Agenda for the
Regular Meeting of the
Englewood City Council
Monday, April 15, 2013
7:30 pm

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

1. Call to Order.

2. Invocation.

3. Pledge of Allegiance.

4. Roll Call.

5. Consideration of Minutes of Previous Session.
   a. Minutes from the Regular City Council Meeting of April 1, 2013.

6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)
   a. Jonathan Bush, Managing Partner – Littleton Capital Partners, will be present to discuss the resolutions before Council.
   b. Lee Novak, Vice President for Development – Western Region, Fore Property Company, will be present to discuss resolutions before Council.
   c. Patty Brisbois, an Englewood resident, will be present to address City Council regarding zoning concerns.

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

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.
8. Communications, Proclamations, and Appointments.

9. Consent Agenda Items.

a. Approval of Ordinances on First Reading.
   
i. Council Bill No. 11 — Recommendation from the Community Development Department to adopt a bill for an ordinance authorizing an Intergovernmental Agreement with the City and County of Denver for Englewood’s participation in the Metro Mortgage Assistance Plus Program. **Staff Source: Harold Stitt, Senior Planner and Janet Grimmett, Housing Finance Specialist.**

   ii. Council Bill No. 12 — Recommendation from the Parks and Recreation Department to adopt a bill for an ordinance authorizing an Intergovernmental Agreement with the Englewood School District for development and usage of gymnasiums at the new Colorado’s Finest Alternative High School. **Staff Source: Jerrell Black, Director of Parks and Recreation.**

b. Approval of Ordinances on Second Reading.
   
i. Council Bill No. 5 — Approving Supplement #169 to the Connectors Agreement Southgate Sanitation District authorizing the inclusion of land within the district.

   ii. Council Bill No. 6 – Authorizing the Valley Sanitation District Wastewater Connector’s Agreement.


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. 10 — Recommendation from the Community Development Department to approve a bill for an ordinance authorizing the redemption and sale of 4896 South Delaware Street. **Staff Source: Harold Stitt, Senior Planner and Janet Grimmett, Housing Finance Specialist.**

b. Approval of Ordinances on Second Reading
c. Resolutions and Motions

i. Recommendation from the City Manager’s Office to adopt a resolution authorizing the City of Englewood to enter into an agreement with the developers for the Martin Plastics Property, d.b.a. LCP Oxford, LLC and its management entities. **Staff Source: Darren Hollingsworth, Economic Development Manager.**

ii. Recommendation from the City Manager’s Office to adopt a resolution authorizing the transfer of the redevelopment assistance agreement from LCP Oxford, LLC and its management entities to CANV NC, LLC (Fore Properties). **Staff Source: Darren Hollingsworth, Economic Development Manager.**

iii. Recommendation from the City Manager’s Office to adopt a resolution amending the agreement with Hampden Broadway, LLC for the City to provide assistance to support redevelopment of the former Flood Middle School site. **Staff Source: Darren Hollingsworth, Economic Development Manager.**

12. General Discussion.

a. Mayor’s Choice.

b. Council Members’ Choice.

i. Council Bill No. 9, a bill for an ordinance submitting to a vote of the registered electors of the City of Englewood at the next scheduled municipal election of November 5, 2013, an advisory question to ban the retail sale of recreational marijuana, ban recreational marijuana cultivation facilities, ban recreational marijuana manufacturing facilities, and ban recreational marijuana testing facilities.

ii. Council Bill No. 8, a bill for an ordinance enacting Title 7, Chapter 6D, Section 12, of the Englewood Municipal Code 2000, defining recreational marijuana cultivation facilities, recreational product manufacturing facilities, recreational marijuana testing facilities, recreational retail marijuana stores; and prohibiting these businesses. [Tabled April 1, 2013. This requires a majority vote to remove from the table.]

iii. Resolution extending the temporary suspension or moratorium on the establishment of any new business that sells, manufactures, or cultivates marijuana.


15. Adjournment.
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date</th>
<th>Agenda Item</th>
<th>Subject:</th>
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<tbody>
<tr>
<td>April 15, 2013</td>
<td>9 a i</td>
<td>Metro Mortgage Assistance Plus Program Delegation and Participation Agreement</td>
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INITIATED BY: Community Development Department. STAFF SOURCE: Harold Stitt, Senior Planner, Janet Grimmett, Housing Finance Specialist

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council discussed this matter at the April 1, 2013 Study Session.

RECOMMENDED ACTION

Staff seeks Council’s approval of an ordinance authorizing an Intergovernmental Agreement between the City and County of Denver and the City of Englewood for Englewood’s participation in the Metro Mortgage Assistance Plus Program.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The City & County of Denver in cooperation with the Metro Mayors Caucus has instituted a program to provide down payment and closing cost assistance (DPA) paired with competitive, fixed-rate, 30-year VA & FHA loans. The Metro Mortgage Assistance Plus Program (MMA Plus) is a $15 Million program available to all members of the Metro Mayors Caucus (MMC) upon the execution of an Intergovernmental Agreement with the City & County of Denver. There is no cost to the participating Metro Mayors Caucus member jurisdictions. To participate, the jurisdiction must execute a two-page "Delegation and Participation Agreement" with Denver, allowing MMA Plus mortgage loans with down payment assistance to be made in that jurisdiction. Upon receipt of an executed Participation Agreement the jurisdiction will be added to the eligible loan area for the duration of the program.

MMA Plus will provide competitive rate 30-year, fixed FHA and VA mortgage loans to qualifying low and moderate income homebuyer families. In addition, homebuyers will receive a DPA grant equal to 4% of the loan amount. The source of the 4% DPA grant funding is housing funds that Denver makes available for the program. Denver will be reimbursed upon the resulting sale of the mortgage loan when pooled with other loans into a Government National Mortgage Association (GNMA) Certificate. GNMA, or Ginnie Mae, was established in 1968 to promote home ownership. As a wholly owned government corporation within the Department of Housing and Urban Development (HUD), Ginnie Mae’s mission is to expand affordable housing in the United States by channeling capital into the nation’s housing finance markets.

Loans may also be made by participating mortgage lenders to homebuyers in participating jurisdictions under the following guidelines:
Eligible Borrowers
- There is no first-time homebuyer requirement in this program.
- With regard to citizenship requirements, follow applicable Agency (FHA, VA) guidelines
- Buyers must occupy the property within 60 days of closing.
- Applicants must be considered irrespective of age, race, color, religion, national origin

Buyers must have a minimum FICO credit score of 640, the mid score must be the minimum or above. If an Agency (FHA, etc.) has a higher minimum, follow Agency guidelines. If a participating lender has a higher minimum for other loans and wishes to require a higher minimum for loans, then lenders must use the higher minimum. For home buyers with NO FICO score, manual underwriting shall be permitted. Underwriters must follow the manual underwriting guidelines for the loan product.

Maximum Debt-to-Income (DTI) Ratio
The maximum DTI ratio is 45%.

Homebuyer Education
Homebuyer education is required for borrowers. Education may be HUD approved courses, CHFA (including CHFA’s online Neighborworks curriculum eHomeAmerica course).

Income Limits
Use Form 1003 Credit Qualifying Income
The limits are as follows:
1-2 person households = $91,100
3 or more person households = $103,000

Eligible Area
Mortgage loans under the program may be made to qualifying borrowers throughout the City and County of Denver and the City of Littleton and in other participating MMC jurisdictions. Lenders will be notified as other cities choose to participate.

Purchase Price Limits
There are no purchase price limits in this program.

Property Requirements
- New or existing, one-four units, detached or attached, condos, town homes, manufactured homes that meet servicer/insurer/guarantor requirements.
- Mobile, recreational, seasonal or other types of vacation or non-permanent homes are not permitted.
- Land may not exceed the size required to maintain basic livability.
- Properties purchased in the program must be residential units.

Financing
It’s expected that lenders have reviewed some preliminary documentation and believe that applicants will also qualify for credit. Excessive cancellations will be reviewed to assure that program funds are not being utilized inappropriately.

Appraisal
The appraisal must indicate that the home has at least a 30 year remaining useful life.
Buydowns
Follow Agency Guidelines.

Cash Back
Cash Back to the borrower is not permitted. However, borrowers are permitted a reimbursement of prepaids and overage of earnest money deposit as permitted by Agency guidelines and to the extent any minimum contribution, if any, has been satisfied.

Construction to Permanent
Not permitted.

Cosigners
Permitted to the extent permitted by FHA. Treat cosigner/income as directed by FHA. A cosigner cannot reside in the property and cannot have any ownership interest in the property (they cannot be on the Mortgage/Deed/Warranty Deed).

Minimum Loan Amount
There is no minimum loan amount in this program.

Prepayments
The first mortgage may be prepaid at any time without penalty.

Recapture Tax
There is no recapture tax in this program.

Refinances
Refinances are not permitted in this program. However, temporary, bridge or construction loans with a term or 2 years or less may be taken out with a program loan.

Remaining reserves are not established by the program. Follow Agency Guidelines.

FINANCIAL IMPACT
There is no financial impact to the City.

LIST OF ATTACHMENTS
Proposed Bill for an Ordinance
A BILL FOR

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
ENTITLED "DELEGATION AND PARTICIPATION AGREEMENT" BETWEEN THE CITY
OF ENGLEWOOD AND CITY AND COUNTY OF DENVER FOR ENGLEWOOD'S
PARTICIPATION IN THE METRO MORTGAGE ASSISTANCE PLUS PROGRAM.

WHEREAS, the City and County of Denver in cooperation with the Metro Mayors Caucus has
instituted a program to provide down payment and closing cost assistance (DPA) paired with
competitive, fixed-rate, 30 year VA and FHA loans; and

WHEREAS, the Metro Mortgage Assistance Plus Program (MMA Plus) is a $15 million
program available to all members of the Metro Mayors Caucus (MMC) upon the execution of an
intergovernmental agreement with the City and County of Denver; and

WHEREAS, there is no cost to the participating Metro Mayors Caucus member jurisdictions;
and

WHEREAS, the Delegation and Participation Agreement with Denver, allows MMA Plus
mortgage loans with down payment assistance to be made in that jurisdiction; and

WHEREAS, Denver will be reimbursed upon the resulting sale of the mortgage loan when
pooled with other loans into a Government National Mortgage Association (GNMA); and

WHEREAS, loans may be made by participating mortgage lenders to homebuyers in
participating jurisdictions subject to certain guidelines; and

WHEREAS, the passage of this Ordinance authorizes the "Delegation and Participation
Agreement" between the City and County of Denver and the City of Englewood.

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

Section 1. The City Council of the City of Englewood, Colorado, hereby authorizes the
"Delegation and Participation Agreement" between the City and County of Denver, attached
hereto as Exhibit A.

Section 2. The Mayor and the City Clerk are authorized to sign and attest said "Delegation
and Participation Agreement" for and on behalf of the City of Englewood, Colorado.
Introduced, read in full, and passed on first reading on the 15th day of April, 2013.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 19th day of April, 2013.

Published as a Bill for an Ordinance on the City’s official website beginning on the 17th day of April, 2013 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 15th day of April, 2013.

Loucrishia A. Ellis
DELEGATION AND PARTICIPATION AGREEMENT

This DELEGATION AND PARTICIPATION AGREEMENT, dated as of __________, 2013 (this “Delegation and Participation Agreement”), is by and between the CITY OF ENGLEWOOD, COLORADO (“Englewood”), a legally and regularly created, established, organized and existing political subdivision under the Constitution and statutes of the State of Colorado (“Englewood”) and the CITY AND COUNTY OF DENVER, COLORADO, a legally and regularly created, established, organized and existing political subdivision under the Constitution and statutes of the State of Colorado (“Denver”);

RECITALS:

WHEREAS, the State of Colorado (the “State”) Constitution Article XIV, Section 18(2)(a) provides that nothing in the Constitution shall prohibit any of the State’s political subdivisions from cooperating with one another to provide any service lawfully authorized to each of the cooperating units; and

WHEREAS, Denver is authorized pursuant to its Charter to promote the financing of residential facilities for low and middle income persons or families or facilities intended for use as the sole place of residence by the owners or intended occupants and to promote the health, safety and general welfare of the people of Denver; and

WHEREAS, Denver has sponsored its 2013 Metro Mortgage Assistance Plus Program to provide competitive fixed rate 30-year mortgage loans which will be coupled with down payment and closing cost assistance grants in connection with financing mortgage loans for residential facilities, intended for use as the sole place of residence by the owners thereof, for low- and middle-income families (the “Program”); and

WHEREAS, Denver has invited Englewood to participate in the Program; and

WHEREAS, Englewood has the full legal authority to participate in the Program pursuant to [its Charter/the general powers granted to it in Title 31, Article 15, Colorado Revised Statutes, as amended] and the Ordinance adopted by the Englewood City Council authorizing Englewood’s participation in the Program pursuant to this Delegation and Participation Agreement (collectively the “Act”); and

WHEREAS, Englewood desires to delegate to Denver the authority of Englewood to take action and exercise power under the Act on behalf of the Englewood with respect to the Program within Englewood’s boundaries;

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

Section 1. Englewood hereby delegates to Denver the authority of Englewood to take action and exercise power under the Act on behalf of Englewood with respect to the Program within Englewood’s boundaries.

