexation of this parcel of land will not increase the tap allocation to the Southgate Sanitation District; and

WHEREAS, the Englewood Water and Sewer Board recommended approval of this Agreement at its April 10, 2012 meeting;

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

Section 1. The Agreement between the City of Englewood and Southgate Sanitation District entitled “Supplement No. 166, to Connector’s Agreement”, which includes 2.5 acres located on the Southeast corner of East Belleview and South Holly Street in Greenwood Village, is hereby accepted and approved by the Englewood City Council. A copy of said Agreement is attached hereto as “Exhibit 1” and incorporated herein by reference.

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

Introduced, read in full, and passed on first reading on the 18th day of June, 2012.
Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of June, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 20th day of June, 2012 for thirty (30) days.

ATTEST:

Randy P. Penn, Mayor

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 _____ day of ____________, 2012.

Loucrishia A. Ellis
SUPPLEMENT NO. 16 TO CONNECTOR'S AGREEMENT

THIS AGREEMENT, made and entered into by and between the CITY OF ENGLEWOOD, acting by and through its duly authorized Mayor and City Clerk, hereinafter called the "City," and SOUTHGATE SANITATION DISTRICT, Arapahoe and Douglas Counties, Colorado, hereinafter called the "District,"

WITNESSETH:

WHEREAS, on the 20th day of June, 1961, the City and the District entered into an Agreement in which the City agreed to treat sewage originating from the District's sanitary sewer system within the area served by the District, which Agreement was renewed by Connector's Agreement dated November 16, 1988 and Amended April 20, 2009; and

WHEREAS, said Connector's Agreement provides that the district may not enlarge its service area without the written consent of the City;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein set forth, the parties agree as follows:

1. The City hereby consents to the inclusion of certain additional area located in Arapahoe County, Colorado, owned by Gareth J. and Natalie G. Nichol and more fully described on Exhibit A attached hereto and incorporated herein by reference, into Southgate Sanitation District. The City agrees that said additional area may be served with the sewer facilities of the District, and that the City will treat the sewage discharged into the City's trunk line from said additional area, all in accordance with the Connector's Agreement dated November 16, 1988 and Amended April 20, 2009. Accordingly, Exhibit A referred to in Paragraph 1 of the Connector's Agreement dated November 16, 1988 and Amended April 20, 2009, is hereby amended to include such additional area.

2. Each and every other provision of the said Connector's Agreement dated November 16, 1988 and Amended April 20, 2009, shall remain unchanged.

IN WITNESS WHEREOF, the parties have set their hands and seals this ___ day of ___, 201__.

CITY OF ENGLEWOOD

By: __________________________

Mayor

ATTEST:

CITY CLERK
(SEAL)

SOUTHGATE SANITATION DISTRICT,
ARAPAHOE AND DOUGLAS COUNTIES,
COLORADO

By: __________________________

President

ATTEST:

SECRETARY
(SEAL)
Inclusion Petition

Page 2

Dated this 16 day of Feb 2012.

Petitioner

5823 S. Highline Cir
Address

5823 S. Highline Cir
Address

Greenwood Village, CO 80121

Greenwood Village, CO 80121

Telephone Number

Telephone Number

STATE OF COLORADO

COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this
16 day of Feb 2012, by Carol Ott

My commission expires: 5/14/12

My address is: 12055 Horseshoe Lane

Parker, CO 80138

CAROL OTT
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires 5/14/2012
EXHIBIT A

(Legal Description)

Lot 3,
Re-Subdivision of Tracts 17 thru 20,
The Clark Colony No. 3,
Section 17, Township 5 South, Range 67 West,
County of Arapahoe,
State of Colorado,
Together with ½ of the vacated street adjacent
to the North line of subject property.
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date</th>
<th>Agenda Item</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 18, 2012</td>
<td>9 a ii</td>
<td>Southgate Supplement #167</td>
</tr>
</tbody>
</table>

INITIATED BY
Utilities Department

STAFF SOURCE
Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION
None.

RECOMMENDED ACTION
The Water and Sewer Board, at their May 8, 2012 meeting, recommended Council approval of a Bill for an Ordinance approving Southgate Supplement #167.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED
The City of Englewood provides sewage treatment to approximately 32,000 accounts outside the City through contracts with numerous connector districts. The area is defined by the natural drainage and extends south and east from Broadway to the Valley Highway and from Hampden to Lincoln Ave, excluding Highlands Ranch. By contract the City of Englewood must approve any additions of land to be served by the districts. These are usually in-fill situations that are within what the City considers to be the area it has committed to serve. Adequate capacity has been provided in the treatment plant to accommodate all such future Inclusions. Annexation of this parcel of land will not increase the tap allocation of the Southgate Sanitation District.

A request was made by the Southgate Sanitation District representing the owner, Carla G. Shankle, for inclusion of Supplement #167 consisting of a parcel totaling 2.39 acres into the Southgate Sanitation District for residential use. The property is currently zoned Residential. The purpose of the inclusion is to install a sewer line and connect to the existing sewer main in the street. The legal is attached as Exhibit “A”. The property is located on the north side of E. Garden Avenue, west of Colorado Blvd.

FINANCIAL IMPACT
None.

LIST OF ATTACHMENTS
Water and Sewer Board Minutes from May 8, 2012
Proposed Bill for Ordinance
Roll Call.

Present: Clyde Wiggins, Chuck Habenicht, Tom Burns, Kells Waggoner, Jim Woodward, Stewart Fonda (Not voting), Cathy Burrage (Not voting).

Absent/Excused: Jo Lay, Wayne Oakley, John Moore, Randy Penn, Linda Olson.

Also present: Jason Clark, Tom Brennan and Yassar Abouish

The meeting was called to order at 5:03 p.m.

1. MINUTES OF THE APRIL 10, 2012 MEETING.

Motion: Approve minutes of the April 10, 2012 Water and Sewer Board meeting.

Moved: Habenicht, Seconded: Bums.

Motion passed unanimously.

MOTION FOR THE ENGLEWOOD WATER AND SEWER BOARD TO ENTER AN EXECUTIVE SESSION PURSUANT TO CRS24-6-402(b) FOR DISCUSSION OF WATER LITIGATION WITH THE WATER ATTORNEY.

Moved: Habenicht Seconded: Waggoner

Motion passed unanimously.

Linda Olson entered at 5:07 p.m.

MOTION TO RETURN TO THE REGULAR SESSION OF THE WATER AND SEWER BOARD MEETING OF MAY 8, 2012.
Motion: Woodward  Seconded: Habenicht

Motion passed unanimously.

2. SOUTHGATE SUPPLEMENT #167.

The Board received a request from Carla G. Shankle for inclusion of Supplement #167 to include a parcel of 2.39 acres into the Southgate Sanitation District for residential use. The purpose of the inclusion is to install a sewer line and connect to the existing sewer main in the street.

Motion: To recommend Council approval of Southgate Supplement #167.

Moved: Waggoner, Seconded: Burns.

Motion passed unanimously.

3. ALLEN PLANT ULTRAVIOLET SYSTEM DESIGN – AMENDMENT #3.

Tom Brennan, Utilities Engineer, appeared to give an overview of the ultraviolet (UV) project for the Allen Filter Plant and the proposed Amendment #3. This amendment is for the design of electrical upgrades to the plant load center.

Motion: To recommend Council approval of the contract for additional engineering and design services to Camp, Dresser & McKee in the amount of $53,240.00.

Moved: Habenicht, Seconded: Waggoner.

Motion passed unanimously.

4. ALLEN PLANT ULTRAVIOLET SYSTEM DESIGN – AMENDMENT #4.

Tom Brennan appeared to give an overview of the proposed Amendment #4 for the Allen Plant UV system. The proposed contract will be for engineering services during construction, site visits, specialty inspections and design clarifications.

Motion: To recommend Council approval, by motion, of the contract for additional engineering and construction management services to Camp, Dresser & McKee in the amount of $272,814.00 for construction management services.

Moved: Burns, Seconded: Waggoner.
Motion passed unanimously.

5. DROUGHT MANAGEMENT PLAN.

Yassar Abouish, Utilities Engineer IV, appeared to discuss the progress of Englewood’s Water Conservation Plan and Drought Management Plan. A possible $50,000 grant from the State was also discussed. An article will appear in the upcoming Pipeline addressing drought mitigation and conservation planning.

6. CHANGES IN COLIFORM PROCEDURES.

Jason Clark, Water Plant Superintendent, appeared to explain the State’s new coliform testing procedures. The Allen Filter Plant has not experienced a maximum contaminant level violation for bacteria in the last 30 years, but with the new policy the odds of having a violation increase slightly.

7. UNSCHEDULED VISITORS.

No unscheduled visitors.

8. OTHER.

None.

Meeting adjourned at 6:40 p.m.

The next Water and Sewer Board meeting will be June 12, 2012 at 5:00 in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary
ORDINANCE NO. ___ SERIES OF 2012
COUNCIL BILL NO. 36
INTRODUCED BY COUNCIL MEMBER ____________

A BILL FOR

AN ORDINANCE APPROVING SUPPLEMENT NO. 167 TO THE SOUTHGATE SANITATION DISTRICT CONNECTOR’S AGREEMENT FOR THE INCLUSION OF LAND WITHIN THE DISTRICT BOUNDARIES.

WHEREAS, Southgate Sanitation District recommends the inclusion of approximately 2.39 acres into the District; and

WHEREAS, said inclusion is located on the North side of East Garden Avenue, west of Colorado Boulevard in Greenwood Village; and

WHEREAS, the proposed inclusion is to install a sewer line and connect to the existing sewer main in the street; and

WHEREAS, the zoning of this property in Greenwood Village is currently zoned Residential which is the proposed use of this property; and

WHEREAS, said annexation of this parcel of land will not increase the tap allocation to the Southgate Sanitation District; and

WHEREAS, the Englewood Water and Sewer Board recommended approval of this Agreement at its May 8th, 2012 meeting;

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

Section 1. The Agreement between the City of Englewood and Southgate Sanitation District entitled “Supplement No. 167, to Connector’s Agreement”, which includes 2.39 acres located on the North side of East Garden Avenue, West of Colorado Boulevard in Greenwood Village, is hereby accepted and approved by the Englewood City Council. A copy of said Agreement is attached hereto as “Exhibit 1” and incorporated herein by reference.

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

Introduced, read in full, and passed on first reading on the 18th day of June, 2012.
Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of June, 2012.

Published as a Bill for an Ordinance on the City's official website beginning on the 20th day of June, 2012 for thirty (30) days.

____________________________________________
Randy P. Penn, 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 _____ day of ____________, 2012.

____________________________________________
Loucrishia A. Ellis
SUPPLEMENT NO. 167 TO CONNECTOR'S AGREEMENT

THIS AGREEMENT, made and entered into by and between the CITY OF ENGLEWOOD, acting by and through its duly authorized Mayor and City Clerk, hereinafter called the "City," and SOUTHGATE SANITATION DISTRICT, Arapahoe and Douglas Counties, Colorado, hereinafter called the "District,"

WITNESSETH:

WHEREAS, on the 20th day of June, 1961, the City and the District entered into an Agreement in which the City agreed to treat sewage originating from the District's sanitary sewer system within the area served by the District, which Agreement was renewed by Connector's Agreement dated November 16, 1988 and Amended April 20, 2009; and

WHEREAS, said Connector's Agreement provides that the district may not enlarge its service area without the written consent of the City;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings herein set forth, the parties agree as follows:

1. The City hereby consents to the inclusion of certain additional area located in Arapahoe County, Colorado, owned by Carla G. Shankle and more fully described on Exhibit A attached hereto and incorporated herein by reference, into Southgate Sanitation District. The City agrees that said additional area may be served with the sewer facilities of the District, and that the City will treat the sewage discharged into the City's trunk line from said additional area, all in accordance with the Connector's Agreement dated November 16, 1988 and Amended April 20, 2009. Accordingly, Exhibit A referred to in Paragraph 1 of the Connector's Agreement dated November 16, 1988 and Amended April 20, 2009, is hereby amended to include such additional area.

2. Each and every other provision of the said Connector's Agreement dated November 16, 1988 and Amended April 20, 2009, shall remain unchanged.

IN WITNESS WHEREOF, the parties have set their hands and seals this ____ day of __________, 201__.

CITY OF ENGLEWOOD

By: ____________________________

_____________________________
MAYOR

ATTEST:

_____________________________
CITY CLERK
(SEAL)

SOUTHGATE SANITATION DISTRICT,
ARAPAHOE AND DOUGLAS COUNTIES,
COLORADO

By: ____________________________

_____________________________
PRESIDENT

ATTEST:

_____________________________
SECRETARY
(SEAL)
EXHIBIT A

(Legal Description)

Lot 6, Sierra Vista,
County of Arapahoe,
State of Colorado
COUNCIL COMMUNICATION

Date: June 18, 2012
Agenda Item: 9 a iii
Subject: Bill for an Ordinance adopting amendments to the City of Englewood NonEmergency Retirement Plan (NERP) Document

Initiated By:
City of Englewood, Finance and Administrative Services Department

Staff Source:
Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

The City Council and staff discussed the changes incorporated in the attached bill for an ordinance at the June 4, 2012 Study Session.

RECOMMENDED ACTION

Staff recommends City Council approve the attached bill for an ordinance making necessary changes to the NERP Plan Document.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The primary purpose of the attached bill for an ordinance is to incorporate proposed amendments to the NERP document that will add the three percent employee contribution that was negotiated with the Englewood Employees Association (EEA) to help offset the cost of providing pension benefits and equalize employee contributions with the NonEmergency Employees Money Purchase Plan (NEMP). The amendments are not intended to change retiree benefits provided prior to the effective date of the amendments.

The attached memorandum (presented to Council on June 4, 2012) summarizes the various required changes not only to implement the employee contribution but also includes language clean up, capitalization consistency, and incorporates Internal Revenue Service requirements to preserve the qualified status of the Plan.

FINANCIAL IMPACT

The implementation the three percent employee contribution should reduce the impact of funding the NERP over the long-term as well as equalize the employee contribution with the NonEmergency Employees Money Purchase (NEMP) Plan.

LIST OF ATTACHMENTS

Memorandum Dated May 30, 2012
Proposed Bill for Ordinance.
Memorandum

To: Mayor Randy Penn and City Council
Through: Gary Sears, City Manager
From: Frank Gryglewicz, Director of Finance and Administrative Services
Date: May 30, 2012
Re: Information for the June 4, 2012 Study Session - NonEmergency Employees Retirement Plan (NERP) Amendments

The primary purpose of the proposed amendments to the NERP is to add the three percent employee contribution that was negotiated with the Englewood Employees Association (EEA) to help offset the cost of providing pension benefits and equalize employee contributions with the NonEmergency Employees Money Purchase Plan (NEMP). The amendments are not intended to change benefits provided prior to the effective date of the amendments. If Council agrees, a bill for an ordinance with the proposed changes will be presented for Council's consideration at the June 18, 2012 Regular Meeting.

1. In conjunction with adding the employee contribution, additional requirements include:
   a. Revising the Plan document effective December 31, 2012 (this date coincides with payroll processing).
   b. A provision to refund Accumulated Contributions (with interest) for terminated non-vested Members.
   c. A provision to refund Accumulated Contributions in excess of total benefits paid to Retirees, Beneficiaries or alternate payees. This provides that the minimum Plan benefits paid will always be at least the amount of the Accumulated Contributions.
   d. Guidelines for the repayment of Accumulated Contributions for rehired employees that may be eligible and choose to participate in the NERP. Repayment must be by payroll deduction or a rollover from a qualified plan within twelve months of rehire. The repayment restrictions are necessary for the contributions to remain pre-tax.
   e. Language to comply with IRS restrictions and set customary practices for the distribution of Accumulated Contribution refunds of $1,000 to $5,000 by either a taxable distribution or rollover to a qualified plan.

2. Clarification of the rules related to the restoration of prior service for an employee with a break in service.
3. Update the required federal guidelines for qualifying military service. These guidelines comply with the Uniformed Services Employment and Reemployment Rights Act (USERRA) regulated by the federal government. These changes will insure Plan compliance.
4. Clarification of the term "Employee" to clarify who is eligible for the NERP.
5. Changes to comply with federal restrictions on Plan mandatory distributions of DROP benefits to minimize potential undue tax burdens on DROP participants. The Internal Revenue Service (IRS) prohibits mandatory distributions.
6. A request to clean-up language that provides for distributions to be made less frequent than monthly. An example is if a retiree were to receive benefit payments of less than $100 per month, the retiree could request the benefit be paid quarterly instead of receiving a lump sum payment. This places an administrative burden on the retiree.
requiring additional programming changes for the few retirees requesting periodic payments who are due an amount less than $100 per month.

7. Multiple changes to provide clarity and consistency throughout the Plan document.

8. Consistent capitalization of terms with a definition under the Plan.

9. The IRS provides beneficial tax treatment for "qualified" retirement plans. To preserve this beneficial tax treatment, plans must comply with numerous IRS requirements, including insuring retirement plans are truly intended to provide benefits for retired employees. These restrictions include not allowing the reemployment of a retiree to receive benefits unless the employee reasonably had no intention of returning to work, or is over 62 years of age when benefits commenced, and separates service for at least 120 days.
A BILL FOR

WHEREAS, during the most recent negotiations with the Englewood Employees Association (EEA) regarding benefits, it was agreed that those employees would make a three percent (3%) contribution to the NonEmergency Employees Retirement Plan (NERP); and

WHEREAS, this contribution is to help offset the cost of providing pension benefits and equalize employee contributions within the NonEmergency Employees Retirement Plan (NERP); and

WHEREAS, these amendments are not intended to change retiree benefits but to make the necessary changes to the NERP Plan Document required by this Agreement.

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

Section 1. The City Council of the City of Englewood, Colorado, hereby authorizes amending Title 3, Chapter 4, of the Municipal Code 2000, to read as follows:

Chapter 4
CITY OF ENGLEWOOD NONEMERGENCY EMPLOYEES RETIREMENT PLAN AND TRUST AS AMENDED AND RESTATED EFFECTIVE JANUARY 1, 1999 DECEMBER 31, 2012

3-4-1: Purpose.

Effective as of January 1, 1999 December 31, 2012, the City Council of the City adopted the amended and restated Plan, as set forth herein, to continue and replace the Plan previously in effect. The Plan and Retirement Fund are intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended. The Plan, previously known as the “City of Englewood Retirement Plan,” shall hereinafter be known as the “City of Englewood Nonemergency Employees Retirement Plan.”

The Plan and the Retirement Fund forming a part hereof, were established and shall be maintained for the exclusive benefit of the eligible Employees of the City and their Beneficiaries.
No part of the Retirement Fund can ever revert to the City except as hereinafter provided, or be used for or diverted to purposes other than the exclusive benefit of the Employees of the City and their Beneficiaries.

This amendment and restatement of the Plan shall not, in any way, affect the rights of former Employees who participated in said Plan and who either retired or otherwise terminated their employment prior to January 1, 1999 December 31, 2012. The rights, if any, of such former Employees and of their Beneficiaries and the amounts of their benefits, if any, shall continue to be governed by the provisions of the Plan as it was in effect on December 31, 1998 2012, or the date, if earlier, of their retirement or termination of employment, unless specifically provided for otherwise herein.

3-4-2: Definitions and Construction.

3-4-2-1: Name.

The retirement income plan as set forth in this document shall be known as the City of Englewood Nonemergency Employees Retirement Plan and Trust and is hereinafter referred to as the “Plan.”

3-4-2-2: Definitions.

Unless the context otherwise requires, the definitions and general provisions contained in this Subsection govern the construction of this restated Plan.

A. Accrued Benefit means the benefit determined in accordance with Section 3-4-7 hereof.

B. Accumulated Contributions means the sum of the Member’s contributions to this Plan, credited with interest thereon at the rate of 3.5 percent per annum to the date payment of the Member’s benefit commences.

C. Actuarial (or Actuarially) Equivalent means equality in value of the aggregate amounts expected to be received under different forms of payment based on interest rate and mortality assumptions as defined below unless otherwise specifically provided in the Plan:

1. Interest Rate Assumption for Alternative Periodic Benefits. The interest rate used for purposes of computing alternative periodic forms of benefits shall be 7.5 percent effective January 1, 1986.

2. Interest Rate Assumption for Single-Sum Payments. Effective for the calendar year beginning on January 1, 1986, and for each calendar year following sequentially thereafter, the interest rate used for purposes of computing single-sum payments shall be the immediate annuity rate (subject to adjustment as required for deferred annuities) used by the Pension Benefit Guaranty Corporation as of the January 1 coincident with or preceding the date as of which the amount of the alternative form of benefit is being determined hereunder.

a. Effective January 1, 2012, the mortality assumption for calculation shall be a unisex rate that is fifty percent (50%) male, fifty percent (50%) percent female, taken from the 1994 group annuity mortality table. For the period July 1, 1999 to December 31, 2011, such mortality assumption shall be a unisex rate that is fifty percent (50%) male, fifty percent (50%) female, taken from the 1983 group annuity mortality table. Prior to July 1, 1999, such mortality assumption shall be a unisex rate that is fifty percent (50%) male, fifty percent (50%) female, taken from the 1971 group annuity mortality table.

b. Solely for purposes of Section 3-4-16-2, hereof, on and after January 1, 2012, the mortality assumption for calculation shall be a unisex rate that is fifty percent (50%) male, fifty percent (50%) female, taken from the 1994 group annuity mortality table. In the case of distribution with annuity starting dates on or after December 31, 2002, the mortality table used to adjust any benefit or limitation under Code Section 415(b)(2)(B), (C), or (D) as set forth in Section 3-4-16-3 of The Plan is the table prescribed by Rev. Rul. 2001-62.

D. **Beneficiary** means the person or persons who are so designated by the Member, in the latest written notice which the Member or Vested Member has filed with the Retirement Board in accordance with Section 3-4-8-7, to receive any payment to which a Beneficiary may become entitled under this Plan.

E. **Board or Retirement Board** means the Board appointed by the City Council and charged with the general administration of the Plan as set forth in Section 3-6-4-11-1 hereof.

F. **City** means the City of Englewood, State of Colorado.

G. **City Council** means the City Council of the City.

H. **Code or Internal Revenue Code** means the Internal Revenue Code of 1986 26 USC (1986), as amended from time to time.

I. **Compensation** means the total cash remuneration paid to an Employee a Member for a calendar year by the City for personal services while earning Credited Service as reported on the Employee's Member's income tax withholding statement or statements (Form W-2, or its subsequent equivalent), including longevity pay and excluding bonuses, extra pay, compensation time, overtime, lump-sum payments in lieu of accrued vacation time, sick leave, or personal leave, worker's compensation and any contribution by the City under this Plan, or the like, but including any compensation that the Employee Member has elected to have deferred under Section 457 and Section 125 of the Internal Revenue Code. Effective January 1, 1989, the amount of a Member's compensation for the purposes of the Plan during any Plan Year shall not exceed two hundred thousand dollars ($200,000.00) subject to cost-of-living adjustments in accordance with Code Section 415(d).

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1996, the annual compensation of each "noneligible member" taken into account under the Plan shall not exceed the Omnibus Budget Reconciliation Act '93 annual compensation limit. The OBRA '93 annual compensation limit is $150,000, as adjusted by the commissioner for increases in the cost of living in accordance with Code Section 401(a) (17) (b). The cost of living adjustment in effect for a calendar year applies to any period, not
exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. A "noneligible member" is any Member who first became a Member in the Plan during a Plan Year beginning on or after January 1, 1996.

Effective January 1, 1989, through December 31, 1996, in determining the compensation of a Member for purposes of this limitation, the rules of Code Section 414(q)(6), shall apply, except in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the member who have not attained age 19 before the close of the year, effective January 1, 1989 through December 31, 1996, if, as a result of the application of such rules the adjusted annual compensation limitation is exceeded then the limitation shall be prorated among the affected individuals in proportion to each such individual's compensation as determined under this Subsection 2-10-2-2(i), of the Englewood Municipal Code prior to the application of this limitation. For purposes of calculating Compensation on or after January 1, 2002, the limitation under Code Section 401(a)(17) is increased to $200,000.00, as adjusted.

J. Credited Service means the period of Service rendered by an Employee as a Member for which credit is allowed.

K. Disability means a physical or mental condition which entitles the Member to receive a disability income under the long-term disability insurance contract maintained by the City.

L. Effective Date of This Plan means was originally effective January 1, 1970 and has been amended and restated Plan is effective as of January 1, 1991 from time to time.

M. Employee means any person employed by the City as a permanent, full-time, non-exempt, non-confidential, non-supervisory (hourly) employee who is covered by the overtime provisions of the Fair Labor Standards Act as defined in the City Personnel Policy and Procedures. For the purposes of this retirement Plan, police officers, paid firefighters, and elected officials and temporary employees shall not be considered to be Employees. If a person who was excluded from this definition of Employee is later determined to have been misclassified or is reclassified, the person shall continue to be treated as not an Employee for all Plan purposes for periods prior to the date the person's classification is revised.

Effective January 1, 1987, included as employees are leased employees within the meaning of Code Section 414(n)(2) except that if such leased employees constitute less than twenty (20) percent of the nonhighly compensated workforce within the meaning of Code Section 414(n)(1)(C)(ii), then the term "Employee" will not include those leased employees covered by a plan described in Code Section 414(n)(5) unless otherwise provided by the terms of this Plan.

N. Exempt Employee means an Employee having one of the following titles as defined by City Personnel Policies and Procedures: City Manager, Assistant Deputy City Manager, any Department Head Directors, Municipal Court Judge, City Attorney, and Assistant City Attorney. Effective January 1, 1988, "Exempt Employee" shall also include any managerial, supervisory or confidential employee as defined by City Personnel Policies and Procedures.
O. **Final Average Monthly Compensation** means $1/36$ of a Member's total Compensation during the thirty-six (36) consecutive full calendar months (determined without the inclusion of any Break in Service) within the last one hundred twenty (120) completed full calendar months of employment with the City which yield the highest average Compensation. In the event the Member was employed for fewer than thirty-six (36) consecutive full calendar months, such average monthly compensation shall be based on his Compensation for the thirty-six (36) successive full months during his last one hundred twenty (120) full calendar months of employment with the City that would yield the highest average, or his full period of such employment, if less than thirty-six (36) months. For purposes of calculating Final Average Monthly Compensation, a retroactive increase in a Member's Compensation shall be considered Compensation only for the calendar month for which the increase is paid (not for the month in which the payment occurs).

P. **Insurance Company** means any insurance company or companies appointed by the City Council for long-term disability coverage, or as provided in Subsection 3-4-12-3 hereof.

Q. **Leave of Absence** means any absence authorized by the Employer under such Employer's standard personnel practices, provided that all persons under similar circumstances must be treated alike in the granting of such Leave of Absence, and provided further that the Employee returns or retires within the period specified in the authorized Leave of Absence.

R. **Member** means any person included in the membership of this Plan as provided in Section 3-4-3 hereof. Effective January 1, 1987, excluded as members are leased employees within the meaning of Code Section 414(n)(2).

S. **Normal Retirement Age** means age sixty-five (65).

T. **Normal Retirement Date** means the first day of the calendar month coincident with or next following the sixty-fifth (65th) birthday of the Member.

U. **Plan** means City of Englewood Nonemergency Employees Retirement Plan and Trust, as amended from time to time.

V. **Plan Administrator** means the Retirement Board of the City.

W. **Plan Year** means the calendar year starting January 1 and ending December 31.

X. **Previous Plan** means the Plan City of Englewood Retirement Plan (including the City of Englewood Retirement Plan and any predecessor plan(s) thereto) in force and effect for the period prior to January 1, 1999 December 31, 2012, the Plan hereby being amended and restated. Any reference herein to the Previous Plan as of a certain date or for a certain period shall be deemed a reference to the Previous Plan as then in effect.

Y. **Retired Member** means a former Member whose employment terminated by reason of retirement according to Section 3-4-6-1, 3-4-6-2 or 3-4-6-3 or Disability and who is receiving or is entitled to receive, or whose Beneficiary or estate is entitled to receive, benefits under this Plan.

Z. **Retirement Benefit or Pension** means any Retirement Benefit provided for in Section 3-4-7 hereof.
AA. *Retirement Fund or Fund* means the "City of Englewood Nonemergency Employees Retirement Fund," maintained by the Retirement Board or in accordance with the terms of the Trust Agreement, amended from time to time, which constitutes a part of this Plan.

BB. *Service* means a person's period or periods of employment as an Employee used in determining eligibility or the amount of benefits as described in Section 3-4-4 hereof.

CC. *Trustee* means any qualified and acting Trustee appointed by the City Council as Named Fiduciary for the investment and management of Plan assets, as provided in Section 3-4-12 hereof.

DD. *Vested Member* means a former Member whose Credited Service has terminated by reason other than retirement or Disability, who has completed at least five (5) years of Credited Service and who is entitled to receive, or whose Beneficiary or estate is entitled to receive, benefits under this Plan. A Vested Member shall become a Retired Member upon the actual commencement of benefit payments.

3-4-2-3: Construction.

The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender and words used in the singular shall include the plural unless the context clearly indicates to the contrary. Words such as "hereof," "herein," and "hereunder," shall refer to the entire Plan, not to any particular provision or section. The Plan and trust shall each form a part of the other by reference and terms shall be used therein interchangeably.

3-4-3: Membership.

3-4-3-1: Employees on January 1, 1970.

Every person who was an Employee of the City on January 1, 1970 could become a Member in the Plan on such date by properly filing with the Retirement Board, on or before such date, the form of membership agreement furnished for that purpose. Any such person who did not file the form of membership agreement on or before such date may thereafter file such membership agreement and become a Member on the first day of any subsequent month.

3-4-3-2: Employees Hired After January 1, 1970.

For each Employee hired after January 1, 1970, and prior to May 21, 2001, membership in the Plan shall be a condition of employment and each Employee shall become a Member on the date of employment. Such Employee shall be required to complete the form of membership agreement at the time of employment or appointment, except as follows:

A. The City Council may, by ordinance, establish optional pension or deferred compensation plans for Exempt Employees. Upon establishment of any such optional plan(s), an Exempt Employee has the option to elect to come within the provisions of such plan; provided, however, that an Exempt Employee may not concurrently be a member of more than one (1) retirement plan to which the City is making contributions on his or her behalf during his or her employment by the City. In the event that any said Exempt Employee of the City, who is presently a Member of the Plan, elects to come within the provisions of any other retirement plan established by the City Council and funded all or in part by the City, he shall have the option to become a Vested Member of the Plan (regardless of
whether or not he has completed five (5) years of credited service or to withdraw from the plan the amount calculated under Section 3-10-2 hereof. For each exempt employee hired on or after January 1, 1988, membership in the money purchase plan shall be a condition of employment.

B. An employee who becomes an exempt employee by promotion or appointment or otherwise, shall have sixty (60) days from the effective date of their appointment in said exempt position during which to elect either to remain in this plan or to become a member of an optional plan, provided the optional plan must require the same member contribution as Section 3-4-5-1 requires for this plan. The election to become a member of another plan shall be irrevocable except as provided in Section 3-4-18-2. In the event that a member elects to convert his or her membership to the City of Englewood Nonemergency Employees Money Purchase Plan (money purchase plan), a determinable amount shall be transferred in accordance with Section 3-4-18-3.

C. City Council previously designated the International City Management Association Retirement Corporation Deferred Compensation Plan ("ICMA-RC Plan") which is established under Section 457 of the Code as an optional plan to which the City would make contributions on behalf of exempt employees who elect this option.

D. City Council previously established a money purchase plan for managerial, supervisory or confidential employees effective January 1, 1988, as a plan to which the City and the employees shall make contributions on behalf of exempt employees who participate in such plan. Effective May 21, 2001, such plan is renamed the City of Englewood Nonemergency Employees Money Purchase Plan.

E. Effective July 30, 2001, a member of this plan who is:

1. An active employee, including an employee currently receiving benefits under the City's long-term disability contract, or

2. A vested member, shall have the option to elect, in accordance with Section 3-4-18-1, whether or not to become a member of the City of Englewood Nonemergency Employees Money Purchase Plan ("money purchase plan").

F. A non-exempt employee hired on or after May 21, 2001, shall immediately upon employment elect to participate in either this plan or the money purchase plan. Said election shall be irrevocable except as provided in Section 3-4-18-2.

3-4-3-3: Termination.

Membership of any member shall terminate if and when he shall cease to be an employee for any reason, except as provided in Subsection 3-4-4-3 or Subsection 3-4-3-2B hereof.

3-4-4: Credited Service.

3-4-4-1: Credited Service.

Credited service shall be used to determine a member's accrued benefit and eligibility for benefits under the plan. A member's credited service is the elapsed time period from his
date of employment with the City, as an employee, to his date of termination of such employment, except as provided below.

3-4-4-2: Limitation on Credited Service.

A. No period of credited service shall be deemed to be increased or extended by overtime.

B. Credited service shall not include any period of time during which the Member is on an approved Leave of Absence or interruption of service as provided in Subsection 3-4-4-3 hereof.

C. Periods of employment with the City prior to the date the employee became a Member shall not be included as credited service unless such employee (1) elected to become a Member of the Plan on January 1, 1970 pursuant to Subsection 3-4-3-1 hereof, or (2) is covered under the provisions of Subsection 3-4-4-3 hereof.

D. Credited service shall not include any period on the basis of which a retirement benefit is payable under any other defined benefit retirement or pension plan to which the City made contributions, other than benefits payable under the Federal Social Security Act or the Volunteer Firefighters' Pension Fund.

E. Credited service shall not include any period of time for which the City contributes on behalf of an employee to the ICMA-RC Plan, the City of Englewood Nonemergency Employees Money Purchase Plan or any other optional deferred compensation plan in lieu of this Plan, as provided in Subsection 3-4-3-2 hereof.

F. Credited service shall not be extended beyond a Member's date of termination for lump-sum payments in lieu of accrued vacation, sick leave or personal leave.

G. Credited service shall not include any period of time for which a Member continues working for the City after commencement of the Member's participation in the deferred retirement option plan pursuant to Section 3-4-7-8.

3-4-4-3: Break In Service.

A. A Member shall incur a break in service if his service as an employee terminates, and he does not return to service as an employee within twelve (12) months of the date such service terminated.

The Retirement Board shall have the power to determine when a break in service shall have occurred, and such determination shall be made in a nondiscriminatory manner.

The following shall not be considered a break in service:

A. 1. A temporary lay-off because of an illness or for purposes of economy, suspension, or dismissal, followed by death, or reinstatement, reemployment or reappointment within one (1) year.

B. 2. A formal Leave of Absence, duly approved by the City Manager for a specific period, followed by death or by reinstatement, reemployment or reappointment within thirty (30) days after termination of the Leave of Absence.
G. Any employee or any member who is on a leave of absence on account of entering into the military service of the United States (including service in the United States Merchant Marine in time of war) shall, in the absence of reasonable justification for additional delay, return to the Service of the City within ninety (90) days after the time when a discharge from such military service was first available to such employee. In the event that a member or employee does not return to the Service of the City within the time specified above, such leave of absence shall be considered a break in service.

Notwithstanding any provision of the plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

D. The period during any Leave of Absence or interruption of Service shall not however, be included in Credited Service.

Effective as of August 5, 1993, a Leave of Absence pursuant to the Family and Medical Leave Act of 1993, shall not be considered a break in service; however, the Employee will not receive any Service credit during such an absence.

After January 1, 1987, if any former member (vested or nonvested) returns to service as an employee within five (5) years after his date of termination, or if a former vested member returns to service as an employee after such five (5) years but without receiving any single sum payment hereunder, then applicable prior credited service shall be restored. Otherwise such prior credited service shall be permanently lost subject to the further provisions of this Subsection 3.4.4.3. If any such retired member, who had returned to service as an employee within five (5) years after the date of termination, had received a single sum payment in lieu of retirement benefits, an actuarial reduction shall be made in his retirement benefits under Subsection 3.4.16.1 hereof unless the repays the Fund within twenty-four (24) amount, with interest at the rate determined under Subsection 3.4.2.2C2 hereof (interest rate assumption for single sum payments) from the date the member received the payment to the date of repayment.

B. After December 31, 2012, if a former Member returns to service as a Member the following rules shall apply to determine whether the Plan shall include (“restore”) or shall not include (“cancel”) the Member’s Credited Service earned before the absence or interruption of service (“prior Credited Service”) for purposes of determining the Member’s Credited Service after his return.