Section 2. Denver hereby accepts the delegation of authority from Englewood pursuant to Section 1 hereof and agrees to abide by each of the terms and conditions of this Delegation and Participation Agreement in connection with the use of such delegation. Denver agrees to make the Program available to Englewood for the origination of home mortgages within Englewood’s boundaries.
Section 3. The participation of Englewood in the Program, and all undertakings, obligations, duties and rights of Englewood and Denver under this Delegation and Participation Agreement, are contingent upon the implementation of the Program.

Section 4. In the event that the Program is not implemented by Denver or the Program is discontinued by Denver, this Delegation and Participation Agreement, and all duties, obligations and rights of Denver and Englewood hereunder, shall terminate. If the Program is not implemented or is terminated, Englewood agrees to hold Denver harmless for any costs or any other liabilities incurred by Englewood with respect to the adoption and approval of this Delegation and Participation Agreement or any other Englewood actions related thereto.

Section 5. Englewood’s participation in the Program pursuant to this Delegation and Participation Agreement shall not be construed as creating or constituting a general obligation or multiple fiscal year direct or indirect indebtedness or other financial obligation whatsoever of Englewood nor a mandatory payment obligation of Englewood in any fiscal year during which this Delegation and Participation Agreement shall be in effect.

[Signatures on the following pages]
IN WITNESS WHEREOF, Englewood and Denver have caused this Delegation and Participation Agreement to be executed and be effective as of ________, 2013.

[SEAL]

CITY OF ENGLEWOOD, COLORADO

By ________________________________
Randy P. Penn, Mayor

ATTEST:

By ________________________________
Loucrishia A. Ellis, City Clerk

CITY AND COUNTY OF DENVER, COLORADO

By ________________________________
Manager of Finance

[Signature Page to Delegation and Participation Agreement]
COUNCIL COMMUNICATION

Date: Agenda Item: Subject:
April 15, 2013 9 a ii Intergovernmental Agreement with Englewood School District #1 for partnership on Colorado's Finest Alternative High School Gymnasium

Initiated By: Staff Source:
Department of Parks and Recreation Jerrell Black, Director of Parks and Recreation

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

A City that provides diverse cultural, recreational and entertainment opportunities. A progressive City that provides responsive and cost efficient services.

The City and Englewood School District No. 1 have worked cooperatively on a number of partnerships throughout the years:

**Ordinance #57, Series of 2012** - Intergovernmental Agreement establishing a refunding of building use tax for Englewood School District No. 1, Arapahoe County 7-12 Campus Project (Schools).

**Ordinance #35, Series of 1978** - Intergovernmental agreement between the City of Englewood and Englewood Schools for the lease of Duncan School/property for park and recreational purposes.

**Council Bill No. 41, Series of 2007** - Contract for Deed for the purchase of Duncan Park located at 4846 South Pennsylvania Street between the City of Englewood and Arapahoe County School District No. 1 (Englewood Schools)

**Ordinance No. 12-87** - Intergovernmental Agreement outlining cost sharing for maintenance on the Hosanna Athletic Complex (Detention Facility for Little Dry Creek)

**Ordinance No. 38, Series 2005** - Intergovernmental Agreement approving multi-use recreation facility Sinclair Middle School defining joint responsibility between City of Englewood and Englewood School District No. 1

RECOMMENDED ACTION

Staff recommends that City Council adopt a bill for an ordinance approving an Intergovernmental Agreement with Englewood School District #1 for a partnership for development and usage of gymnasiums at the New Colorado's Finest Alternative High School.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The City of Englewood has been working with Englewood School District No. 1 throughout its renovation of the new high school and middle school campus. Since the inception for programming of recreational programs, the Department of Parks and Recreation and Englewood School District No. 1 has partnered on use of gymnasium space.
The scope of the project includes improvements and upgrades to the existing floors, walls, ceilings and replacement of athletic equipment (scoreboard, backstop, bleachers, benches, volleyball post/net and badminton upright and net). The HVAC (heating, ventilation and cooling) and fire systems will also be replaced in both gymnasiums which is not part of the cost but was included in the original scope of work funded by the BEST grant.

During non-school hours, the City of Englewood and the Department of Parks and Recreation will receive first priority for use of the gymnasiums. For participation in the renovation cost of the facilities, fees and charges will be waived for the City.

FINANCIAL IMPACT

The total costs of the improvements are approximately $124,000. The impact to the City of Englewood will be $100,000. Any additional cost above $100,000 will be absorbed by the School District as part of its renovation of the current middle school.

This is not a budgeted item. A separate Council Resolution requesting a supplemental appropriation will be brought forward on the 2nd Reading of this Bill.

LIST OF ATTACHMENTS:

CFAHS Gym Improvement Budget
Proposed Bill for an Ordinance
Purpose: Rough Order of Magnitude Pricing for upgrades to the Colorado's Finest Alternative High School Gymnasiums

### North Gym

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<th>Item</th>
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<td>Paint</td>
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<td>Floor-refinish w/lines</td>
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<td>Ceiling</td>
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<td>Glass Backstops-Side Swing</td>
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<td>Fixed Mount Backstops</td>
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<td>Scoreboard</td>
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<td>Volleyball Post/net</td>
<td>$3,123.00</td>
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<tr>
<td>Badminton Upright and Net</td>
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<td>Bleachers- Portable</td>
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### South Gym

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<td>Paint Walls</td>
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<td>Floor-refinish w/lines</td>
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<td>Scoreboard</td>
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<td>Removable Benches- Aluminum</td>
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<td>HCL Cost for IC/Clean/Demo</td>
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<td><strong>Total Estimated Cost</strong></td>
<td><strong>$32,511.60</strong></td>
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**Total for Both Gyms**: $124,341.80
A BILL FOR

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH ARAPAHOE COUNTY SCHOOL DISTRICT NO. 1 FOR A PARTNERSHIP ON GYMNASIUMS LOCATED AT THE NEW COLORADO'S FINEST ALTERNATIVE HIGH SCHOOL.

WHEREAS, the City of Englewood has been working with Arapahoe County School District No. 1 throughout its renovation of the new high school and middle school campus; and

WHEREAS, the scope of the project includes improvements and upgrades to the existing floors, walls, ceilings and replacement of athletic equipment (scoreboard, backstop, bleachers, benches, volleyball post/net and badminton upright and net), HVAC (heating, ventilation and cooling) and fire systems will also be replaced in both gymnasiums which is not part of the cost but was included in the original scope of work funded by the BEST grant; and

WHEREAS, the City of Englewood will contribute $100,000; and

WHEREAS, for participation in the renovation cost of the facilities, fees and charges will be waived for the City; and

WHEREAS, during non-school hours, the City of Englewood and the Department of Parks and Recreation will receive first priority for use of the gymnasiums.

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

Section 1. The City Council of the City of Englewood, Colorado hereby approves the Intergovernmental Agreement with Arapahoe County School District No. 1 for a partnership to develop gymnasiums located at the New Colorado's Finest Alternative High School, attached hereto as “Exhibit A”.

Section 2. The Englewood City Council hereby authorizes the Mayor to sign the agreement for and on behalf of the City of Englewood, attached hereto as Exhibit A.

Introduced, read in full, and passed on first reading on the 15th day of April, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 19th day of April, 2013.
Published as a Bill for an Ordinance on the City’s official website beginning on the 17th day of April, 2013 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 15th day of April, 2013.

Loucrishia A. Ellis
AGREEMENT BETWEEN THE CITY OF ENGLEWOOD AND THE ARAPAHOE COUNTY SCHOOL DISTRICT NO. 1

This agreement, entered into this __ day of __________, 2013, by and between the CITY OF ENGLEWOOD, a Colorado Home Rule Municipality (herein called “City”) and the ARAPAHOE COUNTY SCHOOL DISTRICT NO. 1 (herein called “School District”).

WHEREAS, the City and the School District consider it to be in their mutual interest to cooperate in the renovation of the two (2) gymnasiums at the New Colorado's Finest Alternative High School located at 300 West Chenango Street, Englewood, CO; and

WHEREAS, the City and the School District desire to set forth their respective obligations; and

WHEREAS, the City and the School District desire to set forth their respective duties.

SECTION ONE
PURPOSE

The purpose of this agreement is to establish a relationship between the City of Englewood and the Arapahoe County School District No. 1 such that the parties may cooperate in renovating the two (2) gymnasiums at the New Colorado's Finest Alternative High School.

SECTION TWO
CITY'S OBLIGATIONS

The City shall have the following obligations with respect to the School District renovating the two (2) gymnasiums at the New Colorado's Finest Alternative High School:

1. The City will contribute $100,000 to the renovation of the North and South Gyms at the New Colorado's Finest Alternative High School.

SECTION THREE
SCHOOL DISTRICT OBLIGATIONS

The School District shall have the following obligations with respect to the City of Englewood and the gymnasiums at the New Colorado's Finest Alternative High School.

1. The School District shall be responsible for utility costs.

2. The School District shall be responsible for completing the improvements to the gymnasiums.

3. School District will employ, manage and direct the Contractor for the project.
4. The City of Englewood shall receive first (1st) priority use of the gymnasiums after the School District. The Project shall include those items listed on attached Exhibit A.

5. The City of Englewood will not be assessed any fees or charges for the use of the North and South Gymnasiums. All requests for gymnasium use must be approved by the School District.

SECTION FOUR
MISCELLANEOUS

1. The term of this Agreement shall begin on the date of the City Council approval (the “effective date”), as evidenced by the date first written above and shall continue for twenty-five (25) years subject to annual appropriations by both parties.

2. The terms and conditions of this Agreement shall be binding upon the parties unless modified by a written amendment or written supplement executed by the parties hereto.

3. This Agreement shall inure to the benefit of and be binding upon the parties, their successors, and assigns.

4. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein by writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment or written supplement executed by the parties.

5. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

6. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the School District, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the School District that any person other than the City or the School District receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
7. Each party represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this Agreement on behalf of the party and to bind the party to its terms.

8. The School District shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and other performance hereunder and make such materials available for inspection to at all reasonable times to the City during the period of the Agreement. On request, copies of such records shall be furnished to the City for the City's permanent records.

9. The City and the School District will establish safeguards to prohibit its employees, agents, or servants from using the Agreement for any purpose which causes or lends itself to create an appearance of impropriety. Said employees, agents or servants shall not seek any personal benefits or private gain for themselves, their families, or others.

10. The parties shall not assign or transfer its interest in the Agreement without the written consent of the other party. Any unauthorized assignment or transfer shall render the agreement null, void and of no effect.

11. Any notice to be given hereunder shall be deemed given when sent by registered or certified mail to the addresses below.

   Englewood School District                      City Manager
   4101 South Bannock Street                   City of Englewood
   Englewood, Colorado 80110                   1000 Englewood Parkway
                                                                  Englewood, Colorado 80110

12. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto.

13. The City and the School District as well as the employees and agents of each entity shall be considered for all purposes of the Agreement, to be independent contractors and not employees of the other entity.

14. The Agreement shall be carried out in accordance with the laws of the State of Colorado and all applicable federal laws and regulations, and all local laws, ordinances and regulations.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

ATTEST:                      CITY OF ENGLEWOOD

Loucrishia A. Ellis, City Clerk

Randy P. Penn, Mayor

ARAPAHOE COUNTY SCHOOL DISTRICT NO. 1
BY AUTHORITY

ORDINANCE NO. SERIES OF 2013
COUNCIL BILL NO. 5
INTRODUCED BY COUNCIL MEMBER WOODWARD

AN ORDINANCE APPROVING SUPPLEMENT NO. 169 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 1.2 acres into the District for residential use; and

WHEREAS, said inclusion is located on the North side of East Garden Avenue, East 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 March 12, 2013 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. 169, to Connector’s Agreement”, which includes 1.2 acres located on the North side of East Garden Avenue, East 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 “Attachment 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 1st day of April, 2013.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 5th day of April, 2013.
Published as a Bill for an Ordinance on the City's official website beginning on the 3rd day of April, 2013 for thirty (30) days.