1. For purposes of the five years of Credited Service required to become a Vested Member, the Plan will restore the Member’s prior Credited Service only if the Member repays to the Plan the payment the Member received (if any) of Accumulated Contributions. Such repayment must equal the full Accumulated Contribution amount received by the Member from the Plan, plus interest at the rate of 3.5% on that amount from the date of receipt to the date of repayment. Full repayment must be made within 12 months of the Member’s return to service as a Member and must be made by payroll deduction or by rollover from an IRA, qualified retirement plan or eligible governmental 457(b) plan acceptable to the Board, excluding after-tax contributions. If repayment is made by payroll deduction, the Member must make a one-time irrevocable election upon return to service as a Member, and the election must authorize payroll deduction of the required amount over a specific period (not to extend beyond 12 months of the Member’s return.
to service as a Member). Although designated as Member contributions, the payroll deduction shall be picked up by the City as described in Code Section 414(h)(2). If less than the full repayment is made by payroll deduction due to termination of the Member's employment covered by this Plan within the 12 month repayment period, the amount repaid will be refunded.

2. For all other purposes, the Plan will restore Credited Service for a Member according to the following rules:

a. If the Member returns to service as a Member within five years of the date the Member's employment with the City terminated, the Plan will restore the Member's prior Credited Service only if the Member repays to the Plan the payment the Member received (if any) of Accumulated Contributions. Repayment must be made according to the same rules as described in the preceding paragraph 1.

b. If the Member returns to service as a Member after the fifth anniversary of the date the Member's employment with the City terminated (the "termination date"), the Plan will restore the Member's prior Credited Service only if the Member was a Vested Member on the termination date and the Member did not receive a payment of Accumulated Contributions from the Plan.

Members of the Plan as of January 1, 1987, who were previously covered by the Plan but, due to a prior termination of employment, received such a single-sum payment, and were then reemployed by the City regardless of the time that expired between their termination date and reemployment date, shall have until July 1, 1989, in order to elect to repay such single-sum amount and thereby avoid such actuarial reduction. The amount to be repaid shall be calculated as set forth and must be repaid by July 1, 1989.

Any former nonvested Employee who returns to service as an Employee more than five (5) years after his date of termination and who is a Member of the Plan as of January 1, 1987, shall have until September 30, 1987 to make written application to the Retirement Board to have his prior Credited Service, if any, restored. The Retirement Board shall review such application and shall determine on a nondiscriminatory basis, whether such prior Credited Service shall be restored, and shall inform the Member of its determination by December 31, 1987.

Any Member of the Plan who was an Employee on January 1, 1970 and who did not elect to become a Member of the Plan on January 1, 1970 pursuant to Subsection 2-10-3-1 hereof will, as of January 1, 1987, receive credit for all service prior to the date he actually became a Member of the Plan. Such a Member may elect in writing, prior to July 1, 1988, to pay a single sum amount determined on the basis of the amount of Accumulated Contributions that said Member would have accumulated in the Plan as of July 1, 1988 had he elected to become a Member of the Plan on January 1, 1970 and made the required contributions each year on the basis of compensation he received each year. If the Member elects not to pay the single sum amount, his Retirement Benefit determined under Subsection 3-4-7-1 hereof shall be reduced by the Actuarial Equivalent of the single sum payment due as of July 1, 1988.

3-4-4-4: Effect of Other Plans.
Credited Service shall not include any period on the basis of which a Retirement Benefit is payable under any other defined benefit retirement or pension plan to which the City made contributions, other than benefits payable under the Federal Social Security Act or the Volunteer Firefighters' Pension Fund. Credited Service shall not include any period of time for which the City contributes on behalf of an Exempt Employee to the ICMA-RC Plan or any other optional deferred compensation plan in lieu of this Plan, as provided in Subsection 3-4-3-2 hereof.

3-4-4-5: Miscellaneous.

No Period of Credited Service shall be deemed to be increased by overtime. A year of Credited Service shall be given for each three hundred sixty five (365) day period, beginning with the first day of employment, which elapses while the Employee is entitled to Service credit under the above provisions of Subsection 3-4-3 hereof.

3-4-4-6: Credited Service for Military Service.

A Member who returns to employment with the City from qualified military service during the period within which reemployment rights are guaranteed by law will receive Credited Service with respect to the Member’s period of qualified military service (within the meaning of Section 414(u)(1) of the Code) in accordance with Section 414(u) of the Code and applicable regulations, and as described in subsections A and B below.

A. Credited Service Necessary to Become a Vested Member. A Member’s qualified military service counts toward the five (5) years of Credited Service required to become a Vested Member.

B. Credited Service for All Purposes Other Than Vested Member Requirements. For purposes other than described in subsection (A) above, a Member’s qualified military service counts toward Credited Service only to the extent the Member elects to make contributions to the Plan for all or part of the period of qualified military service, as described in Subsection 3-4-5-4.

3-4-5: Contributions.

3-4-5-1: Member Contributions.

Effective January 1, 1976, no Member will be required or permitted to contribute to the Plan. Effective January 1, 1976 through December 30, 2012, no Member is required or permitted to contribute to the Plan.

Effective December 31, 2012 each Member shall contribute to the Plan by means of payroll deduction three percent (3%) of the Member’s Compensation for periods during which the Member earns Credited Service. Although designated as Member contributions, such contributions shall be picked up and paid by the City as provided in Section 414(h)(2) of the Internal Revenue Code and shall be excluded from the Member’s gross income for federal income tax purposes. The Member’s contribution picked up by the City shall be added to the Member’s Accumulated Contributions in the same manner as if paid directly to the Plan by the Member. No Member shall be required or permitted to make contributions to this Plan for a period during which the Member is not receiving Credited Service or is not receiving Compensation (e.g. during Disability).
3-4-5-2: City Contributions.

The City will, from time to time and at least annually, make contributions to the Trust Fund to the extent necessary to finance the benefits provided by the Plan on a sound actuarial basis. The City expects to continue such contributions to the Plan, but assumes no responsibility to do so and reserves the right to suspend or to reduce contributions at any time.

3-4-5-3: Application of Forfeitures.

Any amount forfeited because of the termination of employment of a Member prior to his having acquired a fully vested right to Retirement Benefits, because of the death of any Member, or for any other reason, shall not be applied to increase the benefits which would otherwise be payable to any other Member. The amounts so forfeited shall be applied as soon as possible to reduce the contributions required to be made by the City.

3-4-5-4: Contributions for Periods of Qualified Military Service.

This section applies to a Member who returns to employment with the City from qualified military service during the period within which reemployment rights are guaranteed by law. The Member may elect to contribute to the Plan all or a part of the contributions the Member would have made to the Plan according to Section 3-4-5-1 if the Member had remained continuously employed by the City throughout the period of the Member’s qualified military service. The amount of contributions the Member may make according to this Section shall be determined on the basis of the Member’s Compensation in effect immediately before the qualified military service and the terms of the Plan during the Member’s period of qualified military service.

A Member may make such contributions during a period beginning on the Member’s reemployment with the City and lasting for the shorter of five (5) years or three (3) times the Member’s period of qualified military service. To the extent the Member makes contributions permitted by this Section, the Member will receive Credited Service as described in Subsection 3-4-4-6(B) for the period of qualified military service to which the contributions relate.

3-4-6: Retirement Dates.

3-4-6-1: Normal Retirement.

All permanent, full-time Employees of the City shall become one hundred percent (100%) vested upon attainment of their Normal Retirement Age and may retire at any time thereafter.

The effective date of retirement under the provisions above shall be the first day of the first month following the month in which such Employee either:

A. Actually retires from employment with the City, or

B. Has attained Normal Retirement Age and

   1. Is a part-time Vested Member employee of the City, or

   2. Has ceased to earn Credited Service due to the application of Section 3-4-4-4.

3-4-6-2: Early Retirement.
A. **Regular Early Retirement:** A Member or Vested Member who has attained the age of fifty-five (55) years and has completed at least five (5) years of Credited Service may elect to retire under Regular Early Retirement and have benefit payments commence as of the first day of any calendar month, which shall not be less than thirty (30) nor more than ninety (90) days after the filing of written notification with the Retirement Board.

B. **Special Early Retirement:** A Member shall be eligible for Special Early Retirement as of the first day of any calendar month if his employment terminates after he has attained the age of fifty-five (55) and the sum of his age plus his Credited Service at termination equals eighty-eight (88) or more.

Such a Member may elect Special Early Retirement upon the filing of written notification with the Retirement Board not less than thirty (30) nor more than ninety (90) days prior to the date benefit payments are to commence.

3-4-6-3: **Delayed Retirement.**

Every Member upon reaching his sixty-fifth (65th) birthday shall be fully vested in the benefits earned prior to such date and shall be eligible to retire under the Plan. However, any Member eligible for normal retirement may elect to delay his retirement date as permitted by the City Personnel Policies and Procedures. His delayed retirement date shall be the first day of the month, coincident with or next following the date of his actual retirement. As a condition precedent to continuance in employment beyond the Normal Retirement Date, the Member shall file with the Retirement Board the written designation of a Beneficiary, whether or not the Member elects an optional benefit in accordance with Section 3-4-8 hereof.

3-4-6-4: **Disability Retirement.**

Any Member who is disabled pursuant to Subsection 3-4-2-2(K) hereof shall qualify for Disability retirement as provided herein. Payment of a Disability Retirement Benefit shall commence on the first day of the month next following his Normal Retirement Date. The last payment shall be made as of the first day of the month in which the death of the Retired Member occurs or his Disability ceases, whichever first occurs. If Disability ceases on or after the Members Normal Retirement Date and he does not return to full-time employment with the City, his Disability Retirement Benefit shall be continued in the same manner as if his Disability had continued. Payment of the Disability Retirement Benefit shall be in the normal form described in Section 3-4-7-5 unless the Member elects an optional form pursuant to Section 3-4-8.

If the Retired Member's Disability ceases prior to his Normal Retirement Date and he is not reemployed by the City, and if he had met the requirements for an early or deferred vested Retirement Benefit on the date of his retirement from Disability, he shall be entitled to receive, commencing on the first day of the month next following his Normal Retirement Date, a Retirement Benefit equal to the early or deferred vested Retirement Benefit to which he would have been entitled, as of the date of his disablement. Such Retirement Benefit to be calculated shall consider the Credited Service he could have received during the period of his Disability. If the Member requests the commencement of his early or deferred vested Retirement Benefit as of the first day of the month next following his fifty fifth (55th) birthday, or as of the first day of any subsequent month which precedes his Normal Retirement Date, his Retirement Benefit shall commence at the beginning of the month so requested, but the amount thereof shall be
reduced in accordance with Subsection 3-4-7-2 hereof based on the number of years by which the starting date of the Retirement Benefit payments precede the Member's Normal Retirement Date.

If Disability ceases before a Retired Member attains his Normal Retirement Date and the Member is reemployed by the City, the Retirement Benefit payable upon his subsequent retirement shall be determined in accordance with the provisions of Subsection 3-4-7-1 hereof including Credited Service for the period that he was disabled.

Notwithstanding any other provision of this Section, no Member shall qualify for a Disability Retirement Benefit if the Board determines that his Disability results from an addiction to narcotics or hallucinogenic drugs, an injury suffered while engaged in a felonious or criminal act or enterprise, or service in the Armed Forces of the United States which entitles the Member to a veteran's disability pension.

Disability under the Plan shall be considered total and permanent if it is determined by the Board that the Member is eligible and receiving disability benefits from the long-term disability insurance contract maintained by the City.

Disability shall be considered to have ended if, prior to his Normal Retirement Date, the Member is no longer eligible for benefits from the long-term disability insurance contract maintained by the City.

3-4-6-5: Required Distribution of Retirement Benefits.

Notwithstanding any other provision of this Plan, distribution of benefits under this Plan shall commence not later than April 1 of the calendar year following the later of the calendar year in which the Member attains age seventy and one-half (70½) or the calendar year in which the Member retires. Distributions shall be made in accordance with the requirements of regulations under Code Section 401(a)(9) as applicable to governmental plans, including the minimum incidental death benefit requirements.

3-4-7: Retirement Benefits.

3-4-7-1: Normal or Delayed Retirement.

Upon retirement at or after his Normal Retirement Date, each Retired Member shall receive a monthly Retirement Benefit equal to one and one half percent (1 1/2%) of the Member's Final Average Monthly Compensation multiplied by the total number of years (including fractional years) of the Member’s Credited Service.

3-4-7-2: Early Retirement

A. Regular Early Retirement. A Member or Vested Member, eligible for Regular Early Retirement and retiring prior to his Normal Retirement Date, shall be entitled to a reduced Retirement Benefit which shall be his Accrued Benefit on his Regular Early Retirement date, reduced by one fourth of one percent (.25%) for each month by which the payment commences prior to the first of the month following his Normal Retirement Date.

B. Special Early Retirement. A Member who meets the requirements for Special Early Retirement shall receive a monthly amount computed as for a Normal Retirement Benefit
considering his Credited Service to the date of his actual Retirement, payable without reduction for early commencement.

3-4-7-3: Disability Retirement.

A Member who meets the requirements for a Disability Retirement Benefit as a result of receiving payments from the City's long-term disability insurance contract shall receive a monthly amount commencing on the first day of the month next following his Normal Retirement Date and computed as for a normal retirement under Subsection 3-4-7-1 hereof, considering his Final Average Monthly Compensation at the date of his retirement from Disability and Credited Service for the period he received long-term disability benefits from the City's long-term disability insurance contract.

3-4-7-4: Delayed Retirement.

A Member retiring subsequent to his Normal Retirement Date shall receive the monthly benefit computed under Subsection 3-4-7-1 hereof, considering his/her Final Average Monthly Compensation at the date of his/her actual retirement and the Credited Service he/she accumulated to the date of his/her actual retirement.

3-4-7-5: Normal Form of Payment.

Unless optional benefits have been elected or are prescribed pursuant to Section 3-4-8 hereof, the basic monthly Retirement Benefit, computed as set forth above, shall be a ten (10) year certain and life benefit. Such benefit shall be in equal monthly payments commencing on the first day of the month next following the retirement date, and continuing at monthly intervals for a period of one hundred nineteen (119) additional months and for the Member's lifetime thereafter. The last benefit payment shall be made on the first day of the month of the Member's death, unless payments have been made for fewer than one hundred twenty (120) months, in which event payments shall be continued to the named Beneficiary, ceasing when an aggregate of one hundred twenty (120) monthly payments have been made to the Member and his/her Beneficiary. If the Member was married at the time benefits are to commence, the spousal consent requirements of Subsection 3-4-8-2 hereof must be met before payments under this Section commence.

In the event that no Beneficiary is living at the death of such Member, the Actuarial Equivalent value of the monthly installments for the balance of the term certain will be computed and paid in one sum to the estate of the Member. If at the death of the last surviving Beneficiary following the death of the Member, monthly installments have not yet been paid for the term certain, the Actuarial Equivalent value of the installments for the balance of the term certain will be computed and paid in one sum to the estate of the last surviving Beneficiary.

As provided by Subsection 3-4-16-2 hereof, Retirement Benefits may be suspended for a Member during a period of employment subsequent to his/her actual retirement date during which he/she is rehired and receiving compensation as an employee of the City. Monthly payments shall commence and be determined pursuant to such Subsection 3-4-16-2 hereof.

3-4-7-6: Accrued Credits and Vested Benefits Under the Previous Plan Preserved.
The restatement of the previous plan by this plan shall not operate to exclude, diminish, limit or restrict the payment or continuation of payment of benefits accrued as of December 31, 1998 2012. The amount of such previous plan benefits, if any, in the course of payment by the Trustee under said previous plan, to any person on December 31, 2012, shall be continued by the Trustee under the trust agreement forming a part of this plan, in the same manner, undiminished, preserved, and fully vested under this plan.

The eligibility for, and amount of, any benefit of any kind, payable commencing after December 31, 1986 2012 under this plan to or for any person who was a member of the previous plan and who became a member of this restated plan as of January 1, 1987 December 31, 2012, shall be determined under the provisions of this plan.

3-4-7-7: Increased Benefits for Retired Members and Beneficiaries.

Effective July 1, 1993, all members and beneficiaries whose payments commenced before January 1, 1993, shall receive a five percent (5%) increase in their pension payments subject to future adjustment as determined by the Board.

Effective January 1, 1996, all members and beneficiaries whose payments commenced before July 1, 1995, shall receive a three percent (3%) increase in their pension payments subject to future adjustment as determined by the Board.

Effective January 1, 2000, all members and beneficiaries whose payments commenced before January 1, 1999, shall receive a three percent (3%) increase in their pension payments subject to future adjustment as determined by the Board.

Effective January 1, 2001, all members and beneficiaries whose payments commenced before January 1, 2000, shall receive a three percent (3%) increase in their pension payments subject to future adjustment as determined by the Board.

3-4-7-8: Deferred Retirement Option Plan (DROP).

A. Effective Date. Notwithstanding Subsection 3-4-2-2(L), hereof, the provisions contained in this Subsection 3-4-7-8, hereof shall be effective on October 1, 1999.

B. Title. The program provided in this Subsection 3-4-7-8, hereof, may be referred to as the "DROP."

C. Applicability. The provisions of this Section are applicable with respect to those otherwise eligible members of the Plan whose election to participate in the DROP occurs on or after the effective date contained in this Subsection 3-4-7-8(A), hereof. An "eligible member" is any member who has attained the normal retirement date in accordance with Subsection 3-4-2-2(T), hereof, or the special early retirement date in accordance with Subsection 3-4-6-2B. A "participating DROP member" is any eligible member who has elected to participate in the DROP as provided by this Subsection 3-4-7-8, hereof.

D. Purpose. The purpose of the DROP is to allow an eligible member to elect, in lieu of immediate termination of employment and receipt of retirement benefit or pension, to continue employment for a specified period of time and to have the eligible member's retirement benefit or pension paid into the DROP account until the end of such specified period of the participating DROP member's participation, at which time employment is to
cease. An eligible Member must choose the Retirement Benefit provided in Subsection 3-4-7-1, hereof, or one of the retirement options provided in Section 3-4-8, hereof, at the same time the eligible Member elects to participate in the DROP.

E. Participation. An eligible Member may participate in the DROP only once.

An eligible Member who has reached Normal Retirement Age must elect to participate in the DROP within ninety (90) days after the later of attainment of Normal Retirement Age or the effective date of the DROP.

An eligible Member may elect to participate in the DROP upon filing of written notification with the Retirement Board not less than sixty (60) nor more than ninety (90) days prior to the date of intended participation.

F. Term. The duration of a participating DROP Member’s participation in the DROP shall not exceed a total of three (3) years. As a condition precedent to participation in the DROP, the participating DROP Member shall execute an irrevocable agreement with the City in the form prescribed by the Retirement Board, which shall, among other items, clearly and unequivocally state that the participating DROP Member must retire no later than the date prescribed in the agreement which may not exceed the third anniversary of the participating DROP Member’s participation in the DROP, and the participating DROP Member shall also acknowledge that no disbursement of any DROP funds can occur absent the retirement or death of the participating DROP Member.

G. Interruption of Participation. If the participating DROP Member’s participation in the DROP is interrupted by military service, there shall be no interruption of membership in the DROP. Such a participating DROP Member’s pension shall continue to be paid into the participating DROP Member’s DROP account while in the military service for the balance of the three-year maximum term elected by the DROP Member under Subsection F.

H. Effect on Participation in the Plan. Upon commencement of the eligible Member’s participation in the DROP, a Member’s credited service, final average monthly compensation and accrued benefit shall be frozen. A participating DROP Member shall not share in any subsequent formula improvements. However, a participating DROP Member shall share in any ad hoc increase granted to retired Members.

I. Contribution. Upon commencement of the eligible Member’s participation in the DROP, the Retirement Benefit or Pension provided in Section 3-4-7 and Section 3-4-8 hereof, shall be paid into the participating DROP Member’s DROP account. Effective on and after December 31, 2012, the Member contribution required by Section 3-4-5-1 shall be paid into the participating DROP Member’s DROP account. In no case shall the City contribution, provided for in Subsection 3-4-5-2 hereof, be used to fund the DROP. The limitations on contributions under Code section 415(e) shall apply to Member contributions made to the DROP account. Accordingly, but other amounts transferred or paid to a participating Member’s DROP account shall not constitute annual additions under Code Section 415.

J. Administration of DROP Assets. Participating DROP Members may direct their DROP money to any of the investment options approved by the Board for the DROP. There shall be no guaranteed rate of investment return on DROP deposits. Any losses, charges or expenses incurred by the participating DROP Member in such Member’s DROP account by virtue of the investment options selected by the participating DROP Member, shall not
be made up by the City or the Plan, but all of same shall be borne by the participating DROP Member. Transfers between investment options shall be in accordance with the rules and regulations of the DROP. A DROP account shall be established for each participating DROP Member. Such DROP account shall be adjusted, no less frequently than annually for contributions, distributions and net investment earnings and losses.

K. Regulations. The Retirement Board is authorized to adopt rules and regulations governing the DROP.

L. Fees. If the DROP account shall be subject to any fees or charges of any kind, such fees or charges shall be charged to the participating DROP Member’s account.

M. Form of Payment. For purposes of this Subsection 3-4-7-8 hereof, a "retiree" is a participating DROP Member who terminates employment or reaches the three-year limit for participation in the DROP. A retiree must choose one of the following forms of payment from the individual's DROP account:

1. Deferred Payment. Distribution from a DROP account may be deferred until a date designated by the retiree. When designating the date upon which distributions shall commence, the retiree must also designate the form of payment from one of the available options. Regardless of the date chosen by the retiree, all distributions must commence no later than the year in which the retiree attains the age of 70½;

2. Lump Sum. A one-time distribution of the retiree's entire account balance, including a direct rollover under Subsection 3-4-17-3;

3. Periodic Payments Designating an Amount. Distribution of the retiree's account balance by monthly payments in an amount designated by the retiree, until the entire balance of the account is distributed;

4. Periodic Payments for a Designated Period of Time. Monthly payments to the retiree for a period designated by the retiree. The payment will be calculated such that upon the occurrence of the last monthly payment, the entire balance of the account will be distributed;

5. Initial Minimum Required Distribution. Account balance is distributed as periodic payments that are calculated based on the retiree's life expectancy (and the life expectancy of the retiree's designated beneficiary, if applicable); or

6. Combination of Lump Sum and Periodic Payments. An initial lump sum payment of an amount designated by the retiree, followed by a designation of a number of subsequent monthly payments or an amount payable on a monthly basis.

Distributions shall be made in accordance with the requirements of regulations under Code Section 401(a)(9), including minimum incidental death benefit requirements of those regulations.

If the retiree makes no selection as to form of payment within thirty (30) days of termination of employment or expiration of the three year limit for participation in the DROP, a lump sum payment shall be made.
N. Participating DROP Member's Death; Spousal Beneficiary. If the participating DROP Member dies during the period of the participating DROP Member's participation in the DROP and the participating DROP Member's designated beneficiary is the participating DROP Member’s surviving spouse to whom the participating DROP Member was legally married at the time of the participating DROP Member's death, the participating DROP Member's designated beneficiary shall receive, at the beneficiary's option, a lump sum payment from the deceased participating DROP Member's individual DROP account balance or equal monthly installment payments from the deceased participating DROP Member's individual DROP account over a period not to exceed the spouse's life or life expectancy. If no selection is made by the designated beneficiary within sixty (60) days of death of the participating DROP member, a lump sum payment shall be made.

O. Participating DROP Member's Death; Non-Spousal Beneficiary. A married participating DROP Member may designate someone other than his spouse to be a primary beneficiary, provided spousal consent as prescribed in Subsection 3-4-8-7, hereof, is obtained. If the participating DROP Member dies during the period of the participating DROP Member's participation in the DROP, and the participating DROP Member's designated beneficiary is someone other than the participating DROP Member's surviving spouse to whom the participating DROP Member was legally married at the time of the participating DROP Member's death, the designated beneficiary shall receive a lump sum payment equal to the deceased participating DROP Member's individual DROP account balance.

P. Participating DROP Member's Death; No Designated Beneficiary. If the participating DROP Member dies during the period of the participating DROP Member's participation in the DROP, and the designated beneficiary has not survived the participating DROP Member, the participating DROP Member's estate shall receive a lump sum payment equal to the deceased participating DROP Member's individual DROP account balance.

Q. No Impact of DROP Participation on Other Death and Disability Benefits. DROP participation shall not affect any other death or disability benefit provided to a Member under federal law, state law, city ordinance, or any rights or benefits under any applicable collective bargaining agreement.

R. Retroactivity (Back-DROP). For purposes of this Subsection 3-4-7-8(R), "retroactive participation date" means January 1, 1999, or such later date as would have been on or after an eligible Member's retirement date, but prior to the effective date of the DROP, and which was selected by the eligible Member to commence participation in the DROP.

Notwithstanding Subsection 3-4-7-8(A), hereof an eligible Member who would have qualified for the DROP on his retroactive participation date, had the DROP been in effect on that date, may elect to have his individual DROP account credited with a one-time lump sum payment. Such one-time lump sum payment shall equal the sum of the number of pension payments which would have been payable prior to the effective date of the DROP, had they commenced on the Member's retroactive participation date, credited with interest using the actuarial interest rate assumption provided in Subsection 3-4-2-2(C), hereof.

Such lump sum payment shall be made as soon as administratively feasible after the effective date of the DROP. If a participating DROP Member elects to have the one-time lump sum payment deposited into his DROP account, the three-year period specified in Subsection 3-4-
7-8F, hereof, will begin to run, not on the date of such election, but on the participating DROP member's retroactive participation date.

S. Fiduciary Liability. The DROP is intended to follow Section 404 (c), of the Employee Retirement Income Security Act of 1974 and the applicable Department of Labor Regulations. Fiduciaries of the Plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by a participant.

3-4-8: Optional Forms of Benefits.

3-4-8-1: General.

Subject to such uniform rules and regulations as the Retirement Board may prescribe and the restrictions contained in this Section 3-4-8 hereof, a member may, in lieu of the basic Retirement Benefits provided in Section 3-4-7 hereof, elect one of the following forms of Retirement Benefits which shall be the Actuarial Equivalent of the benefit to which he would otherwise be entitled. In case of a married member whose spouse does not consent as described in Section 3-4-8-2 hereof, payment shall be made according to Section 3-4-8-2. The member must take any election of an optional benefit in writing, and such election must be filed with the Retirement Board at least thirty (30) days prior to the due date of the first payment of Retirement Benefits under the Plan. The election of an option may be changed at any time prior to thirty (30) days preceding the due date of the first payment of Retirement Benefits under the Plan. However, an optional form of payment may not be elected unless the value of the payments expected to be paid to the member exceeds fifty percent (50%) of the value of the total benefits to be paid under such optional form.

3-4-8-2: Qualified Joint and Survivor Benefit Option.

The Qualified Joint and Survivor Benefit option provides an adjusted monthly Retirement Benefit payment during the Retired Member's life; and the spouse (to whom the Member was married when his Retirement Benefit commenced), if surviving at the Member's death, shall receive thereafter for life a monthly Retirement Benefit of fifty percent (50%) of the adjusted monthly amount paid to the Member.

Within a reasonable time before the Member's Retirement Benefit commencement date hereunder, the Retirement Board shall provide to the Member a written explanation of the terms and conditions of the Qualified Joint and Fifty Percent (50%) Survivor Benefit set forth herein and the effect of refusing it. If on or after January 1, 1987, the Employee wishes to elect a form of payment other than the Qualified Joint and Survivor Benefit (described in this Section), such election will not become effective unless his spouse (if he has a spouse who can be located) consents in writing to such election, acknowledges the effect of such election and has such consent and acknowledgment witnessed by a Plan representative or a notary public. A properly completed benefit election form (furnished by the Retirement Board) must be returned to the Retirement Board within ninety (90) days prior to the Member's benefit commencement date. If the Member files another election form after the earlier form and prior to his benefit commencement date, the earlier form shall be annulled.

3-4-8-3: One Hundred Percent Joint and Survivor Benefit Option.

The one hundred percent (100%) Joint and Survivor Benefit option provides adjusted monthly Retirement Benefit payments during the Retired Member's life, and upon his death after
retirement, continue payments in the same amount to a designated Beneficiary during the life of such Beneficiary.

3-4-8-4: Fifty Percent Joint and Survivor Benefit Option.

The fifty percent (50%) Joint and Survivor Benefit option provides reduced monthly Retirement Benefit payments during the Retired Member's life, and, upon his death after retirement, continues payment in an amount equal to one-half (1/2) of the amount of such reduced payments to a designated Beneficiary during the life of such Beneficiary. Payment shall be continued to the designated Beneficiary for life.

3-4-8-5: Five-Year Certain and Life Benefit Option.

The five (5) Year Certain and Life Benefit option provides adjusted monthly Retirement Benefit payments during the Retired Member's life, and upon his death after retirement within the sixty (60) month period, payments shall be continued to the designated Beneficiary for the balance of the sixty (60) month period.

3-4-8-6: Lifetime Benefit Option.

The Lifetime Benefit option provides increased monthly Retirement Benefit payments during the Retired Member's life with no continuations of payment after his death.

3-4-8-7: Beneficiary.

The Member or Vested Member must designate his Beneficiary in writing. If on or after January 1, 1987, a married Member or Vested Member wishes to designate someone other than his spouse to be a primary Beneficiary (or wishes to continue, after January 1, 1987, such a designation made prior to January 1, 1987), such designation will not become (or continue to be) effective unless his spouse (if his spouse can be located) consents in writing to such designation (or form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the Member or Vested Member without any requirement of further consent by the spouse), acknowledges the effect of such designation and has such consent and acknowledgment witnessed by a Plan representative or a notary public. Such designation shall be made in writing upon a form provided by the Retirement Board and shall be filed with the Retirement Board. The last such designation filed with the Retirement Board shall control. The Member or Vested Member may designate a different Beneficiary for DROP benefits. Retirement Benefits and for death benefits described in Sections 3-4-6-5 and 3-4-9.

3-4-8-8: Minimum Monthly Payments.

If the monthly benefit to which any Member, Vested Member or Beneficiary shall become entitled under the Plan shall be less than one hundred dollars ($100.00), the Retirement Board shall have the right to direct that the Actuarial Equivalent of such benefit shall be paid in a lump sum, or in installments at such intervals as will result in each payment amounting to at least one hundred dollars ($100.00).

3-4-9: Death Benefits.

3-4-9-1: Death of an Active Member with Five (5) or More Years of Credited Service.
If an active Member dies after completing five (5) or more years of credited service, the surviving spouse shall receive fifty percent (50%) of the Member's accrued benefit for one hundred twenty (120) months certain and life thereafter. However, if the spouse is more than five (5) years younger than the Member, the monthly benefits will be reduced by one and one-half percent (1.5%) for each year that their difference in age exceeds five (5) years. If the Member is not survived by a spouse or if the spouse consents to a designated beneficiary other than the spouse according to Section 3-4-8-7, the designated beneficiary shall receive fifty percent (50%) of the Member's monthly accrued benefit for one hundred twenty (120) months certain. If the Member is not survived by a spouse or designated beneficiary, the one hundred twenty (120) monthly payments shall be computed and paid in a single sum to the Member's estate. The payment to the surviving spouse or designated beneficiary will commence on the first day of the month following the date of the Member's death, or if later, the date the Member would have attained age fifty-five (55). If a Member's death occurs prior to his fifty-fifth (55th) birthday, the Retirement Board may elect, with the consent of the Member's spouse, designated beneficiary or estate to pay the spouse, beneficiary or estate a single sum payment at the time of the Member's death, equal to the actuarial equivalent of the payment due when the Member would have attained age fifty-five (55).

3-4-9-2: Death of a Vested or Disabled Member or Member with a Disability Prior to Commencement of Payments.

In the event a Vested Member or a disabled Member with a disability dies prior to the commencement of payments from the Plan, the surviving spouse shall receive fifty percent (50%) of the Member's accrued benefit for one hundred twenty (120) months certain and life thereafter. However, if the spouse is more than five (5) years younger than the Member, the monthly benefit will be reduced by one and one-half percent (1.5%) for each year that their difference in age exceeds five (5) years. If the Member is not survived by a spouse or if the spouse consents to a designated beneficiary other than the spouse according to Section 3-4-8-7, the designated beneficiary shall receive fifty percent (50%) of the Member's monthly accrued benefit for one hundred twenty (120) months certain. If the Member is not survived by a spouse or designated beneficiary, the one hundred twenty (120) monthly payments shall be computed and paid in a single sum to the Member's estate. The payment to the surviving spouse or designated beneficiary will commence on the first day of the month following the date of the Member's death, or if later, the date the Member would have attained age fifty-five (55). If a Member's death occurs prior to his fifty-fifth (55th) birthday, the Retirement Board may elect, with the consent of the Member's spouse, designated beneficiary or estate to pay the spouse, beneficiary or estate a single sum payment at the time of the Member's death, equal to the actuarial equivalent of the payment due when the Member would have attained age fifty-five (55).

3-4-9-3: Death of an Active Member Between Normal and Delayed Retirement Dates.

In the event a Member continues in City employment after his normal retirement date and dies before actually retiring, then he shall be deemed to have retired on the first day of the calendar month in which he dies. If an optional form of payment has been elected, the death benefit, if any, shall be determined by the option elected. If no optional form of payment has been elected, the Member's monthly accrued benefit shall be paid to his surviving spouse for one hundred twenty (120) months certain. If the Member is not survived by a spouse or if the spouse consents to a designated beneficiary other than the spouse according to Section 3-4-8-7, the designated beneficiary shall receive one hundred percent (100%) of the Member's monthly benefit.
Accrued Benefit for one hundred twenty (120) months certain. If the Member is not survived by a spouse or designated Beneficiary, the one hundred twenty (120) monthly payments shall be computed and paid in a single sum to the Member's estate. Death benefit payments shall commence on the first day of the month following the Member's death.

3-4-9-4: Death of a Retired Member or Beneficiary.

In the event a Retired Member or Beneficiary dies while receiving Retirement Benefit payments, the death benefit, if any, will be determined by the form of Retirement Benefit being paid. In the event that no designated Beneficiary is living at the death of such Retired Member and term certain payments are due, the Actuarial Equivalent value of the monthly installments for the balance of the term certain will be computed and paid in one sum to the estate of the Retired Member. If at the death of the last surviving Beneficiary following the death of the Retired Member, monthly installments have not yet been paid for the full period of the term certain, the Actuarial Equivalent value of the installments for the balance of the term certain will be computed and paid in one sum to the estate of the last surviving Beneficiary.

3-4-9-5: Minimum Plan Benefits.

The total amount of Plan benefits paid to the Member, the Member's surviving spouse, the Member's alternate payee and the Member's Beneficiaries shall at a minimum equal the Member's Accumulated Contributions. If not previously paid, this minimum shall be paid to the Member's Beneficiary in a lump sum as soon as administratively feasible following the death of the last recipient of any other Plan benefit payments. If no designated Beneficiary survives the death of the Member, any Plan payments owed to the Member's Beneficiary under this Section 3-4-9-5 shall be made to the Member's surviving spouse or, if none, to the Member's estate.

3-4-9-6: Survivor Benefits for Deaths During Military Service.

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

3-4-9-57: Supplemental Death Benefit for Members Hired Prior to January 1, 1976.

In addition to the death benefit provided in Subsections 1, 2 and 3, of this Section 9, a lump sum supplemental benefit shall be payable to the spouse or, if the spouse consents according to Section 3-4-8-7, to the designated Beneficiary of any active Member, Vested Member or disabled Member who dies prior to the commencement of Retirement Benefit payments from the Plan. The supplemental death benefit shall be equal to the amount of Accumulated Contributions of his date of death plus two percent (2%) of the Compensation received by him subsequent to December 31, 1975 and prior to January 1, 1983. If such Member is not survived by a designated Beneficiary, the lump sum payment shall be made to his estate.

3-4-9-68: Uniform Simultaneous Death Act.
The provisions of any State law providing for the distribution of estates under the Uniform Simultaneous Death Act, when applicable, shall govern the distribution of death benefits payable under this Plan.

3-4-10: Severance Benefits.

3-4-10-1: Coverage.

Benefits shall be paid to a Member under this Section 3-4-10 hereof if his employment terminates for reasons other than retirement, Disability or death.

3-4-10-2: Less than Five Years of Credited Service.

If a Member’s employment with the City ends before the Member’s Normal Retirement Date and before the Member completes the five (5) years of Credited Service needed to become a Vested Member, the Plan shall pay the Member’s Accumulated Contributions to the Member or, in the event of the Member’s death, to the Member’s Beneficiary, plus two percent (2%) of the Compensation received by the Member subsequent to December 31, 1975 and prior to January 1, 1983. Such payment shall be in lieu of any other Plan benefits and shall be in a lump sum payment. Payment shall be made as soon as administratively feasible following the Member’s termination of employment and satisfaction of the notice requirements of Section 402(f) of the Internal Revenue Code, provided that if the Member’s Accumulated Contributions exceed $1000, the Member must consent to payment made before the Member’s Normal Retirement Age or death. The Member’s Accumulated Contributions paid according to this Section 3-4-10-2 shall include interest only to the date the Member’s employment with the City ends and shall not include interest after that date.