Read by title and passed on final reading on the 15th day of April, 2013.

Published by title in the City's official newspaper as Ordinance No. __, Series of 2013, on the 19th day of April, 2013.

Published by title on the City's official website beginning on the 17th day of April, 2013 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 2013.

_________________________
Loucrishia A. Ellis
SUPPLEMENT NO. _____ 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 Howard Bellowe 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 ____________, 2013.

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 3, Village Hill,
County of Arapahoe,
State of Colorado
BY AUTHORITY

ORDINANCE NO. ___
SERIES OF 2013

COUNCIL BILL NO. 6
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE AUTHORIZING AN INTERGOVERNMENTAL WASTEWATER CONNECTOR'S AGREEMENT FOR DISTRICTS BETWEEN VALLEY SANITATION DISTRICT AND THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City of Englewood owns and operates a sewage system, including a sewage treatment plant which is jointly owned and operated with the City of Littleton known as the L/E Wastewater Treatment Plant (WWTP); and

WHEREAS, the L/E WWTP provides sanitary sewer service to districts outside of the Englewood corporate boundaries through a standard connector's agreement; and

WHEREAS, the Valley Sanitation District Wastewater desires to utilize the L/E WWTP for treatment of the District's sewage; and

WHEREAS, the Valley Sanitation District has 2,293 taps; and

WHEREAS, the L/E WWTP is situated physically as to be able to receive and treat the sewage from a designated area served by the Valley Sanitation District and gathered by the District's sanitary sewage system; and

WHEREAS, Valley Sanitation District will continue to own the lines and will be responsible for capital improvements and maintenance in its system; and

WHEREAS, the Englewood Water and Sewer Board reviewed and recommended approval of the Valley Sanitation Wastewater Connector’s Agreement at the March 12, 2013 meeting;

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

Section 1. The Intergovernmental Agreement between the City of Englewood and Valley Sanitation District entitled “Wastewater Connector’s Agreement For Districts” is hereby approved; a copy is attached hereto as Exhibit 1.

Section 2. The Mayor is authorized to execute and City Clerk to attest and seal the Intergovernmental “Wastewater Connector’s Agreement”, for and on behalf of the Englewood City Council.

Introduced, read in full, and passed on first reading on the 1st day of April, 2013.
Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 5th day of April, 2013.

Published as a Bill for an Ordinance on the City’s official website beginning on the 3rd day of April, 2013 for thirty (30) days.

Read by title and passed on final reading on the 15th day of April, 2013.

Published by title in the City’s official newspaper as Ordinance No. ____, Series of 2013, on the 19th day of April, 2013.

Published by title on the City’s official website beginning on the 17th day of April, 2013 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 2013.

__________________________
Loucrishia A. Ellis
WASTEWATER
CONNECTOR’S AGREEMENT
For Districts

Sewer Contract No. _________

THIS AGREEMENT, made and entered into this_________ day of
__________, 20____ to be effective as of__________, 20____, by and
between the CITY OF ENGLEWOOD, COLORADO, a municipal corporation, hereinafter
referred to as “City,” acting by and through its duly elected, qualified and authorized Mayor and
City Clerk, and the VALLEY SANITATION DISTRICT, a quasi-municipal corporation and
subdivision of the State of Colorado, hereinafter called “District,” acting by and through its
authorized Representative.

WITNESSETH

WHEREAS, the City owns and operates a sewage system, including a sewage treatment plant
which is jointly owned and operated with the City of Littleton, so situated physically as to be
able to receive and treat the sewage from a designated area served by the District and gathered by
the District’s sanitary-sewage system; and

WHEREAS, it is the desire of the District to utilize the facilities owned by the City for the
treatment of sewage and the City is willing to serve the District for treatment of sewage under
certain conditions;

NOW, THEREFORE, IN CONSIDERATION of the promises and for other good and
valuable consideration hereinafter set forth, it is mutually agreed by the parties as follows:

1. The City hereby agrees under the conditions hereinafter set forth, to treat the sewage
originating from the District’s sanitary sewer system within the area served by the
District as approved by the City and as indicated in the description attached hereto,
incorporated herein and marked as “Exhibit A.”

The District specifically agrees to prevent sewage from any area other than that
described herein, from being discharged into the District’s sanitary sewage system
connected to the City’s trunk line and to prevent connections to the system from or in
any area other than those described herein.

2. In the operation of the District’s sanitary sewer system, the District agrees that all
applicable Code provisions and rules and regulations of the City, including amendments
thereto during the term of the contract, shall be the minimum standards for the District’s
system. The District further agrees to abide by all applicable state and federal laws,
rules, regulations, or permits, including those of the Environmental Protection Agency
(the EPA) as they become effective or implemented or upon notice from the City. The
District shall inform all users, contractors and subcontractors of such standards, rules and
regulations upon inquiry from such persons, and shall not furnish any information
inconsistent therewith. In this regard, it shall be the responsibility of the District to
obtain the applicable requirements from the appropriate governing body. The City shall
attempt to maintain and provide information on all requirements to the District; however, the City does not guarantee the accuracy or completeness of government regulations other than the City's own regulations.

3. Regarding the provision of sewer service, the City's permitting requirements shall be followed by the District and its users. All sewer plans, specifications and methods of work within the District shall be submitted to the City in writing and approved by the City prior to any construction or tap in the District's designated area. No permit shall be final and no service shall be provided to property until construction is approved, in writing by the City.

4. The District shall be responsible for the proper maintenance of its sewer system and shall rectify any problems or conditions which have been determined by the District or the City to be detrimental to the City's treatment process or system. Should the City determine that any discharge enters the sewer system contrary to applicable laws, ordinances, statutes, rules, regulations or permits, the District agrees to proceed at once to take whatever lawful means may be necessary to rectify any such problem or condition.

5. The City shall have the right to allocate service under this Contract, and the City may deny additional service for any utility-related reason, but in no event will the City terminate or refuse any service without cause. The City shall have the right to disconnect service to any area annexed to the District when such annexation takes place without prior written City approval.

Within one year of this agreement, the District shall provide the City with an estimate of the number of equivalent service taps needed for the next five (5) years under current zoning and planned build out in the District's area as shown on Exhibit A. The District shall continue to monitor zoning changes within its area to estimate its tap requirements and provide the City with notice of tap requirement for the next five (5) year period which time shall be given to the City on each anniversary date of this Agreement in a form satisfactory to the City.

6. The City may impose and collect reasonable fees, tolls and charges, which shall be uniform as to all outside-City users for the services provided by the City under this Connector's Agreement.

The City shall bill the District users directly for all applicable City charges for services rendered under this Agreement. Should any user not pay the City, the City shall bill the District and the District shall pay the amount due to City within forty-five (45) days of such billing. These charges are subject to adjustment by the City from time to time. When such adjustment to these charges are made, the City shall give the District forty-five (45) days advance written notice.

The City may bill and collect "District Charges" imposed by the Districts as an additional item to be billed and collected by the City along with the City's Treatment charge and other fees. The "District Charges" received by the City shall be remitted by the City to the District annually; less an amount equal to the City and District charges which remain delinquent. The District shall notify the City of any changes in the District charges to be imposed and the remittance schedule before May 1st of each year.
Subject to the terms of the Taxpayer's Bill of Rights (TABOR), the term of this Agreement is for a period of three (3) years from the date of execution and automatically renewed for six (6) subsequent three (3) year periods unless either party gives a minimum of six (6) months written notice, during which time the District agrees that all effluent produced from taps within the District shall not be in violation of any federal, state or City laws, rules or regulations, or any other applicable governmental regulations or the permits under which the City operates its sewage treatment system. The City agrees, during the term hereof, to treat said effluent and to maintain adequate facilities for treating the same.

8. The District agrees that it will maintain, at its own expense, all lines now owned and operated by the District, it being specifically agreed that the City assumes no responsibility should any of the District’s lines become clogged, damaged, or require maintenance. The District shall, if it deems necessary, notify its users of the District’s procedure to remedy service disruption.

9. The City is providing only sewage treatment service and, pursuant thereto; any permits incidental to the use of the City’s sewage lines shall be governed only by this individual Contract with the District and the City does not, by this Contract, offer treatment service except in strict accordance with the terms hereof. This Contract does not offer, and shall not be construed as offering, sewage treatment service to the public generally or to any area outside the limits of the District’s service area described in Exhibit A.

10. This Contract may not be assigned, sold or transferred by the District without the City’s written consent.

11. Should any federal law, rule, permit or regulation or should a decree or order of a court render void or unenforceable any provision of this Contract, in whole or in part, the remainder shall remain in full force and effect.

12. The District shall enforce this Agreement and each of its terms and conditions within the area described in “Exhibit A.” The District shall refuse to serve a user or potential user; disconnect the service of any user pursuant to appropriate law; or take other appropriate action in the event of:

a. Nonpayment of such user of any charge made by the City for services;

b. Any violation or noncompliance by such user with the terms of this Agreement;

c. Any violation or noncompliance by such user with the applicable laws, rules, permits or regulations of the City, the United States government, including the EPA, the State of Colorado, the Department of Health, or other law, rule, permit or applicable regulation.

13. Continued breach of this Agreement by the District and/or its users shall be considered cause for the City to terminate this Agreement. Should the District fail to promptly rectify a breach of any provisions identified herein, after notice thereof, the City may take such steps and do such work as it deems necessary to enforce this Agreement, including litigation and specifically a right to injunction or specific performance against the District or any of its users as is necessary to protect the City’s system and operations.
The prevailing party shall be entitled to expenses and costs of suit, including attorney fees.

14. Should more than one district be connected to a sewer line, all districts on the sewer line who are in breach of this Agreement shall be jointly and severally liable for any such breach of this Agreement and each such district shall immediately, after notice, rectify any problem or condition detrimental to the treatment process arising within its legal boundaries. When more than one district is connected to a sewer line, and the City discovers any violation of the terms of this connector's agreement; the City shall not be required to prove which district is at fault but shall make available to all such affected districts all information developed or accumulated by the City pertaining to such breach. Nothing contained herein shall preclude a claim for indemnity or contribution by any District against another District connected to a common sewer line. CRS-13-21-111.5, as amended shall govern the percentage of liability of any district on a common sewer line in the event the City seeks to impose liability based upon negligence or fault.

15. This Contract shall not be used as a legal defense or prohibition to the mandatory consolidation of facilities by either party as may be required by the laws of the State of Colorado of all existing sewer collection systems and facilities to a governmental entity created to assume responsibility for sewer service in the area in which both the City and State are a part under statutory or constitutional authority.

CITY OF ENGLEWOOD, COLORADO

Randy P. Renn, Mayor

ATTEST:

Loucreshia Ellis, City Clerk
VALLEY SANITATION DISTRICT

Phyllis Gooden, President

STATE OF COLORADO
COUNTY OF Jefferson

The foregoing instrument was acknowledged before me this 13th day of February, 2013, by Phyllis Gooden.

Witness my hand and official seal.

My Commission expires: 6-15-13

NOTARY PUBLIC
EXHIBIT A

VALLEY SANITATION DISTRICT
SERVICE BOUNDARY MAP
The Littleton/Englewood Wastewater Treatment Plant (L/E WWTP) Industrial Pretreatment Division (Division) regulates indirect discharge to the Publicly Owned Treatment Works in order to protect the plant, the workers, and ensure compliance with the plant’s Colorado Discharge Permit System (CDPS) permit. In order to achieve these objectives the Division has implemented various programs to regulate discharges from commercial and industrial sectors of the L/E WWTP service area. The proposed discharge from the Englewood Fire Training Facility is one such discharge.

Facilities generating process wastewater in the L/E WWTP service area must manage that wastewater in accordance with City of Englewood and City of Littleton Municipal Codes. Two overall options exist for managing process wastewater. The first is managing the wastewater without a discharge to the sanitary sewer. This is known as zero discharge and is accomplished in many instances by treating and re-using the wastewater onsite. The West Metro Fire Training Center utilizes this type of system. Other means of zero discharge operation include evaporating the wastewater or hauling the wastewater off-site. In each of these instances there is no connection to the sanitary sewer system.