Should a Member’s employment with the City terminate for reasons other than retirement, Disability or death prior to his Normal Retirement Date and prior to his completion of five (5) years of Credited Service, the only benefit to which he shall be entitled under this Plan shall be:

A. The amount of his Accumulated Contributions, if any, plus

B. Two percent (2%) of the Compensation received by the Member subsequent to December 31, 1975 and prior to January 1, 1983.

3-4-10-3: Five or More Years of Credited Service.

Should a Member’s shall be a Vested Member if the Member’s employment with the City terminates:

A. For reasons other than retirement that satisfies the requirements of Section 3-4-6-1, 3-4-6-2 or 3-4-6-3, and for reasons other than Disability or death, and

B. Prior to his Normal Retirement Date, and

C. With five (5) or more years of Credited Service, he may elect either:

A. To leave his Accumulated Contributions on deposit in the Retirement Fund and become a Vested Member, or
B. To receive, in lieu of all other benefits, a refund of his Accumulated Contributions, plus two percent (2%) of the Compensation received by him subsequent to December 31, 1975 and prior to January 1, 1983.

If such a Member fails to elect either of the above within ninety (90) days after his date of termination from the Plan, then he shall be deemed to have elected to leave his Accumulated Contributions on deposit and become a Vested Member. A Vested Member shall be entitled to a deferred Retirement Benefit which shall be one hundred percent (100%) of his Accrued Benefit on the date of his termination of membership in the Plan. Such deferred Retirement Benefit shall commence on the first day of the next month following the Vested Member's Normal Retirement Date.

In lieu of receiving the deferred Retirement Benefit upon his Normal Retirement Date, the Vested Member may elect to receive a reduced Retirement Benefit beginning upon the first of any month subsequent to his attainment of age fifty-five (55). The reduction shall be one-fourth of one percent (.25%) for each month (three percent (3%) per year) by which payments commence prior to the first of the month following his Normal Retirement Date.

A Vested Member who made contributions to the Plan before January 1, 1976 may elect at any time prior to his Normal Retirement Date to receive, in lieu of all other benefits under the Plan and provided benefit payments have not yet commenced, a refund of his Accumulated Contributions, if any, attributable to Member contributions made to the Plan before January 1, 1976 and valued as of the date of the refund plus two percent (2%) of his Compensation received subsequent to December 31, 1975 and prior to January 1, 1983. A Vested Member who did not make contributions to the Plan before January 1, 1976 may not elect to receive a refund of his Accumulated Contributions.

3-4-11: Administration of the Plan.

3-4-11-1: Retirement Board.

There is hereby created a board to be known as the NonEmergency Employees Retirement Board of the City of Englewood ("Retirement Board") which shall be composed of seven (7) members. One (1) member shall be an elected member of the City Council who shall be selected by a majority of the members of City Council. One (1) member shall be the Director of Financial Services appointed by the City Manager. Two (2) members shall be employees of the City who are Members of the Plan, who shall be selected by a vote of all such Members in accordance with such procedures as the City Manager may adopt, from time to time. Three (3) members shall be taxpayers electors of the City who shall be selected by a majority of the members of the City Council. In addition, the City Manager, or his designee, shall serve in an advisory capacity, as an ex officio, nonvoting member.

Members of the Retirement Board shall be appointed for four (4) year terms, provided the said member continues to possess the qualifications provided herein during the member's term and, further provided that:

A. The Council member shall serve during his term of office as a Council member; and

B. The Director of Financial Services City Treasurer shall serve during his tenure in office as such Director City Treasurer.
Should a vacancy occur in the membership of the Retirement Board, the same shall be filled for the duration of the unexpired term only, in the same manner as provided herein. Prior to entering upon the performance of the duties of a member of the Retirement Board, each member thereof shall take and subscribe an oath that he accepts the obligations imposed upon him by the provisions of this Plan and that he shall faithfully perform the duties of such office.

Five (5) members of the Retirement Board shall constitute a quorum. All actions taken by the Board shall be approved by a majority vote of a quorum of the Retirement Board members. All actions, decisions and determinations of the Board shall be recorded in the minutes of the Retirement Board and, unless inconsistent with the provisions of the Plan, shall be binding and conclusive upon all interested parties.

No member of the Board shall receive compensation for his service on the Board but a member may be reimbursed for reasonable expenses incurred in connection with his duties as a member of the Board.

3-4-11-2: Management of the Plan.

In addition to the powers and obligations imposed upon the Board as Trustee pursuant to Subsection 3-4-12-1 hereof, the Retirement Board shall have all powers necessary to effect the management and administration of the Plan in accordance with its terms, including, but not limited to, the following:

A. To establish rules and regulations for the administration of the Plan, for managing and discharging the duties of the Board, for the Board's own government and procedure in so doing, and for the preservation and the protection of the Fund.

B. To interpret the provisions of the Plan and to determine any and all questions arising under the Plan or in connection with the administration thereof. A record of such action and all other matters properly coming before the Board shall be kept and preserved.

C. To determine all matters affecting the eligibility of any Employee to be or become a Member of the Plan.

D. To determine the amount of the Member's contributions to be withheld by the City in accordance with the Plan and to maintain such records of Accumulated Contributions as are necessary under said Plan.

E. To determine the Credited Service of any Member and to compute the amount of Retirement Benefit, or other sum, payable under the Plan to any person.

F. To authorize and direct all disbursements of Retirement Benefits and other sums under the Plan.

G. To employ such counsel and agents and to obtain such clerical, medical, legal and actuarial services as it may deem necessary or appropriate in carrying out the provisions of the Plan.

H. With the advice of its actuary to adopt, from time to time for purposes of the Plan, such mortality and other tables as it may deem necessary or appropriate for the operation of the Plan.
I. To make or arrange for valuations and appraisals of Fund assets held under the Plan, and, with the advice of the actuary, to determine the liabilities of the Plan.

J. To hold assets of the Plan in a special account entitled "Retirement Plan Fund," and invest and reinvest the same and to make such withdrawals therefrom as are authorized by the Plan for the payment of Retirement Benefits and the expenses of the Board and the members thereof.

K. To create reserves from such assets for any purpose.

L. To maintain such records and accounts and to render such financial statements and reports as may be required by the City Council.

M. To authorize one or more members of the Retirement Board to sign all legal documents and reports on behalf of the Retirement Board.

N. To perform such other duties as may be required of a Plan Administrator under the applicable laws and regulations.

3-4-11-3: Miscellaneous.

All proper expense incurred by the Retirement Board in the administration of the Plan, if not paid by the City, shall be paid from the Fund when authorized by the Retirement Board.

The Retirement Board shall have no power to add to, subtract from or modify any of the terms of the Plan, nor to change or add to any benefits provided by the Plan, nor to waive or fail to apply any requirements of eligibility for Retirement Benefits under the Plan.

A member of the Retirement Board shall not vote on any matter relating solely to himself or to his rights or benefits under the Plan. If a Board member is so disqualified to act and the remaining members cannot agree, the City Council shall appoint a temporary substitute member to exercise all the powers of the disqualified member concerning the matter in which he is disqualified.

The decision of the Retirement Board and any action taken by it in respect to the management of the Plan shall be conclusive and binding upon any and all employees, officers, former employees and officers, Members, Retired Members, Vested Members, their Beneficiaries, heirs, distributees, executors, administrators and assigns and upon all other persons whomsoever, but the Board at all times shall act in a uniform and nondiscriminatory manner. Neither the establishment of this Plan nor any modifications thereof or any action taken thereunder or any omission to act, by the Board, the City Council or any of their members shall be construed as giving to any Member or other person any legal or equitable right against the City or any officer or employee thereof or against the Retirement Board, the City Council, or any of their members.

3-4-12: Retirement Plan Trust Fund.

3-4-12-1: Appointment of Trustee.
The Retirement Board of the City, and its members, are hereby appointed and constituted Trustee of the Retirement Plan Fund and shall hold, manage and control the same in accordance with the provisions herein contained.

3-4-12-2: The Trust Fund.

All City and Employee contributions and all investments thereof, together with all accumulations, accruals, earnings and income with respect thereto, shall be held by the Trustee in trust hereunder as the Trust Fund for use in providing the benefits under the Plan. No part of the said corpus or income shall be used for or diverted to purposes other than the exclusive benefit of the Members, Retired Members, Vested Members, their Beneficiaries or estates under the Plan, prior to the satisfaction of all liabilities hereunder with respect to them, except such funds which, upon termination of the Plan, are in excess of the amount required to fully fund the Plan and are due solely to erroneous actuarial assumptions. No person shall have any interest in or right to any part of the assets of the Fund except as and to the extent expressly provided in the Plan.

3-4-12-3: Purposes and Authority of the Trustee.

It is the purpose and intent of the City in constituting and appointing the Retirement Board as Trustee of the Trust Fund to give the Retirement Board full power to establish such investment or purchasing programs as the Retirement Board may deem necessary or appropriate to provide assurance that there shall be an adequate source for the payment of all benefits provided herein. The Trustee, however, shall not be responsible for the collection of any City or Employee contributions. In serving as Trustee, the Retirement Board may determine to:

A. Use the Trust Fund for the purchase of one or more group annuity, or other, insurance policies from one or more Insurance Companies authorized to do business within the State of Colorado, whereby said Insurance Company agrees to pay all or a portion of the benefits herein provided for;

B. Contract with a commercial bank, chartered under either the statutes of the State of Colorado or the United States of America and doing business within this State, with a trust company organized pursuant to the statutes of the State of Colorado and doing business within this State, or with a member of the New York Stock exchange or the American Stock Exchange, doing business within this State, to have any of such parties invest funds on behalf of the Trustee;

C. Directly invest the assets of the Trust Fund;

D. Establish an investment program, partly funded by insurance and partly funded by investments;

E. Retain on a discretionary basis an investment advisor licensed as such under the United States Investment Advisor's Act of 1940, which investment advisor is also an investment counsel as defined in said Act.

3-4-12-4: Investments.

In serving as Trustee, the Retirement Board shall be authorized and empowered, in its sole discretion, to invest and reinvest the Trust Fund as follows:
A. Assets of the **Retirement Fund** (other than assets of the **DROP** accounts) shall be invested in accordance with Colorado Revised Statutes Section 15-1.1-102, under the Uniform Prudent Investor Act.

B. Assets of the **DROP** accounts shall be invested in accordance with Colorado Revised Statutes Section 24-54-112(3)(c).

### 3-4-12-5: Trustee's Powers.

Subject to the provisions of Subsections 3-4-12-3 and 3-4-12-4, hereof, in its investment and administration of the Trust Fund, the Trustee is authorized and empowered with respect to any securities or other property held in the Trust Fund:

A. To sell, exchange, convey, transfer, lease for any period, pledge, mortgage, grant options, contract with respect to or otherwise encumber or dispose thereof, at public or private sale, for cash or upon credit or partly for both, and no person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency or propriety of any such sale or other disposition.

B. To sue, defend, compromise, arbitrate, compound and settle any debt, obligation or claim due it as Trustee or any other suit or legal proceeding involving the Trust, and to reduce the rate of interest on, to extend or otherwise modify, or to foreclose upon default or otherwise enforce any such debt, obligation or claim.

C. To give general or specific proxies or powers of attorney with or without power of substitution.

D. To vote in person or by proxy on any stocks, bonds or other securities for the conversion thereof into other stocks, bonds or securities, or to deposit them in any voting trust or with any protective or like committee or with a trustee or depositories designated thereby, or to exercise any rights to subscribe for additional stocks, bonds or other securities and to make any and all necessary payments therefor, and to join and participate in or to dissent from and oppose any reorganization, recapitalization, consolidation, liquidation, sale or merger of corporations or properties in which it may be interested as Trustee, upon such terms and conditions as it may deem wise.

E. To register any securities or other property in its own name or in the name of its nominee, with or without the addition of words indicating that such securities are held in a fiduciary capacity, or to hold any securities in bearer form, but the books and records of the Trustee shall at all times show that such investments are part of the Trust Fund.

F. To retain, manage, operate, repair, improve, partition, dedicate or otherwise deal with any real estate held by it.

G. To retain uninvested such cash as it may deem necessary, without obligation to pay interest thereon.

H. In general, to exercise all powers in the management of the Trust Fund which any individual could exercise in the management of property owned in his own right.
Necessary parties to any accounting, litigation, or other proceedings shall include only the Trustee and the City Council, and the settlement or judgment in any such case in which the City is duly served or cited shall be binding upon all Members, Retired Members, Vested Members, or Beneficiaries under the Plan, and upon all persons claiming by, through or under them.

3-4-12-6: Administration of the Trust Fund.

The Trustee shall pay or distribute all Plan benefits from the Trust Fund in such form, in such amounts, at such times and to such payees as may be authorized by the Retirement Board.

The Trustee may employ suitable agents and counsel. The expenses incurred by the Trustee in the performance of its duties hereunder and all proper charges and disbursements of the Trustee, including all taxes lawfully assessed upon or in respect of the Trust Fund or its income, shall be charged and paid by the Trustee from the Fund. No member of the Retirement Board, as Trustee, shall receive compensation for his services as such but shall be entitled to be reimbursed for any expenses incurred by him on behalf of the Trust Fund to the extent that such expenses are not paid by the City.

The Trustee shall keep detailed, accurate accounts of all investments, receipts and disbursements and other transactions hereunder. All accounts, books and records relating thereto shall be open to inspection by any person designated by the City at all reasonable times. The Trustee shall maintain such records, make such computations and perform such ministerial acts as the City from time to time may request. On or before August 1 and February 1 of each year, the Trustee shall file a report with the City in such form as the City may request. This report shall show all purchases, sales, receipts, disbursements and other transactions effected by the Trustee during the six (6) month period for which the report is filed. It shall contain an exact description, the cost value as shown on the Trustee's books and the market value as of the end of such period of every item then held in the Trust Fund. The Trustee shall be forever relieved from all liability to the City, the Fund, and any Member or Beneficiary with respect to the propriety of any of its acts or transactions shown in such report unless within ninety (90) days after the receipt of such report, the City gives the Trustee written notice of its objection or objections to any matter set forth therein.

The Trustee shall not be liable, either as a body or individually, for the making, retention, or sale of any investment or reinvestment made by it or originally received by it as herein provided nor for any expense or liability, hereunder, nor for any loss to or diminution of the Trust Fund unless due to or arising from its own gross negligence, misconduct, dishonesty or lack of good faith. The Trustee may consult with counsel and shall be fully protected in acting upon the advice of counsel. Unless otherwise advised, the Trustee may assume that the Plan at all times qualifies under Internal Revenue Code Section 401(a) and that the Trust hereby established is at all times tax-exempt under Internal Revenue Code Section 501(a), as amended, or a successor provisions. The Trustee shall have no responsibility for the accuracy of any information furnished it by the City.

3-4-12-7: Removal of Trustee.

Nothing herein shall be construed to prohibit the City Council from removing the Retirement Board as Trustee of the Retirement Fund by appropriate amendment to this agreement. Upon
removal of the Trustee, the City Council shall appoint a successor Trustee or Funding Agent. Upon delivery by the removed Trustee to its successor of all property of the Fund, less such reasonable amount as it shall deem necessary to provide for its expenses, and any taxes or advances chargeable or payable out of the Fund, the successor Trustee or Funding Agent shall thereupon have the powers and duties as are conferred upon it by the Trust Agreement or group annuity contract. No successor Trustee or Funding Agent shall have any obligation or liability with respect to the acts or omission of its predecessors.

3-4-13: Retirement Benefits and Rights Inalienable.

3-4-13-1: Inalienability.

Members, Retired Members, Vested Members and their Beneficiaries under the Plan are hereby restrained from selling, transferring, anticipating, assigning, hypothecating, or otherwise disposing of their Retirement Benefit, prospective Retirement Benefit, or any other rights or interest under the Plan, and any attempt to anticipate, assign, pledge, or otherwise dispose of the same shall be void. Said Retirement Benefit, prospective Retirement Benefit and rights and interests of said Members, Retired Members, Vested Members or Beneficiaries shall not at any time be subject to the claims of creditors or others for liabilities or torts of said Members, Retired Members, Vested Members or Beneficiaries, nor be liable to attachment, execution, or other legal process. Notwithstanding the foregoing, the Retirement Board may approve payment.

A. Assignments for: Child Support purposes provided for in Colorado Revised Statutes Sections 14-10-118(1) and 14-14-107, as they existed prior to July 1, 1996;

B. Income assignments for Child Support provided for in Colorado Revised Statutes Section 14-14-111.5;

C. Writs of garnishment that are the result of a judgment taken for arrearages for Child Support or for Child Support debt; and

D. Payments made in compliance with a properly executed and certified court order approving a written agreement dividing Retirement Benefits between a member and an alternate payee ("dro"), entered into pursuant to Colorado Revised Statutes 14-10-113 (6).

3-4-13-2: Bankruptcy.

If any Member, Retired Member, Vested Member or Beneficiary shall become bankrupt or attempt to anticipate, assign or pledge any benefits under the Plan, then such benefits shall, in the discretion of the Retirement Board, cease, and in that event the Retirement Board shall have authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such Member, his spouse, his children, or other dependents, or any of them, in such manner and in such proportions as the Retirement Board may deem proper.

3-4-14: Modification or Termination of Plan.

3-4-14-1: Expectation.

It is the expectation of the City that it will continue this Plan and the payment of its contributions hereunder indefinitely, but continuance of the Plan is not assumed as a contractual obligation of the City.
3-4-14-2: Amendment.

The City reserves the right to alter, amend, or terminate the Plan or any part thereof in such manner as it may determine, and such alteration, amendment or termination shall take effect upon notice thereof from the City to the Retirement Board; provided that no such alteration or amendment shall provide that the Retirement Benefit payable to any Retired Member shall be less than that provided by his Accumulated Contributions or affect the right of any Member to receive a refund of his Accumulated Contributions and shall not directly or indirectly reduce any Member's Accrued Pension Benefits. And provided further, that no alteration or termination of the Plan or any part thereof shall permit any part of the Fund to revert to or be recoverable by the City or be used for or diverted to purposes other than the exclusive benefit of Members, Retired Members, Vested Members or Beneficiaries under the Plan, except such funds, if any, as may remain at termination of the Plan after satisfaction of all liabilities with respect to Members, Retired Members, Vested Members and Beneficiaries under the Plan and are due solely to erroneous actuarial assumptions. Further, no amendment shall cause the elimination of an optional form of benefit nor the elimination or reduction of an early Retirement Benefit that continues after retirement.

3-4-14-3: Approval Under the Internal Revenue Code.

The Plan is intended to comply with the requirements of the applicable provisions of Internal Revenue Code Section 401(a), as now in effect or hereafter amended, and any modification or amendment of the Plan may be made retroactive, as necessary or appropriate, to establish and maintain such compliance.

3-4-14-4: Discontinuance.

The City reserves the right at any time and for any reason satisfactory to it to discontinue permanently all contributions under this Plan. Such discontinuance shall be deemed to be a complete termination of the Plan.

3-4-14-5: Termination.

In the event of a partial or complete termination of the Plan, the Accrued Benefits up to the date of termination by the affected Employees and their Beneficiaries shall be nonforfeitable and all affected funds shall be allocated to affected Members, Retired Members, Vested Members and Beneficiaries on the following priority basis of:

A. An amount equal to the Accumulated Contributions, or balance thereof, which would be payable to the Members, Retired Members, Vested Members or Beneficiaries should death occur on the date of the termination of the Plan.

B. An amount of the remaining assets equal to a pro rata portion determined on the basis of the ratio that the actuarial reserve for his Accrued Benefit minus the amount in A. above credited to him bears to the total of such actuarial reserves minus the aggregate of amounts allocated under A. above.

3-4-14-6: Distribution.
When the assets of the Trust Fund have been allocated as indicated above, the distribution may be made in the form of cash or nontransferable annuity contracts as determined by the Retirement Board, provided that any affected funds remaining after the satisfaction of all liabilities to affected Members, Retired Members, Vested Members and Beneficiaries under the Plan may be withdrawn by the Retirement Board from the Fund and refunded to the City.

3-4-15: Reserved.

3-4-16: Limitations.

3-4-16-1: Reemployment of Former Nonvested Members.

If a Member's employment terminates prior to his becoming a Vested Member and the Member is subsequently reemployed as an Employee, such Member shall not be entitled to receive credit for his previous Credited Service under the Plan, except as provided in Subsection 3-4-4-3 hereof.

3-4-16-2: Reemployment of Former Members.

If a former Member is reemployed as an Employee of the City on or after January 1, 2012, no Retirement Benefit payments shall be made during the period of such reemployment unless:

A. The Employee attained age 62 before commencing benefits from this Plan, or

B. At the time the Employee originally ceased to provide services to the City, the City and the Employee reasonably anticipated that the Employee would not provide services to the City in the future; and the former Member is reemployed as an Employee of the City no sooner than one hundred twenty (120) days after the date the former Member's employment with the City terminated.

Upon the subsequent vested termination of employment by such a Member, the Member shall be entitled to receive a Retirement Benefit based on i) his Credited Service prior to the date of his previous termination (except Credited Service lost after a five (5) year break under Subsection 3-4-4-3 hereof, ii) his Credited Service during the period of his reemployment (if any), and iii) in the case of a disabled Member, his Credited Service while disabled. In the case of reemployment, of a former Member who received, prior to his reemployment, any benefit payments (whether single sum or periodic) with respect to which Credited Service is restored hereunder, the Retirement Benefit payable upon his subsequent retirement shall be reduced by the Actuarial Equivalent of such payments, other than Disability Retirement Benefit payments, he received prior to his Normal Retirement Date previously, unless such payment was a single lump sum that was repaid under Subsection 3-4-4-3 hereof.

3-4-16-3: Annual Benefit and Contribution Limits.

The Plan incorporates by reference the requirements of Code Section 415 and final regulations interpreting Code Section 415, as applicable to this governmental retirement plan. The cost-of-living increase of Code Section 415(d) shall continue to apply to increase the dollar benefit limit of Code Section 415(b) after the Member's severance from employment. The limitation on contributions of Code Section 415(c) shall apply to Member contributions that are made to the DROP account, as described in Article V, Section 9.d 3-4-7-8(f). The limitation year is the calendar year.
3-4-16-4: Consolidation or Merger.

The Plan shall not be consolidated or merged with, nor shall any assets or liabilities be transferred to any other Plan, unless the benefits payable to each Member if the Plan were terminated immediately after such action would be equal to or greater than the benefits to which such Member would have been entitled if this Plan had been terminated immediately before such action.

3-4-17: Miscellaneous Provisions.

3-4-17-1: Rights of Members.

Each Member shall be advised of the general provisions of the Plan and upon written request addressed to the Retirement Board shall be furnished with any information requested regarding his status, rights and privileges under the Plan. Neither the establishment of the Plan, the granting of a Retirement Benefit, nor any action of the City or the Retirement Board shall be held or construed to confer upon any person any right to continue employment, nor, upon dismissal, any right or interest in the Trust Fund other than as herein provided.

3-4-17-2: Limitation of Liability.

No Member shall have any right to Retirement Benefits under the Plan, except such rights, if any, as may accrue to him upon his retirement from the service of the City under the provisions of the Plan while it is in effect. All such benefits are payable solely out of the Trust Fund and in no event shall the City, the Trustee, or the Retirement Board be liable therefor. Neither the establishment of this Plan, nor any amendment or modification thereof, nor failure of the City to provide sufficient contributions to the same shall be construed as giving to any Member, or other person, any legal or equitable right against the City, or any officer or director thereof, or against the Retirement Board, or any member thereof.

3-4-17-3: Direct Rollovers.

A. General. This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution which exceeds $200.00 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. If a distributee's direct rollover distribution is less than $500.00, the distributee may only elect to direct rollover 100 percent of the eligible rollover distribution.

B. Definitions:

1. Eligible Rollover Distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross
income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). For distributions made after December 31, 2007, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or in a direct trustee-to-trustee transfer to a qualified trust described in Section 401(a) of the Code which is exempt from tax under Section 501(a) of the Code or to an annuity contract described in Section 403(b) of the Code, provided such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon) including separate accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

2. **Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), and annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. Effective January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p). Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Code Section 408A(b), subject to any applicable limits described in Code Section 408A(c).

3. **Distributee.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

4. **Direct Rollover.** A direct rollover is a payment by the plan to one eligible retirement plan specified by the distributee.

5. **Waiver of 30-Day Notice for Cashouts of $5,000.00 ($3,500.00 Prior to January 1, 1998) or Less.** If an eligible rollover distribution is one to which Code Sections 401(a)911 and 417 do not apply, such distribution may commence less than thirty (30) days after the notice required under treasury regulation Code Section 1.411(a)-11(c), 402(f) is given, provided that:

a. The Board clearly informs the Member that the Member has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a direct rollover distribution (and, if applicable, a particular distribution option), and
b. The Member, after receiving the notice, affirmatively elects a distribution.

C. Distribution to IRA of Non-Spouse Beneficiary. A Member's non-spouse Beneficiary may elect to have any portion of an eligible Plan distribution paid in a direct trustee-to-trustee transfer to an individual retirement account or annuity described in Section 401(c)(8)(B)(i) or (ii) of the Code that is established to receive the Plan distribution on behalf of the Beneficiary. For purposes of this Subsection C, a trust maintained for the benefit of one (1) or more designated beneficiaries may be the Beneficiary to the extent provided in rules prescribed by the Secretary of Treasury. If the Member dies after the Member's required beginning date as defined in Section 3-4-6-5 hereof, the required minimum distribution in the year of death may not be transferred according to this Subsection 3-4-17-3C. The requirements of Code Section 402(c)(11) apply to distributions under this Subsection 3-4-17-3C.

3-4-18: Money Purchase Plan Choice and Transfer of Funds.

3-4-18-1: Conversion Option for Members Described in Section 3-4-3-2E.

Each active employee who is a Member including any employee currently receiving benefits under the City’s long-term disability contract, and each vested Member shall have the option of converting from membership in this Plan to membership in the money purchase plan. The application to convert must be made in writing, on or before July 15, 2001. Furthermore, the Member must complete the waiver and release documents as specified in Section 3-4-18-2.

3-4-18-2: Waiver and Release Requirement.

Each eligible Member under Section 3-4-3-2B or 3-4-18-1, who wishes to exercise the option of converting membership to the money purchase plan must sign a waiver and release within the timeframes specified by the Board and in a form acceptable to the Board, waiving all rights to a defined benefit pension from this Plan and releasing the City and Board from any liability to the Member and/or his or her Beneficiaries for such a defined benefit pension or any claim based on the conversion to the money purchase plan. Said election shall be irrevocable unless the Employee changes status from an Exempt Employee to a non-exempt employee, in which case such Employee may elect within sixty (60) days of the change in status to again become a Member of this Plan. Such an election to again become a Member of this Plan is permitted only if the money purchase pension plan requires the same Member Contribution as Section 3-4-5-1 requires for this Plan. In the event an Employee rejoins this Plan, due to a change in status after five (5) years from the transfer date, any Service shall not be restored for such Employee and such Employee shall not be vested until he or she earns five (5) years of credited service subsequent to his or her reentry into this Plan, the provisions of Section 3-4-4-3 shall determine whether the Employee’s prior Credited Service shall be restored. Funds transferred to the money purchase plan shall not be transferred back to this Plan.

3-4-18-3: Transfer of Funds.

Each eligible Member under Section 3-4-3-2B or 3-4-18-1, who chooses to exercise the option to convert his or her membership to the money purchase plan shall have a determinable amount transferred to the money purchase plan. The amount transferred on behalf of each such Member is the actuarial equivalent present value (which shall include an adjustment if the Member qualifies for Special Early Retirement or Regular Early Retirement as of the date the Member changes status for a Member described in Section 3-4-3-2B and is July 30, 2001,
for a Member described in Section 3-4-18-1), as of the date of transfer of the Member's accrued benefit. For purposes of this Section 3-4-18-3, the term "actuarial equivalent present value" shall be based on an interest rate assumption of seven and one-half percent (7.5%) and the mortality assumption of a unisex rate that is fifty percent (50%) male, fifty percent (50%) female, taken from the 1994 group annuity mortality table (except that the 1983 group annuity mortality table applies for transfers before January 1, 2012). The date of transfer of the Member's accrued benefit shall be as soon as practicable after the election date for a Member described in Section 3-4-3-2B, and August 31, 2001, or as soon as practicable thereafter, for a Member described in Section 3-6-18-1.

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

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

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

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

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

Introduced, read in full, and passed on first reading on the 18th day of June, 2012.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 22nd day of June, 2012.

Published as a Bill for an Ordinance on the City’s official website beginning on the 20th day of June, 2012 for thirty (30) days.

Randy P. Penn, 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 ____ day of ____________, 2012.

Loucrishia A. Ellis
COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

On Monday, May 7, 2012 Dorothy Hargrove, Director of Library Services, provided Council a brief overview of the Marmot Library Network and discussed the expected advantages of membership should the Englewood Public Library choose to become a part of the Network. Marmot subsequently provided a Service Agreement for approval.

RECOMMENDED ACTION

The Library Department recommends City Council approve a bill for an ordinance authorizing an intergovernmental agreement with Marmot Library Network. The agreement becomes effective October 1, 2012, with the option for annual renewals, and an expected implementation date of January 1, 2013.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Public libraries use an integrated library system (ILS) to handle basic operations, including acquisitions, cataloging, circulation and searching for library materials and information. The Englewood Public Library has used one vendor for the last several years, but because this vendor is no longer fully supporting our current ILS version, Library staff studied other options. We also explored ways to share resources with other Colorado libraries. We were favorably impressed with the Marmot Library Network. Based in Grand Junction and governed by representatives from member libraries throughout Colorado, the Network not only provides cost-effective access to a nationally recognized and up-to-date ILS, but also allows member libraries to share over 1.4 million items in their respective collections. State-wide courier service delivers books and other materials to our library patrons from other member libraries on a regular basis. The Network will offer support and training for our staff, all at highly favorable prices. This ILS will improve the efficiency of Library operations and offer advanced service options to our patrons.

FINANCIAL IMPACT

The 2012 cost of conversion to the Marmot Library Network system will be $10,500, with a subsequent annual cost of $34,440. These funds are already included in the 2012 Library budget and the expected 2013 budget, so no additional funds will be required.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance
A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ENGLEWOOD AND THE MARMOT LIBRARY NETWORK.

WHEREAS, The City uses an integrated library system (ILS) to handle basic operations and the current vendor no longer provides support services for the Library's system; and

WHEREAS, the Marmot Library Network is a member network of libraries and library districts, and

WHEREAS, Marmot Library Network provides cost-effective access to an up-to-date ILS as well as access to shared items in the member libraries' collections, and

WHEREAS, this Network of libraries and library districts will also provide support and training for library staff at favorable prices,

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

Section 1. The City Council of the City of Englewood hereby authorizes the Intergovernmental Agreement entitled "Marmot Library Network Service Agreement" by and between the City of Englewood and the Marmot Library Network as attached hereto as Exhibit A.

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

Introduced, read in full, and passed on first reading on the 18th day of June, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22nd day of June, 2012.
Published as a Bill for an Ordinance on the City's official website beginning on the 20th day of June, 2012 for thirty (30) days.

Randy P. Penn, 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 ___ day of _____________, 2012.

Loucrishia A. Ellis
MARMOT LIBRARY NETWORK
SERVICE AGREEMENT WITH ENGLEWOOD PUBLIC LIBRARY

This Marmot Library Network Service Agreement ("Agreement") is made by and between Marmot Library Network, Inc. with offices in Grand Junction, Colorado, hereinafter referred to as "Marmot", and Englewood Public Library in Englewood, Colorado, hereinafter referred to as "Member."

RECITALS:

A. Member is a public library with 1 library location in Englewood, Colorado.
B. Marmot is the administrator for the Marmot Library Network linking member libraries.
C. The parties are desirous of entering into an agreement defining the services to be provided by Marmot to Member, the cost thereof, and the rights, duties, and obligations of the respective parties with respect to the Marmot Library Network.

In consideration of the foregoing and in further consideration of the price to be paid for the services rendered, the parties agree as follows:

1. Definitions.
   a. "Member" shall include Member's branch locations, if any, provided that no operations located at a branch location constitute a separate legal entity apart from the Member.
   b. "Network Node" is either A) One telecommunications link to the Marmot Library Network by a dedicated circuit administered by Marmot; OR B) an internet data connection administered by Member.
   c. "Access Session" is the unit by which multiple simultaneous library staff users are measured, limited, and licensed. Each Network Node supports multiple Access Sessions on the Marmot Library Network.
   d. "Enrichment Data" means the form and content licensed by Marmot to be gathered from web services and displayed in the online public access catalog along with the Member's own catalog data.
   e. "Enrichment Services" means the services by which the Enrichment Data is delivered to Member, including any software contained therein.
   f. "Enrichment Providers" include but are not limited to such organizations as EBSCO (Novelist), Bowker (Syndetics), Amazon, OpenLibrary, Googlebooks, and Wikipedia. The list of Enrichment Providers may change from time to time. Marmot maintains licenses as appropriate, and passes specific terms and conditions to Member as required. In the event Marmot changes any of the Enrichment Providers, this Agreement shall apply to all new or substituted Enrichment Providers.

2. Marmot's Scope of Services. Marmot will provide the following services to Member:
   a. Operate and maintain the Marmot Library Network computer systems;
   b. Maintain, revise, and upgrade the Marmot Library Network computer hardware and installed software;
   c. Provide user support to include trouble shooting, system analysis, and development;
d. Train Member employees as often as needed and as scheduled by mutual agreement;

e. Inform Member of its responsibilities for the purchase of terminal equipment and materials required and specified by Marmot to connect to the Marmot Library Network. At Member request, Marmot will broker the purchase of terminal equipment and materials according to the standard fee schedule (Attachment B) or of other equipment and materials as mutually agreed;

f. Install and maintain Marmot administered telecommunications service for Network Nodes, as provided for in Attachment A, including telecommunications hardware and equipment; OR Configure the Marmot Wide Area Network (WAN) to accept user connections over the internet where Member opts to use its own Internet Service Provider instead of Marmot-administered telecommunications service;

g. Provide Software Access Sessions to the Marmot Library Network as provided for in Attachment A;

h. Provide an optional equipment maintenance service to Member for microcomputer workstations, printers, bar code readers, and other equipment as provided for in Attachment C;

i. Provide access to the software and databases provided for in Attachment A.

3. Member's Obligations. Member shall:

a. Purchase its own workstations, cables to Network Nodes, bar code readers, bar code labels and other equipment and materials;

b. Assume responsibility for all ongoing cataloging and retrospective conversion of local library collections;

c. Prepare all materials to accommodate use with the Marmot Library Network;

d. Maintain its own database records;

e. Follow trouble shooting procedures and emergency/downtime contingency plans provided by Marmot;

f. Identify contact person(s); and

g. Follow Marmot policies and procedures posted at http://www.marmot.org/node/42.

4. Cost of Services, Equipment and Materials. Member shall pay Marmot the fees for service and purchase prices for equipment and materials as provided for in Marmot's standard fee schedule, as outlined in Attachment B. Marmot may at any time, in its sole discretion, increase or decrease the fees for service and purchase prices for equipment and materials. Each addition or revision shall be effective at such time specified by Marmot, which will be at least thirty (30) days after Marmot gives written notice of such increase or decrease. As required by Marmot bylaws, price changes are approved by the Marmot Executive Board. In the event Marmot increases any prices or charges under the Agreement, Member may, at its option and without liability, terminate the Agreement by giving ninety (90) day written notice to Marmot.

5. Time of Payment. Marmot shall bill Member on an annual basis, in advance. Marmot shall bill Member for the purchase price of equipment and materials when such are delivered to Member.
In the event Member should request additional Network Nodes or Access Sessions for the Marmot Library Network during any term of this Agreement, then Member's cost of services shall be prorated from date of access and a billing sent to Member.

All payments by Member to Marmot shall be due within thirty (30) days of the date a billing is delivered. Marmot shall bill Member late payment fees at the statutory rate of 8% per annum.

Member may withhold any payment in whole or in part for products/services found by Member to be defective, untimely, unsatisfactory, otherwise not conforming to the description, or not in accordance with all applicable warranties, laws, ordinances, rules and regulations. Payment or acceptance/use by Member shall not be deemed a waiver or settlement of any defect or nonconformity in the products/services.

6. Default in Payment. Should Member fail to make any payment due to Marmot within the period set forth in paragraph 5, Marmot shall give Member written notice of such default in payment. If Member fails to correct the default within thirty (30) days after the date of such written notice, Marmot shall have the right to discontinue services to Member and enter upon the premises of Member, if necessary, to remove Marmot's electrical and telecommunications equipment and wiring necessary to disconnect Member from access to the Marmot Library Network. Marmot may only enter Member's facilities to disconnect or remove its equipment upon reasonable advance notice, at a time that is mutually convenient to the parties and which will be minimize disruption of Member's operations. The discontinuance of services hereunder shall not relieve Member from liability for payment for services previously provided or for payment for any equipment and materials ordered by Member. In addition, Member shall also pay all costs associated with removal from the Integrated Library System and termination of the telecommunication circuits including, but not limited to extraction of records, deletion of scopes, disconnect fees and Marmot staff time, in accordance with the fee schedule in Attachment B, as it may be amended.