The second option for managing process wastewater is through discharge to the sanitary sewer, in accordance with municipal codes and other applicable regulations. This requires installing a permanent connection to the sanitary sewer system along with appropriate pretreatment to comply with Division requirements. Based on the Division’s understanding of the proposed plan, this would likely involve the installation of some type device to remove floatable and settleable materials from the wastewater prior to discharging to the sanitary sewer connection. Measures would also need to be put in place to minimize stormwater infiltration into the sanitary sewer through the process wastewater collection system. This may be a possibility for the Englewood Fire Training Center. However, the Division will require project plans and specifications in order to evaluate any potential discharge to the L/E WWTP. A full evaluation of requirements can be completed by the Division once plans are submitted.
ORDINANCE NO. SERIES OF 2013
COUNCIL BILL NO. 7
INTRODUCED BY COUNCIL MEMBER GILLIT

BY AUTHORITY

AN ORDINANCE AMENDING TITLE 7, CHAPTER 6D, OF THE ENGLEWOOD MUNICIPAL CODE 2000, RELATING TO THE POSSESSION, USE OR CONSUMPTION OF RECREATIONAL MARIJUANA AND DRUG PARAPHERNALIA.

WHEREAS, Amendment 64 changed Colorado law regarding the regulation and sale of marijuana; and

WHEREAS, the Constitutional Amendment sets a deadline for the completion of regulations by the State Department of Revenue for July 1, 2013; and

WHEREAS, the Governor's Task Force recently forwarded recommendations to the Legislature; and

WHEREAS, the City of Englewood established a moratorium to evaluate the State regulations; and

WHEREAS, the moratorium on the sale, manufacture and cultivation of marijuana was found to be necessary for the City to evaluate the effect of the Amendment and any State regulations on the City's existing Medical Marijuana regulations; and

WHEREAS, during the moratorium, City Council directed City staff to continue to develop appropriate recommendations consistent with the Constitutional Amendment and State regulations; and

WHEREAS, the Marijuana definition has been modified to match the new Constitutional language; and

WHEREAS, the Police Department has requested a prohibition as to minors, which is permitted by Amendment 64; and

WHEREAS, language under the Code has been modified as to the number of plants allowed to match the new Constitutional language; and

WHEREAS, Amendment 64 provides that growing of marijuana shall take place in an enclosed, locked, space and shall not be conducted openly and publicly; and

WHEREAS, restrictions on cultivating marijuana have been modified accordingly; and
WHEREAS, the Police Department has requested that the current provisions based upon similar intoxicating liquor open container prohibitions be maintained as to motor vehicles; and

WHEREAS, the penalty provision of 1-4-1 EMC will still apply, and redundant language has been eliminated to avoid confusion; and

WHEREAS, Amendment 64 specifically prohibits consumption of any marijuana that is conducted openly or publicly or in a manner that endangers others; and

WHEREAS, the draft Ordinance has language prohibiting marijuana use in the same manner as Englewood’s restriction on open containers of intoxicating liquor 5-3C-3 EMC; and

WHEREAS, Marijuana Accessories have been exempted from Drug Paraphernalia as required by the language of Amendment 64.

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes amending Title 7, Chapter 6D, Section 12, of the Englewood Municipal Code 2000, entitled Possession of Marijuana Prohibited, to read as follows:

7-6D-12: Possession Use or Consumption of Marijuana Prohibited.

A. Definitions.

Any word or term used that is defined in Article XVIII, Sections 14, 14(e), or 16 of the Colorado Constitution; in § 25-1.5-101 et seq. C.R.S. or in the Colorado Medical Marijuana Code, § 12-43.3-101 et seq. C.R.S. shall have the same meaning that is ascribed to such word or term in those Constitutional provisions or C.R.S. sections unless the definition is amended by this section.

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

Marijuana or Marihuana: All parts of the plant cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, if these items exist apart from any other item defined as "marijuana" herein. "Marijuana" does not include marijuana concentrate as defined below. All parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. "Marijuana" or "Marihuana" does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Marijuana Accessories: Any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing,
analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

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

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

**B.** It is unlawful for any person to possess, use or consume one ounce or less of Marijuana, except in accordance with Sections 14, and 16 of Article XVIII of the Colorado Constitution.

1. It shall be unlawful for anyone under twenty-one (21) years of age to possess, use or consume one ounce or less of Marijuana.

   (a) **Exception – Medical Marijuana as authorized by EMC 5-3D-1**

2. It shall be unlawful to sell, distribute or transfer Marijuana to a person who is under twenty-one (21) years of age.

   (a) **Exception – Medical Marijuana as authorized by EMC 5-3D-1.**

**D.C. Restrictions on locations for cultivating Marijuana.**

1. Growing of Marijuana shall take place in an enclosed, locked space and shall not be conducted openly or publicly.

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

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

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

   (a) Common visual observation of Marijuana.

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

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

   (d) Noise from fans in excess of the limits set in Section 6-2-5(F) EMC, as amended.
45. It shall be unlawful to cultivate Medical Marijuana in the common areas of residential property;

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

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

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

E. Concerning Marijuana in Motor Vehicles:

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

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

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

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

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

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

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

Restrictions on use or the consumption of Marijuana that is conducted openly and publicly or in a manner that endangers others.

1. It shall be unlawful for any person to use or consume Marijuana in any public place.
7-6D-12-1: Drug Paraphernalia.

A. Definitions. As used in this Section, unless the context otherwise requires:

1. Drug paraphernalia means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the laws of this State. Drug paraphernalia includes, but is not limited to:

   a. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances under circumstances in violation of the laws of this State;

   b. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

   c. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

   d. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

   e. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

   f. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances; or

   g. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

      (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

      (2) Water pipes;

      (3) Carburetion tubes and devices;

      (4) Smoking and carburetion masks;

      (5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

      (6) Miniature cocaine spoons and cocaine vials;

      (7) Chamber pipes;
Carburetor pipes;
Electric pipes;
Air-driven pipes;
Chillums;
Bongs; or
Ice pipes or chillers.

2. **Drug Paraphernalia shall not mean or include Marijuana Accessories as defined by Article XVIII of the State Constitution.**

B. **Determination; Considerations.**

1. In determining whether an object is drug paraphernalia, a court, in its discretion, may consider, in addition to all other relevant factors, the following:

   a. Statements by an owner or by anyone in control of the object concerning its use;
   b. The proximity of the object to controlled substances;
   c. The existence of any residue of controlled substances on the object;
   d. Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he/she knows or reasonably should know, could use the object to facilitate a violation of this Section;
   e. Instructions, oral or written, provided with the object concerning its use;
   f. Descriptive materials accompanying the object which explain or depict its use;
   g. National or local advertising concerning its use;
   h. The manner in which the object is displayed for sale;
   i. Whether the owner, or anyone in control of the object, is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco or Marijuana products;
   j. The existence and scope of legal uses for the object in the community;
   k. Expert testimony concerning its use.
C. **Possession of Drug Paraphernalia.** A person commits possession of drug paraphernalia if he/she possesses drug paraphernalia and knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of this Code, except in accordance with Section 14 and 16 of Article XVIII of the Colorado Constitution.

D. **Manufacture, Sale or Delivery of Drug Paraphernalia; Penalty.** Any person who sells or delivers, possesses with intent to sell or deliver, or manufactures with intent to sell or deliver equipment, products, or materials knowing, or under circumstances where one reasonably should know, that such equipment, products or materials could be used as drug paraphernalia commits a violation of this Section, except in accordance with Section 14 and 16 of Article XVIII of the Colorado Constitution.

E. **Advertisement of Drug Paraphernalia; Penalty.** Any person who places an advertisement in any newspaper, magazine, handbill, or other publication and who intends thereby to promote the sale in this City of equipment, products, or materials designed and intended for use as drug paraphernalia commits a violation of this Code, except in accordance with Section 14 and 16 of Article XVIII of the Colorado Constitution.

F. **Defenses.** The common law defense known as the procuring agent defense is not a defense to any crime in this Section.

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 1st day of April, 2013.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 5th day of April, 2013.

Published as a Bill for an Ordinance on the City’s official website beginning on the 3rd day of April, 2013 for thirty (30) days.

Read by title and passed on final reading on the 15th day of April, 2013.

Published by title in the City’s official newspaper as Ordinance No. __, Series of 2013, on the 19th day of April, 2013.

Published by title on the City’s official website beginning on the 17th day of April, 2013 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 2013.

__________________________  
Loucrishia A. Ellis
COUNCIL COMMUNICATION

<table>
<thead>
<tr>
<th>Date</th>
<th>Agenda Item</th>
<th>Subject: Redemption and Sale of Property acquired through the Housing Rehabilitation Fund</th>
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<tbody>
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<td>April 15, 2013</td>
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INITIATED BY
Community Development Department.

STAFF SOURCE: Harold Stitt, Senior Planner,
Janet Grimmett, Housing Finance Specialist

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council passed Ordinance No. 23, Series 1999 accepting assignment from the Englewood Housing Authority of all rights, assets and liabilities associated with the Housing Rehabilitation Loan Program and also passed Ordinance No. 26, Series, 1999 amending Title 4, Chapter 3, by the addition of a new Section 13 entitled “Housing Rehabilitation Fund”.

Since 2005, Council has passed ordinances approving redemption and sale of seven other properties acquired through the foreclosure process. Those properties are: 4231 South Cherokee Street (Ordinance No. 7, Series of 2005), 4180 South Acoma Street (Ordinance No. 8, Series of 2005), 3596 South Bannock Street (Ordinance No. 32, Series of 2005), 4165 South Washington Street (Ordinance No. 42, Series of 2005), 3030 South Sherman Street (Ordinance No. 10, Series of 2007, 2397 West Harvard Street (Ordinance No. 68, Series of 2007), and 290 East Bellwood Drive (Ordinance No. 7, Series of 2009).

RECOMMENDED ACTION

Approve an ordinance for the redemption and subsequent sale of 4896 South Delaware Street (a single family home) acquired through the foreclosure process as defined by Colorado State statutes.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The Housing Rehabilitation Program was created in 1976 by the City of Englewood to preserve the existing housing stock in Englewood, and to also address the problems that homeowners experience with the financing of major household improvements. The City Attorney required that the new Housing Rehab Program not be administered directly by the City to avoid any conflicts with a State statute that prohibited any municipal government from making loans to its citizens. It was decided to use the Englewood Housing Authority (EHA) as the conduit to manage and operate the Program.

The legal authority to operate and manage the Rehab Program was assigned to the City in 1999 through an agreement with the EHA. It was determined at that time that the Program and city staff should be under the direct management of the Community Development Director. In order to avoid any conflict with Colorado State Statutes, an enterprise fund was created under TABOR regulations known as the Housing Rehabilitation
Fund (Fund). The Rehab Program retained its own funding sources designated as Fund 45 and Fund 46 that are used to support the operations of the Program.

The foreclosure process is the primary tool for lenders to use to insure repayment of their loans. When a homeowner defaults, the lien holder is able to initiate the foreclosure process to collect the monies that are owed to them. This process is started by filing the required legal documents with the Public Trustee’s Office. This filing triggers a whole sequence of events that is dictated by state statues. The Public Trustee will set a Public Sale date for the property and publish this information in a newspaper of general circulation. Each recorded lien holder receives a copy of that advertisement as well as a Public Trustee’s Notice of Rights to Cure or Redeem. The homeowner can cure the default any time from the initial notification prior to the Public Sale date. If the homeowner redeems the property, then the foreclosure process is ended and all liens remain in full effect. If the homeowner does not redeem prior to the Public Sale date, all junior lien holder’s must file a Notice of Intention to Redeem and Affidavit of Amount Owed (Intent) within eight (8) business days after the Public Sale date if they want to redeem the property to collect their own indebtedness. If the Intention to Redeem is not filed, then the lien holder loses their rights under the deed of trust provisions and the property is no longer collateral for their loan.

The foreclosure of 4896 South Delaware Street was initiated by the first mortgagee in May 2012. The Public Trustee’s Sale originally set for September 5, 2012 was continued until February 20, 2013. At that sale, the property was sold to ColFin AI-CO 1, LLC for $1 over the first mortgagee’s bid. The RLC was consulted via email on February 28, 2013 and voted to file Notice of Intention to Redeem with the Public Trustee’s Office. That Notice was filed on March 1, 2013. As the only junior lien holder to file an Intent to Redeem, the City was notified on March 12, 2013 by the Public Trustee’s Office that the redemption amount of $136,629.59 was due no later than Noon on March 19, 2013. A wire transfer from the Housing Rehabilitation Fund 46 was sent on March 18, 2013, to the Public Trustee’s Office for the redemption. A letter requesting that a Public Trustee’s deed be issued in the name of the City of Englewood-Housing Rehabilitation Fund was sent on March 19, 2013. A Public Trustee’s Deed was electronically filed and was recorded on March 25, 2013 at Reception #D3036541.