7. Term and Renewal of Agreement. The initial term of this agreement shall begin on October 1, 2012 and shall expire on December 31, 2013. Notice of annual pricing will be distributed to the membership on or before September 1 of each calendar year and renewal contracts will become due on September 30 of each year. Notice of non-renewal must be given in writing ninety (90) days prior to expiration of the existing contract. All the provisions of this Agreement shall remain in full force and effect during any renewal term. The following table makes these terms clear.

<table>
<thead>
<tr>
<th>Initial Term:</th>
<th>Automatic Renewal 1:</th>
<th>Automatic Renewal 2:</th>
<th>Automatic Renewal 3:</th>
</tr>
</thead>
</table>

8. Termination. Upon termination, pursuant to paragraphs 6 or 7 above, Marmot may only enter Member's facilities to disconnect or remove its equipment upon reasonable advance notice, at a time that is mutually convenient to the parties and which will be minimize disruption of Member's operations. Member shall pay all costs for services rendered up to the effective date of termination and shall pay Marmot for all equipment and materials ordered by Member. Member shall also pay all costs associated with removal from the Integrated Library System and termination of the telecommunication circuits including, but not limited to extraction of records, deletion of scopes, disconnect fees and Marmot staff time, in accordance with the fee schedule in Attachment B, as it may be amended.


a. Marmot warrants that it owns or has rights to use all assets, including software, hardware and equipment, necessary for the operation of the Marmot Library Network. It is expressly agreed that there is no warranty of merchantability or fitness for a particular purpose, expressed or
implied, by Marmot with regard to any software used in connection with the Marmot Library Network. Any workstations or peripherals that Marmot purchases on behalf of, and delivers to, Member immediately become the property of Member, and come with whatever warranty is provided by each manufacturer. Marmot does not manufacture, assemble, or warrant hardware procured on behalf of Member. Marmot does agree to perform the services contemplated by this Agreement to the satisfaction of Member and with the standard of care and skill of an expert regularly rendering services of the type required by this Agreement and in conformance with applicable law. Marmot shall not be liable for any direct, special, or consequential damages arising out of this Agreement, by use of the hardware or software by Member or the Marmot Library Network.

b. As to the Enrichment Data and the Enrichment Services, Marmot makes no warranties, express or implied, and expressly excludes all warranties of merchantability and fitness for a particular purpose. Marmot makes no warranties or representations regarding the accuracy, adequacy, or completeness of the Enrichment Data or the Enrichment Services. In no event shall Marmot be liable for any indirect, incidental, special, or consequential damages arising out of the use of or inability to use the Enrichment Data or Enrichment Services.

c. All rights in Cover Images are reserved by the original copyright owners. Cover Images are provided "as is," and with all faults, without warranty of any kind. Without limiting the foregoing, as to cover images, Marmot expressly disclaims any and all warranties, whether express, implied, or statutory, including without limitation any warranties of title, noninterference, non-infringement, informational content, merchantability and fitness for a particular purpose.

10. **Excusable Delays.** The parties shall use their best efforts to perform their duties under this Agreement in a timely fashion. However, the obligation of a party shall be postponed automatically if the party is prevented from meeting its obligation by reason of any causes beyond its reasonable control, except the obligation to make payment as provided in paragraphs 4, 5 and 6, provided the party prevented from rendering performance notifies the other party immediately and in detail of the commencement and nature of such a cause and the probable consequences thereof, and provided that such party uses its best efforts to render performance in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if same are reasonably available.

11. **Enforcement.** The prevailing party in any litigation concerning this agreement shall be reimbursed by the other party for all costs and expenses incurred in such proceeding, including reasonable attorneys' fees. Litigation arising out of any dispute concerning the Agreement shall be brought only in Mesa County, Colorado.

12. **Notices.** All notices required or provided herein shall be in writing, and shall be addressed to the party to whom said notice is directed and shall be deposited in the United States mail, certified mail, return receipt requested, with postage prepaid thereon. Such notice shall be effective on the date of receipt.

13. **Waiver.** Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute the same instrument.

15. **Public Contracts 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] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will
confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting 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 Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

16. Relevant Colorado Laws. Financial obligations of Member payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The parties acknowledge that appropriation of moneys by Member is a governmental function which Member cannot contractually commit to in advance and that this Agreement does not constitute: (i) a multiple fiscal year direct or indirect debt or financial obligation; or (ii) an obligation payable in any fiscal year beyond the fiscal year for which funds are lawfully appropriated; or: (iii) an obligation creating a pledge of or a lien on Member tax or general revenues. In the event Member’s board does not approve an appropriation of funds at any time during the term of this Agreement for any payment due or to become due for a fiscal year during the term of this Agreement, Member shall have the right to terminate the Agreements on the last day of the fiscal period for which sufficient appropriations were received, without penalty or expense. Member may terminate this Agreement by giving notice in writing that (a) funds have not been appropriated for the fiscal period, and (b) Member has exhausted all funds legally available for the payment. Marmot understands that certain information, including the Agreement and all Exhibits thereto, are public records available for public inspection and copying under the Colorado Public Records Act, C.R.S. §§24-72-201, et seq. and other applicable laws. No term or condition of the Agreement 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.

17. Independent Contractor Role. Marmot shall perform its duties hereunder as an independent contractor and not as an employee. Neither Marmot nor any agent or employee of Marmot shall be deemed to be an agent or employee of Member.

18. Use of Intellectual Property. By signing below, Member agrees and acknowledges that the collection, creation, and arrangement of the Enrichment Data offered by Enrichment Providers constitutes intellectual property wholly owned by Enrichment Providers and/or their licensors. While it is understood that the Enrichment Data will be publicly available on open electronic networks, Member will use the Enrichment Data only for the intended purpose of augmenting Member’s library online public and student access catalog and web site.

19. Proprietary Rights. The Enrichment Data and Enrichment Services made available to Member under this Agreement are protected by copyrights, trademarks, trade secrets, or other proprietary rights.
Member acknowledges that Enrichment Providers, their licensors, or both own all right, title and interest, including, without limitation, the copyright, in and to the Enrichment Data and the Enrichment Services and all components thereof. The copyright and title to all property interests in or to the Enrichment Data and the Enrichment Services are and shall remain in Enrichment Providers, their licensors, or both as owner and this Agreement shall not grant to Member, or any Member affiliate or agent, or any Member patron, student, volunteer, employee or user, any right of ownership therein. Member warrants and represents that Member and Member’s patrons, students, volunteers, employees, users and agents shall not modify, remove, delete, augment, add to, publish, transmit, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Enrichment Data or the Enrichment Services, in whole or in part. If no specific restrictions are displayed, Member and users of the Enrichment Services may make copies of select portions of the Enrichment Data, provided that the copies are made only for personal use and any notices contained in the Enrichment Data, such as all copyright notices, trademark legends, or other proprietary rights notices are maintained on such copies. Except as otherwise permitted in this Agreement or as permitted by the fair use privilege under the U.S. copyright laws (see, e.g., 17 U.S.C. Section 107), neither Member nor users of the Enrichment Services may upload, post, reproduce, or distribute in any way Enrichment Data protected by copyright, or other proprietary right, without obtaining permission of the owner of the copyright or other propriety right.

20. **Indemnification.** Except as may otherwise be excluded from Marmot's liability under this Agreement, Marmot shall defend, hold harmless and indemnify Member, its officers, directors, employees, agents and attorneys, for, from and against any and all claims, demands, suits, fines, penalties, costs, expenses (including, without limitation, reasonable attorney's fees), and losses of every nature whatsoever, ("Marmot Damages") resulting from or caused by the negligence or fault of Marmot or its employees and agents and/or for Marmot's breach or violation of any of Marmot's representations, warranties, covenants or agreements contained in this Agreement. To the extent permitted by law, Member shall defend, hold harmless and indemnify Marmot, its officers, directors, employees, agents and attorneys, for, from and against any and all claims, demands suits, fines, penalties, costs, expenses (including, without limitation, reasonable attorney's fees), and losses of every nature whatsoever, ("Member Damages") arising from Member's use or operation of the Marmot Library Network and/or Member's breach or violation of any of Member's representations, warranties, covenants or agreements contained in this Agreement.

21. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

22. **Amendment.** Except with respect to Attachment B which may be amended by Marmot in its discretion, this Agreement may be amended, modified or supplemented only by an instrument in writing executed by the parties hereto. In the event Marmot increases any prices or charges under the Agreement, Member may, at its option and without liability, terminate the Agreement by giving ninety (90) day written notice to Marmot.

23. **Assignment.** Neither this Agreement nor any right created hereby shall be assignable by either party without the consent of the other party.

24. **Attachments.** The provisions of the following attachments are included as part of this Agreement:
   A. Marmot Provided Services
   B. Fee Schedule
25. **Entire Agreement.** This Agreement contains the entire agreement of the parties. There are no other agreements between the parties. No modification, alteration, or amendment of this Agreement shall be effective unless reduced to a writing signed by both parties hereto; with the understanding the Attachment B may be revised from time to time at the discretion of Marmot. In the event Marmot increases any prices or charges under the Agreement, Member may, at its option and without liability, terminate the Agreement by giving ninety (90) day written notice to Marmot. This Agreement shall be binding on the parties hereto and their successors; provided, however, that this Agreement may not be assigned by either party without the written consent of the other party.

26. **Effective Date of Agreement.** This Agreement shall be effective as of October 1, 2012.

**INGLEWOOD PUBLIC LIBRARY**

By: __________________________

Title: ______________

Date: ______________

**MARMOT LIBRARY NETWORK**

By: __________________________

Title: ______________

Date: ______________
Attachment A – Marmot-Provided Services

Marmot Library Network price quote for
Englewood Public Library
April 18, 2012

<table>
<thead>
<tr>
<th>HOSTED ILS SERVICES</th>
<th>Units</th>
<th>One-time</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic System(^1)</td>
<td>1</td>
<td>$5,250</td>
<td>$6,000</td>
</tr>
<tr>
<td>Scope setup by III</td>
<td>1</td>
<td>$1,260</td>
<td>N/A</td>
</tr>
<tr>
<td>Additional Staff Sessions</td>
<td>12</td>
<td>$0</td>
<td>$28,440</td>
</tr>
<tr>
<td>Acquisitions Setup &amp; Training</td>
<td>1</td>
<td>$2,500</td>
<td>included</td>
</tr>
<tr>
<td>OverDrive hosting &amp; support</td>
<td>1</td>
<td>$1,500</td>
<td>included</td>
</tr>
<tr>
<td>OverDrive collection: development</td>
<td></td>
<td>$0</td>
<td>set by library</td>
</tr>
<tr>
<td>Data migration(^2)</td>
<td>1</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>INN-Reach (Prospector)(^3)</td>
<td>0</td>
<td>not included</td>
<td>not included</td>
</tr>
<tr>
<td>TOTAL FIRST-YEAR COST</td>
<td></td>
<td>$10,510</td>
<td>$34,440</td>
</tr>
</tbody>
</table>

1 Basic System includes: Circulation, Cataloging, Acquisitions, Serials, Reports, Training, WAM, Content Subscriptions, shared OverDrive collection, unlimited VuFind OPAC, one (1) WAN Access or WAN Telecom Service, one (1) staff session, Council Seat, Continuing Education, Participation in Task Forces & Marmot User Group.

2 Assuming you can provide bib & holdings data in MARC format, and patron data in comma-delimited format, and do not require circulation transaction data to be migrated, Marmot can provide this service at no charge.

3 The INN-Reach (Prospector) subscription is OPTIONAL. It includes membership in a regional union catalog and resource sharing system hosted by the Colorado Alliance of Research Libraries. It does not include full membership in the Alliance.

This quote is good for 90 days.
Attachment B Marmot Price List  
January - December, 2012

<table>
<thead>
<tr>
<th>Millennium Integrated Library System</th>
<th>One-time Fee</th>
<th>Annual Fee</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic System*</td>
<td>5,250.00</td>
<td>6,000.00</td>
<td>2,000</td>
</tr>
<tr>
<td>Scope (1 required, more are optional)</td>
<td>1,260.00</td>
<td>0.00</td>
<td>2,276.00</td>
</tr>
<tr>
<td>Staff sessions</td>
<td>3,900</td>
<td>0.00</td>
<td>2,370.00</td>
</tr>
<tr>
<td>Acquisitions, Serials, Reserve Room and other II Modules</td>
<td>2,500.00</td>
<td>0.00</td>
<td>700.00</td>
</tr>
<tr>
<td>Express Lane self check</td>
<td>3,200.00</td>
<td>1,000.00</td>
<td>2,000.00</td>
</tr>
<tr>
<td>SIP2 for 3rd-party self check &amp; other SIP2 appliances</td>
<td>2,800.00</td>
<td>1,000.00</td>
<td>2,000.00</td>
</tr>
<tr>
<td>Data migration</td>
<td>18,500.00</td>
<td>4,350.00</td>
<td>n/a Outside contract may be needed to convert data</td>
</tr>
<tr>
<td>INN-Reach (Prospector) price for members joining Marmot after 2010</td>
<td>15,000.00</td>
<td>0.00</td>
<td>15,000.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Millennium Integrated Library System</th>
<th>One-time Fee</th>
<th>Annual Fee</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-time Fee</td>
<td>5,250.00</td>
<td>6,000.00</td>
<td>2,000</td>
</tr>
<tr>
<td>Annual Fee</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Notes</td>
<td>2,000</td>
<td>2,000</td>
<td>2,000</td>
</tr>
</tbody>
</table>

* Basic System includes Circulation, Cataloging, OPAC, Acquisitions, Serials, Reports, Training, WAM, Patron API, Catalog Enrichment Subscriptions, IssueLog handling and OverDrive title purchases. UniServe, Unlimited OPAC, one (1) WAN Access or Telecom Circuit, one (1) Staff session, Council Seat, Continuing Education, Participation in Task Forces & User Groups.

### Internet Services
- **WAN Access for each additional site:** 4,000.00
- **WAN Telecom Service for each additional circuit:** 1,000.00 with a 100.00 Internet Service Fee

### Local Area Network (LAN)
- **IP address block setup:** 500.00
- **IP address per workstation, server, or other device:** 2,000.00

### PC Reservation and Print Management
- **PCRes Management Console software per site:** 400.00
- **PCRes client workstation software:** Included
- **LPT1 Metasearch Station software per site:** 400.00
- **LPT1 client workstation software:** Included

### Wireless Access (WiFi)
- **WIFI service (requires dedicated circuit):** 4,002.00
- **Wireless access point:** 100.00

### Equipment
- **Workstations (Public and Staff) without monitor:** 1,020.00
- **Portable (notebook) Desk Top Replacement:** 1,140.00
- **Microsoft Office Professional (Current Release):** 100.00
- **Monitors:**
  - 17" Digital Height Adjustable: 150.00
  - 19" Digital Height Adjustable: 225.00
- **Printers:**
  - Recopl Printem Thermal with autocut: 220.00
  - Bar Code Readers:
    - Datalogic Wired Barcode Scanner: 164.00
    - Micrologic Wireless Barcode Scanner: 399.00
- **Cooperative Purchase Program:**
  - 837.00

### Extended Technical Services per hour
- **53.88**

* Marmot leverages group buying discounts and invoices member libraries at the cost. Equipment prices vary by year and configuration. Please contact Marmot to discuss your needs.

Members paying more than $90,000/year across all Marmot services will receive a 5% discount on the total bill.

There is no longer a 2% discount for annual instead of quarterly payments.

Effective January 1, 2012

---

<table>
<thead>
<tr>
<th>Millennium Integrated Library System</th>
<th>One-time Fee</th>
<th>Annual Fee</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-time Fee</td>
<td>5,250.00</td>
<td>6,000.00</td>
<td>2,000</td>
</tr>
<tr>
<td>Annual Fee</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Notes</td>
<td>2,000</td>
<td>2,000</td>
<td>2,000</td>
</tr>
</tbody>
</table>

* Marmot leverages group buying discounts and invoices member libraries at the cost. Equipment prices vary by year and configuration. Please contact Marmot to discuss your needs.

Members paying more than $90,000/year across all Marmot services will receive a 5% discount on the total bill.

There is no longer a 2% discount for annual instead of quarterly payments.

Effective January 1, 2012

---

<table>
<thead>
<tr>
<th>Millennium Integrated Library System</th>
<th>One-time Fee</th>
<th>Annual Fee</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-time Fee</td>
<td>5,250.00</td>
<td>6,000.00</td>
<td>2,000</td>
</tr>
<tr>
<td>Annual Fee</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Notes</td>
<td>2,000</td>
<td>2,000</td>
<td>2,000</td>
</tr>
</tbody>
</table>

* Marmot leverages group buying discounts and invoices member libraries at the cost. Equipment prices vary by year and configuration. Please contact Marmot to discuss your needs.

Members paying more than $90,000/year across all Marmot services will receive a 5% discount on the total bill.

There is no longer a 2% discount for annual instead of quarterly payments.

Effective January 1, 2012
A ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT ENTITLED THE DENVER REGIONAL COUNCIL OF GOVERNMENTS (DRCOG) CONSORTIUM AGREEMENT FOR THE SUSTAINABLE COMMUNITIES INITIATIVE BETWEEN THE CITY OF ENGLEWOOD, COLORADO AND DRCOG.

WHEREAS, the Denver Regional Council of Governments (DRCOG) has a Sustainable Communities Regional Planning Grant from the Federal government to support the regional planning activities which correspond with the activities of "Sustainable Communities Initiative: Metro Vision 2040 Plan Update"; and

WHEREAS, the Grant includes Federal Funds from the U.S. Department of Housing and Urban Development (HUD), Department of Transportation (DOT), and the Environmental Protection Agency (ETA) which awarded the Denver Region 4.5 Million Dollars for this Planning Grant; and

WHEREAS, the City Council of the City of Englewood passed Resolution No. 78, Series of 2011, supporting the submission of an application by DRCOG for a grant under HUD's Sustainable Communities Regional Planning Grant; and

WHEREAS, the passage of this proposed ordinance authorizes the City's participation in the intergovernmental agreement "DRCOG Sustainable Communities Initiative Consortium Agreement"; and

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the intergovernmental agreement entitled "DRCOG Sustainable Communities Initiative Consortium Agreement" by and between the City of Englewood and the Denver Regional Council of Governments (DRCOG), as attached hereto as Exhibit A.

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

Introduced, read in full, and passed on first reading on the 4th day of June, 2012.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 8th day of June, 2012.
Published as a Bill for an Ordinance on the City’s official website beginning on the 6th day of June, 2012 for thirty (30) days.

Read by title and passed on final reading on the 18th day of June, 2012.

Published by title in the City’s official newspaper as Ordinance No. ____, Series of 2012, on the 22nd day of June, 2012.

Published by title on the City’s official website beginning on the 20th day of June, 2012 for thirty (30) days.

________________________
Randy P. Penn, 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 2012.

________________________
Loucrishia A. Ellis
Consortium Agreement
Frequently Asked Questions

Q: Who from my organization should sign the Agreement?
A: Any representative of the organization that has the authority to enter into an agreement on behalf of the organization may sign. For local governments, this may be a Planning Director, City or County Manager, elected official or other officer who is able to sign for the entity.

Q: Is the Agreement legally binding?
A: The Agreement does not create any financial or other obligations and does not give rise to any claims for breach. The main purpose of the Agreement is to confirm the governance structure and very general roles. A Consortium Agreement for these purposes is a required part of the Sustainable Communities Regional Planning Grant.

Q: What is the role of the “point person” that each member must designate?
A: The point person will serve as the primary contact for communication about the Sustainable Communities Initiative. Note that language from a previous draft of the Agreement indicating the point person will “cast the member’s vote on any matter upon which a vote of member is taken” has been removed.

Q: Do the regional planning activities included in the Sustainable Communities Initiative correspond with the Metro Vision 2040 Plan update, or will they lead to the development of some other regional plan?
A: The regional planning activities will be part of the Metro Vision 2040 Plan update.
Q: Will organizations that don’t sign the Agreement be excluded from the Metro Vision planning process?
A: Absolutely not. Development of the Metro Vision 2040 Plan will be an open and public process.

Q: Is the Consortium superseding the normal DRCOG process?
A: No, DRCOG is the regional decision-making body and the Agreement does not change that.

Q: My community isn’t on a FasTracks Corridor; why should we sign the Agreement?
A: There are several reasons communities not located along the FasTracks Corridors receiving grant funding may wish to sign the Agreement:

- FasTracks is a regional project with regional benefits. The Sustainable Communities Initiative aims to maximize the benefits of FasTracks and ensure these benefits extend well beyond the transit lines themselves.
- Lessons learned through the corridor planning activities and catalytic projects can apply to other transit corridors.
- The Sustainable Communities Initiative includes regional planning activities that will address the full DRCOG planning area and a broad range of issues, such as Rural Town Centers.
- By signing the Agreement, partners affirm their commitment of matching resources and willingness to collaborate with new partners on new issues.
Consortium Agreement

May 16, 2012

Background

The Denver region enjoys a storied history of collaboration, anchored by the Denver Regional Council of Governments (DRCOG), its 56 member governments and more than 50 years of weaving land use, transportation and environmental concerns into a fully integrated regional plan. Metro Vision, most recently updated in February 2011, provides the framework that will guide this region into a future of expanded opportunities for people of all ages, incomes and abilities, supporting vibrant communities and a robust regional economy.

In November 2011 the Sustainable Communities Partnership, a federal collaboration of the U.S. Department of Housing and Urban Development (HUD), Department of Transportation (DOT), and Environmental Protection Agency (EPA), awarded the Denver region a $4.5 million Regional Planning Grant. With this grant funding, a Consortium of municipalities, counties, state agencies, housing authorities, nonprofits, corporate interests, philanthropic and academic organizations will work together to further enhance and implement Metro Vision, while addressing one of our region's most pressing and exciting challenges: leveraging the planned $6.7 billion expansion of the FasTracks transit system.

This document establishes the goals of the Consortium and the conditions under which Consortium members shall participate in the planning and related activities funded by the Sustainable Communities Regional Planning Grant, sometimes referred to herein as the Initiative.

Goals

The Consortium's overarching goal is to align investments, programs and policies to maximize the benefits that result from the region’s investment in transit. We anticipate a region with greater access to job opportunities across the entire income spectrum, lower combined transportation and housing costs, reduced consumption of fossil fuels, reduced strain on our air and water resources, and ultimately the development of concentrated, mixed-use, pedestrian- and bicycle-friendly “urban centers” along transit lines that allow residents to easily access their daily needs without having to get into a car.

Grant-Funded Activities

The planning process is divided into five main categories. The first three represent distinct but interrelated planning levels – regional, corridor and site-specific (Catalytic Projects). The remaining two – Stakeholder Engagement and Outcomes Assessment and Knowledge Sharing (OAKS) – cut across and...
support planning efforts at all three levels. Regional planning activities will focus on further refinements to *Metro Vision*, particularly the issues of access to housing choices and economic opportunity. Detailed execution planning at the corridor level will bring *Metro Vision* closer to implementation, and will focus on the three transit corridors currently under construction as part of the innovative EAGLE P3 public-private partnership (Gold, East, and Northwest rail/US36 BRT). Corridor-level planning will in turn lead to the identification and selection of three Catalytic Projects (one on each corridor) at specific sites that offer the potential for transformational changes. The West Line, which recently completed corridor-wide planning, has also identified a fourth Catalytic Project at the Sheridan Station. Pre-development planning, environmental review and policy changes that catalyze redevelopment at these sites will in turn provide valuable lessons for other transit station areas throughout the region.

**Benefits to Consortium Members**

**Participate in regional and corridor planning**

*Metro Vision* and the corridor planning provides a framework where Consortium members can find common ground on shared goals the region can collectively work toward. Consortium members can play a role ensuring *Metro Vision* and corridor planning activities reflect and advance the mission of their local government, organization or constituency.

**Recognize the value of communities within the regional context**

The physical and cultural diversity of the many communities that comprise the Denver region creates the opportunity for a wide variety of economic development initiatives and living styles. Through participation in *Metro Vision* and corridor planning activities, Consortium members can raise awareness of the unique contribution that each individual community makes toward regional goals. In turn, a stronger, more livable region will serve to strengthen and sustain its individual communities.

**Gain access to tools, data and best practices**

A considerable amount of data will be collected and disseminated as part of the *Metro Vision* and corridor planning process. Grant resources will also fund the development of decision-support tools, case studies of best practices, and training opportunities for Consortium members. These resources will increase Consortium members' understanding of the livability principles and capacity to enhance livability within their own communities.

**Foster new partnerships and increased collaboration among entities in the region**

The *Metro Vision* and corridor planning process will bring together stakeholders from a wide variety of sectors and disciplines, some of whom may not have worked together previously, and highlight opportunities for Consortium members with similar goals to coordinate efforts and align resources. These relationships will live beyond the grant-funding period and support ongoing collaboration.
Access funding opportunities

In recognition of the Denver region's ongoing commitment to advancing sustainability, HUD has awarded the region Preferred Sustainability Status. Consortium members may therefore be able to claim additional points or receive special consideration when applying for funding through HUD and other agencies affiliated with the Federal Partnership for Sustainability.

Responsibilities of Consortium Members

Actively collaborate on regional, corridor, and site-level planning activities

Consortium members will work together through the Metro Vision and corridor planning activities to identify shared goals, values and interests, and to develop consensus on policies and strategies for implementation. Active engagement may include participation in the Corridor Working Groups, stakeholder committees, advisory committees, workshops and trainings, case studies, and other opportunities that arise throughout the planning process to contribute to the overall effort. In contributing to the effort, Consortium members will make good on any commitments of matching resources.

Share information and ensure broad participation

The full Consortium will convene at least twice annually to share information on their collective efforts and address any key issues that arise during the planning process. Consortium members will also serve as ambassadors for the Sustainable Communities Initiative, assisting with outreach both to members of the public and to members of their organization or local government. By raising awareness of the planning activities and identifying potential new partners, Consortium members will help ensure the Initiative is comprehensive in scope and includes a broad diversity of perspectives, particularly from communities that are traditionally underrepresented in the planning process. Consortium members will designate a point person within their organization who will serve as the primary contact for the Initiative and who will be responsible for communicating the activities of the Consortium to their organization and constituents. If the point of contact changes, the Consortium member must provide DRCOG staff with contact information for the new designated contact person.

Assist with plan implementation

Consortium members will help identify opportunities to implement the projects and strategies identified in Metro Vision and the corridor plans. Consortium members will also facilitate any needed revisions to existing plans to ensure consistency with common regional or corridor-level goals.
Governance Structure

Figure 1. Consortium Governance Structure

The Consortium is comprised of the groups below involved in each of the three levels of planning and implementation: regional, corridor, and site (catalytic projects). Rectangles with thick white borders represent decision-making bodies.

The roles, purposes and responsibilities of the various committees and groups are as generally described below. The Executive Committee is authorized to promulgate written guidelines governing the size, membership, removal of members, and procedures of that committee, provided the guidelines are consistent with the provisions below. Each Corridor Working Group is authorized to promulgate such guidelines for their own group, and the Executive Director of DRCOG is authorized to promulgate such guidelines for all other committees and groups.

The Executive Committee, comprised of leaders from the public, private, and non-profit sectors, will provide project oversight to ensure the proposed planning efforts meet the objectives set forth in this Agreement and result in implementable strategies that equitably benefit the Denver region. The Committee will work toward consensus when making decisions, but upon the affirmative vote of the majority of members present and voting, the Committee may decide any questions that cannot be resolved by consensus. The Committee will meet quarterly and have the following responsibilities:
Serve as champions for the Initiative, setting the tone for regional collaboration and advocating for the planning process.

If necessary, resolve conflicts or disputes and redirect any activities not aligned with the Consortium's objectives.

Approve the initial work plan and any subsequent modifications.

Receive quarterly updates and provide feedback on grant-funded activities, grant fund expenditures and allocation of matching resources.

Educate and inform others about the Initiative.

Provide direction to the Coordinating Committee on how grant-funded activities could be coordinated with and amplify other allied efforts.

Each Executive Committee member will represent the perspective of their particular interest group, while seeking common ground with other interest groups.

As described below, the Executive Committee will provide input to DRCOG throughout the regional planning process, and the DRCOG Board of Directors is the final decision maker on any proposed updates to the Metro Vision plan. The Executive Committee may also make recommendations to DRCOG regarding changes to the grant budget.

The Coordinating Committee, comprised of staff from DRCOG and members of Mile High Connects, will provide logistical support and day-to-day project direction, and support the Executive Committee in providing project oversight. Its key functions are ensuring integration of regional, corridor and catalytic project planning efforts, and keeping the Executive Committee informed of grant activities and any related issues. The Committee will make decisions by consensus. Any issues that cannot be resolved by consensus will be elevated to the Executive Committee. Specific responsibilities of the Committee include:

- Ensure coordination among Consortium members and among grant-funded activities
- Develop detailed scopes of work for sub-recipients and contractors as needed
- Attend to HUD requirements for reporting on and managing the grant-funded activities

The Denver Regional Council of Governments (DRCOG), as the Regional Planning Commission and Metropolitan Planning Organization (MPO) for the Denver region, will lead and coordinate all regional planning efforts, including the potential expansion of regional goals and policies within Metro Vision. The DRCOG Board of Directors, comprised of elected officials from each of the member governments, will make all policy-related decisions regarding the update of Metro Vision. DRCOG's Articles of Association detail the Board's decision-making procedures.

To ensure participation of key stakeholders in regional planning, DRCOG intends to establish the two committees described below. The Executive Committee will also provide input to the DRCOG Board throughout the regional planning process. The DRCOG Board is the final decision maker on any proposed updates to the Metro Vision plan.

- The Citizens' Advisory Committee, comprised of resident leaders from throughout the region, including individuals representing the interests of low-income households, minorities, the elderly
and people with disabilities, will provide recommendations to the DRCOG Board on Metro Vision policies and the engagement of community members in the regional planning process, particularly the direct involvement of those typically underrepresented.

- The **Technical Planning Advisory Committee**, comprised of local planning staff and subject-matter experts, will provide technical recommendations to the DRCOG Board on efforts to improve Metro Vision.

DRCOG is also serving as fiscal and administrative agent for the grant and will allocate resources to sub-recipients and award consultant contracts as needed. Through its annual budgeting process, the DRCOG Board will approve the grant budget and any subsequent changes. The DRCOG Administrative Committee will approve contracts with sub-recipients and consultants.

The **Corridor Working Groups**, comprised of city and county officials, housing authorities, and subject-matter experts, will direct corridor-level planning activities and establish a vision and goals unique to their corridor. Each Corridor Working Group will either manage its catalytic project directly or delegate that task to another entity. The existing West Line Working Group, having successfully carried out corridor level planning over the past year, will focus primarily on catalytic project planning activities. The other three corridors (East, Gold and Northwest rail/US36 BRT) will establish new Working Groups and create their own governance structures, using the West Line Working Group as a model.

- Reconnecting America will serve as the **Corridor Coordinator** across these new Working Groups to assure alignment with SCRPG objectives, provide training and capacity building, and share best practices among Working Groups.
- Each Working Group will receive direct input from larger corridor-wide **Stakeholder Committees**, which will include local residents. Corridor Working Groups will make all policy-related decisions regarding corridor and catalytic project planning efforts.

The **Regional Resource Group** includes organizations with demonstrated subject-matter expertise in housing, transportation, community and economic development, education, creative businesses and the arts, public health, environmental issues, urban agriculture, issues relevant to older adults, promoting equitable outcomes for low-income populations, and stakeholder engagement. Members of this group are committed and available to provide input and assistance at the behest of regional, corridor and catalytic project leadership needs. Many have committed matching resources and/or offered services at a discounted rate. Each member of the regional resource group will provide information on the types of assistance and services they can offer, which DRCOG will distribute to the full Consortium.

The **Outcomes Assessment and Knowledge Sharing (OAKS) Group** will help evaluate the outcomes of current and previous planning efforts, provide opportunities to share lessons learned and best practices, and ensure these lessons are integrated into ongoing planning efforts through the development of performance measures and decision support tools. The OAKS group includes University of Colorado-Denver, the Colorado Department of Public Health and the Environment, PlaceMatters and Reconnecting America. Activities of this group will support the collection and dissemination of information among participating agencies to ensure that decisions are well-informed and communicated.
across jurisdictions. Case study reports will evaluate the existing light rail corridors in the Denver region (Southeast and Southwest lines) as well as the corridor nearing completion (West Line) in terms of their contribution to regional targets. Lessons learned both locally and nationally will be integrated into regional, corridor, and catalytic project planning efforts through the use of cutting-edge decision support tools. DRCOG’s online regional data catalog will also make data and information associated with the proposed planning activities widely available.

The Stakeholder Engagement Group includes FRESC, The Denver Foundation, Transit Alliance and PlaceMatters. This group will ensure stakeholders have meaningful opportunities to provide input and feedback throughout the proposed planning and implementation activities at the regional, corridor and catalytic project levels, as well as the skills and knowledge required to participate effectively. Activities of this group will include capacity building and stakeholder engagement among traditionally disadvantaged communities; Citizens’ Academies that engage a broad range of constituents; and large-scale, interactive meetings. These efforts will help populate the regional Citizens’ Advisory Committee and Corridor Stakeholder Committees, particularly with people typically underrepresented in the planning process.

State and Regional Partners include the Colorado departments of local affairs, public health and environment, and transportation; the Regional Transportation District; and the Regional Air Quality Council. These partners have committed staff time and technical expertise, and will ensure state and regional efforts are coordinated with and enhance the proposed activities. Philanthropic Partners have also committed funding and technical expertise to directly support the proposed activities, as well as funding for a variety of related initiatives that will ensure the benefits gained are widespread and realized for generations to come.

Accountability Measures
DRCOG is serving as fiscal and administrative agent for the grant and will act in a representative capacity with HUD on behalf of all members of the Consortium with respect to reporting to HUD and ensuring compliance with the requirements of the grant program. In this capacity, DRCOG will administer grant funding, budgeting and accounting, and will be the contracting agent to award and administer sub-recipient contracts and other contracts as needed. DRCOG may establish rules and policies governing the process for award of contracts, including without limitation rules prohibiting actual or potential conflicts of interest.

All Consortium members that have pledged in-kind support or other match requirements will work with DRCOG to document the number of hours spent on the project and the allocation of other matching resources, and will enter into an agreement governing their pledge if required by DRCOG. All Consortium members that will be receiving grant funds (sub-recipients) will enter into a formal contract with DRCOG that outlines the work to be performed and deliverables, and provide progress reports to DRCOG on a regular basis. DRCOG will use these reports to share information on the status of grant-funded activities with the larger Consortium.
Expansion of Consortium Membership
Any entity supportive of the Consortium’s goals may join at any time by becoming a signatory to this Agreement. The Executive Committee, Coordinating Committee, Corridor Working Groups and DRCOG Board may undertake special outreach to engage new partners and underrepresented constituencies as needed.

Duration of Consortium Agreement
This Agreement shall remain in force for the duration of the Sustainable Communities Regional Planning Grant funding period, which is expected to conclude on February 15, 2015. This Agreement and the Consortium may be continued beyond the grant conclusion date through a writing signed by those members wishing to continue this Agreement beyond the grant conclusion date.

Withdrawal From Consortium Agreement
Any member may, at any time, provide written notice to DRCOG of their intent to leave the Consortium, which notice shall state the effective date of withdrawal. Upon withdrawal, the member shall no longer be a party to this Agreement and shall no longer receive any benefits of Consortium membership, unless there is a specific written agreement to the contrary. However, a withdrawing member shall remain obligated to satisfy any pledge of in kind support or match requirement that is outstanding at the time of withdrawal. If approved by DRCOG, the member’s obligation may be satisfied by working with DRCOG to secure equivalent resources from an alternative source.

Changes to Terms of Agreement
The Executive Committee may, after consultation with the Consortium members, elect to change the terms of this Agreement at any time and will provide written notification of any changes to the entire Consortium membership.

Signatures
An entity becomes a member of the Consortium by signing this Agreement and returning its signature page to DRCOG. This Agreement may be signed in any number of copies or counterparts, each of which shall constitute an original and all of which shall constitute one and same document. Signature submitted by facsimile or electronic transmission shall be sufficient and binding.

Signature Page Follows
Member Signature Page

Instruction: This Agreement is to be signed by a representative of each Consortium member who has the authority to enter into an agreement on behalf of that entity. Please return your entity's signed original of this Signature Page to Jill Locantore at DRCOG, 1290 Broadway, Suite 700, Denver, CO 80203. Please keep a signed copy of this Agreement for your records.