Given the very short time frames of the junior lien holder redemption period, properties redeemed through the Housing Rehab Program are always brought to the Council after the fact for ordinance approval and coupled with authorization to sell the property as stipulated in Section 72 of the Home Rule Charter. Each property is brought before Council as early in the process as possible so that marketing efforts can begin. This process will expedite the subsequent sale and closing of the property.

The property will be listed for sale as soon as a staff inspection has been completed and any necessary repairs have been made. The property will be sold to a private owner-occupied party who has secured their own permanent financing. The proceeds from the sale of the property will be returned to the Housing Rehabilitation Fund 46. If an offer to purchase the property is received from any City of Englewood employee, their family members, or any business in which a City employee has a financial interest, then staff will submit the offer to the City Council for approval.

On March 15, 2013, the former owner filed for Chapter 7 Bankruptcy protection with the U.S. Bankruptcy Court. Since this filing was after the February 20, 2013 Public Trustee sale, the bankruptcy filing will not affect the City’s redemption of the property. However, since the bankruptcy filing occurred less than a month after the Public Trustee sale, staff will monitor the bankruptcy proceedings to insure the City’s interest in the property are fully protected. Staff is currently working with the former owner to affect a voluntary sixty day vacation of the property. In the event that such an agreement cannot be reached, the eviction process will need to be initiated.
FINANCIAL IMPACT

Fund 46 will cover all costs of the redemption and the subsequent sale of 4896 South Delaware Street. There are no other financial impacts to the City.

LIST OF ATTACHMENTS

Notice of Intention to Redeem and Affidavit of Amount Owed
Public Trustee’s Deed in name of City of Englewood-Housing Rehabilitation Fund
Bill for an Ordinance
NOTICE OF LIENOR INTENT TO REDEEM AND AFFIDAVIT OF AMOUNT OWED

TO THE PUBLIC TRUSTEE OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO

Information Regarding Public Trustee's Foreclosure Sale:

#1443-2012                                  Public Trustee Sale Number
February 20, 2013                              Date of Sale
5116227 08/05/2005                            Recording Information of Deed of Trust
D2051126 05/11/2012                            Recording Information of Notice of Election and Demand

Information Regarding Right to Redeem:

City of Englewood                            Name of Redeeming Junior Lienor
1000 Englewood Pkwy                          Address of Redeeming Junior Lienor
Englewood, CO 80110                           Telephone and Fax Numbers
303.762.2349 ph 303.782.6895 fax
jgrimmett@englewoodgov.org                   Email address
Deed of Trust                                 Lien or Encumbrance Entitling the Redemption*
October 11, 2000                             Recording Date of Junior Lien
Arapahoe                                     County of Recording of Junior Lien
B0131369                                      Reference Nos. of Recorded Junior Lien

You are hereby notified that the undersigned is a Junior Lienor pursuant to CRS §38-38-100.3(12) entitled to redeem from the Public Trustee’s Sale described above pursuant to CRS §38-38-302(1). Be further advised that the undersigned is entitled to redeem as the owner of the lien or encumbrance described above. A copy of any recorded assignment to the lien is attached.

Junior Lienor is entitled to redeem under CRS §38-38-302(1)(c) because the instrument evidencing junior lien, which was recorded in the incorrect county named below prior to the date and time of the recording of the Notice of Election and Demand, was rerecorded in the correct county, as described above, at least fifteen calendar days prior to the actual date of sale.

The recording information for the incorrect county is: not applicable
Incorrect County of Recording of Junior Lien
Recording Date of Junior Lien
Recording Reception Number

You are further notified that the amount owed on the lien or encumbrance, evidenced by the attached instrument, is as follows:

$12,076.00 Principal
0 Total of per diem interest from through the date of this statement
12,076.00 TOTAL
0 Per Diem interest @ 0 % per annum

I certify that the above amounts are true and correct to the best of my knowledge.

City of Englewood by Alan White, Director

March 1, 2013 DATE

The foregoing Statement of Amount Required to Redeem Lienor's Lien was acknowledged before me this day of March, 2013, by Alan White, Director, City of Englewood.

Witness my hand and official seal

My commission expires: Sept 22, 2013

If this is an HOA lien, the following is also required:
• If lien is recorded after the NED, a complete recorded copy of the HOA Declarations
• Notarized affidavit from the HOA officer or attorney stating amounts due on lien, super lien versus junior lien (Super lien cannot be redeemed as a junior lien)

*Attach a true and correct copy of the instrument with evidence of recording affixed by the Clerk and Recorder's Office

ACPT Revised 06/2011, NOTICE OF INTENT TO REDEEM AND AFFIDAVIT OF AMOUNT OWED
CONFIRMATION DEED
(CRS §38-38-502)
Public Trustee's Foreclosure Sale No. 1443-2012

THIS DEED is made March 25, 2013 between Cynthia D Mares as the Public Trustee in and for the County of Arapahoe, State of Colorado, grantor and CITY OF ENGLEWOOD-HOUSING REHABILITATION FUND, grantee, the holder of the certificate of redemption whose legal address is 1000 ENGLEWOOD PARKWAY, ENGLEWOOD, CO 80110.

WHEREAS, the Grantor(s) described below did convey to the public trustee, in trust, the property hereinafter described to secure the payment of the indebtedness provided in said deed of trust:

Original Grantor(s)  Donna I. Bundy
Original Beneficiary(ies)  Mortgage Electronic Registration Systems, Inc. acting solely as a nominee for RBC Mortgage Company, an Illinois Corporation
Current Holder of Evidence of Debt  NATIONSTAR MORTGAGE LLC
Date of Deed of Trust  July 25, 2005
County of Recording  Arapahoe
Recording Date of Deed of Trust  August 05, 2005
Recording Information (Reception Number)  B5116227

WHEREAS, a violation was made in certain of the terms and covenants of said deed of trust as shown by the notice of election and demand for sale filed with the Public Trustee; the said property was advertised for public sale at the place and in the manner provided by law and by said deed of trust; combined notice of sale and right to cure and redeem was given as required by law; said property was sold according to said combined notice; and a certificate of purchase thereof was made and recorded in the office of said county Clerk and Recorder; and

WHEREAS, all periods of redemption have expired.

NOW, THEREFORE, the Public Trustee, pursuant to the power and authority vested by law and by the said deed of trust, confirms the foreclosure sale and sells and conveys to grantee the following described property located in the County of Arapahoe, State of Colorado, to wit:

The West 133 feet of Lot 8, Block 3, Koehler Subdivision, County of Arapahoe, State of Colorado.
Also known by street and number as: 4896 South Delaware Street, Englewood, CO 80110

THE PROPERTY DESCRIBED HEREIN IS ALL OF THE PROPERTY CURRENTLY ENCUMBERED BY THE LIEN OF THE DEED OF TRUST.

To have and to hold the same, with all appurtenances, forever.

Executed on: March 25, 2013

Cynthia D Mares, Public Trustee in and for the County of Arapahoe, State of Colorado

By: Cynthia D Mares, Public Trustee

When Recorded Return to: Arapahoe County Public Trustee
A BILL FOR

AN ORDINANCE AUTHORIZING THE REDEMPTION AND SALE OF PROPERTY ACQUIRED THROUGH THE HOUSING REHABILITATION PROGRAM LOCATED AT 4896 SOUTH DELAWARE IN THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, the City Council of the City of Englewood accepted assignment from the Englewood Housing Authority of all rights, assets and liabilities associated with the Housing Rehabilitation Loan Program by the passage of Ordinance No. 23, Series 1999; and

WHEREAS, Englewood City Council authorized amending Title, 4, Chapter 3, with the addition of a new Section 13 entitled "Housing Rehabilitation Fund" by the passage of Ordinance No. 26, Series 1999; and

WHEREAS, the Englewood Housing Rehabilitation Program was created in 1976 to preserve the existing housing stock in Englewood and to address the problems of low-income families with the financing of major household repairs; and

WHEREAS, the Rehab Program approves home improvement loans that are secured by deeds of trust recorded on the property representing generally second or third mortgages; and

WHEREAS, the homeowner defaulted on her loans and the first mortgage holder initiated foreclosure; and

WHEREAS, this property went to public sale on February 20, 2013; and

WHEREAS, the Englewood Rehab Loan Committee recommended filing the Intention to Redeem Notice with the public Trustee's Office; and

WHEREAS, the City redeemed the property on March 18, 2013 and on March 25, 2013 received a Public Trustee's Confirmation Deed issued to the City of Englewood Housing Rehabilitation Fund; and

WHEREAS, the property will be sold to a private owner-occupied party who has secured his own financing and any remaining funds will be returned to the Housing Rehabilitation Fund; and

WHEREAS, if an offer to purchase is received from any City employee, their family members, or any business in which a City employee has a financial interest, the offer will be submitted to the Englewood City Council for approval;
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood hereby authorizes the redemption, and subsequent sale of a Housing Rehabilitation Property acquired through the foreclosure process located at 4896 South Delaware.

Section 2. The City Council of the City of Englewood authorizes the City Attorney to initiate eviction proceedings and/or file any necessary documents in Bankruptcy Court.

Section 3. The Mayor and the City Clerk are authorized to execute the proper form of deed for the conveyance of the property located at 4896 South Delaware, Englewood, Colorado pursuant to Section 71 of the Englewood Home Rule Charter.

Introduced, read in full, and passed on first reading on the 15th day of April, 2013.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 19th day of April, 2013.

Published as a Bill for an Ordinance on the City’s official website beginning on the 17th day of April, 2013 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 15th day of April, 2013.

__________________________
Loucrishia A. Ellis
COUNCIL COMMUNICATION

DATE: April 15, 2013
AGENDA ITEM: 11 c i
SUBJECT: Littleton Capital Partners
Redevelopment Assistance Request

INITIATED BY: City Manager’s Office
STAFF SOURCE: Darren Hollingsworth, Economic Development Manager

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved Littleton Capital Partners’ (LCP) Planned Unit Development for the redevelopment and reuse of the former Martin Plastics site on October 1, 2012. Additionally, City Council discussed the proposed Redevelopment Assistance Agreement at the September 10, 2012 and February 4, 2013 Executive Sessions and there was consensus to bring the proposal for consideration at an upcoming City Council meeting.

Englewood’s Comprehensive Plan states a goal of community revitalization and increased housing opportunities. The Retail Analysis and Site Development Assessment also recommends the development of housing to support existing and new retailers.

RECOMMENDED ACTION

Staff recommends that Council adopt the attached resolution authorizing the City of Englewood to enter into an agreement with the developers for the Martin Plastics Property, Littleton Capital Partners, d.b.a. LCP Oxford, LLC and its management entities. The proposed use of funds will offset the cost of public infrastructure necessary to support the proposed 252 unit multi-family residential project near the Oxford Light Rail Station.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The proposed project involves redevelopment of a former industrial manufacturing facility to a residential project which capitalizes on its proximity to the adjacent Oxford Light Rail Station. LCP is approved for a 252-unit multifamily residential project on the 3.5 acre former Martin Plastics facility. The total development costs, is estimated at approximately $35,646,000. LCP points out a number of indirect benefits derived from the proposed project including the following:

- The reuse and development on an underutilized 3.5 acre industrial site.
- The creation of 252 market-rate residential units ($1.40/sq. ft. or $1045/unit average) adjacent to the Oxford LRT station.
Based on Council’s goal to attract new sales and use tax, and retain and expand existing jobs in the City, the proposed agreement is presented for City Council’s consideration. The agreement contains the following elements:

1. The City shall rebate to LCP Oxford, building use tax revenues, derived from the imposition of the City’s 3.5% use tax, that are actually collected by the city and attributable to this project. Rebates shall not exceed the lesser amount of $260,000 or 55% of the Building Material Use Tax due on this project.
2. The City shall rebate to LCP Oxford, Furniture Fixtures and Equipment Use Tax derived from the imposition of the city’s 3.5% Use Tax, that are actually collected by the City and attributable to this project. This rebate shall not exceed the lesser amount of $17,500 or 100% of the Furniture, Fixtures and Equipment Use Tax due on this project.
3. The City shall waive building permit fees attributable to this project not to exceed the lesser of 50% or $44,500.
4. The City agrees to reduce “Fees in Lieu” for Parks. The City shall waive “Fees in Lieu” for Parks attributable to this project, not to exceed the lesser of 50% or $48,500.