By signing this Consortium Agreement, the undersigned party hereby agrees to join the Denver Region Sustainable Communities Consortium effective as of the date of signing and agrees to the provisions of the Consortium Agreement.

EXECUTED this ___ day of ______________________, 2012

Signature

   Randy P. Penn

Name (please print)

   Mayor

Title

Organization

Primary Point of Contact:

Name

Title

Phone

E-mail

Mailing address
**OPTIONAL Additional Information**

Areas of the Sustainable Communities Initiative your organization will participate in:
*Check all that apply*

- [ ] Metro Vision Plan Update
- [ ] Boomer Bond
- [ ] Regional Equity Atlas
- [ ] Stakeholder Engagement
  - [ ] Citizens’ Academies
  - [ ] Outreach to traditionally disadvantaged communities
- [ ] Outcomes Assessment and Knowledge Sharing
  - [ ] Case Studies (Existing Transit Lines)
  - [ ] Workshops and Trainings
- [ ] Regional Resource Group
- [ ] Executive Committee
- [ ] Coordinating Committee
- [ ] Corridor Planning
  - [ ] East
  - [ ] Gold
  - [ ] Northwest Rail/US 36 BRT
- [ ] Catalytic Projects
  - [ ] West
  - [ ] East
  - [ ] Gold
  - [ ] Northwest Rail/US 36 BRT

Details of how your organization anticipates participating in the areas checked above:

Matching resources your organization will commit to the Sustainable Communities Initiative:

- [ ] Cash
- [ ] In-Kind
- [ ] Other

Value:

Description:
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 CDBG and HOME funds for fiscal years 2010 through 2012; and also passed Resolution No. 90, Series of 2011 supporting the submission of applications for 2012 CDBG funding.

RECOMMENDED ACTION

Approve a Bill for an Ordinance authorizing the execution of two Intergovernmental Subgrantee Agreements for the 2012 Arapahoe County Community Development Block Grant Program between the Arapahoe Board of County Commissioners and the City of Englewood.

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.

For FY2012, funds were approved to support the following projects:

$100,000 for the Energy Efficient Englewood (E3) project to provide matching grants to fourteen low to moderate income homeowners for energy efficiency interior and exterior home improvements; and,

$27,500 for the Housing Rehabilitation project to provide low interest loans and/or grants to income eligible homeowners for health and safety related home improvements.

An additional $22,500 of the City’s allocation of CDBG funds was approved by Arapahoe County to support the House of Hope Staffing project. It was requested that Arapahoe County contract directly with Family Tree for the administration of the project.
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 both projects (est. $6,000) to partially offset the costs of those salaries and benefits.

LIST OF ATTACHMENTS

Bill for an Ordinance.
BY AUTHORITY

ORDINANCE NO. ______ SERIES OF 2012 COUNCIL BILL NO. 40 INTRODUCED BY COUNCIL MEMBER _____________

A BILL FOR

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF TWO INTERGOVERNMENTAL SUBGRANTEE AGREEMENTS FOR 2012 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BETWEEN THE ARAPAHOE BOARD OF COUNTY COMMISSIONERS AND THE CITY OF ENGLEWOOD, COLORADO.

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

WHEREAS, the Englewood City Council passed Resolution 90, Series of 2011, supporting Housing and Community Development that authorized submitting an application for 2012 CDBG funding; and

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

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

WHEREAS, These Community Development Block Grant (CDBG) funds are Federal Housing and Urban Development funds which are administered through Arapahoe County, Colorado.

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

Section 1. The Subgrantee Agreement for Arapahoe County Community Development Block Grant Funds – Subgrantee: City of Englewood, Project Name: Energy Efficient Englewood (E3) Project Number: ENHS 1222, attached hereto as Exhibit A, is hereby accepted and approved by the Englewood City Council.

Section 2. The Subgrantee Agreement for Arapahoe County Community Development Block Grant Funds – Subgrantee: City of Englewood, Project Name: Housing Rehabilitation Project Number: ENHS1223, attached hereto as Exhibit B, is hereby accepted and approved by the Englewood City Council.

Section 3. Community Development Block Grant (CDBG) funds are Federal Housing and Urban Development funds which are administered through Arapahoe County, Colorado.
Section 4. The Mayor is hereby authorized to sign said Agreements for and on behalf of the City of Englewood, Colorado.

Section 5. The City Manager shall be authorized to further extend the subgrantee agreements for Project Number EN HS 1222 and Project Number EN HS 1223 attached hereto for the Arapahoe County Community Development Block Grant Program as needed.

Introduced, read in full, and passed on first reading on the 18th day of June, 2012.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 22nd day of June, 2012.

Published as a Bill for an Ordinance on the City’s official website beginning on the 20th day of June, 2012 for thirty (30) days.

____________________
Randy P. Penn, 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 ______ day of ________________, 2012.

____________________
Loucrishia A. Ellis
SUBGRANTEE AGREEMENT FOR
ARAPAHOE COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

SUBGRANTEE: City of Englewood
PROJECT NAME: Energy Efficient Englewood (E3)
PROJECT NUMBER: ENHS 1222

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

I. PURPOSE

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

The project by the SubGrantee known as Energy Efficient Englewood (E3) (Project) will be carried out in accordance with the Scope of Services, attached to, and incorporated herein as Exhibit A.

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

II. WORK TO BE COMPLETED BY THE SUBGRANTEE

The grant funds are to be used only to provide services to Arapahoe County residents, excluding residents of the city of Aurora, per County CDBG guidelines.

A. Payment

It is expressly agreed and understood that the total amount to be paid by the County under this contract shall not exceed $100,000. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with performance criteria established in Exhibit A Scope of Services. The parties expressly recognize that the SubGrantee is to be paid with CDBG funds received from the federal government, and that the obligation of the County to make payment to SubGrantee is contingent upon receipt of such funds. In the event that said funds, or any part thereof, are, or become, unavailable, then the County may immediately terminate or, amend this agreement. To the extent C.R.S. § 29-1-110 is applicable, any financial obligation of the County to the SubGrantee
beyond the current fiscal year is also contingent upon adequate funds being appropriated, budgeted and otherwise available.

Upon expiration of this Agreement, as identified by the Agreement Date and Project Deadline (Deadline) in Exhibit A, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. These transferred funds shall revert to the County and be utilized for other purposes.

B. Timeline

All Project activities shall be completed and draw requests submitted by the Deadline unless the Subgrantee notifies the County in writing thirty (30) days prior to the Deadline that the funds cannot be disbursed. An extension may be granted, in writing, in which all draw requests be submitted and Project activities shall be completed by thirty (30) days following the Deadline. In the event that the completion deadline falls on a weekend or holiday, the Deadline will be considered the work day prior to the scheduled completion date. If the project requires additional time past the extended Deadline, the Agreement must be modified by mutual agreement of the County and the SubGrantee.

C. Performance Criteria

In accordance with the funding application submitted by the SubGrantee for the Project, the criteria listed below are to be met during the execution of the Project as identified in Exhibit A Scope of Services.

1. Quantifiable Goals
2. Community Impact
3. Monthly Performance Standards

D. Reporting Requirements

1. Project reports will be due within twenty (20) days following the end of each reporting period as specified in Exhibit A Scope of Services until the Project is completed.
2. The official annual audit and/or Financial Statements for the SubGrantee in which both revenues and expenditures for the CDBG Projects described herein are detailed are due annually. The last completed official annual audit report and/or Financial Statements shall be due on May 31, and for four (4) years thereafter on May 31.
3. Non-profit organizations that expend $500,000 or more annually in federal funds shall comply with the Single Audit Act of 1984, as amended, as implemented in OMB Circular A-133, and other applicable federal regulations.
III. RESPONSIBILITIES OF THE SUBGRANTEE

A. Federal Compliance

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

1. 24 CFR Part 570;
2. 24 CFR Parts 84 and 85 as applicable per 24 CFR 570.502;
3. Title VI of the Civil Rights Act of 1964;
4. Title VII of the Civil Rights Act of 1968;
5. Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
6. Fair housing regulations established in the Fair Housing Act, Public Law 90-284, and Executive Order 11063;
7. Section 504 of the Rehabilitation Act of 1973;
8. Asbestos guidelines established in CPD Notice 90-44;
10. Non-discrimination in employment, established by Executive Order 11246;
11. Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
12. Section 3 of the Housing and Urban Development Act of 1968;
   The purpose of section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
13. Federal procurement rules when purchasing services, supplies, materials, or equipment. The applicable federal regulations are contained in: 24 CFR Part 85 or through 24 CFR Part 84, as applicable;
14. Lead Based Paint regulations established in 24 CFR Parts 35 and 570.608;
15. Audit requirements established in OMB Circular A-133; and
16. Cost principles established in OMB Circulars A-87 and A-122 as applicable per 24 CFR 570.502;

17. Conflict of Interest:
   a) Applicability.
   (1) In the procurement of supplies, equipment, construction, and services by the County and by the SubGrantee, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively shall apply.
   (2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of 24 CFR 570.611 (2) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the County or by its SubGrantees to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to 24 CFR 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to 24 CFR 570.203, 570.204, 570.455, or 570.703).
   b) Conflicts prohibited. The general rule is that persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may not obtain a financial interest or benefit from a CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.
   c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the County, or any designated public agencies, or of the SubGrantee that are receiving funds under this part.
   d) Exceptions. Upon the written request of the County, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.
   (1) Threshold requirements. HUD will consider an exception only after the County has provided the following documentation:
      i. A disclosure of the nature of the conflict, accompanied by an assurance that there has been
public disclosure of the conflict and a description of how the public disclosure was made; and

ii. An opinion of the County’s attorney that the interest for which the exemption is sought would not violate State or local law.

(2) Factors to be considered for exceptions. In determining whether to grant a requested exception after the County has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the County’s program or project, taking into account the following factors, as applicable:

i. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

ii. Whether an opportunity was provided for open competitive bidding or negotiation;

iii. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

iv. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

vi. Whether undue hardship will result either to the County or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

vii. Any other relevant considerations.

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

19. Labor Standards (Davis-Bacon)

Except for the rehabilitation of residential property that contains less than eight (8) units, the SubGrantee, and its
contractor and all subcontractors shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates of not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor, when the project costs total $2,000 or more and the work is financed in whole or in part with assistance provided under this Agreement. The applicable Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the “Federal Labor Standards Provisions”, Form HUD-4010.

20. Lead Based Paint Regulations

If the Project involves acquisition, construction, demolition, rehabilitation, or any other activity related to residential housing, and the building was built prior to 1978, Lead Based Paint Laws and Regulations apply, as established in 24 CFR Parts 35 and 24 CFR 570.608. Further, all applicable federal and state laws relating to lead based paint must be followed, including such regulations promulgated by the U.S. Environmental Protection Agency and the State Department of Public Health and Environment, including regulations for non-housing buildings. If the SubGrantee does not follow and document lead based paint laws and regulation compliance, the SubGrantee will not be eligible for reimbursement.

21. Environmental Review

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

21. Uniform Relocation Act (URA)
The Project is subject to the relocation and acquisition requirements of the Uniform Relocation Act of 1970, as amended, and implemented at 49 CFR Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implemented at 24 CFR Part 42; and Displacement, Relocation, Acquisition, and Replacement of Housing implemented at 24 CFR 570.606. The SubGrantee must comply with the County's Anti Displacement and Relocation Assistance Plan on file.

B. Non-Appropriations Clause

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

C. Expenditure Restrictions

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

D. Agreement Changes

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

E. Direct Project Supervision and Administration

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

1. The SubGrantee agrees that all funds allocated to it for approved projects or activities shall be used solely for the purposes approved by the County. Said funds shall not be used for any non-approved purposes.

2. The SubGrantee agrees that the funds allocated for any approved projects or activities shall be sufficient to complete said projects or activities without any additional CDBG funding.

F. Indemnity

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

G. Bonding and Insurance

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

1. Comprehensive General Liability: In the amount of not less than $1,000,000 combined single limit. Coverage to include:
   a. Premises Operations
   b. Products/Completed Operations
   c. Broad Form Contractual Liability
   d. Independent Contractors
   e. Broad Form Property Damage
   f. Employees as Additional Insured
   g. Personal Injury
   h. Arapahoe County and the SubGrantee as Additional Named Insured
   i. Waiver of Subrogation
2. Comprehensive Automobile Liability: In the amount of not less than $1,000,000 combined single limit for bodily injury and property damage. Coverage to include:
   a. Arapahoe County and the SubGrantee as additional Named Insured
   b. Waiver of Subrogation

3. Employers Liability and Workers Compensation: The Contractor shall secure and maintain employer's liability and Worker's Compensation Insurance that will protect it against any and all claims resulting from injuries to and death of workers engaged in work under any contract funded pursuant to this agreement. Coverage to include Waiver of Subrogation.

4. All referenced insurance policies and/or certificates of insurance shall be subject to the following stipulations:
   a. Underwriters shall have no rights of recovery subrogation against Arapahoe County or the SubGrantee; it being the intent of the parties that the insurance policies so effected shall protect the parties and be primary coverage for any and all losses covered by the described insurance.
   b. The clause entitled "Other Insurance Provisions" contained in any policy including Arapahoe County as an additional named insured shall not apply to Arapahoe County, or the SubGrantee.
   c. The insurance companies issuing the policy or policies shall have no recourse against Arapahoe County, or the SubGrantee for payment of any premiums due or for any assessments under any form of any policy.
   d. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.

5. Certificate of Insurance: The Contractor shall not commence work under any contract funded pursuant to this Agreement until he has submitted to the SubGrantee, received approval thereof, certificates of insurance showing that he has complied with the foregoing insurance requirements. The SubGrantee shall also submit a copy of the Contractor's certificates of insurance to the County.

6. Notwithstanding the provisions contained in this paragraph (H) set forth hereinabove, the County reserves the right to modify or waive said provisions for projects or activities for which these provisions would prove prohibitive. The SubGrantee understands, however, that the decision to waive or modify those provisions is fully within the discretion of the County.
In accordance with 24 CFR parts 84 and 85, the following bonding requirements shall apply to all projects exceeding the simplified acquisition threshold (currently $100,000):

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

H. Records

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

I. Reporting

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

J. Timeliness

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

K. Reimbursement for Expenses

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

L. **Program Income**

All program income directly derived from the Arapahoe County Community Development Block Grant Program received by the SubGrantee will be returned to the County unless authorized in Exhibit A Scope of Services to be retained by the SubGrantee and dispersed for its approved CDBG Project activities. If the retention and re-use of Program Income is Authorized, it must be dispersed for its approved CDBG Project activities before additional CDBG funds are requested from the County. Following completion of the SubGrantee's Arapahoe County CDBG Projects, all program income directly generated from the use of CDBG funds will be remitted to the County.

M. **Real Property**

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

N. **State and County Law Compliance**

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

O. **Subcontracts**

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

P. **Suspension or Termination**

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

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

R. Certification

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and,

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

S. Disallowance

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

T. Reversion of Assets

Upon expiration of this Agreement, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the SubGrantee's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the SubGrantee in the form of a loan) in excess of $25,000 is either:

(i) Used to meet one of the national objectives in §570.208 (formerly §570.901) until five years after expiration of the agreement, or for such
longer period of time as determined to be appropriate by the County and specified in Exhibit A Scope of Services; or

(ii) Not used in accordance with national objectives in §570.208 (formerly §570.901), in which event the SubGrantee shall pay to the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

IV. RESPONSIBILITIES OF THE COUNTY

A. Administrative Control

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

B. Performance and Compliance Monitoring

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

C. Reporting to HUD

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

V. EXTENT OF THE AGREEMENT

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

VI. NOTICES

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

To the County: Arapahoe County Attorney
5334 S. Prince Street
Littleton, CO 80120-1136

and

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

To the SubGrantee: City of Englewood
ATTN: Janet Grimmett
1000 Englewood Pkwy
Englewood, CO 80110

In Witness Whereof, the Parties have caused this Agreement to be duly executed this ______________ day of _____________________________, 2012.

SubGrantee:

________________________________________
Signature

________________________________________
Title
Board of County Commissioners
Arapahoe County, Colorado

Don Klemme on behalf of the Board of County Commissioners
Pursuant to Resolution #120113
EXHIBIT A

SCOPE OF SERVICES
FOR CDBG REHAB

Program Name: Englewood—Energy Efficient Englewood (E3)
CFDA #: CDBG 14.218
Project #: ENHS 1222

AGREEMENT AMOUNT: $ 100,000
AGREEMENT END DATE AND PROJECT DEADLINE: 4/30/2013

INTRODUCTION

This Scope of Services is attached to and incorporated into the SubGrantee Agreement between the Board of County Commissioners of the County of Arapahoe, State of Colorado and the City of Englewood (SubGrantee) as referenced in the Agreement. The purpose of this Scope of Services is to further describe the project requirements referenced in Section II. C. - Performance Criteria of the SubGrantee Agreement.

1. FEDERAL REGULATORY INFORMATION

CDBG National Objective1: Benefit to low- and moderate-income (LMI) housing

HUD Matrix Code: 14A Single Unit Proposed Number of beneficiaries*: 12 Residential

*Beneficiaries are to be counted by the number of total number of □ PEOPLE or □ HOUSEHOLDS who will benefit from the project (including all members of a household).

The Project will be carried out under the:

□ CDBG Area Benefit definition        □ CDBG Limited Clientele definition

For Limited Clientele Activities: Select which method of income verification will be used:

□ Self-Certification   □ Verification with supporting income documentation

If income will be verified2, select the method that will be used to determine annual household income:

□ N/A □ Part 5 Section 8 □ Census Long Form □ IRS Form 1040 Long Form

2. ACTIVITY DESCRIPTION/PERFORMANCE GOALS

1 Change to appropriate National Objective if necessary.
2 For descriptions of each income verification method and required documentation, go to: http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/calculator.cfm
This website provides an on-line income calculator for each of the three verification methods. The use of the calculator is required and a print-out of the completed calculator for each household assisted must be maintained on file.
a. **Purpose (short description of program purpose)**
   The E3 project is available within the City of Englewood to assist low and moderate income families with incentives to encourage conservation and energy efficiency upgrades.

b. **Goals and Community Impact**
   To provide loan and/or grants to 12 single family homeowners within Englewood.

c. **Project Address-throughout Arapahoe County**
   Sites within Englewood addresses unknown at this time.

d. **Name of Organization Carrying out the Activity – City of Englewood**
   Organization is: ☑ Another unit of local gov't; ☐ Another public agency; ☑ CBDO only; ☐ Subrecipient only; ☐ CBDO designated as subrecipient

e. **Local Jurisdictions rules and regulations/ADA**
   SubGrantee agrees that it has read and understands the local jurisdiction's rules and regulations and local codes pertaining to the work and that all work will be permitted with the municipality and completed according to its rules and regulations. SubGrantee will perform the work in accordance with the Americans with Disabilities Act (ADA).

f. **Detailed Program Requirements**
   The responsibilities of the City of Englewood for implementation of the program will include:
   - Market the program;
   - Accept all applications;
   - Determine applicants' eligibility and approve or deny grants;
   - Maintain a list of approved contractors;
   - Complete a Site Specific Environmental Review;
   - Contact Arapahoe County Weatherization, if eligible refer client;
   - Determine needs and develop comprehensive work specifications based on Energy Audit;
   - Prepare client documentation;
   - Monitor rehab activity;
   - Comply with lead-based paint regulations and ensure that tenants, owners and contractors are aware of their rights, responsibilities and options;
   - Maintain program activity records and produce reports as set forth in this contract;
   - Homeowner selects company/individual to conduct work or purchase materials. Company name and/or individual name is matched against the Federal Excluded Party List System by City to insure eligibility to receive federal funds. This is completed before any work begins. Once cleared the homeowner is instructed to proceed and to ensure appropriate permits are obtained, if required, by the Englewood Building and Safety Division.
   - Ensure that costs are reasonable:
     - Does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost;
     - Is consistent with sound business practices; and
consistent with market prices for similar goods and services;
- Payment may be made either directly to homeowner, upon receipt of paid invoices, or paid directly to company/individual. Reimbursement is 80% of the total invoice when a 20% match is required. Copies of checks and invoices are placed in file;
- Items will meet or exceed energy standards set forth at www.energystar.gov; and
- Homeowner sign-off on the job being completed as stated in the description of work.

g. Program Income
Program income is the gross income received by the SubGrantee directly generated from the use of CDBG funds under this Agreement. Program income includes:
- Proceeds from the sale or lease of property purchased or improved with CDBG funds until five years after the termination of this Agreement;
- Proceeds from the sale or lease of equipment purchased with CDBG funds;
- Gross income from the use or rental of real or personal property acquired, constructed or improved by the SubGrantee less costs incidental to the generation of income;
- Payments of principal and interest on loans made by the SubGrantee using CDBG funds;
- Proceeds from the sale of loans or obligations secured by loans made with CDBG funds;
- Interest earned on program income pending its disposition (NOTE: interest earned on CDBG funds held in revolving loan funds is not program income and must be remitted to the U.S. Treasury at least annually); and
- Funds collected through special assessments on properties not owned and occupied by LMI households in order to recover the CDBG portion of a public improvement.

The County □ authorizes □ does not authorize the SubGrantee to retain Program Income to be used for eligible CDBG activities. If authorized, Program income may be used for the following purposes: n/a

Reporting program income: Monthly, the SubGrantee must report to the County on the amount of Program Income received, less costs incidental to the generation of Program Income. Any Program Income in excess of the amount of CDBG funds identified in Section i. Budget must be repaid to the County.

i. Budget

<table>
<thead>
<tr>
<th>ITEM</th>
<th>TOTAL BUDGET</th>
<th>AMT. PD BY COUNTY</th>
<th>AMT PD BY Englewood</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admin- Personnel Costs</td>
<td>$25,000</td>
<td>$1,720</td>
<td>$23,280</td>
</tr>
<tr>
<td>Admin-Lead Based Paint Testing</td>
<td>$1,200</td>
<td>$1,200</td>
<td>$1,200</td>
</tr>
<tr>
<td>Admin-Energy Audit Costs</td>
<td>$1,080</td>
<td>$1,080</td>
<td>$1,080</td>
</tr>
<tr>
<td>Grants for Energy Efficiency</td>
<td>$96,000</td>
<td>$96,000</td>
<td>$96,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$123,280</td>
<td>$100,000</td>
<td>$23,280</td>
</tr>
</tbody>
</table>
The amounts in each budget line item may be adjusted with the written approval of the County; provided, however, that the total amount of the award does not change.

Retainage: Up to 5% of each draw may be retained to ensure that the work is completed satisfactorily. Retainage withheld will be paid within 60 days upon the completion and satisfactory inspection of the work.

3. DRAW REQUESTS

Draw requests are due for each calendar month by the 20th day of the following month. Draw requests must include:

a. Draw cover sheet showing itemized list of expenditures (HCDS form)
b. Supporting documentation (check all that apply):
   - Third-party invoices or receipts
   - Check copies showing payment cashment (cancelled checks)
   - Lien Waivers
   - Davis-Bacon Certified Payrolls
   - Federal Accountability and Transparency Act form (Attachment 1)*

   *Per the Federal Accountability and Transparency Act of 2006 as amended, compensation data for certain officials must be reported. The report form is attached herein as Attachment 1. This form must be submitted with the first draw request and updated if there are changes

   Site Specific Environmental Review checklists

   Note: Payments on draws submitted after May 20 may be delayed due to end-of-year HUD reporting

4. REPORTING

Data collection must be completed demonstrating income eligibility and achievements met towards meeting the objectives described in Section 2 Activity Description. The disbursement of funds is contingent upon the receipt of the required information.

Reports are due for each calendar month by the 20th day of the following month. Reports must include:

- No. of beneficiaries served during the reporting period
- Demographic information* for □ the individual served, or □ each household
- Household income* (if applicable)
- Brief narrative report on activities contained in Section 2
- Program Income

*HCDS will provide a form for the collection of beneficiary income and demographic information; however, the SubGrantee may use its own form, or a form used for another fund source for the same program, provided that the following information is collected:

- Unique identifier: Name and address
- Whether the head of household is female and/or disabled
- Whether the head of household is aged 62 years or older
- Total number of household members
- Total income of all household members
• Ethnicity: Hispanic or Latino OR Not Hispanic or Latino of each household member
• The race of each household member:
  White
  Black or African American
  Asian
  American Indian or Alaska Native
  Native Hawaiian or Other Pacific Islander
  American Indian or Alaska Native and White
  Asian and White
  Black or African American and White
  American Indian or Alaska Native and Black or African American
  Other Multi-Racial
  NOTE: Both ethnicity AND race category must be selected for each household member
• Signature attesting to the accuracy of the information submitted.

5. RECORD-KEEPING AND MONITORING

SubGrantee shall retain on file the following documents for a period of five years beyond the final close-out of this grant...Files shall be made available to Arapahoe County, the Department of Housing and Urban Development, the Office of Inspector General, the General Accounting Office, or any other federal regulatory agency, upon request for monitoring purposes.

1. Agreement between County and SubGrantee
2. Draw Requests and supporting documentation (see Section IV Draw Requests)
3. Beneficiary Data (see Section V Reporting)
4. Annual audits
5. Records of compliance with federal procurement rules when the SubGrantee awards contracts, utilizing CDBG funds, for services, supplies, materials or equipment, that are in the amount of $100,000 or more, or when CDBG funds, in any amount, are used for construction activities. SubGrantees should follow their local jurisdiction’s or State procurement policies; provided that they are not in conflict with applicable federal law. Labor clauses contained in HUD-4010 and the applicable Davis-Bacon wage rate decision must be a physical part of a bid package. 24 CFR 85.36
   a. Copies of bid documents
   b. Copies of contracts
   c. Copies of all payments and supporting documentation to contractors and vendors
6. Records pertaining to Labor Laws and Requirements
7. Davis-Bacon wage rate decisions when project costs are $2,000 or more
8. Davis-Bacon weekly payroll records, including overtime records
9. Section 3 outreach efforts, for contracts between the County and SubGrantee that are in the amount of $100,000 or more, and for contracts between the SubGrantee and its sub-contractors that are in the amount of $200,000 or more
   a. Women and Minority Business Enterprise - outreach efforts and records of contracts with woman- and minority-owned businesses
   b. Copies of contracts with sub-contractors
10. Records of lead-based paint assessment, abatement and final clearance, if applicable
11. Records of asbestos assessment, abatement and final clearance, if applicable
12. Records of acquisition and/or relocation, if applicable

**FOR COUNTY USE ONLY – FEDERAL IDIS REPORTING**

1. Performance Goal: □ Create suitable living environments; □ Provide decent affordable housing; □ Create economic opportunities
2. Performance Outcome: □ Availability/Accessibility; □ Affordability; □ Sustainability
3. Check box if project address is to be marked as confidential □
4. Activity Purpose: □ Prevent Homelessness; □ Help the Homeless; □ Help those with HIV/AIDS; □ Help persons with disabilities
5. □ Accomplishments to be reported at another activity: IDIS #
6. Activity being carried out by Grantee? □ yes; □ no if yes, activity is being carried out through: □ Employees; □ Contractors; □ Both
7. If agreement is with another County department, the activity will be carried out by: □ County employees; □ Contractors; □ Both
8. Area Type: □ CDFO Area; □ Local Target Area; □ Strategy Area
9. Special Characteristics: □ Presidentialy Declared major Disaster Area; □ Historic Preservation Area; □ Brownfield Redevelopment Area – indicate number of acres remediated:
10. Activity Information: □ One-for-One Replacement; □ Displacement; □ Favored Activity; □ Special Assessment; □ Revolving Fund; □ Float Funded
## Attachment 1

**Federal Funding Accountability and Transparency Act (FFATA)**

In accordance with Federal Acquisition Regulation Clause 52.204-10, reporting is required for awards of $25,000 or more.

### Information Field Definitions can be found on the reverse of this form.

<table>
<thead>
<tr>
<th>Information Field</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agency or Jurisdiction DUNS number:</td>
<td>Arapahoe County</td>
</tr>
<tr>
<td>2. Subrecipient name Receiving Award:</td>
<td>City of Englewood</td>
</tr>
<tr>
<td>3. Subrecipient Parent DUNS number: (report if different from agency number above)</td>
<td></td>
</tr>
<tr>
<td>4. Location of Entity Receiving Award: (full street address)</td>
<td></td>
</tr>
<tr>
<td>5. Primary location of Performance of the Award: (City, State and Congressional District)</td>
<td></td>
</tr>
</tbody>
</table>

**Answer True or False (below)**

6. In the preceding fiscal year, Contractor received:
   a.) $25,000,000 or more in annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.
   b.) 80% or more of its annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.
   c.) The public does not have access to information about the compensation of its five most highly compensated Executives through periodic reports filed through the Securities Exchange Act of 1934 or the IRS.

An answer to question 7 is required ONLY when all answers to questions 6 are true.

7. Names and total compensation of the five (5) most highly compensated Executives for the preceding fiscal year:

<table>
<thead>
<tr>
<th>Print Name</th>
<th>Compensation Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Page 7
Definitions

1. The DUNS Number of the agency receiving the award, which is used as the unique entity identifier. **DUNS Number - Dun and Bradstreet (D&B)** – This commercial entity maintains a repository of unique identifiers (D-U-N-S Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number.

2. The name of the entity receiving the award; Sub-Grantee, Sub-Recipient, Sub-Awardee.

3. The DUNS Number of the agency receiving the award (if different than Sub-Recipient in box #1), which is used as the unique entity identifier. **DUNS Number - Dun and Bradstreet (D&B)** – This commercial entity maintains a repository of unique identifiers (DUNS Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number.

4. The business office location of the entity receiving the award under the award including the city, state, congressional district, and country.

5. The primary location of performance under the award including the city, state, congressional district, and country.

6. The names and total compensation of the five highest-paid officers of an entity if, in the preceding fiscal year, that entity received: 80% or more of its annual gross revenues in Federal awards, $25,000,000 or more in annual gross revenues from Federal awards, and the public does not already have access to data on executive compensation through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, or section 6104 of the Internal Revenue Code of 1986.
SUBGRANTEE AGREEMENT FOR
ARAPAHOE COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

SUBGRANTEE: City of Englewood
PROJECT NAME: Housing Rehabilitation
PROJECT NUMBER: ENHS 1223

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

I. PURPOSE

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

The project by the SubGrantee known as Housing Rehabilitation (Project) will be carried out in accordance with the Scope of Services, attached to, and incorporated herein as Exhibit A.

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

II. WORK TO BE COMPLETED BY THE SUBGRANTEE

The grant funds are to be used only to provide services to Arapahoe County residents, excluding residents of the city of Aurora, per County CDBG guidelines.

A. Payment

It is expressly agreed and understood that the total amount to be paid by the County under this contract shall not exceed $27,500. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in the Project Budget and in accordance with performance criteria established in Exhibit A Scope of Services. The parties expressly recognize that the SubGrantee is to be paid with CDBG funds received from the federal government, and that the obligation of the County to make payment to SubGrantee is contingent upon receipt of such funds. In the event that said funds, or any part thereof, are, or become, unavailable, then the County may immediately terminate or, amend this agreement. To the extent C.R.S. § 29-1-110 is applicable, any financial obligation of the County to the SubGrantee
beyond the current fiscal year is also contingent upon adequate funds being appropriated, budgeted and otherwise available.

Upon expiration of this Agreement, as identified by the Agreement Date and Project Deadline (Deadline) in Exhibit A, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. These transferred funds shall revert to the County and be utilized for other purposes.

B. Timeline

All Project activities shall be completed and draw requests submitted by the Deadline unless the Subgrantee notifies the County in writing thirty (30) days prior to the Deadline that the funds cannot be disbursed. An extension may be granted, in writing, in which all draw requests be submitted and Project activities shall be completed by thirty (30) days following the Deadline. In the event that the completion deadline falls on a weekend or holiday, the Deadline will be considered the work day prior to the scheduled completion date. If the project requires additional time past the extended Deadline, the Agreement must be modified by mutual agreement of the County and the SubGrantee.

C. Performance Criteria

In accordance with the funding application submitted by the SubGrantee for the Project, the criteria listed below are to be met during the execution of the Project as identified in Exhibit A Scope of Services.

1. Quantifiable Goals
2. Community Impact
3. Monthly Performance Standards

D. Reporting Requirements

1. Project reports will be due within twenty (20) days following the end of each reporting period as specified in Exhibit A Scope of Services until the Project is completed.
2. The official annual audit and/or Financial Statements for the SubGrantee in which both revenues and expenditures for the CDBG Projects described herein are detailed are due annually. The last completed official annual audit report and/or Financial Statements shall be due on May 31, and for four (4) years thereafter on May 31.
3. Non-profit organizations that expend $500,000 or more annually in federal funds shall comply with the Single Audit Act of 1984, as amended, as implemented in OMB Circular A-133, and other applicable federal regulations.
III. RESPONSIBILITIES OF THE SUBGRANTEE

A. Federal Compliance

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

1. 24 CFR Part 570;
2. 24 CFR Parts 84 and 85 as applicable per 24 CFR 570.502;
3. Title VI of the Civil Rights Act of 1964;
4. Title VIII of the Civil Rights Act of 1968;
5. Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
6. Fair housing regulations established in the Fair Housing Act, Public Law 90-284, and Executive Order 11063;
7. Section 504 of the Rehabilitation Act of 1973;
8. Asbestos guidelines established in CPD Notice 90-44;
10. Non-discrimination in employment, established by Executive Order 11246;
11. Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
12. Section 3 of the Housing and Urban Development Act of 1968;
   The purpose of section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
13. Federal procurement rules when purchasing services, supplies, materials, or equipment. The applicable federal regulations are contained in: 24 CFR Part 85 or through 24 CFR Part 84, as applicable;
14. Lead Based Paint regulations established in 24 CFR Parts 35 and 570.608;
15. Audit requirements established in OMB Circular A-133; and
16. Cost principles established in OMB Circulars A-87 and A-122 as applicable per 24 CFR 570.502;

17. Conflict of Interest:
   a) **Applicability.**
      (1) In the procurement of supplies, equipment, construction, and services by the County and by the SubGrantee, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively shall apply.
      (2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of 24 CFR 570.611 (2) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the County or by its SubGrantees to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to 24 CFR 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to 24 CFR 570.203, 570.204, 570.455, or 570.703 (i)).

   b) **Conflicts prohibited.** The general rule is that persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may not obtain a financial interest or benefit from a CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

   c) **Persons covered.** The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the County, or any designated public agencies, or of the SubGrantee that are receiving funds under this part.

   d) **Exceptions.** Upon the written request of the County, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.
      (1) **Threshold requirements.** HUD will consider an exception only after the County has provided the following documentation:
         i. A disclosure of the nature of the conflict, accompanied by an assurance that there has been
public disclosure of the conflict and a description of how the public disclosure was made; and

ii. An opinion of the County's attorney that the interest for which the exemption is sought would not violate State or local law.

(2) Factors to be considered for exceptions. In determining whether to grant a requested exception after the County has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the County's program or project, taking into account the following factors, as applicable:

i. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

ii. Whether an opportunity was provided for open competitive bidding or negotiation;

iii. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

iv. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

vi. Whether undue hardship will result either to the County or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

vii. Any other relevant considerations.

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

19. Labor Standards (Davis-Bacon)

Except for the rehabilitation of residential property that contains less than eight (8) units, the SubGrantee, and its
contractor and all subcontractors shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates of not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor, when the project costs total $2,000 or more and the work is financed in whole or in part with assistance provided under this Agreement. The applicable Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the “Federal Labor Standards Provisions”, Form HUD-4010.

20. Lead Based Paint Regulations

If the Project involves acquisition, construction, demolition, rehabilitation, or any other activity related to residential housing, and the building was built prior to 1978, Lead Based Paint Laws and Regulations apply, as established in 24 CFR Parts 35 and 24 CFR 570.608. Further, all applicable federal and state laws relating to lead-based paint must be followed, including such regulations promulgated by the U.S. Environmental Protection Agency and the State Department of Public Health and Environment, including regulations for non-housing buildings. If the SubGrantee does not follow and document lead based paint laws and regulation compliance, the SubGrantee will not be eligible for reimbursement.

21. Environmental Review

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

21. Uniform Relocation Act (URA)
The Project is subject to the relocation and acquisition requirements of the Uniform Relocation Act of 1970, as amended, and implemented at 49 CFR Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implemented at 24 CFR Part 42; and Displacement, Relocation, Acquisition, and Replacement of Housing implemented at 24 CFR 570.606. The SubGrantee must comply with the County’s Anti Displacement and Relocation Assistance Plan on file.

B. Non-Appropriations Clause

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

C. Expenditure Restrictions

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

D. Agreement Changes

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

E. Direct Project Supervision and Administration

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

1. The SubGrantee agrees that all funds allocated to it for approved projects or activities shall be used solely for the purposes approved by the County. Said funds shall not be used for any non-approved purposes.

2. The SubGrantee agrees that the funds allocated for any approved projects or activities shall be sufficient to complete said projects or activities without any additional CDBG funding.

F. Indemnity

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

G. Bonding and Insurance

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

1. Comprehensive General Liability: In the amount of not less than $1,000,000 combined single limit. Coverage to include:
   a. Premises Operations
   b. Products/Completed Operations
   c. Broad Form Contractual Liability
   d. Independent Contractors
   e. Broad Form Property Damage
   f. Employees as Additional Insured
   g. Personal Injury
   h. Arapahoe County and the SubGrantee as Additional Named Insured
   i. Waiver of Subrogation
2. Comprehensive Automobile Liability: In the amount of not less than $1,000,000 combined single limit for bodily injury and property damage. Coverage to include:
   a. Arapahoe County and the SubGrantee as additional Named Insured
   b. Waiver of Subrogation

3. Employers Liability and Workers Compensation: The Contractor shall secure and maintain employer's liability and Worker's Compensation Insurance that will protect it against any and all claims resulting from injuries to and death of workers engaged in work under any contract funded pursuant to this agreement. Coverage to include Waiver of Subrogation.

4. All referenced insurance policies and/or certificates of insurance shall be subject to the following stipulations:
   a. Underwriters shall have no rights of recovery subrogation against Arapahoe County or the SubGrantee; it being the intent of the parties that the insurance policies so effected shall protect the parties and be primary coverage for any and all losses covered by the described insurance.
   b. The clause entitled "Other Insurance Provisions" contained in any policy including Arapahoe County as an additional named insured shall not apply to Arapahoe County, or the SubGrantee.
   c. The insurance companies issuing the policy or policies shall have no recourse against Arapahoe County, or the SubGrantee for payment of any premiums due or for any assessments under any form of any policy.
   d. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.

5. Certificate of Insurance: The Contractor shall not commence work under any contract funded pursuant to this Agreement until he has submitted to the SubGrantee, received approval thereof, certificates of insurance showing that he has complied with the foregoing insurance requirements. The SubGrantee shall also submit a copy of the Contractor's certificates of insurance to the County.

6. Notwithstanding the provisions contained in this paragraph (H) set forth hereinabove, the County reserves the right to modify or waive said provisions for projects or activities for which these provisions would prove prohibitive. The SubGrantee understands, however, that the decision to waive or modify those provisions is fully within the discretion of the County.
In accordance with 24 CFR parts 84 and 85, the following bonding requirements shall apply to all projects exceeding the simplified acquisition threshold (currently $100,000):

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

H. Records

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

I. Reporting

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

J. Timeliness

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

K. Reimbursement for Expenses

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

L. Program Income

All program income directly derived from the Arapahoe County Community Development Block Grant Program received by the SubGrantee will be returned to the County unless authorized in Exhibit A Scope of Services to be retained by the SubGrantee and dispersed for its approved CDBG Project activities. If the retention and re-use of Program Income is Authorized, it must be dispersed for its approved CDBG Project activities before additional CDBG funds are requested from the County. Following completion of the SubGrantee's Arapahoe County CDBG Projects, all program income directly generated from the use of CDBG funds will be remitted to the County.

M. Real Property

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

N. State and County Law Compliance

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

O. Subcontracts

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

P. Suspension or Termination

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

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

R. Certification

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and,

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

S. Disallowance

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

T. Reversion of Assets

Upon expiration of this Agreement, the SubGrantee shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the SubGrantee's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the SubGrantee in the form of a loan) in excess of $25,000 is either:

(i) Used to meet one of the national objectives in §570.208 (formerly §570.901) until five years after expiration of the agreement, or for such
longer period of time as determined to be appropriate by the County and specified in Exhibit A Scope of Services; or

(ii) Not used in accordance with national objectives in §570.208 (formerly §570.901), in which event the SubGrantee shall pay to the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

IV. RESPONSIBILITIES OF THE COUNTY

A. Administrative Control

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

B. Performance and Compliance Monitoring

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

C. Reporting to HUD

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

V. EXTENT OF THE AGREEMENT

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

VI. NOTICES

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

To the County: Arapahoe County Attorney
5334 S. Prince Street
Littleton, CO 80120-1136

and

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

To the SubGrantee: City of Englewood
ATTN: Janet Grimmett
1000 Englewood Pkwy
Englewood, CO 80110

In Witness Whereof, the Parties have caused this Agreement to be duly executed this _____________ day of __________________________, 2012.

SubGrantee:

__________________________________________
Signature

__________________________________________
Title
Board of County Commissioners  
Arapahoe County, Colorado

Don Klemme on behalf of the Board of County Commissioners
Pursuant to Resolution #120113
EXHIBIT A

SCOPE OF SERVICES
FOR CDBG REHAB

Program Name: Englewood–Housing Rehabilitation
CFDA #: CDBG 14.218
Project #: ENHS 1223

AGREEMENT AMOUNT: $ 27,500
AGREEMENT END DATE AND PROJECT DEADLINE: 4/30/2013

INTRODUCTION

This Scope of Services is attached to and incorporated into the SubGrantee Agreement between the Board of County Commissioners of the County of Arapahoe, State of Colorado and the City of Englewood (SubGrantee) as referenced in the Agreement. The purpose of this Scope of Services is to further describe the project requirements referenced in Section II. C - Performance Criteria of the SubGrantee Agreement.

1. FEDERAL REGULATORY INFORMATION

CDBG National Objective¹: Benefit to low- and moderate-income (LMI) housing

HUD Matrix Code: 14A Single Unit Proposed Number of beneficiaries*: 3 Residential

*Beneficiaries are to be counted by the number of total number of □ PEOPLE or □ HOUSEHOLDS who will benefit from the project (including all members of a household).

The Project will be carried out under the:
□ CDBG Area Benefit definition □ CDBG Limited Clientele definition

For Limited Clientele Activities: Select which method of income verification will be used:
□ Self-Certification □ Verification with supporting income documentation

If income will be verified², select the method that will be used to determine annual household income:
□ N/A □ Part 5 Section 8 □ Census Long Form □ IRS Form 1040 Long Form

2. ACTIVITY DESCRIPTION/PERFORMANCE GOALS

¹ Change to appropriate National Objective if necessary.
² For descriptions of each income verification method and required documentation, go to:
http://www.hud.gov/offices/cod/affordablehousing/training/web/calculator/calculator.cfm
³ This website provides an on-line income calculator for each of the three verification methods. The use of the calculator is required and a print-out of the completed calculator for each household assisted must be maintained on file.
a. **Purpose (short description of program purpose)**
The Housing Rehabilitation Project is available within the City of Englewood to assist low and moderate income families with the financing of their major household repairs.

b. **Goals and Community Impact**
To provide loan and/or grants to 3 single family homeowners within Englewood.

c. **Project Address—throughout Arapahoe County**
Sites within Englewood addresses unknown at this time.

d. **Name of Organization Carrying out the Activity—City of Englewood**
Organization is: ☑ Another unit of local gov’t; ☐ Another public agency; ☐ CBDO only; ☐ Subrecipient only; ☑ CBDO designated as subrecipient

e. **Local Jurisdictions rules and regulations/ADA**
SubGrantee agrees that it has read and understands the local jurisdiction’s rules and regulations and local codes pertaining to the work and that all work will be permitted with the municipality and completed according to its rules and regulations. SubGrantee will perform the work in accordance with the Americans with Disabilities Act (ADA).

f. **Detailed Program Requirements**
The responsibilities of the City of Englewood for implementation of the program will include:
- Market the program;
- Accept all applications;
- Determine applicants’ eligibility and approve or deny grants/loans;
- Maintain a list of approved contractors;
- Complete a Site Specific Environmental Review;
- Determine rehab needs and develop comprehensive work specifications;
- Structure contractor bidding process;
- Prepare contractor and client documentation;
- Monitor rehab activity;
- Comply with lead-based paint regulations and ensure that tenants, owners and contractors are aware of their rights, responsibilities and options;
- Maintain program activity records and produce reports as set forth in this contract;
- Inspect each rehab once completed with the contractor, and sign-off on the job being completed as stated in the description of work; and
- Ensure that all City permitting and local standards are met.

g. **Program Income**
Program income is the gross income received by the SubGrantee directly generated from the use of CDBG funds under this Agreement. Program income includes:
- Proceeds from the sale or lease of property purchased or improved with CDBG funds until five years after the termination of this Agreement;
- Proceeds from the sale or lease of equipment purchased with CDBG funds;
• Gross income from the use or rental of real or personal property acquired, constructed or improved by the SubGrantee less costs incidental to the generation of income;
• Payments of principal and interest on loans made by the SubGrantee using CDBG funds;
• Proceeds from the sale of loans or obligations secured by loans made with CDBG funds;
• Interest earned on program income pending its disposition (NOTE: interest earned on CDBG funds held in revolving loan funds is not program income and must be remitted to the U.S. Treasury at least annually); and
• Funds collected through special assessments on properties not owned and occupied by LMI households in order to recover the CDBG portion of a public improvement.

The County does not authorize the SubGrantee to retain Program Income to be used for eligible CDBG activities. If authorized, Program income may be used for the following purposes: The Englewood Housing Rehabilitation Program

**Reporting program income:** Monthly, the SubGrantee must report to the County on the amount of Program Income received, less costs incidental to the generation of Program Income. Any Program Income in excess of the amount of CDBG funds identified in Section i. Budget must be repaid to the County.

### 1. Budget

<table>
<thead>
<tr>
<th>ITEM</th>
<th>TOTAL BUDGET</th>
<th>AMT PD BY COUNTY</th>
<th>AMT PD BY Englewood</th>
<th>AMT PD BY Bank Line of Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admin- Personnel Costs</td>
<td>$50,000</td>
<td>$3,000</td>
<td>$47,000</td>
<td>$0</td>
</tr>
<tr>
<td>Project Rehab Costs</td>
<td>$37,000</td>
<td>$24,500</td>
<td>$47,000</td>
<td>$12,500</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$87,000</strong></td>
<td><strong>$27,500</strong></td>
<td><strong>$47,000</strong></td>
<td><strong>$12,500</strong></td>
</tr>
</tbody>
</table>

The amounts in each budget line item may be adjusted with the written approval of the County; provided, however, that the total amount of the award does not change.

Retainage: Up to 5% of each draw may be retained to ensure that the work is completed satisfactorily. Retainage withheld will be paid within 60 days upon the completion and satisfactory inspection of the work.

### 3. DRAW REQUESTS

Draw requests are due for each calendar month by the 20th day of the following month. Draw requests must include:

a. Draw cover sheet showing itemized list of expenditures (HCDS form)
b. Supporting documentation (check all that apply):

- Third-party invoices or receipts
- Check copies showing payment cashment (cancelled checks)
- Lien Waivers
- Davis-Bacon Certified Payrolls—the one unit is considered a group home and therefore exempt from Davis Bacon
- Federal Accountability and Transparency Act form (Attachment 1)*

*Per the Federal Accountability and Transparency Act of 2006 as amended, compensation data for certain officials must be reported. The report form is attached herein as Attachment 1. This form must be submitted with the first draw request and updated if there are changes.
4. REPORTING

Data collection must be completed demonstrating income eligibility and achievements met towards meeting the objectives described in Section 2 Activity Description. The disbursement of funds is contingent upon the receipt of the required information.

Reports are due for each calendar month by the 20th day of the following month. Reports must include:

- No. of beneficiaries served during the reporting period
- Demographic information* for □ the individual served, or □ each household
- Household income* (if applicable)
- Brief narrative report on activities contained in Section 2
- Program Income

*HCDS will provide a form for the collection of beneficiary income and demographic information; however, the SubGrantee may use its own form, or a form used for another fund source for the same program, provided that the following information is collected:

- Unique identifier: Name and address
- Whether the head of household is female and/or disabled
- Whether the head of household is aged 62 years or older
- Total number of household members
- Total income of all household members
- Ethnicity: Hispanic or Latino OR Not Hispanic or Latino of each household member
- The race of each household member:
  - White
  - Black or African American
  - Asian
  - American Indian or Alaska Native
  - Native Hawaiian or Other pacific Islander
  - American Indian or Alaska Native and White
  - Asian and White
  - Black or African American and White
  - American Indian or Alaska Native and Black or African American
  - Other Multi-Racial
  
  NOTE: Both ethnicity AND race category must be selected for each household member

- Signature attesting to the accuracy of the information submitted.

5. RECORD-KEEPING AND MONITORING

SubGrantee shall retain on file the following documents for a period of five years beyond the final close-out of this grant. Files shall be made available to Arapahoe County, the Department of Housing and
Urban Development, the Office of Inspector General, the General Accounting Office, or any other federal regulatory agency, upon request for monitoring purposes.

1. Agreement between County and SubGrantee
2. Draw Requests and supporting documentation (see Section IV Draw Requests)
3. Beneficiary Data (see Section V Reporting)
4. Annual audits
5. Records of compliance with federal procurement rules when the SubGrantee awards contracts, utilizing CDBG funds, for services, supplies, materials or equipment, that are in the amount of $100,000 or more, or when CDBG funds, in any amount, are used for construction activities. SubGrantees should follow their local jurisdiction's or State procurement policies; provided that they are not in conflict with applicable federal law. Labor clauses contained in HUD-4010 and the applicable Davis-Bacon wage rate decision must be a physical part of a bid package. 24 CFR 85.36
   a. Copies of bid documents
   b. Copies of contracts
   c. Copies of all payments and supporting documentation to contractors and vendors
6. Records pertaining to Labor Laws and Requirements
7. Davis-Bacon wage rate decisions when project costs are $2,000 or more
8. Davis-Bacon weekly payroll records, including overtime records
9. Section 3 outreach efforts, for contracts between the County and SubGrantee that are in the amount of $100,000 or more, and for contracts between the SubGrantee and its sub- contractors that are in the amount of $200,000 or more
   a. Women and Minority Business Enterprise - outreach efforts and records of contracts with woman- and minority-owned businesses
   b. Copies of contracts with sub-contractors
10. Records of lead-based paint assessment, abatement and final clearance, if applicable
11. Records of asbestos assessment, abatement and final clearance, if applicable
12. Records of acquisition and/or relocation, if applicable

---

**FOR COUNTY USE ONLY—FEDERAL IDIS REPORTING**

1. Performance Goal: ☑ Create suitable living environments; ☑ Provide decent affordable housing; ☑ Create economic opportunities
2. Performance Outcome: ☐ Availability/Accessibility; ☑ Affordability; ☐ Sustainability
3. Check box if project address is to be marked as confidential ☐
4. Activity Purpose: ☑ Prevent Homelessness; ☑ Help the Homeless; ☑Help those with HIV/AIDS; ☑ Help persons with disabilities
5. ☐ Accomplishments to be reported at another activity: IDIS #
6. Activity being carried out by Grantee? ☑ yes; ☐ no  If yes, activity is being carried out through: ☑ Employees; ☐ Contractors; ☐ Both
7. If Agreement is with another County department, the activity will be carried out by: ☑ County employees; ☐ Contractors; ☐ Both
8. Area Type: ☑ CDFO Area; ☑ Local Target Area; ☑ Strategy Area
9. Special Characteristics: ☑ Presidentially Declared major Disaster Area; ☑ Historic Preservation Area; ☑ Brownfield Redevelopment Area — indicate number of acres remediated: ________
10. Activity Information: ☑ One-for-One Replacement; ☑ Displacement; ☑ Favored Activity; ☑ Special Assessment; ☑ Revolving Fund; ☑ Float Funded
## Attachment 1

### Federal Funding Accountability and Transparency Act (FFATA)

In accordance with Federal Acquisition Regulation Clause 52.204-10, reporting is required for awards of $25,000 or more.

<table>
<thead>
<tr>
<th>Information Field</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Agency or Jurisdiction DUNS number:</td>
<td>Arapahoe County</td>
</tr>
<tr>
<td>2. Subrecipient name Receiving Award:</td>
<td>City of Englewood</td>
</tr>
<tr>
<td>3. Subrecipient Parent DUNS number: (report if different from agency number above)</td>
<td></td>
</tr>
<tr>
<td>4. Location of Entity Receiving Award: (full street address)</td>
<td></td>
</tr>
<tr>
<td>5. Primary location of Performance of the Award: (City, State and Congressional District)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. In the preceding fiscal year, Contractor received:</th>
<th>Answer True or False (below)</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.) $25,000,000 or more in annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.</td>
<td></td>
</tr>
<tr>
<td>b.) 80% or more of its annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.</td>
<td></td>
</tr>
<tr>
<td>c.) The public does not have access to information about the compensation of its five most highly compensated Executives through periodic reports filed through the Securities Exchange Act of 1934 or the IRS.</td>
<td></td>
</tr>
</tbody>
</table>

*An answer to question 7 is required ONLY when all answers to questions 6 are true.*

7. Names and total compensation of the five (5) most highly compensated Executives for the preceding fiscal year:

<table>
<thead>
<tr>
<th>Print Name</th>
<th>Compensation Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
By signing below, I certify the information contained in this report is complete and accurate to the best of my knowledge.

______________________________  ________________
Signature of Responsible Administrator and Title Date

Definitions

1. The DUNS Number of the agency receiving the award, which is used as the unique entity identifier.

**DUNS Number - Dun and Bradstreet (D&B)** – This commercial entity maintains a repository of unique identifiers (D-U-N-S Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number.

2. The name of the entity receiving the award; Sub-Grantee, Sub-Recipient, Sub-Awardee.

3. The DUNS Number of the agency receiving the award (if different than Sub-Recipient in box #1), which is used as the unique entity identifier. **DUNS Number - Dun and Bradstreet (D&B)** – This commercial entity maintains a repository of unique identifiers (DUNS Numbers), which are nine-digit sequences recognized as the universal standard for identifying business entities and corporate hierarchies. Any organization that has a Federal contract or grant must have a DUNS Number.

4. The business office location of the entity receiving the award under the award including the city, state, congressional district, and country.

5. The primary location of performance under the award including the city, state, congressional district, and country.

6. The names and total compensation of the five highest-paid officers of an entity if, in the preceding fiscal year, that entity received: 80% or more of its annual gross revenues in Federal awards, $25,000,000 or more in annual gross revenues from Federal awards, and the public does not already have access to data on executive compensation through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934, or section 6104 of the Internal Revenue Code of 1986.
COUNCIL COMMUNICATION

Date: Agenda Item: Subject:
June 18, 2012 11 a ii Centennial Agreement for Temporary Lease of Return Flows

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

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council passed the original Centennial Agreement for Temporary Lease of Return Flows on July 1, 2002 and renewed May 19, 2003.

Council passed the Centennial Agreement for Temporary Lease of Return Flows on July 12, 2004. The agreement was a renewal of that agreement.

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at their June 12, 2012 meeting, recommended Council approval of the Agreement for Temporary Lease and/or Re-Diversion of Reusable Return Flows of Water Agreement with Centennial Water and Sanitation District. It is also recommended that the City Manager be granted the authority to extend the agreement on the anniversary date for three successive years.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Englewood injects granular activated carbon to improve water quality into a forebay near Union Ave. and the S. Platte River, but the process creates blackened water that cannot be directly introduced into City Ditch for exchanging. Clear water can be exchanged up City Ditch but must be pumped into the ditch from a forebay adjacent to the Allen Plant. Englewood has no pump or pipe for pumping this forebay, but Centennial is agreeing to provide and install the pump and pipe at Centennial’s sole expense.

Centennial owns reusable wastewater return flows to the S. Platte River and Englewood has means to re-divert these flows at Union Avenue and either use them or redeliver to Centennial. The proposed agreement would divert the return flows and pay Centennial $85.00 an acre-foot for the flows, plus pumping costs. Englewood would only acquire the return flows at its sole discretion. Centennial would acquire all return flows delivered to McLellan Reservoir that are not acquired by Englewood and shall pay Englewood $30/acre foot, plus pumping costs.
FINANCIAL IMPACT

Englewood will pay Centennial $85 per acre for all return flows it chooses to acquire from Centennial and Centennial shall pay Englewood $30 per acre for return flows acquired by Centennial.

LIST OF ATTACHMENTS

Water and Sewer Board Minutes from June 13, 2012
Water and Sewer Board Minutes from June 12, 2012
Proposed Bill for Ordinance
WATER & SEWER BOARD

PHONE VOTE - WEDNESDAY, JUNE 13, 2012

Phone Vote Roll Call.

Contacted: Clyde Wiggins, Chuck Habenicht, Tom Burns, Kells Waggoner, Jim Woodward, Linda Olson, Joe Lay, Wayne Oakley, John Moore, Randy Penn

1. MINUTES OF THE JUNE 12, 2012 MEETING.

Motion: Approve minutes of the June 12, 2012 Water and Sewer Board meeting.

Moved: Habenicht, Seconded: Wiggins

Motion passed unanimously.

The next Water and Sewer Board meeting will be Tuesday, July 17, 2012 at 5:00 p.m. in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary
ROLL CALL.

Present: Clyde Wiggins, Jo Lay, Chuck Habenicht, Tom Burns, Wayne Oakley, Kells Waggoner, John Moore, Randy Penn, Linda Olson, Jim Woodward, Stewart Fonda (Not voting), Cathy Burrage (Not voting).

Absent/Excused: None

Also present: Tom Brennan, Engineer IV and Yasser Abouaish, Engineer IV.

The meeting was called to order at 5:01 p.m.

1. MINUTES OF THE MAY 8, 2012. APPROVED BY PHONE VOTE.

The Minutes of the May 8, 2012 Water Board meeting were approved by phone vote on May 18, 2012.

2. AGREEMENT FOR TEMPORARY LEASE AND/OR REDIVERSION OF REUSABLE RETURN FLOWS.

Tom Brennan, Engineer IV, appeared before the Board to discuss the agreement in which Centennial owns reusable wastewater return flows to the S. Platte River that Englewood has means to re-divert at Union Avenue.

Motion: To recommend Council approval of the Agreement for Temporary Lease and/or Re-Diversion of Reusable Return flows of Water Agreement with Centennial Water and Sanitation district. It is also recommended that the City Manager be granted the authority to renew the agreement on the anniversary date for three successive years.
Moved: Burns  Seconded: Penn
Motion passed unanimously.

3. ALL RECYCLE – WESLEY AVE. VACATION – UTILITY ISSUES.

Tom Brennan reviewed the proposed vacation with All Recycle. Presently a water main is located in the Public ROW in W. Wesley Ave. and W. Harvard Ave. and in an easement in vacated S. Pecos St. that service only All Recycling with 12 taps ranging from 5/8” to 2”. The Board recommends All Recycle take ownership of the water mains and assume all maintenance of them.

After discussion, there was a general concurrence from the Water Board to allow All Recycling assume ownership of the main. A check valve and master meter in W. Wesley Ave. and W. Harvard Ave. at the east property line of S. Raritan St. will be required.

4. GRAND AVE. – WATER LINE CONSTRUCTION.

The Board received a memo from Mitch Riley, dated May 29, 2012 discussing conditions that residents may encounter during construction of the W. Grand Avenue water main.

5. ENGLEWOOD WATER CONSERVATION PLANNING GRANT APPLICATION - DRAFT.

Yasser Abouaish reviewed the Water Conservation Plan Grant Application draft that was submitted to the Colorado Water Conservation Board. This is a prerequisite to obtaining financial assistance from the Colorado Water Conservation Board and the Colorado Water Resources and Power Development Authority.

6. DROUGHT MANAGEMENT PLAN. (ATT. 6)

Yasser Abouaish reviewed the Drought Management Plan draft. Mr. Abouaish explained that this is a component of the Water Conservation Plan. Public notices, feedback and resident involvement were discussed.
PRESS RELEASE FROM COLORADO DEPT. OF LAW, "ATTORNEY GENERAL ANNOUNCES INDICTMENT OF CENTENNIAL BUSINESS SUSPECTED OF DEFRAUDING WESTERN SLOPE RESTAURANTS."

The Board received an article regarding the indictment of Frank Brandse and Erica Wicklund-Brandse and Centennial-based Pro Grease Trap Services, Inc. It is alleged that they lied on an official form and defrauded restaurants in Grant Junction.

MOVING JULY 10 WATER BOARD MEETING TO JULY 17, 2012.

The July Water and Sewer Board meeting was moved to July 17, 2012.

OTHER.

None.

The meeting adjourned at 6:14 p.m.

The next Water and sewer board meeting will be July 17, 2012 at 5:00 in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary
BY AUTHORITY

ORDINANCE NO. ______  COUNCIL BILL NO 41
SERIES OF 2012  INTRODUCED BY COUNCIL
MEMBER

A BILL FOR

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BETWEEN
CENTENNIAL WATER AND SANITATION DISTRICT AND THE CITY OF
ENGLEWOOD, COLORADO, ENTITLED “AGREEMENT FOR TEMPORARY
LEASE AND/OR RE-DIVERSION OF REUSABLE RETURN FLOWS OF WATER”.

WHEREAS, Englewood injects granular activated carbon to improve water
quality near Union Ave. and South Platte River, but the process creates blackened water
that cannot be directly introduced into the City Ditch for exchange; and

WHEREAS, clear water can be exchanged up city ditch but must be pumped into
the City Ditch from the reservoir adjacent to the Allen Filter Plant; and

WHEREAS, Englewood has no pump or pipe for pumping this water, but
Centennial is agreeing to provide and install the pump and pipe at Centennial’s sole
expense; and

WHEREAS, Centennial Water and Sanitation District owns reusable wastewater
return flows to the South Platte River, and the City of Englewood has means to re-divert
these flows at Union Avenue and either use them or redeliver them to Centennial; and

WHEREAS, the Agreement authorizes diversion of the return flows and
payment to Centennial of $85.00 an acre foot for the flows, plus pumping costs; and

WHEREAS, Centennial would acquire all return flows delivered to McLellan
Reservoir that are not acquired by Englewood and shall pay Englewood $30.00 an acre
foot, plus pumping costs; and

WHEREAS, the Englewood City Council approved an Intergovernmental Agreement
for the lease of Englewood’s Surplus water in 2003 and 2004; and

WHEREAS, the Englewood Water and Sewer Board recommended approval of
the Agreement for Temporary Lease And/Or Re-diversion of Reusable Return Flows of
Water between Centennial Water and Sanitation District and the City of Englewood at its
June 12, 2012 meeting.
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The Englewood City Council hereby approves renewal of the Lease Agreement between the City of Englewood and Centennial Water and Sanitation District entitled “Agreement for Temporary Lease and/or Re-Diversion of Reusable Return Flows of Water”. A copy of said Agreement, marked “Exhibit A”, is attached hereto and incorporated herein by reference.

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

Section 3. The Englewood City Manager shall be authorized to further extend and/or amend the “Agreement For Temporary Lease And/Or Re-Diversion Of Reusable Return Flows Of Water” for a period of three years through October 2014, 2015 and 2016 if needed.

Introduced, read in full, and passed on first reading on the 18th day of June, 2012.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 22nd day of June, 2012.

Published as a Bill for an Ordinance on the City’s official website beginning on the 20th day of June, 2012 for thirty (30) days.

ATTEST:

Randy P. Penn, Mayor

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 _____ day of ____________, 2012.

Loucrishia A. Ellis
AGREEMENT FOR TEMPORARY LEASE AND/OR RE-DIVERSION OF REUSABLE RETURN FLOWS OF WATER.

1. Introduction; Parties and Purposes.

Centennial Water and Sanitation District (Centennial) owns reusable return flows to the South Platte River which consist of Centennial’s reusable water discharged by Centennial’s Marcy Gulch wastewater treatment plant (the return flows). The City of Englewood (Englewood) has a means to re-divert the return flows at Union Avenue, and either retain them for use by Englewood or re-deliver same to Centennial. The parties intend that Englewood shall attempt to divert the return flows, under the circumstances set forth below, and pay Centennial for the return flows if same are retained by Englewood; and that Centennial will pay Englewood for re-directing the return flows, if same are re-delivered to Centennial. It is anticipated that Englewood will attempt to divert the return flows at its Union Avenue pump station, and either use same immediately in its Allen Treatment Plant, or exchange same up City Ditch to McLellan reservoir, in Englewood’s discretion.

Therefore, the parties have agreed as follows:

2. Centennial to Give Notice of Availability; Englewood Response.

Centennial will advise Englewood, on a daily basis, of the amount of available return flows at Englewood’s Union Avenue pump station. Englewood will advise Centennial, on a daily basis, of available return flows Englewood will not be diverting.

3. Englewood to Attempt to Divert.

Englewood will make reasonable efforts to lawfully divert the return flows at its Union Avenue pump station. Englewood shall have no obligation to divert: a) if diversion would impair the necessary quality of water introduced into Englewood’s water treatment plant or introduced into City Ditch for exchange, as determined in Englewood’s sole discretion; b) except to the extent that Englewood determines to use the return flows immediately in its Allen Treatment Plant, plus the exchange capacity in City Ditch; c) to the extent that the capacity in Englewood’s pumping system after supplying Englewood’s demand is less than all of the available return flows.

Englewood shall have no obligation to use the return flows immediately in its Allen Treatment Plant. While Englewood shall make reasonable efforts to divert the return flows, the parties recognize that various factors may make diversion impractical, and Englewood shall have no liability to Centennial for failure to divert. Englewood will account for return flows diverted at its Union Avenue pump station.

4. Englewood to Exchange Up City Ditch.

Englewood will make reasonable efforts to exchange the diverted return flows up City Ditch and into McLellan Reservoir, via the pump station from City Ditch to McLellan Reservoir.

5. Englewood’s Option to Acquire Return Flows Delivered to McLellan Reservoir.

Englewood will account for the return flows delivered by exchange to McLellan Reservoir, Englewood will have the option to acquire the return flows delivered to McLellan Reservoir (and Englewood will acquire return flows used immediately in Englewood’s Allen Treatment Plant).
Within four days after the end of each week (ending Saturday at midnight) Englewood will notify Centennial if it wishes to acquire all of the return flows delivered to McLellan during that week. Englewood will pay Centennial $85 per acre foot for all of the return flows which it acquires, and pay the pumping costs associated with those return flows. Return flows so acquired by Englewood shall be treated as Englewood’s water for all purposes, and may be used by Englewood or delivered to Centennial under any agreement between Englewood and Centennial. Return flows delivered to McLellan as to which Englewood does not give such notice shall belong to Centennial.


Centennial shall acquire all return flows delivered to McLellan Reservoir that are not acquired by Englewood. Centennial shall pay Englewood $30 per acre foot to return flows acquired by Centennial, plus all pumping costs associated with delivery of those return flows to McLellan Reservoir.

7. Temporary Pumping Facilities from the Forebay Reservoir next to the Allen Treatment Plant.

Englewood currently injects granular activated carbon (GAC) into the forebay adjacent to the South Platte River, from which Englewood’s Union Avenue pumping station pumps water to the Allen Treatment Plant facilities. (The GAC is injected because of the current severe quality problems in the South Platte River.) The water containing the GAC is blackened in color and therefore cannot be directly introduced into City Ditch for exchange purposes. Therefore, a substitute supply of clear water to be exchanged up City Ditch must be pumped into City Ditch from a forebay reservoir adjacent to the Allen Treatment Plant (not to be confused with the forebay at the river). (Pumping of this substitute supply will be unnecessary if the GAC injection at the river forebay should cease.) Englewood has no pump and pipe to accomplish the pumping of this substitute supply from the forebay reservoir. Centennial will provide and install such a pump and pipe, and hook it up to a power source, at Centennial’s sole expense. Englewood and Centennial will cooperate in determining the location, nature and installation of the pump and pipe. At the end of this Agreement, Centennial will remove the pump, pipe and power hookup at Centennial’s sole expense, unless the parties otherwise agree. Centennial will restore any excavation or alteration of the forebay and surrounding areas, at Centennial’s sole expense.

8. Pumping Costs.

Englewood will reasonably determine pumping costs, which are to include power, other operation costs, and maintenance.


Either Englewood or Centennial may terminate this Agreement after 5 days written notice to the other party. If not so terminated, this Agreement will terminate at the sooner of October 31, 2013 or the cessation of flows in City Ditch below the Allen Treatment Plant, whichever sooner occurs, unless the parties otherwise agree. This Agreement may be renewed for three (3) additional one (1) year terms upon the signature of the City Manager and the Centennial Water and Sanitation District Manager.
10. Payment.

Englewood will account for deliveries. Englewood will pay Centennial for return flows acquired by Englewood within thirty (30) days after the end of the month during which particular deliveries were made to Englewood. Centennial will pay Englewood within thirty (30) days after the end of the month during which particular deliveries were made to Centennial.

11. Financial Obligations subject to Appropriation.

For any multiple-fiscal year financial obligations by the City or District that extend beyond its current fiscal year, the financial obligations of the City or District under this Agreement shall be subject to and limited by the appropriation of sufficient funds therefore by its governing body. Funds for this Agreement have been budgeted, authorized and appropriated by the City and District for the 2012 fiscal year. Nothing herein obligates the City or District to budget, authorize or appropriate funds for any future fiscal year.

12. State Engineer.

Centennial will be responsible for any necessary notice to the State Engineer’s office, assuring the State Engineer’s office that its return flows are indeed reusable and divertible by Englewood, and reporting to the State Engineer’s office, in cooperation with Englewood.

CITY OF ENGLEWOOD

By: ____________________________
Mayor -

Dated: __________________________

CENTENNIAL WATER AND SANITATION DISTRICT

By: ____________________________
Title: General Manager

Dated: 6/17/12
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date:</th>
<th>Agenda Item:</th>
<th>Subject:</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 18, 2012</td>
<td>11 ci</td>
<td>Resolution for a supplemental appropriation for the Humane Society of the South Platte Valley</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Initiated By:</th>
<th>Staff Source:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance and Administrative Services Department</td>
<td>Frank Gryglewicz, Director</td>
</tr>
</tbody>
</table>

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council discussed this issue with staff at the June 4, 2012 Study Session. Council directed staff to draft a resolution for a supplemental appropriation for $41,000 to fund the Humane Society of the South Platte Valley (HSSPV) 2012 operations.

RECOMMENDED ACTION

Staff recommends City Council approve the attached resolution for a supplemental appropriation to the 2012 Budget to HSSPV operations as follows:

SOURCES AND USES OF FUNDS

**GENERAL FUND:**

**SOURCE OF FUNDS:**
Unassigned/Unrestricted Reserves

**USE OF FUNDS:**
Payment to the Humane Society of the South Platte Valley

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

This supplemental appropriation to 2012 is presented for Council’s consideration at this time because this expenditure was not anticipated when the 2012 Budget was prepared. The Littleton City Council voted to approve paying the HSSPV an additional $41,000.

FINANCIAL IMPACT

The General Fund’s unassigned/unrestricted reserves will decrease $41,000.

LIST OF ATTACHMENTS

Proposed Resolution
RESOLUTION NO. _____
SERIES OF 2012

A RESOLUTION APPROVING A SUPPLEMENTAL APPROPRIATION TO THE 2012 BUDGET FOR THE HUMANE SOCIETY OF THE SOUTH PLATTE VALLEY.

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

WHEREAS, the 2012 Budget was submitted and approved by the Englewood City Council in October 2011; and

WHEREAS, the Humane Society of the South Platte Valley (HSSPV) has requested additional funding for their 2012 operations; and

WHEREAS, the expenditure could not be foreseen and therefore was not included in the 2012 Budget.

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

Section 1. The Budget for the City of Englewood, Colorado, is hereby amended for the year ending 2012, as follows:

2012 SUPPLEMENTAL APPROPRIATION

GENERAL FUND

SOURCE OF FUNDS:
Unassigned/Unrestricted Reserves $41,000

USE OF FUNDS:
Payment to the Humane Society of the South Platte Valley $41,000

Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2012 Budget for the City of Englewood.

ADOPTED AND APPROVED this 18th day of June, 2012.

ATTEST: ___________________________
Randy P. Penn, 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 2012.

Loucrishia A. Ellis, City Clerk
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date:</th>
<th>Agenda Item:</th>
<th>Subject:</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 18, 2012</td>
<td>11 c ii</td>
<td>Allen Plant Ultraviolet System Design – Amendment #3</td>
</tr>
</tbody>
</table>

INITIATED BY
Utilities Department

STAFF SOURCE
Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved a contract with Camp, Dresser and McKee (CDM) for engineering and construction management services on April 19, 2010 for the design of the ultraviolet (UV) disinfecting system.

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at their May 8, 2012 meeting, recommended Council approval, by motion, of the contract for additional engineering and design services to Camp, Dresser & McKee in the amount of $53,240.00 for design of electrical upgrades to the plant load center.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Long Term Two Enhanced Surface Water Treatment Rule was adopted by Congress on January 5, 2006. In this rule, the Environmental Protection Agency required that water systems meet additional cryptosporidium (crypto) removal requirements. The system must be operational by October 1, 2013.