FINANCIAL IMPACT

The development will yield property tax to the City at an estimated $213,880 over the first 10 years. Additionally, the City would receive approximately $305,500 in direct revenues associated with use taxes, permit fees, and the parks fee in lieu.

The project will generate approximately 300 to 350 new residents. The targeted demographics of residents for the project is Generation Y, which tends to spend time and resources outside of their domicile. These residents will bring spending potential to support retailers, restaurants, entertainment establishments, and service providers in Englewood and the surrounding area. According to an economic impact model prepared by Development Research Partners (Patty Silverstein) the average household spends approximately 36.1% of its household income on taxable purchases. With the estimated population of 350 and Englewood’s median household income of $44,056 the potential gross taxable sales of $5.6 million results in approximately $195,000 in local sales tax generated for the area annually.

LIST OF ATTACHMENTS

Proposed Resolution
RESOLUTION NO. _____
SERIES OF 2013

A RESOLUTION APPROVING A REDEVELOPMENT ASSISTANCE AGREEMENT WITH LCP OXFORD, LLC, FOR THE REDEVELOPMENT OF 1366 WEST OXFORD AVENUE IN ENGLEWOOD, COLORADO.

WHEREAS, the successful attraction and retention of high quality development to the City of Englewood provides employment and housing opportunities and increased revenue for citizen services which is an important public purpose; and

WHEREAS, it is important for the City of Englewood to attract new sales and use tax revenue in the City and remain competitive with other local governments in creating assistance for redevelopment of existing space in the City; and

WHEREAS, LCP Oxford, LLC plans to demolish the former Martin Plastics Building and build an apartment complex; and

WHEREAS, pursuant to the provisions of Section 31-15-903, C.R.S., the City has the authority to negotiate for incentive payments or credits with taxpayers who establish new business facilities or who expand existing business facilities; and

WHEREAS, a Redevelopment Assistance Agreement has been proposed between the City and LCP Oxford, LLC, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference; and

WHEREAS, the City Council finds that the proposed Redevelopment Assistance Agreement is consistent with and in furtherance of the business assistance policies of the City, and desires to approve the Agreement and authorize its execution and implementation;

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

Section 1. The proposed Redevelopment Assistance Agreement between the City of Englewood and LCP Oxford, LLC. is hereby approved, a copy of which is attached hereto as Exhibit A.

Section 2. The Mayor is hereby authorized to execute the Agreement on behalf of the City Council of the City of Englewood.

ADOPTED AND APPROVED this 15th day of April, 2013.

ATTEST: ____________________________
Randy P. Perin, 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 2013.

Loucrishia A. Ellis, City Clerk
REDEVELOPMENT ASSISTANCE AGREEMENT FOR
THE OXFORD STATION TOD WITH LCP OXFORD, LLC
IN THE CITY OF ENGLEWOOD.

THIS AGREEMENT ("Agreement") is made and entered into as of the ______ day of ____________, 2013, between the CITY OF ENGLEWOOD, a Colorado home rule municipal corporation (the "City"), and LCP Oxford, LLC, a Colorado limited liability corporation, whose address is 5711 South Nevada Street, Littleton, CO 80120.

WHEREAS, the City wishes to provide certain business assistance in connection with the redevelopment of a former industrial manufacturing facility of approximately 3.5 acres located at South Navajo Street and Oxford Avenue also known as 1366 West Oxford Avenue, in Englewood, Colorado (the project), and

WHEREAS, LCP Oxford, LLC has purchased and plans to redevelop the property located at 1366 West Oxford Avenue, Englewood, CO 80110 into a 252 unit multifamily residential project; and

WHEREAS, it is anticipated that the project will generate property tax and revenue; create new housing and associated improvements in the City; generate new sales and use tax revenue, and create new jobs in the City; and

WHEREAS, City Council finds the execution of this Agreement will serve to provide a public benefit and advance the public interest and welfare of the City.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and LCP Oxford, LLC agree as follows:

1. Building Use Tax Rebate. The City shall rebate to LCP Oxford, LLC, building use tax revenues, derived from the imposition of the City's 3.5% use tax, that are actually collected by the City and attributable to this project. Rebates shall not exceed the lesser amount of $260,000 or 55% of the Building Use Tax due on this project.

2. Furniture, Fixtures & Equipment Use Tax Rebate. The City shall rebate to LCP Oxford, LLC, Furniture, Fixtures & Equipment Use Tax derived from the imposition of the City's 3.5% Use Tax, that are actually collected by the City and attributable to the project. This rebate shall not exceed the lesser amount of $17,500.00 or 100% of the Furniture, Fixtures & Equipment Use Tax due on this project.

3. Waiver of Building Permit Fees. The City shall waive building permit fees attributable to this project not to exceed the lesser of 50% of the anticipated fees or $44,500.

4. The City agrees to reduce "Fees in Lieu" for Parks. The City shall waive "Fees in Lieu" for Parks attributable to this project, not to exceed the lesser of 50% of the anticipated fees or $48,500.00.
5. **Payment of Funds.** The Building and Furniture, Fixtures & Equipment Use Tax rebates shall be paid by the City in a single payment and shall be made after receipt of payments of building use tax in an amount equal to or in excess of the rebate amount. The City shall pay no interest on the amount subject to rebate. The waiver of fees shall be made upon the payment of the remaining fees owed.

6. **Use of Funds.** Funds rebated pursuant to this Agreement shall be used by LCP Oxford, LLC solely to reimburse LCP Oxford, LLC for the costs incurred for the relocation of the improvements adjacent to their project in the Navajo Right-of-Way and the pedestrian ramp and retaining wall at the Oxford-Navajo intersection.

7. **Entire Agreement.** This instrument shall constitute the entire agreement between the City and LCP Oxford, LLC and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. Contact information is as follows:

   Jonathan Bush, Managing Member
   LCP Oxford, LLC
   5711 South Nevada Street
   Littleton, CO 80120-4615

   Mike Flaherty, Deputy City Manager
   Alan White, Director of Community Development
   1000 Englewood Parkway
   Englewood, CO 80110

8. **Termination.** This Agreement shall terminate and become void and of no force and effect upon the City if by April, 2018 LCP Oxford, LLC has not completed the project (as evidenced by the issuance of a certificate of occupancy).

9. **Subordination.** The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales and use tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

9. **Annual Appropriation.** Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, or any other constitutional or statutory provision, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. LCP Oxford, LLC understands and agrees that any decision of City Council to not appropriate funds for payment shall be
without penalty or recourse to the City and, further, shall not affect, impair, or invalidate any of the remaining terms or provisions of this Agreement.

10. **Governing Law: Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with the City of Englewood City Charter and the City of Englewood Municipal Code. The venue for any lawsuit concerning this agreement shall be in the District Court for Arapahoe County, Colorado.

11. **Legal Challenge: Escrow.** The City shall have no obligation to make any rebate payment hereunder during the pendency of any legal challenge to this Agreement. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement against any challenge by any third party. Any funds appropriated for payment under this Agreement shall be escrowed in a separate City account in the event there is a legal challenge to this Agreement.

12. **Assignment.** This Agreement is personal to LCP Oxford, which may not assign any of the obligations, benefits or provisions of the Agreement in whole or in any part without the express written authorization of the City Council. Any purposed assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.

13. **No Joint Venture.** Nothing in this Agreement is intended or shall be construed to create a joint venture between the City and LCP Oxford, LLC. The City shall never be liable or responsible for any debt or obligation of LCP Oxford, LLC.
COMPANY: LCP OXFORD, LLC
By: Littleton Capital Partners, L.L.C, its Manager
By: Denver City Town Company, L.L.C, member
By: Jonathan Bush, managing member

STATE OF COLORADO
COUNTY OF Arapahoe

The foregoing instrument was acknowledged before me this 22 day of March, by
Jonathan Bush, as Managing Member of LCP Oxford, LLC
My commission expires: 10/31/2015

By: Windward Investments, L.L.C Member
By: Steve Kurtz, managing member

STATE OF COLORADO
COUNTY OF Arapahoe

The foregoing instrument was acknowledged before me this 26 day of March, by Steve
Kurtz, as Managing Member of LCP Oxford, LLC
My commission expires: 9/15/15

CITY OF ENGLEWOOD
By: Randy P. Penn, Mayor
Attest:
Loucrishia A. Ellis, City Clerk

My Commission Expires 10/31/2015
My Commission Expires 09/15/2015
COUNCIL GOAL AND PREVIOUS COUNCIL ACTION:

Council approved Littleton Capital Partner’s (LCP) Planned Unit Development for the redevelopment and reuse of the former Martin Plastics site on October 1, 2012. Additionally, City Council discussed the proposed Redevelopment Assistance Agreement at the September 10, 2012 and February 4, 2013 Executive Sessions and there was consensus to bring the proposal for consideration at an upcoming City Council meeting.

Englewood’s Comprehensive Plan states a goal of community revitalization and increased housing opportunities. The Retail Analysis and Site Development Assessment also recommends the development of housing to support existing and new retailers.

RECOMMENDED ACTION:

Staff recommends that Council adopt the attached resolution authorizing the transfer of the redevelopment assistance agreement from LCP Oxford, LLC and its management entities to CANV NC, LLC, an affiliate of Fore Property Company. CANV NC, LLC will develop the proposed 252 unit multi-family residential project near the Oxford Light Rail Station.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED:

City staff has been informed by LCP of the sale of their property at Oxford and Santa Fe, known as the former Martin Plastics site. Attached is a letter from LCP explaining their pending sale with CANV NC, LLC, with all rights and obligations of LCP including the redevelopment assistance agreement that City Council is also scheduled to consider during the April 15, 2013 meeting.

CAN NC, LLC intends to move forward with the project as previously approved under the terms of the PUD, which runs with the property. In order to complete the sale, LCP is asking that the City approve the assignment of the redevelopment assistance agreement to CANV NC, LLC.
Fore is a full-service national real estate company that builds and manages multifamily residential housing across the United States, including their first Denver project at 1000 South Broadway in Denver. With over 30 years in business, Fore has amassed a $1 billion portfolio and manages 18,000 residential units in 77 communities.

**FINANCIAL IMPACT:**

Project impacts remain identical to the LCP project.

**LIST OF ATTACHMENTS:**

LCP Letter Requesting Assignment of the Redevelopment Assistance Agreement to CANV NC, LLC
Proposed Resolution
April 10, 2013

Mike Flaherty
Deputy City Manager
City of Englewood
Englewood Civic Center
1000 Englewood Parkway
Englewood, CO 80110

Subject: Oxford Station TOD
Assignability of Redevelopment Assistance Agreement

Dear Mike:

On behalf of our company, let me first say that we have appreciated the professionalism, diligence and ease of working with the City of Englewood Council and staff on this project to date. We have completed a PUD and PUD Site Plan that will allow for substantial investment and will dramatically improve the former Martin Plastics site. The approved plan not only better leverages a major asset at the Oxford light rail station, but will also serve as a catalyst for future investment in the surrounding area. To make the project financially viable, we have come to agreement on a set of economic incentives that are documented in a draft Redevelopment Assistance Agreement. For the Oxford Station TOD project to move forward, we request that this agreement be assignable to another party for the reasons outlined below.

When Littleton Capital Partners first acquired the Martin Plastics industrial property, it was with the full intention of gaining entitlements, raising capital and then developing Oxford Station ourselves. With a total development budget of approximately $35 million, our capital structure involved both debt and equity. Early on, we readily secured proposals from several banks for debt terms. In the process of raising equity, however, an interested party emerged, Fore Property Company, that has in-house development capabilities and therefore offered to acquire the site from us and develop it themselves. With some hesitation due to the time and effort we had into it and our desire to develop the project, we ultimately decided that accepting Fore's offer to purchase the property was the best option. Among other reasons, we elected to proceed with Fore due to their long track record of developing multi-family projects and their current activity in the Denver market, specifically another TOD project on the Santa Fe corridor. Over the last 30 years, Fore has developed over 77 communities comprising more than 18,000 units. They are currently under construction on the 1000 S. Broadway project at Broadway and Mississippi, a 260-unit project near the Broadway light rail station.