UV operates with a band of light that disinfects water at a certain wavelength in the ultraviolet light spectrum. Water at the Allen Filter Plant will be treated by the UV system after the filtration process and before chlorination, then pumped into the distribution system. The UV process will reduce sodium hypochlorite (chlorine) use, is an extremely fast process to inactivate crypto, is proven technology, requires the smallest footprint and is the most cost effective.

CDM, the selected engineer consultant, has completed several other UV systems throughout the United States, and they are also familiar with the Allen Water Treatment Plant, having consulted on other water treatment plant projects. They have designed modifications to the old clearwell, the clearwell roof, the UV system, and the electrical upgrades.

During an overall electrical system evaluation by NEI, an audit revealed that the existing main electrical load center was becoming obsolete, with repair parts at a premium. The load center is vital for powering the entire plant, including the pumps and treatment processes. It was determined that additional plant electrical upgrades to the load center are required and would be cost effective to include this in the UV construction project. At this time it is roughly estimated that the load center modifications will cost $800,000. This will be bid with the UV construction project.
FINANCIAL IMPACT

CDM's proposal is for $53,240.00.

LIST OF ATTACHMENTS

Water and Sewer Board Minutes from May 8, 2012
Original Professional Services Agreement
Third Amendment to Agreement
Roll Call.

Present: Clyde Wiggins, Chuck Habenicht, Tom Burns, Kells Waggoner, Jim Woodward, Stewart Fonda (Not voting), Cathy Burrage (Not voting).

Absent/Excused: Jo Lay, Wayne Oakley, John Moore, Randy Penn, Linda Olson.

Also present: Jason Clark, Tom Brennan and Yassar Abouish

The meeting was called to order at 5:03 p.m.

1. MINUTES OF THE APRIL 10, 2012 MEETING.

Motion: Approve minutes of the April 10, 2012 Water and Sewer Board meeting.

Moved: Habenicht  Seconded: Burns.

Motion passed unanimously.

MOTION FOR THE ENGLEWOOD WATER AND SEWER BOARD TO ENTER AN EXECUTIVE SESSION PURSUANT TO CRS24-6-402(b) FOR DISCUSSION OF WATER LITIGATION WITH THE WATER ATTORNEY.

Moved: Habenicht  Seconded: Waggoner

Motion passed unanimously.

Linda Olson entered at 5:07 p.m.

MOTION TO RETURN TO THE REGULAR SESSION OF THE WATER AND SEWER BOARD MEETING OF MAY 8, 2012.
Motion: Woodward  Seconded: Habenicht

Motion passed unanimously.

2. SOUTHGATE SUPPLEMENT #167.

The Board received a request from Carla G. Shankle for inclusion of Supplement #167 to include a parcel of 2.39 acres into the Southgate Sanitation District for residential use. The purpose of the inclusion is to install a sewer line and connect to the existing sewer main in the street.

Motion: To recommend Council approval of Southgate Supplement #167.

Moved: Waggoner, Seconded: Burns.

Motion passed unanimously.

3. ALLEN PLANT ULTRAVIOLET SYSTEM DESIGN – AMENDMENT #3.

Tom Brennan, Utilities Engineer, appeared to give an overview of the ultraviolet (UV) project for the Allen Filter Plant and the proposed Amendment #3. This amendment is for the design of electrical upgrades to the plant load center.

Motion: To recommend Council approval of the contract for additional engineering and design services to Camp, Dresser & McKee in the amount of $53,240.00.

Moved: Habenicht,  Seconded: Waggoner.

Motion passed unanimously.

4. ALLEN PLANT ULTRAVIOLET SYSTEM DESIGN – AMENDMENT #4.

Tom Brennan appeared to give an overview of the proposed Amendment #4 for the Allen Plant UV system. The proposed contract will be for engineering services during construction, site visits, specialty inspections and design clarifications.

Motion: To recommend Council approval, by motion, of the contract for additional engineering and construction management services to Camp, Dresser & McKee in the amount of $272,814.00 for construction management services.

Moved: Burns,  Seconded: Waggoner.
Motion passed unanimously.

5. DROUGHT MANAGEMENT PLAN.

Yassar Abouish, Utilities Engineer IV, appeared to discuss the progress of Englewood’s Water Conservation Plan and Drought Management Plan. A possible $50,000 grant from the State was also discussed. An article will appear in the upcoming Pipeline addressing drought mitigation and conservation planning.

6. CHANGES IN COLIFORM PROCEDURES.

Jason Clark, Water Plant Superintendent, appeared to explain the State’s new coliform testing procedures. The Allen Filter Plant has not experienced a maximum contaminant level violation for bacteria in the last 30 years, but with the new policy the odds of having a violation increase slightly.

7. UNSCHEDULED VISITORS.

No unscheduled visitors.

8. OTHER.

None.

Meeting adjourned at 6:40 p.m.

The next Water and Sewer Board meeting will be June 12, 2012 at 5:00 in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this 19th day of __________, 2010, (the "Effective Date") by Camp Dresser & McKee Inc., 555 17th Street, Suite 1100 Denver, Colorado 80202, a Massachusetts corporation ("Consultant"), and The City of Englewood, Colorado, a municipal corporation organized under the laws of the state of Colorado ("City").

City desires that Consultant provide certain consulting services as described in Exhibit A, and/or related services as described herein, and Consultant desires to perform such services on behalf of City on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Definitions. The terms set forth below shall be defined as follows:

   (a) "Intellectual Property Rights" shall mean any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, reissues and 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 Exhibit 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 services outlined in Exhibit A 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 utilize its professional engineering expertise and creative talents in completing the projects outlined in the 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 and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting party may terminate this Agreement or any or all outstanding Statements of Work by providing ten (10) days prior written notice of termination to the defaulting party.

(d) Bankruptcy or Insolvency. Either party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency laws is filed against that other party and is not dismissed within sixty (60) days after it was filed.

(e) TABOR. The parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period ending upon the next succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

(f) Return of Property. Upon termination of this Agreement, both parties agree to return to the other all property (including any Confidential information, as defined in Section 11) of the other party that it may have in its possession or control.

9. City Obligations. City will provide timely access to City personnel, systems and information required for Consultant to perform its obligations hereunder. City shall provide to Consultant's employees performing its obligations hereunder at City's premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services. With respect to all third party hardware or software operated by or on behalf of City, City shall, at no expense to Consultant, obtain all consents, licenses and sublicenses necessary for Consultant to perform under the Statements of Work and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

10. Staff. Consultant is an independent consultant and neither Consultant nor Consultant's staff is, or shall be deemed to be employed by City. City is hereby contracting with Consultant for the Services described in a Statement of Work and Consultant reserves the right to determine the method, manner and
means by which the Services will be performed. The Services shall be performed by Consultant or Consultant's staff, and City shall not be required to hire, supervise or pay any assistants to help Consultant perform the Services under this Agreement. Except to the extent that Consultant's work must be performed on or with City's computers or City's existing software, all materials used in providing the Services shall be provided by Consultant.

11. Confidential Information.

(a) Obligations. Each party hereto may receive from the other party information which relates to the other party's business, research, development, trade secrets or business affairs ("Confidential Information"). Subject to the provisions and exceptions set forth in the Colorado Open Records Act, CRS Section 24-72-101 et. seq., each party shall protect all Confidential Information of the other party with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Without limiting the generality of the foregoing, each party hereto agrees not to disclose or permit any other person or entity access to the other party's Confidential Information except such disclosure or access shall be permitted to an employee, agent, representative or independent consultant of such party requiring access to the same in order to perform his or her employment or services. Each party shall insure that their employees, agents, representatives, and independent consultants are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section 11. Further, each party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other party. A party hereto shall undertake to immediately notify the other party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall restrict either party with respect to information or data identical or similar to that contained in the Confidential Information of the other party but which (1) that party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that party; (3) is subsequently furnished rightfully to that party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure.

(b) Know-How. For the avoidance of doubt neither City nor Consultant shall be prevented from making use of know-how and principles learned or experience gained of a non-proprietary and non-confidential nature.

(c) Remedies. Each of the parties hereto agree that if any of them, their officers, employees or anyone obtaining access to the Confidential Information of the other party by, through or under them, breaches any provision of this Section 11, the non-breaching party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching party, its officers or employees directly or indirectly realize or may realize as a result of or growing out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section 11, the parties agree that the non-breaching party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching party arising from a violation of this Section 11 would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the parties agree that the non-breaching party shall be entitled to temporary and permanent injunctive relief against the breaching party, its officers or employees and such other rights and remedies to which the non-breaching party may be entitled to at law, in equity or under this Agreement for any violation of this Section 11.
The provisions of this Section 11 shall survive for five (5) years following 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. Should City reasonably determine that particular personnel provided by Consultant are not satisfactory or are requested by City to be replaced for good cause shown, 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 successors and permitted assigns of any of the foregoing (the "City Indemnities") 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 to the extent directly or indirectly arising from or related to: (1) any act, error 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 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. This paragraph intentionally deleted

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. Notwithstanding the foregoing, Consultant shall be entitled to additional compensation if, after the effective date of this Agreement, there is a change to any Applicable Law which requires a change or modification to 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.

35. The Consultant is hereby notified of the requirements of Colorado Constitutional Amendment 54, effective December 31, 2008, which limits the rights of the holder of a sole source government contract to make political contributions.

36. Mutual Waiver of Consequential Damages. Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

37. Limitation of Liability In no event shall Consultant’s total liability to City and/or any of the City’s officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, Consultant’s wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to Consultant under this agreement or $500,000, whichever is greater.
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: __________________________
    Gary Sears
Title: City Manager

Att'y

City Clerk - Loucrishia A. Ellis

Camp Dresser & McKee Inc.
Company Name.

By: __________________________
    Robert G. Armstrong
Title: Vice President

STATE OF Colorado )
COUNTY OF Denver  ) ss.

Signed before me this 2nd day of April, 2010
by Robert Armstrong

My Commission expires:

July 31, 2012

Notary Public
EXHIBIT A
TO AGREEMENT BETWEEN
OWNER AND ENGINEER
(STUDY, REPORT, DESIGN AND CONSTRUCTION SERVICES)
This is an exhibit attached to and made a part of the Agreement dated 4/17/2010, between City of Englewood (OWNER) and Camp Dresser & McKee Inc. (ENGINEER) for professional services.

1.0 ENGINEER'S SERVICES

1.1 Study and Report Phase
Upon this Agreement becoming effective, ENGINEER shall:

1.1.1 Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

1.1.2 Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services which are not part of ENGINEER's Services, and assist OWNER in obtaining such data and services.

1.1.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.

1.1.4 Evaluate various alternate solutions available to OWNER as described herein, and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment best meet OWNER's requirements for the Project.

1.1.5 Prepare a report (the "Report") which will contain the statement of OWNER's requirements for the Project and, as appropriate, will contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project, including the following: opinion of probable Construction Cost, allowances for contingencies including costs of design professional and related services based on information furnished by OWNER for allowances and other items and services included within the definition of Total Project Costs.

1.1.6 Furnish the Report to and review it with OWNER.

1.1.7 Revise the Report in response to OWNER's comments, as appropriate, and furnish final copies of the Report in the number set forth herein.

1.1.8 Submit the Report within the stipulated period indicated herein.

1.1.9 ENGINEER's Services under the Study and Report Phase will be considered complete at the earlier of (1) the date when the Report has been accepted by OWNER or (2) thirty days after the date when such Report is delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to review the portions of the Project specified by ENGINEER, if such approval is to be obtained during the Study and Report Phase.
The duties and responsibilities of ENGINEER during the Study and Report Phase as set forth in this paragraph 1.1 are amended and supplemented as follows:

The Engineer shall conduct the following workshop as part of the requirements for item 1.1.1

Kickoff and Planning Workshop
This half-day workshop will be held within the first month of the project. The objectives will be to:

- Document the OWNER's goals, objectives and critical success factors for a successful project
- Provide an update on the UV disinfection industry, including regulatory considerations and technology advances, which will benefit the project
- Establish disinfection-related water quality goals, including primary and back-up disinfection barriers for Cryptosporidium, Giardia and viruses
- Select plant siting and UV technology alternatives to be evaluated for the Allen WTP
- Review and approve criteria and weights for the benefit-cost evaluation of design alternatives

ENGINEER's project manager, technical director, and key project staff will attend this workshop.

The ENGINEER shall conduct the following workshops and services as part of the requirements for item 1.1.4

Site Selection Workshop
This half-day workshop will present the results of the site selection evaluation for the new UV facility, based on direction received from the OWNER at the Planning Workshop. Conceptual layouts of the UV facility for each site alternative will be prepared by ENGINEER and presented at the workshop. The layouts will be designed to accommodate either low-pressure high-output (LPHO) or medium pressure (MP) UV systems.

The workshop will also incorporate results of the electrical field investigation performed by NEI to verify equipment nameplate data and protection settings. The field investigation will include placing power meters at strategic locations to determine actual system loads. ENGINEER will work with the operations staff to determine the best way to correlate this to peak load operation.

The results of the field investigation will be used to create a Power System model in SKM™ to evaluate short circuit, load flow, and Arc Flash values, and determine if the existing system will require upgrades or changes to allow the addition of the two UV technologies. This information will be used during the workshop to:

- Determine if XCEL Primary and Secondary Transformers are adequately sized
- Determine if existing generator is sized for its intended purpose
- Verify that existing equipment is rated to handle additional loads
- Evaluate existing system protection for proper coordination and arc flash values

Assumptions: Up to three siting alternatives for the UV facility will be evaluated in Phase 1.

Selection of UV Manufacturers for Pilot Test
ENGINEER will evaluate the advantages and disadvantages of each technology with respect to meeting the overall goals of the project, and shortlist qualified UV equipment suppliers for Owner approval. The ENGINEER will
develop the protocol for the UV pilot test and prepare installation documents for the pilot UV reactor or reactors. OWNER and ENGINEER will determine whether LPHO, MP, or both UV technologies will be piloted.

After the UV Test Equipment is installed, ENGINEER will conduct training sessions for operation of the equipment and data collection procedures. Engineer will meet with the operators bi-weekly to review the data and adjust procedures if necessary.

**Deliverables:** UV pilot test protocol and UV technologies to be piloted. UV pilot equipment installation drawings for installation by Owner’s electrical and plumbing contractor.

**Feasibility Study for 2 MGD Softening Facility**

Task 1 - Develop Background Information and Define Project Water Quality Objectives – A complete mineral analysis of the raw water will be developed for the different water sources and blends. This information will be used to estimate hardness reduction that can be achieved from using lime precipitation, membranes and sodium based ion exchange.

Task 2 - Identify Softening Alternatives and Design Criteria – Develop process configurations, water quality projections, chemical requirements and residuals volumes for three softening alternatives.

Task 3 – Comparison of Softening Alternatives and Siting Options – The advantages and disadvantages of the softening alternatives will be developed and discussed with the Owner during a facilitated softening workshop after the UV procurement workshop.

Task 4 – Conceptual Layout and Opinion of Probable Capital, Operations and Maintenance Costs – The ENGINEER will use the alternative selected during the Task 3 workshop to develop a conceptual site plan, process flow diagram and design summary technical memorandum. The design summary will include an opinion of probable construction, operation and maintenance costs based on typical unit prices and allowances for contractor overhead and profit.

**UV Process Engineering and Fouling Study Workshop**

A half-day workshop will be held to discuss process engineering and fouling design issues, including the results of historical flow and water quality trending for the Allen WTP. This will include an update of the UV transmittance (UVT) trending presented in ENGINEER’s 2007 TM and enable the ENGINEER to develop the recommended UV process and equipment design criteria for the project. The initial results of the UV pilot study will be discussed at the workshop, including preliminary findings on lamp sleeve fouling rates for medium, pressure (MP) and low-pressure high-output (LPHO) UV systems. Within the first month of piloting, ENGINEER will have sufficient data in hand to make a preliminary determination on the need for automatic wiper systems for the UV reactor equipment.

ENGINEER’s project manager, technical director and pilot study project engineer will attend this workshop. If there are any significant or unusual fouling issues for discussion, Dr. Blatchley will be available to attend the workshop as well.

**Deliverables:** Briefing package for each workshop; minutes from each workshop; At the completion of pilot testing, CDM will compile all the data and prepare a summary report of results to be used during the UV Procurement Workshop.

**Assumptions:** The City will continue to measure UVT in the filtered water supply for the purpose of developing process design criteria for the UV system.
1.2 Design Phase

1.2.1 Prepare for incorporation in the Contract Documents final Drawings showing the scope, extent and character of the work to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen-division format of the Construction Specifications Institute).

1.2.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.

1.2.3 Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER as a result of changes in scope, extent or character or design requirements of the Project.

1.2.4 Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.2.5 Furnish five copies of the above documents, Drawings and Specifications to and review them with OWNER.

1.2.6 ENGINEER's services under the Design Phase will be considered complete at the earlier of (1) the date when the submittals have been accepted by OWNER or (2) thirty days after the date when such submittals are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Design Phase.

The duties and responsibilities of ENGINEER during the Design Phase are amended and supplemented as follows:

The Engineer shall conduct the following workshops as part of the requirements for item 1.2.1

Conceptual UV Design Workshop
This one-day workshop will present results of the conceptual design phase, including final process and equipment design criteria, development of conceptual level UV facility layout drawings, and construction cost estimates. The UV facility layout drawings will be developed to allow either LPHO or MP UV systems to be included in the design, since these two technologies will likely be included in the UV equipment procurement documents. ENGINEER's project manager, technical director and critical design discipline leads (structural, architecture, electrical) will attend this workshop.

Deliverables: Briefing package for each workshop; minutes from each workshop

UV Procurement Workshop
After the pilot testing is complete a half-day UV procurement workshop will present key issues for UV equipment technology selection and generate guidance on preparing the UV procurement documents for the project. A key source of information for this workshop will be detailed technical and cost information, including validation reports for the proposed UV reactor designs. This information will be available from qualified UV vendors in response to a Technical Request for Information (T-RFI) document to be prepared by ENGINEER. ENGINEER's project manager and technical director will attend the workshop.
Deliverables: Workshop briefing documents, workshop minutes and summary of decisions, technical memorandum summarizing the pilot testing results.

Assumptions: Pilot test data and WTP operational data will be available in coordinated electronic form that can be analyzed using standard spreadsheet tools. The pilot test period will be continuous over a 4-8 month period from approximately June 2010 through January 2011.

**UV System Final Design**

After pilot testing is completed and the UV technology and/or vendors selected, ENGINEER will prepare a Basis of Design Report (BDR) summarizing the design criteria to be used by each of the design teams. This will include: required pipe materials, valves, maximum headloss and temperature, and ventilation requirements. The BDR will include a final list of drawings and specifications for the project along with equipment and instrumentation preferences identified by the City through the workshops.

The design team will meet regularly with the OWNER's engineering and WTP staff to discuss design alternatives and will provide formal review submittals when the overall project is 30%, 60% and 90% complete. The 30% design will be also used as the basis of a facilitated design workshop with City staff. The information in the BDR and the preliminary drawings will have enough detail to give City staff a better understanding of potential conflicts and construction issues. ENGINEER's construction group will review the 30% plans to provide input on constructability during the design workshop.

The next design submittal will be when the drawings are 60% complete, which will allow the OWNER to determine if issues of concern raised during the 30% review workshop have been addressed. The OWNER review will allow for any final adjustments to the design approach before completing the remaining construction details for the 95% design submittal. At this point the drawings show all required construction, and the remaining work relates to final drawing coordination and clarification of the contractor responsibilities. This submittal will be stamped, and used as the review submittal to CDPHE for the authorization to construct. The CDPHE submittal will also include the results of the pilot testing and the BDR.

Deliverables: 10 copies of the Draft Basis of Design Report and 30% plans for use during the Design Workshop; 10 copies of the 60% plans for City Review; 10 copies of the 90% plans and specifications for OWNER review; CDPHE submittal for construction approval. One copy of the calculations used to develop the final design.

Assumption: The design effort is based on the Alternative A location inside the existing chlorine contact basin. Replacement of the existing main electrical switchgear is not required to supply power for the UV system. One coordination meeting with CDPHE will be required to review comments, and identify any supplemental information needed.

**UV Bid Package Preparation**

When the OWNER is ready to proceed with bidding and construction of the UV system improvements ENGINEER will prepare the bid documents. These will reflect the review comments on the 90% submittal received from the OWNER and CDPHE, and will reflect the specific conditions at the time of the bid regarding dates, contract duration, general conditions, WTP operational constraints, and UV procurement.

1.3 Bidding or Negotiating Phase

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization to proceed, ENGINEER shall:
1.3.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process deposits for Bidding Documents.

1.3.2 Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

1.3.3 Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.3.4 Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

1.3.5 The Bidding or Negotiating Phase will terminate and the Services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase as set forth in this paragraph 1.3 are amended and supplemented as follows:

The ENGINEER shall conduct the following workshops as part of the requirements for item 1.3.1

Once the construction plans and specifications are finalized, bid sets will be printed and sent to the City for distribution to general contractors. ENGINEER will participate in a half day pre-bid meeting at the site and prepare meeting minutes for distribution with a bid addendum.

Deliverables: 30 sets of 100% construction plans and specification for bidding; electronic versions of the pre-bid meeting minutes and addendums; bid review letter and recommendation

Assumptions: The bid documents and addenda provided by ENGINEER and will be distributed by the OWNER; any follow-up site visits for contractors will be handled by WTP staff; the bid period will be 6 weeks or less

1.4 Construction Phase
During the Construction Phase:

1.4.1 General Administration of Construction Contract.
ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided herein. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

1.4.2 Visits to Site and Observation of Construction.
In connection with observations of the work of Contractor while in progress:

1.4.2.1 ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an
experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 1.4. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 1.4.2.2 and other express or general limitations in this Agreement and elsewhere.

1.4.2.2 The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

1.4.2.3 Duties, Responsibilities and Authority of the Resident Project Representative are set forth in Exhibit B.

1.4.3 Defective Work. During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

1.4.4 Clarifications and Interpretations: Field Orders. ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the
Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

1.4.5 Change Orders and Work Change Directives. ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

1.4.6 Shop Drawings. ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.4.7 Substitutes. ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. However, services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitute which is appropriate for the Project or an excessive number of substitutes will only be performed pursuant to an amendment to this Agreement for additional compensation.

1.4.8 Inspections and Tests. ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

1.4.9 Disagreements between OWNER and Contractor. ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

1.4.10 Applications for Payment. Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

1.4.10.1 ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the
recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 1.4.10.1 are expressly subject to the limitations set forth in paragraph 1.4.10.2 and other express or general limitations in this Agreement and elsewhere.

1.4.10.2 By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.4.11 Contractor's Completion Documents
ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 1.4.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

1.4.12 Substantial Completion
Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

1.4.13 Final Notice of Acceptability of the Work
ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of paragraph 1.4.10.2) to the
best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

1.4.14 Limitation of Responsibilities
ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

1.4.15. Duration of Construction Phase.
The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment.

The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 1.4 are amended and supplemented as follows:

1.4.2.1 Engineer will not provide a resident project representative for this project.
1.4.2.3 Exhibit B Duties and Responsibilities of the resident project representative are not included as part of this agreement.

2.0 OWNER’S RESPONSIBILITIES

2.1 Furnish to ENGINEER, as requested by ENGINEER for performance of Services as required by the Contract Documents, the following:

2.1.1 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;

2.1.2 The services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment;

2.1.3 Appropriate professional interpretation of all of the foregoing;

2.1.4 Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;

2.1.5 Field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;

2.1.6 Property descriptions;

2.1.7 Zoning, deed and other land use restrictions; and

2.1.8 Other special data or consultations not covered in Article 2.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

2.2 Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.
2.3 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

2.4 Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

2.5 Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.

2.6 Provide, as may be required for the Project:

2.6.1 Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;

2.6.2 Such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and

2.6.3 Such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.

2.7 Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:

2.7.1 That Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or

2.7.2 That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 2.7.1 and 2.7.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

2.8 Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering, and Constructability Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

2.9 Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Special Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

2.10 If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among
the various prime contractors, and define and set forth the duties, responsibilities and limitations of 
authority of such person or entity and the relation thereof to the duties, responsibilities and authority 
of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of 
this Agreement before such services begin.

2.11 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be 
provided by others for OWNER (such as services pursuant to paragraphs 2.1, 2.2 and 2.4 through 
2.11, inclusive) and other costs so that ENGINEER may make the necessary calculations to develop 
and periodically adjust ENGINEER's opinion of Total Project Costs.

2.12 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and 
other job-related meetings and Substantial Completion and final payment inspections.

2.13 Provide labor and safety equipment to open and protect manholes and/or to operate valves and 
hydrants as required by the ENGINEER.

2.14 Bear all costs incident to compliance with the requirements of the OWNER's Responsibilities.

3.0 TIME PERIOD FOR PERFORMANCE:
The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are 
as follows:

Study and Report Phase
Final Design and Bidding Phases
Construction Phase
April 19, 2010 through March 31, 2011
April 1, 2011 through April 30, 2012
May 1, 2012 through August 31, 2013

4.0 METHOD OF PAYMENT
The method of payment for Services rendered by ENGINEER shall be as set forth below:

Actual labor costs multiplied by 3.10, plus other direct expenses, plus actual cost of outside professional 
services multiplied by 1.10, but not to exceed $453,264.00 without prior Owner authorization

5.0 SPECIAL PROVISIONS
OWNER has established the following special provisions and/or other considerations or requirements in 
respect of the Assignment:

none
THIRD AMENDMENT TO AGREEMENT

This AMENDMENT made this 24th day of April, 2012 between the City of Englewood, Colorado ("OWNER") and Camp Dresser & McKee Inc. ("ENGINEER") modifies the AGREEMENT between the OWNER and the ENGINEER dated April 21, 2010.

The AGREEMENT is modified by this AMENDMENT to add to the Design Phase Services. Specifically, the following additions to the AGREEMENT are agreed to:

1. Add the following Exhibits:
   
   Exhibit A – Scope of Work for Allen WTP Switchgear replacement (includes scope and project schedule).

2. The schedule for performance of ENGINEER's services in the AMENDMENT is as follows:
   
   As described in Exhibit A to this AMENDMENT.

3. Payment of Services Rendered by the ENGINEER.

   Time and materials payment with a not to exceed value listed in Exhibit A. The terms and conditions are listed in the April 21st, 2010 agreement.

4. Reason of AMENDMENT

   The OWNER seeks additional design services to replace the switchgear at the OWNER's Allen Water Treatment Plant.

All other terms and conditions of the AGREEMENT of April 21, 2010, as amended, remain in full force and effect.
IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT to the AGREEMENT to be effective as of the date first above written.

OWNER:

City of Englewood

By: Stewart Fonda

Title: Utilities Director

Address for giving notices:

City of Englewood – Utilities Department

1000 Englewood Parkway

Englewood, Colorado 80110

ENGINEER:

Camp Dresser & McKee Inc.

By: Robert G. Armstrong

Title: Vice President

Address for giving notices:

555 17th Street, Suite 1100

Denver, Colorado 80202
April 27th, 2012

Tim Rynders  
CDM Smith  
555 17th Street, Suite 1100  
Denver, Colorado 80202

Ref: City of Englewood, Allen Water Treatment Plant Electrical Switchgear Replacement

Dear Tim:

Thank you for the opportunity to provide you with a professional engineering services cost estimate for this project. This proposal is based on locating new 480V switchgear for the Allen Plant outside near the existing transformers and transferring loads from the existing switchgear to the new switchgear while the Allen Plant is in operation. The estimate is broken down with the scope of work below:

<table>
<thead>
<tr>
<th>TASK</th>
<th>ESTIMATED COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Field Investigation</td>
<td>$4,400.00</td>
</tr>
<tr>
<td>Switchgear Research</td>
<td>$4,710.00</td>
</tr>
<tr>
<td>Load Shedding Scheme Investigation</td>
<td>$2,860.00</td>
</tr>
<tr>
<td>Coordination Study</td>
<td>$2,690.00</td>
</tr>
<tr>
<td>Arc-Flash Study</td>
<td>$1,010.00</td>
</tr>
<tr>
<td>SCADA Investigation</td>
<td>$5,420.00</td>
</tr>
<tr>
<td>Single Lines</td>
<td>$1,850.00</td>
</tr>
<tr>
<td>Equipment Elevations &amp; Details</td>
<td>$1,010.00</td>
</tr>
<tr>
<td>Site Plan</td>
<td>$840.00</td>
</tr>
<tr>
<td>Schematics</td>
<td>$3,320.00</td>
</tr>
<tr>
<td>Demo Plan</td>
<td>$1,850.00</td>
</tr>
<tr>
<td>Conduit Routing &amp; Duct Bank Details</td>
<td>$5,590.00</td>
</tr>
<tr>
<td>Conduit/Cable Schedule</td>
<td>$1,010.00</td>
</tr>
<tr>
<td>Specifications</td>
<td>$3,030.00</td>
</tr>
<tr>
<td>Meetings, CDM and City Review Changes</td>
<td>$5,960.00</td>
</tr>
<tr>
<td>Sequence of Construction</td>
<td>$2690.00</td>
</tr>
<tr>
<td>Civil and Structural Engineering</td>
<td>$5,000.00</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>$53,240.00</strong></td>
</tr>
</tbody>
</table>
**Engineering/Design Deliverables:**

The list of proposed deliverables NEI will provide includes the following (but not necessarily limited to):

**Drawings:**
- Single Line Diagram
- Switchgear Elevations & Details
- Schematic Drawings
- Site Plan
- Demo Plan
- Conduit Routing & Duct Bank Details
- Conduit/Cable Schedule
- Communication Schematic Drawings
- Switchgear Foundation Plan

**Reports:**
- Coordination Study and Breaker Settings
- Arc Flash Study

**Specifications:**
- Switchgear Specifications
- Sequence of Construction

Please note that the cost proposal takes into account the difficulties associated with working in an existing facility that must be kept in operation while the work is performed.

This proposal does include civil and structural engineering associated with the switchgear building foundation and demo work.

This proposal does not include construction services and submittal review. As requested, NEI is providing this estimate in a separate proposal.

Please feel free to let me know if you have any questions or comments. Thank you for the opportunity, and we look forward to working with you again.

Best Regards,

Andrew Humphrey, PE
NEI Electric Power Engineering
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date:</th>
<th>Agenda Item:</th>
<th>Subject:</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 18, 2012</td>
<td>11 c iii</td>
<td>Allen Plant Ultraviolet System Design – Amendment #4</td>
</tr>
</tbody>
</table>

**INITIATED BY**
Utilities Department

**STAFF SOURCE**
Stewart H. Fonda, Director of Utilities

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved contract to CDM for engineering and construction management services on April 19, 2010 for the design of the ultraviolet (UV) disinfection system.

RECOMMENDED ACTION

The Englewood Water and Sewer Board, at their May 8, 2012 meeting, recommended Council approval, by motion, of the contract for additional engineering and construction management services to Camp, Dresser & McKee in the amount of $272,814.00 for construction management services.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Long Term Two Enhanced Surface Water Treatment Rule was adopted by Congress on January 5, 2006. In this rule, the Environmental Protection Agency required that water systems meet additional cryptosporidium (crypto) removal requirements. The system must be operational by October 1, 2013.

UV operates with a band of light that disinfects water at a certain wavelength in the ultraviolet light spectrum. Water at the Allen Filter Plant will be treated by the UV system after the filtration process and before chlorination, then pumped into the distribution system. The UV process will reduce sodium hypochlorite (chlorine) use, is an extremely fast process to inactivate crypto, is proven technology, requires the smallest footprint and is the most cost effective.

CDM, the selected engineering consultant, has completed several other UV systems throughout the United States, and they are also familiar with the Allen Water Treatment Plant, having consulted on other water treatment plant projects. They have designed modifications to the old clearwell, the clearwell roof, the UV system, and the electrical upgrades.
The scope of construction activity was not established in the original contract for UV in 2010 because the construction services that would be required were unknown. Construction services were finalized after the 95% design plans were completed. Now that the true scope of work has been established, Amendment #4 will authorize construction management services necessary. This amendment includes funding for engineering services during construction. The resident CDM project rep will be on site 20 hours a week to conduct site visits, specialty inspections and design clarifications. For cost efficiency, City staff will cover the remainder of construction observation. CDM will be providing training to City staff for the major processes, systems and operating equipment installed.

Exhibit A defines the engineering services during construction. Exhibit B defines the construction design observation.

**FINANCIAL IMPACT**

CDM’s proposal is for $272,814.00.

**LIST OF ATTACHMENTS**

Water and Sewer Board Minutes from May 8, 2012
Original Professional Services Agreement
Fourth Amendment to Agreement
WATER & SEWER BOARD
TUESDAY, MAY 8, 2012
COMMUNITY DEVELOPMENT CONFERENCE ROOM

Roll Call.

Present: Clyde Wiggins, Chuck Habenicht, Tom Burns, Kells Waggoner, Jim Woodward, Stewart Fonda (Not voting), Cathy Burrage (Not voting).

Absent/Excused: Jo Lay, Wayne Oakley, John Moore, Randy Penn, Linda Olson.

Also present: Jason Clark, Tom Brennan and Yassar Abouish

The meeting was called to order at 5:03 p.m.

1. MINUTES OF THE APRIL 10, 2012 MEETING.

Motion: Approve minutes of the April 10, 2012 Water and Sewer Board meeting.

Moved: Habenicht, Seconded: Burns.

Motion passed unanimously.

MOTION FOR THE ENGLEWOOD WATER AND SEWER BOARD TO ENTER AN EXECUTIVE SESSION PURSUANT TO CRS24-6-402(b) FOR DISCUSSION OF WATER LITIGATION WITH THE WATER ATTORNEY.

Moved: Habenicht Seconded: Waggoner

Motion passed unanimously.

Linda Olson entered at 5:07 p.m.

MOTION TO RETURN TO THE REGULAR SESSION OF THE WATER AND SEWER BOARD MEETING OF MAY 8, 2012.
Motion: Woodward  Seconded: Habenicht

Motion passed unanimously.

2. SOUTHGATE SUPPLEMENT #167.

The Board received a request from Carla G. Shankle for inclusion of Supplement #167 to include a parcel of 2.39 acres into the Southgate Sanitation District for residential use. The purpose of the inclusion is to install a sewer line and connect to the existing sewer main in the street.

Motion: To recommend Council approval of Southgate Supplement #167.

Moved: Waggoner, Seconded: Burns.

Motion passed unanimously.

3. ALLEN PLANT ULTRAVIOLET SYSTEM DESIGN – AMENDMENT #3.

Tom Brennan, Utilities Engineer, appeared to give an overview of the ultraviolet (UV) project for the Allen Filter Plant and the proposed Amendment #3. This amendment is for the design of electrical upgrades to the plant load center.

Motion: To recommend Council approval of the contract for additional engineering and design services to Camp, Dresser & McKee in the amount of $53,240.00.

Moved: Habenicht,  Seconded: Waggoner.

Motion passed unanimously.

4. ALLEN PLANT ULTRAVIOLET SYSTEM DESIGN – AMENDMENT #4.

Tom Brennan appeared to give an overview of the proposed Amendment #4 for the Allen Plant UV system. The proposed contract will be for engineering services during construction, site visits, specialty inspections and design clarifications.

Motion: To recommend Council approval, by motion, of the contract for additional engineering and construction management services to Camp, Dresser & McKee in the amount of $272,814.00 for construction management services.

Moved: Burns,  Seconded: Waggoner.
Motion passed unanimously.

5. DROUGHT MANAGEMENT PLAN.

Yassar Abouish, Utilities Engineer IV, appeared to discuss the progress of Englewood’s Water Conservation Plan and Drought Management Plan. A possible $50,000 grant from the State was also discussed. An article will appear in the upcoming Pipeline addressing drought mitigation and conservation planning.

6. CHANGES IN COLIFORM PROCEDURES.

Jason Clark, Water Plant Superintendent, appeared to explain the State’s new coliform testing procedures. The Allen Filter Plant has not experienced a maximum contaminant level violation for bacteria in the last 30 years, but with the new policy the odds of having a violation increase slightly.

7. UNSCHEDULED VISITORS.

No unscheduled visitors.

8. OTHER.

None.

Meeting adjourned at 6:40 p.m.

The next Water and Sewer Board meeting will be June 12, 2012 at 5:00 in the Community Development Conference Room.

Respectfully submitted,

Cathy Burrage
Recording Secretary
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is made as of this 29th day of April, 2010, (the "Effective Date") by Camp Dresser & McKee Inc., 555 17th Street, Suite 1100 Denver, Colorado 80202, a Massachusetts corporation ("Consultant"), and The City of Englewood, Colorado, a municipal corporation organized under the laws of the State of Colorado ("City").

City desires that Consultant provide certain consulting services as described in Exhibit A, and/or related services as described herein, and Consultant desires to perform such services on behalf of City on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Definitions. The terms set forth below shall be defined as follows:

   (a) "Intellectual Property Rights" shall mean any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

   (b) "Work Product" shall mean all patents, patent applications, inventions, designs, mask works, processes, methodologies, copyrights and copyrightable works, trade secrets including confidential information, data, designs, manuals, training materials and documentation, formulas, knowledge of manufacturing processes, methods, prices, financial and accounting data, products and product specifications and all other intellectual Property Rights created, developed or prepared, documented and/or delivered by Consultant, pursuant to the provision of the Services.

2. Statements of Work. During the term hereof and subject to the terms and conditions contained herein, Consultant agrees to provide, on an as requested basis, the consulting services, systems integration services, data conversion services, training services, and related services (the "Services") as further described in Exhibit 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 services outlined in Exhibit A 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 utilize its professional engineering expertise and creative talents in completing the projects outlined in the 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 and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting party may terminate this Agreement or any or all outstanding Statements of Work by providing ten (10) days prior written notice of termination to the defaulting party.

(d) Bankruptcy or Insolvency. Either party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency laws is filed against that other party and is not dismissed within sixty (60) days after it was filed.

(e) TABOR. The parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City’s current fiscal period ending upon the next succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

(f) Return of Property. Upon termination of this Agreement, both parties agree to return to the other all property (including any Confidential Information, as defined in Section 11) of the other party that it may have in its possession or control.

9. City Obligations. City will provide timely access to City personnel, systems and information required for Consultant to perform its obligations hereunder. City shall provide to Consultant’s employees performing its obligations hereunder at City’s premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services. With respect to all third party hardware or software operated by or on behalf of City, City shall, at no expense to Consultant, obtain all consents, licenses and sublicenses necessary for Consultant to perform under the Statements of Work and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

10. Staff. Consultant is an independent consultant and neither Consultant nor Consultant’s staff is, or shall be deemed to be employed by City. City is hereby contracting with Consultant for the Services described in a Statement of Work and Consultant reserves the right to determine the method, manner and
means by which the Services will be performed. The Services shall be performed by Consultant or Consultant’s staff, and City shall not be required to hire, supervise or pay any assistants to help Consultant perform the Services under this Agreement. Except to the extent that Consultant’s work must be performed on or with City’s computers or City’s existing software, all materials used in providing the Services shall be provided by Consultant.

11. Confidential Information.

(a) Obligations. Each party hereto may receive from the other party information which relates to the other party’s business, research, development, trade secrets or business affairs ("Confidential Information"). Subject to the provisions and exceptions set forth in the Colorado Open Records Act, CRS Section 24-72-101 et. seq., each party shall protect all Confidential Information of the other party with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Without limiting the generality of the foregoing, each party hereto agrees not to disclose or permit any other person or entity access to the other party’s Confidential Information except such disclosure or access shall be permitted to an employee, agent, representative or independent consultant of such party requiring access to the same in order to perform his or her employment or services. Each party shall insure that their employees, agents, representatives, and independent consultants are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section 11. Further, each party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other party. A party hereto shall undertake to immediately notify the other party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall restrict either party with respect to information or data identical or similar to that contained in the Confidential Information of the other party but which (1) that party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that party; (3) is subsequently furnished rightfully to that party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure.

(b) Know-How. For the avoidance of doubt neither City nor Consultant shall be prevented from making use of know-how and principles learned or experience gained of a non-proprietary and non-confidential nature.

(c) Remedies. Each of the parties hereto agree that if any of them, their officers, employees or anyone obtaining access to the Confidential Information of the other party by, through or under them, breaches any provision of this Section 11, the non-breaching party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching party, its officers or employees directly or indirectly realize or may realize as a result of or growing out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section 11, the parties agree that the non-breaching party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching party arising from a violation of this Section 11 would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the parties agree that the non-breaching party shall be entitled to temporary and permanent injunctive relief against the breaching party, its officers or employees and such other rights and remedies to which the non-breaching party may be entitled to at law, in equity or under this Agreement for any violation of this Section 11.
The provisions of this Section 11 shall survive for five (5) years following 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. Should City reasonably determine that particular personnel provided by Consultant are not satisfactory or are requested by City to be replaced for good cause shown, 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 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 to the extent directly or indirectly arising from or related to: (1) any act, error 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 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 Employees' 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.
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. This paragraph intentionally deleted.

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. Notwithstanding the foregoing, Consultant shall be entitled to additional compensation if, after the effective date of this Agreement, there is a change to any Applicable Law which requires a change or modification to 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 not 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 ETSEQ. 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 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.

35. The Consultant is hereby notified of the requirements of Colorado Constitutional Amendment 54, effective December 31, 2008, which limits the rights of the holder of a sole source government contract to make political contributions.

36. Mutual Waiver of Consequential Damages. Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

37. Limitation of Liability In no event shall Consultant's total liability to City and/or any of the City's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, Consultant's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to Consultant under this agreement or $500,000, whichever is greater.
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: ____________________________
Title: City Manager

ATTEST:

City Clerk: Loucrishia A. Ellis

Camp Dresser & McKee Inc.
Company Name.

By: ____________________________
Robert G. Armstrong,
Title: Vice President

STATE OF Colorado
COUNTY OF Denver

Signed before me this 2nd day of April, 2010
by Robert Armstrong

My Commission expires:

July 31, 2010

-Notary Public
EXHIBIT A
TO AGREEMENT BETWEEN
OWNER AND ENGINEER
(STUDY, REPORT, DESIGN AND CONSTRUCTION SERVICES)

This is an exhibit attached to and made a part of the Agreement dated 4/17/2010, between City of Englewood (OWNER) and Camp Dresser & McKee Inc. (ENGINEER) for professional services.

1.0 ENGINEER'S SERVICES

1.1 Study and Report Phase

Upon this Agreement becoming effective, ENGINEER shall:

1.1.1 Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

1.1.2 Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services which are not part of ENGINEER's Services, and assist OWNER in obtaining such data and services.

1.1.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.

1.1.4 Evaluate various alternate solutions available to OWNER as described herein, and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment best meet OWNER's requirements for the Project.

1.1.5 Prepare a report (the "Report") which will contain the statement of OWNER's requirements for the Project and, as appropriate, will contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project, including the following: opinion of probable Construction Cost, allowances for contingencies including costs of design professional and related services based on information furnished by OWNER for allowances and other items and services included within the definition of Total Project Costs.

1.1.6 Furnish the Report to and review it with OWNER.

1.1.7 Revise the Report in response to OWNER's comments, as appropriate, and furnish final copies of the Report in the number set forth herein.

1.1.8 Submit the Report within the stipulated period indicated herein.

1.1.9 ENGINEER's Services under the Study and Report Phase will be considered complete at the earlier of (1) the date when the Report has been accepted by OWNER or (2) thirty days after the date when such Report is delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to review the portions of the Project specified by ENGINEER, if such approval is to be obtained during the Study and Report Phase.
The duties and responsibilities of ENGINEER during the Study and Report Phase as set forth in this paragraph 1.1 are amended and supplemented as follows:

The Engineer shall conduct the following workshop as part of the requirements for item 1.1.1

**Kickoff and Planning Workshop**
This half-day workshop will be held within the first month of the project. The objectives will be to:

- Document the OWNER’s goals, objectives, and critical success factors for a successful project
- Provide an update on the UV disinfection industry, including regulatory considerations and technology advances, which will benefit the project
- Establish disinfection-related water quality goals, including primary and back-up disinfection barriers for *Cryptosporidium*, *Giardia* and viruses
- Select plant siting and UV technology alternatives to be evaluated for the Allen WTP
- Review and approve criteria and weights for the benefit-cost evaluation of design alternatives

ENGINEERS' project manager, technical director, and key project staff will attend this workshop.

The ENGINEER shall conduct the following workshops and services as part of the requirements for item 1.1.4

**Site Selection Workshop**
This half-day workshop will present the results of the site selection evaluation for the new UV facility, based on direction received from the OWNER at the Planning Workshop. Conceptual layouts of the UV facility for each site alternative will be prepared by ENGINEER and presented at the workshop. The layouts will be designed to accommodate either low-pressure high-output (LPHO) or medium pressure (MP) UV systems.

The workshop will also incorporate results of the electrical field investigation performed by NEI to verify equipment nameplate data and protection settings. The field investigation will include placing power meters at strategic locations to determine actual system loads. ENGINEER will work with the operations staff to determine the best way to correlate this to peak load operation.

The results of the field investigation will be used to create a Power System model in SKMTM to evaluate short circuit, load flow, and arc flash values, and determine if the existing system will require upgrades or changes to allow the addition of the two UV technologies. This information will be used during the workshop to:

- Determine if XCEL Primary and Secondary Transformers are adequately sized
- Determine if existing generator is sized for its intended purpose
- Verify that existing equipment is rated to handle additional loads
- Evaluate existing system protection for proper coordination and arc flash values

*Assumptions:* Up to three siting alternatives for the UV facility will be evaluated in Phase 1.

**Selection of UV Manufacturers for Pilot Test**
ENGINEER will evaluate the advantages and disadvantages of each technology with respect to meeting the overall goals of the project, and shortlist qualified UV equipment suppliers for Owner approval. The ENGINEER will...
develop the protocol for the UV pilot test and prepare installation documents for the pilot UV reactor or reactors. OWNER and ENGINEER will determine whether LPHO, MP, or both UV technologies will be piloted.

After the UV Test Equipment is installed, ENGINEER will conduct training sessions for operation of the equipment and data collection procedures. Engineer will meet with the operators bi-weekly to review the data and adjust procedures if necessary.

Deliverables: UV pilot test protocol and UV technologies to be piloted. UV pilot equipment installation drawings for installation by Owner's electrical and plumbing contractor.

Feasibility Study for 2 MGD Softening Facility
Task 1 - Develop Background Information and Define Project Water Quality Objectives – A complete mineral analysis of the raw water will be developed for the different water sources and blends. This information will be used to estimate hardness reduction that can be achieved from using lime precipitation, membranes and sodium based ion exchange.

Task 2 – Identify Softening Alternatives and Design Criteria – Develop process configurations, water quality projections, chemical requirements and residuals volumes for three softening alternatives.

Task 3 – Comparison of Softening Alternatives and Siting Options – The advantages and disadvantages of the softening alternatives will be developed and discussed with the Owner during a facilitated softening workshop after the UV procurement workshop.

Task 4 – Conceptual Layout and Opinion of Probable Capital, Operations and Maintenance Costs – The ENGINEER will use the alternative selected during the Task 3 workshop to develop a conceptual site plan, process flow diagram and design summary technical memorandum. The design summary will include an opinion of probably construction, operation and maintenance costs based on typical unit prices and allowances for contractor overhead and profit.

UV Process Engineering and Fouling Study Workshop
A half-day workshop will be held to discuss process engineering and fouling design issues, including the results of historical flow and water quality trending for the Allen WTP. This will include an update of the UV transmittance (UVT) trending presented in ENGINEER's 2007 TM and enable the ENGINEER to develop the recommended UV process and equipment design criteria for the project. The initial results of the UV pilot study will be discussed at the workshop, including preliminary findings on lamp sleeve fouling rates for medium pressure (MP) and low-pressure high-output (LPHO) UV systems. Within the first month of piloting, ENGINEER will have sufficient data in hand to make a preliminary determination on the need for automatic wiper systems for the UV reactor equipment.

ENGINEER’s project manager, technical director and pilot study project engineer will attend this workshop. If there are any significant or unusual fouling issues for discussion, Dr. Blatchley will be available to attend the workshop as well.

Deliverables: Briefing package for each workshop; minutes from each workshop; At the completion of pilot testing, CDM will compile all the data and prepare a summary report of results to be used during the UV Procurement Workshop

Assumptions: The City will continue to measure UVT in the filtered water supply for the purpose of developing process design criteria for the UV system.
1.2 Design Phase

1.2.1 Prepare for incorporation in the Contract Documents final Drawings showing the scope, extent and character of the work to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen-division format of the Construction Specifications Institute).

1.2.2 Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist OWNER in consultations with appropriate authorities.

1.2.3 Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER as a result of changes in scope, extent or character or design requirements of the Project.

1.2.4 Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.2.5 Furnish five copies of the above documents, Drawings and Specifications to and review them with OWNER.

1.2.6 ENGINEER's services under the Design Phase will be considered complete at the earlier of (1) the date when the submittals have been accepted by OWNER or (2) thirty days after the date when such submittals are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, if such approval is to be obtained during the Design Phase.

The duties and responsibilities of ENGINEER during the Design Phase are amended and supplemented as follows:

The Engineer shall conduct the following workshops as part of the requirements for item 1.2.1

Conceptual UV Design Workshop
This one-day workshop will present results of the conceptual design phase, including final process and equipment design criteria, development of conceptual level UV facility layout drawings, and construction cost estimates. The UV facility layout drawings will be developed to allow either LPHO or MP UV systems to be included in the design, since these two technologies will likely be included in the UV equipment procurement documents. ENGINEER's project manager, technical director and critical design discipline leads (structural, architecture, electrical) will attend this workshop.

Deliverables: Briefing package for each workshop; minutes from each workshop

UV Procurement Workshop
After the pilot testing is complete a half-day UV procurement workshop will present key issues for UV equipment technology selection and generate guidance on preparing the UV procurement documents for the project. A key source of information for this workshop will be detailed technical and cost information, including validation reports for the proposed UV reactor designs. This information will be available from qualified UV vendors in response to a Technical Request for Information (T-RFI) document to be prepared by ENGINEER. ENGINEER's project manager and technical director will attend the workshop.
**Deliverables:** Workshop briefing documents, workshop minutes and summary of decisions, technical memorandum summarizing the pilot testing results

**Assumptions:** Pilot test data and WTP operational data will be available in coordinated electronic form that can be analyzed using standard spreadsheet tools. The pilot test period will be continuous over a 4-8 month period from approximately June 2010 through January 2011.

**UV System Final Design**

After pilot testing is completed and the UV technology and/or vendors selected, ENGINEER will prepare a Basis of Design Report (BDR) summarizing the design criteria to be used by each of the design teams. This will include: required pipe materials, valves, maximum headloss and temperature, and ventilation requirements. The BDR will include a final list of drawings and specifications for the project along with equipment and instrumentation preferences identified by the City through the workshops.

The design team will meet regularly with the OWNER's engineering and WTP staff to discuss design alternatives and will provide formal review submittals when the overall project is 30%, 60% and 90% complete. The 30% design will be also used as the basis of a facilitated design workshop with City staff. The information in the BDR and the preliminary drawings will have enough detail to give City staff a better understanding of potential conflicts and construction issues. ENGINEER's construction group will review the 30% plans to provide input on constructability during the design workshop.

The next design submittal will be when the drawings are 60% complete, which will allow the OWNER to determine if issues of concern raised during the 30% review workshop have been addressed. The OWNER review will allow for any final adjustments to the design approach before completing the remaining construction details for the 95% design submittal. At this point the drawings show all required construction, and the remaining work relates to final drawing coordination and clarification of the contractor responsibilities. This submittal will be stamped, and used as the review submittal to CDPHE for the authorization to construct. The CDPHE submittal will also include the results of the pilot testing and the BDR.

**Deliverables:** 10 copies of the Draft Basis of Design Report and 30% plans for use during the Design Workshop; 10 copies of the 60% plans for City Review; 10 copies of the 90% plans and specifications for OWNER review; CDPHE submittal for construction approval. One copy of the calculations used to develop the final design.

**Assumption:** The design effort is based on the Alternative A location inside the existing chlorine contact basin. Replacement of the existing main electrical switchgear is not required to supply power for the UV system. One coordination meeting with CDPHE will be required to review comments, and identify any supplemental information needed.

**UV Bid Package Preparation**

When the OWNER is ready to proceed with bidding and construction of the UV system improvements ENGINEER will prepare the bid documents. These will reflect the review comments on the 90% submittal received from the OWNER and CDPHE, and will reflect the specific conditions at the time of the bid regarding dates, contract duration, general conditions, WTP operational constraints, and UV procurement.

1.3 **Bidding or Negotiating Phase**

After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Design Phase documentation (including the most recent opinion of probable Construction Cost), and upon written authorization to proceed, ENGINEER shall:

---

Page 5

Owner and Engineer-Study, Report, Design and Construction
1.3.1 Assist OWNER in advertising for and obtaining bids or negotiating proposals for the contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process deposits for Bidding Documents.

1.3.2 Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.

1.3.3 Consult with OWNER as to the acceptability of subcontractors, suppliers and other persons and entities proposed by Contractor for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.3.4 Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

1.3.5 The Bidding or Negotiating Phase will terminate and the Services to be performed or furnished thereunder will be considered complete upon commencement of the Construction Phase or upon cessation of negotiation with prospective Contractors.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase as set forth in this paragraph 1.3 are amended and supplemented as follows:

The ENGINEER shall conduct the following workshops as part of the requirements for item 1.3.1

Once the construction plans and specifications are finalized, bid sets will be printed and sent to the City for distribution to general contractors. ENGINEER will participate in a half day pre-bid meeting at the site and prepare meeting minutes for distribution with a bid addendum.

Deliverables: 30 sets of 100% construction plans and specification for bidding; electronic versions of the pre-bid meeting minutes and addendums; bid review letter and recommendation

Assumptions: The bid documents and addenda provided by ENGINEER and will be distributed by the OWNER; any follow-up site visits for contractors will be handled by WTP staff; the bid period will be 6 weeks or less

1.4 Construction Phase

During the Construction Phase:

1.4.1 General Administration of Construction Contract.
ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided herein. All of OWNER's instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

1.4.2 Visits to Site and Observation of Construction.
In connection with observations of the work of Contractor while in progress:

1.4.2.1 ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an
experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 1.4. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 1.4.2.2 and other express or general limitations in this Agreement and elsewhere.

1.4.2.2 The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

1.4.2.3 Duties, Responsibilities and Authority of the Resident Project Representative are set forth in Exhibit B.

1.4.3 Defective Work. During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

1.4.4 Clarifications and Interpretations: Field Orders. ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the
Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

1.4.5 Change Orders and Work Change Directives.
ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.

1.4.6 Shop Drawings
ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.4.7 Substitutes
ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. However, services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitute which is appropriate for the Project or an excessive number of substitutes will only be performed pursuant to an amendment to this Agreement for additional compensation.

1.4.8 Inspections and Tests.
ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

1.4.9 Disagreements between OWNER and Contractor
ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

1.4.10 Applications for Payment.
Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

1.4.10.1 ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the
recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 1.4.10.1 are expressly subject to the limitations set forth in paragraph 1.4.10.2 and other express or general limitations in this Agreement and elsewhere.

1.4.10.2 By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.4.11 Contractor's Completion Documents
ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 1.4.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

1.4.12 Substantial Completion
Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

1.4.13 Final Notice of Acceptability of the Work
ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of paragraph 1.4.10.2) to the
best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

1.4.14 Limitation of Responsibilities.
ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

1.4.15. Duration of Construction Phase.
The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment.

The duties and responsibilities of ENGINEER during the Construction Phase as set forth in this paragraph 1.4 are amended and supplemented as follows:

1.4.2.1 Engineer will not provide a resident project representative for this project.
1.4.2.3 Exhibit B Duties and Responsibilities of the resident project representative are not included as part of this agreement.

2.0 OWNER'S RESPONSIBILITIES

2.1 Furnish to ENGINEER, as requested by ENGINEER for performance of Services as required by the Contract Documents, the following:

2.1.1 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;

2.1.2 The services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment;

2.1.3 Appropriate professional interpretation of all of the foregoing;

2.1.4 Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;

2.1.5 Field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;

2.1.6 Property descriptions;

2.1.7 Zoning, deed and other land use restrictions; and

2.1.8 Other special data or consultations not covered in Article 2.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

2.2 Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.
2.3 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

2.4 Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

2.5 Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.

2.6 Provide, as may be required for the Project:

2.6.1 Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;

2.6.2 Such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and

2.6.3 Such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.

2.7 Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:

2.7.1 That Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or

2.7.2 That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 2.7.1 and 2.7.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

2.8 Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering, and Constructability Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.

2.9 Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Special Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.

2.10 If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among
the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.

2.11 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 2.1, 2.2 and 2.4 through 2.11, inclusive) and other costs so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.

2.12 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings and Substantial Completion and final payment inspections.

2.13 Provide labor and safety equipment to open and protect manholes and/or to operate valves and hydrants as required by the ENGINEER.

2.14 Bear all costs incident to compliance with the requirements of the OWNER's Responsibilities.

3.0 TIME PERIOD FOR PERFORMANCE
The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are as follows:

- Study and Report Phase: April 19, 2010 through March 31, 2011
- Final Design and Bidding Phases: April 1, 2011 through April 30, 2012
- Construction Phase: May 1, 2012 through August 31, 2013

4.0 METHOD OF PAYMENT
The method of payment for Services rendered by ENGINEER shall be as set forth below:

Actual labor costs multiplied by 3.10, plus other direct expenses, plus actual cost of outside professional services multiplied by 1.10, but not to exceed $453,264.00 without prior Owner authorization

5.0 SPECIAL PROVISIONS
OWNER has established the following special provisions and/or other considerations or requirements in respect of the Assignment:

none
FOURTH AMENDMENT TO AGREEMENT

This AMENDMENT made this 26th day of April, 2012 between the City of Englewood, Colorado ("OWNER") and Camp Dresser & McKee Inc. ("ENGINEER") modifies the AGREEMENT between the OWNER and the ENGINEER dated April 21, 2010.

The AGREEMENT is modified by this AMENDMENT to add to the Design Phase Services. Specifically, the following additions to the AGREEMENT are agreed to:

1. Add the following Exhibits:

   Exhibit A – Scope of Work for the Allen Water Treatment Plant Ultraviolet Disinfection System Construction Services (includes scope and project schedule).

   Exhibit B – Duties, Responsibilities and Limitations of Authority of the Resident Project Representative

2. The schedule for performance of ENGINEER's services in the AMENDMENT is as follows:

   As described in Exhibit A to this AMENDMENT.

3. Payment of Services Rendered by the ENGINEER.

   Time and materials payment with a not to exceed value listed in Exhibit A. The terms and conditions are listed in the April 21st, 2010 agreement.

4. Reason of AMENDMENT

   The OWNER seeks additional services for ENGINEER to provide construction services during the construction of the OWNER’s UV Disinfection Project at the Allen Water Treatment Plant as described in Exhibit A.

All other terms and conditions of the AGREEMENT of April 21, 2010, as amended, remain in full force and effect.
IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT to the AGREEMENT to be effective as of the date first above written.

OWNER:
City of Englewood
By: Stewart Fonda
Title: Utilities Director
Address for giving notices:
City of Englewood – Utilities Department
1000 Englewood Parkway
Englewood, Colorado 80110

ENGINEER:
Camp Dresser & McKee Inc.
By: Robert G. Armstrong
Title: Vice President
Address for giving notices:
555 17th Street, Suite 1100
Denver, Colorado 80202
EXHIBIT A - AMENDMENT NO. 4 Scope of Work

Allen Water Treatment Plant Ultraviolet Disinfection System Construction Services

This is an Amendment made a part of the Professional Services Agreement dated April 19, 2010, between City of Englewood, Colorado (City, also referred to as Owner) and Camp Dresser & McKee Inc. (Consultant also referred to as Engineer) for consulting services associated with the design and construction of the City's Ultraviolet (UV) Disinfection System (Project) at the Allen Water Treatment Plant.

The scope of these facilities is defined in draft (95 percent complete) contract documents (Plans, Specifications, and Contract Documents) prepared by Consultant dated February 2012 and has changed substantially from what was intended in the original Agreement to include a new building to house UV equipment, demolition of an adjacent abandoned pump station and site work. As a result, the original design budget was exceeded and consumed funds budgeted for engineering services during construction. This amendment therefore includes funding for the additional design services as well as an updated fee for engineering services during construction.

The scope of services of the Consultant described in Section 2 and Exhibit A of said Agreement are supplemented and amended as follows:

Exhibit A, add the following new paragraphs:

1.4.16 Conformed Documents
Upon completion of the Bid Phase, Consultant will incorporate addenda items into the Contract Documents to create a conformed set of Contract Documents. The Drawings and Specifications are to be identified as "Conformed Documents—Final for Construction." Consultant shall provide the City two paper copies and one electronic copy and provide the Contractor with two paper copies and one electronic copy of the Conformed Documents.

1.4.17 Pre-Construction Conference
Consultant will facilitate and participate in a half-day Pre-Construction Conference with the Contractor and provide clarifications and interpretations of the Contract Documents as appropriate to assist with construction related issues. The pre-construction conference will address the following:

- Correspondence procedures and contact persons
- Shop drawing submittal procedures
- Progress meetings with the District, Consultant and Contractor
- Scheduling procedures
- Payment procedures
- Change order and time extension procedures
- Coordination of utilities and contact persons
- Contractors safety and emergency procedures
• Storage of materials and special work activities or conditions
• Record drawing maintenance and submission requirements
• General review of construction sequence
• Communications procedures

Consultant will prepare minutes of the pre-construction conference and address follow-up questions as necessary.

1.4.18 Resident Project Representative (RPR)

RPR means the authorized representative of Consultant who will be assigned to assist Consultant at the Project site during the Construction Phase. The RPR will be Consultant's agent or employee and under Consultant's supervision. As used herein, the term RPR includes any assistants of Resident Project Representative agreed to by City. The duties and responsibilities of the RPR are set forth in Exhibit B, "Duties, Responsibilities, and Limitations of Authority of Resident Project Representative."

For the purposes of this Agreement, the Consultants level of effort is based on 9 month construction period including start-up, testing, commissioning (substantial completion) and close-out (final completion). During this period, the Consultant will provide an RPR for an average of 20 hours per week for a total of 784 hours.

The City will provide inspection and coordination of civil related items including but not limited to site work, repaving, storm drains, inlets and conveyance systems, site access and security, as well as construction staging and storage.

1.4.19 Record Drawings

At the completion of construction, Consultant shall prepare reproducible Record Drawings indicating those changes made during the construction process based on construction records provided by the Contractor and the RPR. The construction records shall indicate construction changes, site observations, drawings, and other data, which the City considers significant and desires to have included on the Record Drawings. Consultant will not be responsible for any errors in or omissions in the information provided by Contractor that is incorporated in the record drawings or other record documents. Record Drawings shall be prepared in digital format in AutoCAD Version 2008 and submitted in conformance with City’s current standards. In addition, the Consultant shall provide the City with three (3) full size and five (5) half size paper sets of Record Drawings as well as one electronic set.

1.4.20 Start-Up Assistance

Consultant will provide assistance with the start up, refining, and adjusting of equipment and/or systems and will perform the following:

• Observation and documentation of equipment functional demonstration testing.
• Observation and documentation of Project facilities startup and shutdown procedures provided and performed by the Contractor.

• Interface with Contractors System Integrator as required for verification of instrumentation and SCADA functionality.

• Assist City in developing forms and procedures for control of Project facilities operation and maintenance, and record keeping.

In company with City, visit the Project to observe any apparent defects in the completed work, assist City in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective work.

1.4.21 Operator Training.

Consultant will provide training to City staff for major processes, systems, and equipment installed as part of this Project. Training shall consist of a one-day session focused on the overall operation of the plant. Training shall discuss process theory; performance goals and operational expectations of the UV disinfection system. Major system components, equipment installed, operational requirements, safety considerations, and control system logic/operation shall be addressed during the training. New and updated O&M manuals chapters developed under Paragraph 1.4.23 will be used and distributed at Project training sessions.

1.4.22 Operations and Maintenance Manual

Consultant will prepare an electronic operations and maintenance (O&M) manual for the Project. A draft manual will be delivered in paper format and the final manual will be delivered in electronic format. The O&M manual will generally include the following information about the facility and its operations:

• Applicable regulations associated with the systems.

• A functional overview of the equipment and description of the flow sequence through the systems.

• List of equipment components necessary for the operation of the system.

• Description of systems explaining the operation and the purpose for the system.

• Equipment control descriptions.

• Lists of important contacts and phone numbers, and procedures to follow in the event of an emergency.
The electronic O&M manual Web will be created and managed in Microsoft FrontPage and will be designed for viewing in Microsoft Internet Explorer version 7.0 or higher. The manual will include hyperlinks to figures and photographs of the equipment and will include up to 300 letter-sized pages of scanned manufacturer service manuals in Adobe PDF format and up to 40 photos of the UV facility and associated equipment. The City will provide the necessary computer hardware. The Consultant will provide on-site training for editing and use of the manual.

Exhibit A, Paragraph 3.0, change Construction Phase time period of performance to “October 15, 2012 to July 1, 2013”.

Exhibit A, Paragraph 4.0, delete entire paragraph and replace with the following: “For RPR services, City agrees to pay Consultant at actual direct labor cost times a multiplier of 2.30; all other labor City agrees to pay Consultant at actual direct labor cost times a multiplier of 3.10. Direct Project expenses will be paid at cost. The services of outside professionals sub-contracted by Consultant will be paid at actual cost times a multiplier of 1.10. Total Agreement upper limit is not to exceed $803,558 without prior City authorization.”
### SUMMARY OF SCOPE AND FEE ESTIMATE

#### AMENDMENT 4

**Engineering Services During Construction**  
City of Englewood UV Disinfection System

<table>
<thead>
<tr>
<th>351Scope Item No.</th>
<th>Description</th>
<th>Scope of Work Summary</th>
<th>Total Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.4.16</td>
<td>Conformed Documents</td>
<td>Incorporate addenda, clarifications into Contract Documents</td>
<td>$7,650</td>
</tr>
<tr>
<td>1.4.17</td>
<td>Pre-Construction Conference</td>
<td>Conduct pre-construction meeting with Contractor, Prepare Agenda and Minutes</td>
<td>$3,484</td>
</tr>
<tr>
<td>1.4.18</td>
<td>Resident Project Representative (RPR)</td>
<td>Provide RPR to observe progress of the work for nine months at an average of 20 hours per week</td>
<td>$92,866</td>
</tr>
<tr>
<td>1.4.19</td>
<td>Record Drawings</td>
<td>Incorporate field changes into Drawings and prepare five (5) paper copies and one (1) electronic copy.</td>
<td>$10,400</td>
</tr>
<tr>
<td>1.4.20-1.4.22</td>
<td>Start-up, Training and O&amp;M manual</td>
<td>Assist with startup, testing, and refining equipment operations, Conduct operator training, Prepare electronic O&amp;M Manual</td>
<td>$25,112</td>
</tr>
<tr>
<td>Revised Task 1.4</td>
<td>Engineering Support Services</td>
<td>Conduct site visits and specialty inspections, Review/design clarifications, Review change orders and work changes, Review approve shop drawings, submittals and substitutes, Review contractor completion documents, Observe functional demonstration tests, Conduct substantial and final completion inspections</td>
<td>$133,322</td>
</tr>
</tbody>
</table>

**Total Amendment Upper Limit**  
$272,814

**Percent of Construction Management fees from estimated $4.5 million Construction Cost**  
6.1%
EXHIBIT B

DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE

Engineering Consulting Services During Construction
City of Englewood UV Disinfection Project, Allen Water Treatment Plant

Camp Dresser & McKee Inc.

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement made on August 26, 2010 between The City of Englewood (City) and CDM Smith Inc. (Consultant) providing for professional engineering services.

Consultant shall furnish a Resident Project Representative ("RPR"), assistants, inspectors and other field staff to assist Consultant in observing progress and quality of the work of Contractor.

Through more extensive onsite observations of the work in progress and field checks of materials and equipment by the RPR and assistants, Consultant shall endeavor to provide further protection for City against defects and deficiencies in the work of Contractor. However, Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, for safety precautions and programs incident to the work of Contractor, for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of Consultant in Consultant's Agreement with the City and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is Consultant's agent at the site, will act as directed by and under the supervision of Consultant, and will confer with Consultant regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with Consultant and Contractor, keeping City advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with City with the knowledge of and under the direction of Consultant.

B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by Contractor and consult with Consultant concerning acceptability.

2. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings.

3. Liaison:
a. Serve as Consultant's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents

b. Assist in obtaining from City additional details or information, when required for proper execution of the Work.

4. Shop Drawings and Samples:
   a. Record date of receipt of Shop Drawings and Samples.
   b. Receive Samples that are furnished at the site by Contractor, and notify Consultant of availability of Samples for examination.
   c. Advise Consultant and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by Consultant.

5. Review of Work, Rejection of Defective Work, Inspections, and Tests:
   a. Conduct on-site observations of the Work in progress to assist Consultant in determining if the Work is in general proceeding in accordance with the Contract Documents.
   b. Report to Consultant whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Consultant of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
   c. When on site accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to Consultant.

6. Interpretation of Contract Documents: Report to Consultant when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Consultant.

7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to Consultant. Transmit to Contractor in writing decisions as issued by Consultant.

8. Records:
   a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, Consultant's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other Project related documents.
b. Prepare a daily report or keep a diary or log book, for the days when the RPR is present, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Consultant.

c. Record names, addresses, and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.

9. Reports:

a. Furnish to Consultant periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

b. Consult with Consultant in advance of scheduled major tests, inspections, or start of important phases of the Work.

c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to Consultant Change Orders, Work Change Directives, and Field Orders.

d. Report immediately to Consultant and City the occurrence of any accident.

10. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Consultant, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to Consultant for review and forwarding to City prior to final payment for the Work.

C. Limitations of Authority by RPR

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by Consultant.

2. Shall not exceed limitations of Consultant's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.

4. Shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.

5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.

6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.

7. Shall not authorize City to occupy the Project in whole or in part.

8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by Consultant.

D. Services to be provided by the City Staff

City of Englewood Engineering Staff

1. Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, prepare and circulate minutes thereof.

2. Inspect the installation of all buried piping and utilities.

3. Inspect the demolition of the existing pump station and clearwell.

4. Inspect all earthwork, sidewalk, curb and gutter, roadway and street pavement construction.

5. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to Consultant appropriate details relative to the test procedures and start-ups.

6. Inspect all electrical work, including but not limited to demolition of existing equipment, installation of switchgear, wiring, conduits, ductbank, boxes, transformers, lighting and circuitry.

7. Witness all factory and field acceptance tests of Instrumentation and Control equipment and systems that are required.

8. Before the Consultant issues a certificate of substantial completion, submit to the Contractor a list of observed items requiring completion or correction.

9. Observe whether Contractor has had performed inspections required by laws, rules regulations, ordinances, codes or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.

10. Conduct a final inspection in the company of the Consultant and the Contractor and prepare a final list of items to be completed or corrected.

11. Observe whether items on the final list have been completed or corrected and make recommendations to Consultant concerning acceptance and issuance of the Notice of Acceptability of the Work.

12. Prepare a daily report or keep a dairy or log book, for the days when City Staff is observing the Work recording Contractor's hours on the job site, weather conditions, daily activities,
observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Consultant.
# SUMMARY OF SCOPE AND FEE ESTIMATE

## AMENDMENT 4

**Engineering Services During Construction**  
*City of Englewood UV Disinfection System*

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Scope of Work Summary</th>
<th>Total Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.4.16</td>
<td>Conformed Documents</td>
<td>• Incorporate addenda, clarifications into Contract Documents</td>
<td>$7,630</td>
</tr>
<tr>
<td>1.4.17</td>
<td>Pre-Construction Conference</td>
<td>• Conduct pre-construction meeting with Contractor</td>
<td>$3,484</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Prepare Agenda and Minutes</td>
<td></td>
</tr>
<tr>
<td>1.4.18</td>
<td>Resident Project Representative (RPR)</td>
<td>• Provide RPR to observe progress of the work for nine months at an average of 20 hours per week</td>
<td>$92,866</td>
</tr>
<tr>
<td>1.4.19</td>
<td>Record Drawings</td>
<td>• Incorporate field changes into Drawings and prepare five (5) paper copies and one (1) electronic copy.</td>
<td>$10,400</td>
</tr>
<tr>
<td>1.4.20-</td>
<td>Start-up, Training and O&amp;M manual</td>
<td>• Assist with startup, testing, and refining equipment operations</td>
<td>$25,112</td>
</tr>
<tr>
<td>1.4.22</td>
<td></td>
<td>• Conduct operator training</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Prepare electronic O&amp;M Manual</td>
<td></td>
</tr>
<tr>
<td>Revised</td>
<td>Engineering Support Services</td>
<td>• Conduct site visits and specialty inspections</td>
<td>$133,322</td>
</tr>
<tr>
<td>Task 1.4</td>
<td></td>
<td>• Review/issue design clarifications</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Review change orders and work changes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Review/approve shop drawings, submittals, and substitutes</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Review contractor completion documents</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Observe functional demonstration tests</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Conduct substantial and final completion inspections</td>
<td></td>
</tr>
</tbody>
</table>

**Total Amendment Upper Limit**  
$272,814

**Percent of Construction Management fees from estimated $4.5 million Construction Cost**  
6.1%