We are presently under contract, and Fore is completing its due diligence. If all goes as intended, Fore should close in the late second or early third quarter of this year. Fore intends to continue with our design direction and to engage our architect, Humphries Poli, to complete the design. They have also reviewed and understand the PUD and PUD Site Plan, and have given no indication that they are planning to make revisions that would trigger amendments to these documents. Fore's underwriting has assumed and their closing on the property is conditioned on them effectively "stepping into our
shoes", including the benefits and obligations of the redevelopment assistance package, hence the need for assignability of the Redevelopment Assistance Agreement. For this project, the Fore entity that is party to agreements and the proposed assignee of the Redevelopment Assistance Agreement is CANV NC, LLC. Both Fore Property Company and CANV NC, LLC are 100% owned by Richard Fore, the founder of the company.

We look forward to continuing to work with you as the project transitions from us to Fore. Please let us know if you have any further questions about our situation with Fore or our request for assignability.

Sincerely,

Jonathan Bush
RESOLUTION NO. ———
SERIES OF 2013

A RESOLUTION APPROVING THE ASSIGNMENT OF THE LCP OXFORD, LLC REDEVELOPMENT ASSISTANCE AGREEMENT TO CANV NC, LLC, AN AFFILIATE OF FORE PROPERTY COMPANY.

WHEREAS, the Englewood City Council approved LCP Oxford, LLC Planned Unit Development for the redevelopment and reuse of the former Martin Plastics side by the passage of Resolution No. 83, Series of 2012; and

WHEREAS, City staff negotiated and proposed a Redevelopment Agreement with LCP Oxford, LLC; and

WHEREAS, the Englewood City Council has adopted that Redevelopment Assistance Agreement with LCP Oxford, LLC; and

WHEREAS, paragraph 12 of the Redevelopment Assistance Agreement provides that this Agreement is personal to LCP Oxford, which may not assign any of the obligations, benefits or provisions of the Agreement in whole or in any part without the express written authorization of the City Council. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void; and

WHEREAS, City staff has been informed that LCP Oxford, LLC wishes to sell its property which is the subject of the Planned Unit Development (PUD) and the Redevelopment Assignment Agreement to CANV NC, LLC, an affiliate of Fore Property Company with all rights and obligations of LCP Oxford, LLC including the redevelopment assistance agreement; and

WHEREAS, CANV NC, LLC intends to move forward with the project as previously approved under the terms of the Planned Unit Development, which runs with the property.

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

Section 1. The City Council of the City of Englewood hereby approves the assignment of the LCP Oxford, LLC Redevelopment Assistance Agreement to CANV NC, LLC subject to and effective on the date of closing of the transaction between LCP Oxford, LLC and CANV NC, LLC.

ADOPTED AND APPROVED this 15th day of April, 2013.

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 2013.

Loucrishia A. Ellis, City Clerk
COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

Council approved a resolution on January 7, 2013 authorizing the Flood Middle School Redevelopment Assistance Agreement. During an Executive Session on March 25, City Council discussed the proposed amendment and asked staff to bring it forward for consideration.

RECOMMENDED ACTION

Staff recommends that Council approve the attached resolution amending the agreement with Hampden Broadway, LLC for the City to provide assistance to support redevelopment of the former Flood Middle School site.

The amendment reflects a wording change in the Building Use Tax Rebate section of the agreement.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

Earlier this year, City Council approved a Financial Assistance Agreement with Hampden Broadway, LLC, developers of the Flood Middle School site. The developers recently approached the City to request a change in the wording related to the Building Use Tax Rebate.

The agreement contains the following wording change:

1. The City shall rebate to Hampden Broadway, LLC those use tax revenues derived from the City’s 3.5% general use tax that are actually attributable to this project. Rebates shall not exceed $170,000 or the actual cost incurred for relocation of the City Ditch, whichever amount is lower.

FINANCIAL IMPACT

This amendment will not change the financial impact noted previously.

LIST OF ATTACHMENTS

Proposed Resolution
RESOLUTION NO. ______
SERIES OF 2013

A RESOLUTION APPROVING AMENDMENT NO. 1 TO THE REDEVELOPMENT ASSISTANCE AGREEMENT WITH HAMPDEN BROADWAY, LLC, FOR THE REDEVELOPMENT OF 3695 SOUTH LINCOLN STREET IN ENGLEWOOD, COLORADO.

WHEREAS, the successful attraction and retention of high quality development to the City of Englewood provides employment and housing opportunities and increased revenue for citizen services and is therefore an important public purpose; and

WHEREAS, it is important for the City of Englewood to attract new sales and use tax revenue in the City and remain competitive with other local governments in creating assistance for redevelopment of existing space in the City; and

WHEREAS, Hampden Broadway Holdings plans to demolish the former Flood Middle School and build an apartment complex; and

WHEREAS, pursuant to the provisions of Section 31-15-903, C.R.S., the City has the authority to negotiate for incentive payments or credits with taxpayers who establish new business facilities or who expand existing business facilities; and

WHEREAS, City Council approved a Redevelopment Assistance Agreement between the City and Hampden Broadway, LLC, by the passage of Resolution No. 2, Series 2013; and

WHEREAS, based on new cost estimates for public improvements on the site, Hampden Broadway, LLC. has asked for a modification of the amount of rebate to be approved; and

WHEREAS, the proposed amendment removes the "lesser of" cap as to the actual cost of relocating the City Ditch.

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

Section 1. The proposed Amendment No. 1, to the Redevelopment Assistance Agreement between the City of Englewood and Hampden Broadway, LLC. is hereby approved, a copy of which is attached hereto as Exhibit A.

Section 2. The Mayor is hereby authorized to execute the Agreement on behalf of the City Council of the City of Englewood.

ADOPTED AND APPROVED this 15th day of April, 2013.

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 2013.

Loucrishia A. Ellis, City Clerk
AMENDMENT NO. 1 TO THE REDEVELOPMENT ASSISTANCE AGREEMENT FOR HAMPDEN BROADWAY, LLC, IN THE CITY OF ENGLEWOOD.

THIS AGREEMENT ("Agreement"), amending a prior agreement, is made and entered into as of the ______ day of ________, 2013, between the CITY OF ENGLEWOOD, a Colorado home rule municipal corporation (the "City"), and HAMPDEN BROADWAY, LLC, a Colorado limited liability corporation.

WHEREAS, the City wishes to provide certain business assistance in connection with the former Flood Middle School site redevelopment of approximately 4.56 acres located at South Broadway and Kenyon Avenue also known as 3695 South Lincoln Street, in Englewood, Colorado (the project); and

WHEREAS, Hampden Broadway, LLC plans to purchase and cause the redevelopment of the property located at 3695 South Lincoln Street, Englewood, CO 80113 into an apartment project; and

WHEREAS, it is anticipated that the project will generate property tax and revenue, and create new housing and associated improvements in the City; to generate new sales and use tax revenue, and to create new jobs in the City; and

WHEREAS, the Englewood City Council authorized the Redevelopment Assistance Agreement by the passage of Resolution No. 2, Series of 2013; and

WHEREAS, the Parties wish to clarify the amount of Use Tax rebate; and

WHEREAS, City Council finds the execution of this Agreement will serve to provide a public benefit and advance the public interest and welfare of the City.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and Hampden Broadway, LLC agree as follows:

1. Use Tax Rebates. The City shall rebate to Hampden Broadway, LLC, building use tax revenues, derived from the imposition of the City's 3.5% use tax, that are actually collected by the City and attributable to this project. Rebates shall not exceed $170,000. This rebate is to assist in the necessary relocation of the City Ditch across the subject property and other public improvements. The City Ditch Right-of-Way vacation and grant of a new Right-of-Way must be approved by the Water and Sewer Board and City Council, which approval process requires approximately six weeks to complete. The construction of the relocated City Ditch will be pursuant to City approved plans and specifications. Construction may take place at any time with the tie-ins or reconnection limited to 48 hours on an approved date. Documentation and City approval of the completed City Ditch and documentation of the actual cost of relocation is required prior to the processing of the request for the rebate of building use tax.
2. Payment of Funds. The building use tax rebate shall be paid by the City in a single payment and shall be made after receipt of payments of building use tax in an amount equal to or in excess of the rebate amount. The City shall pay no interest on the amount subject to rebate.

3. Use of Funds. Funds rebated pursuant to this Agreement shall be used by Hampden Broadway, LLC solely to reimburse Hampden Broadway, LLC for the costs incurred for the relocation of the City Ditch and other public improvements. Rebates shall not exceed $170,000.

4. The City agrees to reduce the park dedication fee-in-lieu from $20,000 to $10,000 per acre of the park land dedication requirement. As required by the City's Unified Development Code, the actual amount due will be based on the total number of dwelling units X 1.8 X .0107 X $10,000. For example, based on 310 units, the land dedication requirement is 5.9706 acres, which at $10,000 per acre would total $59,706.

5. The City agrees to utilize its credit from Xcel Energy for relocation and/or undergrounding of Xcel overhead utility distribution lines located on the property, estimated at $300,000. The Xcel agreement provides only for utility lines owned by Xcel. Hampden Broadway, LLC is responsible for the cost of relocation of all other lines. Hampden Broadway, LLC will coordinate the Xcel undergrounding through the City's Public Works Department.

6. Prior to acquiring a building permit, Hampden Broadway, LLC will deposit $10,000 in escrow with the City Finance Department for the cost of associated project related traffic improvements at the Broadway/Kenyon intersection as deemed necessary by the City. These funds will remain in escrow with the City for a period of two years after issuance of the certificate of occupancy or at such time as the development is 90% occupied, whichever comes first. At that time, the City will refund any amount not obligated or expended by the City for such traffic improvements.

7. Entire Agreement. This instrument shall constitute the entire agreement between the City and Hampden Broadway, LLC and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. Contact information is as follows:

Edward Barsocchi, Co-Manager
Thomas Bradbury, Jr., Co-Manager
Hampden Broadway, LLC
4725 South Monaco Street, Suite 205
Denver, CO 80237

Mike Flaherty, Deputy City Manager
Alan White, Director of Community Development
1000 Englewood Parkway
Englewood, CO 80110

8. Termination. This Agreement shall terminate and become void and of no force or effect upon the City if, by December 31, 2015, Hampden Broadway, LLC has not completed the project (as evidenced by the issuance of a certificate of occupancy); or should Hampden Broadway, LLC fail, after a thirty day Notice of Violation, to comply with any City code.
9. **Subordination.** The City's obligations pursuant to this Agreement are subordinate to the City's obligations for the repayment of any current or future bonded indebtedness and are contingent upon the existence of a surplus in sales and use tax revenues in excess of the sales and use tax revenues necessary to meet such existing or future bond indebtedness. The City shall meet its obligations under this Agreement only after the City has satisfied all other obligations with respect to the use of sales and use tax revenues for bond repayment purposes. For the purposes of this Agreement, the terms "bonded indebtedness," "bonds," and similar terms describing the possible forms of indebtedness include all forms of indebtedness that may be incurred by the City, including, but not limited to, general obligation bonds, revenue bonds, revenue anticipation notes, tax increment notes, tax increment bonds, and all other forms of contractual indebtedness of whatsoever nature that is in any way secured or collateralized by sales and use tax revenues of the City.

10. **Annual Appropriation.** Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20, or any other constitutional or statutory provision, and the City's obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion. Hampden Broadway, LLC understands and agrees that any decision of City Council to not appropriate funds for payment shall be without penalty or recourse to the City and, further, shall not affect, impair, or invalidate any of the remaining terms or provisions of this Agreement.

11. **Governing Law: Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. This Agreement shall be subject to, and construed in strict accordance with the City of Englewood City Charter and the City of Englewood Municipal Code. In the event of a dispute concerning any provision of this Agreement, the parties agree that prior to commencing any litigation; they shall first engage, in good faith, the services of a mutually acceptable, qualified, and experienced mediator or panel of mediators for the purpose of resolving such dispute. In the event such dispute is not fully resolved by mediation or otherwise within 60 days after a request for mediation by either party, then either party may commence legal proceedings regarding the dispute. The venue for any lawsuit concerning this agreement shall be in the District Court for Arapahoe County, Colorado.

12. **Legal Challenge: Escrow.** The City shall have no obligation to make any rebate payment hereunder during the pendency of any legal challenge to this Agreement. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement against any challenge by any third party. Any funds appropriated for payment under this Agreement shall be escrowed in a separate City account in the event there is a legal challenge to this Agreement.

13. **Assignment.** This Agreement is personal to Hampden Broadway, LLC and Hampden Broadway; LLC may not assign any of the obligations, benefits or provisions of the Agreement in whole or in any part without the express written authorization of the City Council. Any purported assignment, transfer, pledge, or encumbrance made without such prior written authorization shall be void.
14. **No Joint Venture.** Nothing in this Agreement is intended or shall be construed to create a joint venture between the City and Hampden Broadway, LLC. The City shall never be liable or responsible for any debt or obligation of Hampden Broadway, LLC.

HAMPDEN BROADWAY, LLC

By: SolidCore Partners, LLC

By: ______________ 

Thomas H. Bradbury, Jr., Co-Manager

STATE OF COLORADO  )
COUNTY OF DENVER  )

The foregoing instrument was acknowledged before me this 16th day of April, 2015 by Thomas H. Bradbury, Jr., as Co-Manager of Hampden Broadway, LLC of SolidCore Partners, LLC as Manager.

My commission expires: 09/29/2016

HUGH E. SMITH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094033111

[Notary seal]

MY COMMISSION EXPIRES SEPTEMBER 29, 2016
The foregoing instrument was acknowledged before me this 27th day of April, 2015, by Edward Barsocchi, as Co-Manager of Hampden Broadway, LLC, as Manager.

My commission expires: 09/29/2016

By: _______________________

Edward Barsocchi, Co-Manager

STATE OF COLORADO

COUNTY OF DENVER

HUGH E. SMITH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084033111
MY COMMISSION EXPIRES SEPTEMBER 29, 2016

CITY OF ENGLEWOOD

By: _______________________

Randy P. Penn, Mayor

ATTEST:

Lourcrishia A. Ellis, City Clerk
BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2013

COUNCIL BILL NO. 9
INTRODUCED BY COUNCIL
MEMBER __________

A BILL FOR

AN ORDINANCE SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY OF ENGLEWOOD AT THE NEXT SCHEDULED MUNICIPAL ELECTION OF NOVEMBER 5, 2013, AN ADVISORY QUESTION TO BAN THE RETAIL SALE OF RECREATIONAL MARIJUANA, BAN RECREATIONAL MARIJUANA CULTIVATION FACILITIES, BAN RECREATIONAL MARIJUANA MANUFACTURING FACILITIES, AND BAN RECREATIONAL MARIJUANA TESTING FACILITIES.

WHEREAS, the City of Englewood ("City") is a home-rule municipality organized and existing under the provisions of the Colorado Constitution Article XX; and

WHEREAS, pursuant to the Constitution, and as further authorized by State statutes, including, but not limited to C.R.S. Section 31-15-401, the City has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its residents; and

WHEREAS, such police powers include the power to regulate the nature and type of businesses allowed within such community; and

WHEREAS, the voters of Colorado approved Amendment 64 at the 2012 General Election, which will be codified as Section 16 of Article 18 of the Colorado Constitution, authorizing the use, display, purchase, transport, and transfer of one ounce or less of recreational marijuana by a person 21 of age or older; and

WHEREAS, Amendment 64 allows local governments to ban recreational marijuana retail stores, cultivation facilities, product manufacturing facilities and testing facilities; and

WHEREAS, the ban will not restrict personal use of marijuana as allowed under the Colorado Constitution, nor shall it affect Englewood's currently licensed medical marijuana businesses, primary care-givers, patients, and Code provisions relating thereto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:
Section 1. There is hereby submitted to the registered electors of the City of Englewood at the next scheduled municipal election on November 5, 2013 an advisory question, to read as follows:

Question No.

Shall the Englewood Municipal Code of the City of Englewood, Colorado ban the retail sale of recreational marijuana, ban recreational marijuana cultivation facilities, ban recreational marijuana manufacturing facilities, and ban recreational marijuana testing facilities?

______ Yes ______ No

Section 3. Each elector voting at said election and desirous of voting shall indicate his/her choice by depressing the appropriate counter of the voting machine or by the appropriate marking upon paper ballots where used.

Section 4. The proper officials of the City of Englewood shall give notice of said next scheduled municipal election, such notice shall be published in the manner and for the length of time required by law, and the ballots cast at such election shall be canvassed and the result ascertained, determined, and certified as required by law.

Section 5. Only if the question is approved by the registered electors of the City of Englewood shall the Englewood Municipal Code be amended.

Section 6. If any section, paragraph, clause, or other portion of this Ordinance is for any reason held to be invalid or unenforceable, the invalidity or unenforceability shall not affect any of the remaining portions of this Ordinance.

Introduced, read in full, and passed on first reading on the 15th day of April, 2013.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 19th day of April, 2013.

Published as a Bill for an Ordinance on the City’s official website beginning on the 17th day of April, 2013 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 15th day of April, 2013.

Loucrishia A. Ellis
BY AUTHORITY

ORDINANCE NO. ______ SERIES OF 2013
COUNCIL BILL NO. 8
INTRODUCED BY COUNCIL
MEMBER __________ 

A BILL FOR

AN ORDINANCE ENACTING TITLE 7, CHAPTER 6D, SECTION 12, SUBSECTION 2, OF THE ENGLEWOOD MUNICIPAL CODE 2000, DEFINING RECREATIONAL MARIJUANA CULTIVATION FACILITIES, RECREATIONAL MARIJUANA PRODUCT MANUFACTURING FACILITIES, RECREATIONAL MARIJUANA TESTING FACILITIES, RECREATIONAL RETAIL MARIJUANA STORES; AND PROHIBITING THESE BUSINESSES.

WHEREAS, the City of Englewood (“City”) is a home-rule municipality organized and existing under the provisions of Colorado Constitution Article XX; and

WHEREAS, pursuant to the Constitution, and as further authorized by State statutes, including, but not limited to C.R.S. Section 31-15-401, the City has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its residents; and

WHEREAS, such police powers include the power to regulate the nature and type of businesses allowed within such community; and

WHEREAS, in 2000 Colorado voters passed a Constitutional Amendment concerning medical marijuana; and

WHEREAS, Englewood adopted a licensing procedure for medical marijuana and revised it’s ordinances with the adoption of Ordinance No. 41, Series of 2009 and Ordinance No. 27, Series of 2011; and

WHEREAS, the voters of Colorado approved Amendment 64 at the 2012 general election, which will be codified as Section 16 of Article 18 of the Colorado Constitution, authorizing the use, display, purchase, transport, and transfer of one ounce or less of recreational marijuana by a person 21 of age or older; and

WHEREAS, Amendment 64 allows local governments to prohibit recreational marijuana retail stores, cultivation facilities, product manufacturing facilities and testing facilities by ordinance or by placing a ballot measure on the November 2014 General Election ballot; and

WHEREAS, Amendment 64 provides that nothing shall be construed to limit any privileges or rights of a medical marijuana patient, medical marijuana primary care-giver or licensed entity, nor does it permit a Medical Marijuana Center to distribute medical marijuana to a person who is not a medical marijuana patient or operate on the same premises as a Recreational Retail Marijuana Store; and
WHEREAS, this Ordinance will not restrict personal use of marijuana as allowed under the Colorado Constitution, nor shall it affect Englewood’s currently licensed medical marijuana businesses, primary care-givers, patients, and Code provisions relating thereto.

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

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the addition of a new Title 7, Chapter 6D, Section 12, Subsection 2, of the Englewood Municipal Code 2000, entitled Recreational Marijuana, to read as follows:

7-6D-12-2: Recreational Marijuana.

A. Purpose and Intent. The purpose of this subsection is to prohibit certain business uses related to Recreational Marijuana in the City. The City Council makes the following findings regarding its intent:

1. Pursuant to the provisions of Article XX, Section 6, of the Colorado Constitution, and as further authorized by State Statutes, including, but not limited to C.R.S. Section 31-15-401, the City has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its residents. These police powers include the power to regulate the nature and type of businesses allowed within such community.

2. Article XVIII, Section 16 of the Colorado Constitution specifically authorizes a municipality to “enact ordinances or regulations ... governing the time, place, manner and number of recreational marijuana establishment operations.”

3. Article XVIII, Section 16 of the Colorado Constitution specifically authorizes a municipality to prohibit the operation of recreational marijuana establishments: recreational marijuana cultivation facilities, recreational marijuana product manufacturing facilities, recreational marijuana testing facilities and recreational retail marijuana stores.

B. Definitions.

Recreational Marihuana or Marijuana: shall mean all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. “Marijuana” or “Marihuana” does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink or other product. Recreational Marijuana does not include Medical Marijuana as defined in Article XVIII, Section 14, of the Colorado Constitution.
under the Colorado Medical Marijuana Code, 12-43.3-101 et seq. C.R.S., and Title 5, Section 3D, of the Englewood Municipal Code; and

Recreational Marijuana Cultivation Facility: shall mean and include any real property used for or upon which there is any type of structure or any such facility that includes or is associated with cultivating, preparing, or packaging Recreational Marijuana.

Recreational Marijuana Establishment: shall mean and include a Recreational Marijuana Cultivation Facility, a Recreational Marijuana Testing Facility, a Recreational Marijuana Product Manufacturing Facility, or a Recreational Retail Marijuana Store.

Recreational Marijuana Product Manufacturing Facility: shall mean and include any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with manufacturing, preparing, or packaging Recreational Marijuana.

Recreational Marijuana Testing Facility: shall mean and include any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with analyzing and certifying the safety and potency of medical Recreational Marijuana.

Recreational Marijuana Products: shall mean concentrated Recreational Marijuana products that are comprised of Recreational Marijuana and other ingredients and are intend for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Recreational Retail Marijuana Store: shall mean and include any real property used for or upon which there is any type of structure, or any such facility that includes or is associated with the sale of Recreational Marijuana to consumers.

C. Prohibition:

1. Recreational Marijuana Establishments are prohibited.

   a. This prohibition shall not apply to Medical Marijuana Centers, Medical Marijuana Primary Care-Givers, Medical Marijuana Infused Product Manufacturers, Medical Marijuana Optional Premises Cultivation Operations that are licensed in accordance with Article XVIII, Section 14, of the Colorado Constitution, the Colorado Medical Marijuana Code, and Title 5-3D EMC.

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.

Section 7. Federal and state laws are binding upon home rule municipalities. However, neither this Article nor its adoption, implementation, or enforcement shall be construed as an intent of the City, its elected officials, its employees or contractors or Authority members to violate federal law, including but not limited to, the Controlled Substances Act of 1970, as amended, nor shall such adoption, implementation or enforcement be construed as acquiescence or conspiracy by the City, its elected officials, appointed Authority members, contractors, or its employees to violate such federal and state law.

Introduced, read in full, and tabled on the 1st day of April, 2013.

Taken off of the table and passed on first reading on the 15th day of April, 2013.

Published by Title as a Bill for an Ordinance in the City’s official newspaper on the 19th day of April, 2013.

Published as a Bill for an Ordinance on the City’s official website beginning on the 17th day of April, 2013 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, taken off the table and passed on first reading on the 15th day of April, 2013.

________________________
Loucrishia A. Ellis
RESOLUTION NO. __________
SERIES OF 2013

A RESOLUTION EXTENDING A TEMPORARY SUSPENSION OR MORATORIUM ON
THE ESTABLISHMENT OF ANY NEW BUSINESS WHICH SELLS, MANUFACTURES OR
CULTIVATES MARIJUANA UNTIL JANUARY 31, 2014.

WHEREAS, the amendment on the ballot for the November 6, 2012 election changed
Colorado law regarding the regulation and sale of marijuana; and

WHEREAS, the City Council of the City of Englewood, Colorado approved Ordinance No.
56, series of 2012, establishing a temporary suspension or moratorium on the establishment of
any new business which sells, manufactures or cultivates marijuana;

WHEREAS, the current moratorium expires on July 31, 2013; and

WHEREAS, an advisory question is being asked concerning the banning of certain types of
recreational marijuana businesses on the November 5, 2013 General Election; and

WHEREAS, an extension of the moratorium is necessary to allow an advisory ballot question
on the November 5, 2013 and implementation of ordinances to effectuate that vote.

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

Section 1. The City Council of the City of Englewood, Colorado recommends the City
Manager extend the temporary moratorium on the sale, manufacture and cultivation of marijuana
until January 31, 2014.

Section 2. The moratorium on the sale, manufacture and cultivation of recreational marijuana
business is necessary for the City to evaluate the effect of Amendment 64 and any new
regulations required.

ADOPTED AND APPROVED this 15th day of April, 2013.

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 2013.

Loucrishia A. Ellis, City Clerk