



Council Request Update

October 11, 2018

Council Request: 18- 181

Requested by: Mayor Pro Tem Russell

Request: Request for additional information on the Englewood Environmental Foundation.

Assigned to: Finance and Administrative Services

Response: Please see the response provided by Senior Financial Analyst Jennifer Nolan.

Council Request: 18- 182

Requested by: Council Member Sierra

Request: Additional Budget Questions (see attached)

Assigned to: Finance and Administrative Services

Response: Please see the response provided by the Acting Director of Finance and Administrative Services Maria Sobota.

Council Request: 18- 185

Requested by: City Council

Request: Clarification from South Platte Water Renewal Partners from the September 17, 2018 Regular Meeting.

Assigned to: South Platte Water Renewal Partners (SPWRP)

Response: Please see the response provided by SPWRP Director Pieter Van Ry.

Council Request: 18- 186

Requested by: Council Member Martinez

Request: 1. Is Council Member Wink allowed to vote on ADU's considering she was absent for the Public Hearing? 2. Is it a conflict of interest if a City Council member has stated that he/she will benefit from a proposed code amendment?

Assigned to: City Attorney's Office

Response: Please see the response provided by City Attorney Alison McKenney Brown.

Council Request: 18- 187

Requested by: Mayor Pro Tem Russell

Request: Request for the I.R.S. status of EEF and EMRF.

Assigned to: City Attorney's Office

Response: Please see the response provided by City Attorney Alison McKenney Brown.

CR 18-181

Requested by: Mayor Pro Tem: Request for additional information on the Englewood Environmental Foundation.

Please see the following response from Senior Financial Analyst Jennifer Nolan:

Council Member Barrentine,

I appreciate you, Mayor Pro-Tem Russell and Mr. and Mrs. Jones meeting with me today to review the Resource Alignment Diagnostic (RAD) Tool.

I am following up with you regarding your questions regarding the Englewood Environmental Foundation (EEF).

- 1) How are the Common Area Maintenance (CAM) charges accounted for?
The EEF contracts with vendors to provide the maintenance services. The EEF pays the contractors and then invoices the CAM property owners (including the City). The external property owners remit physical payments to the EEF. The City remits its payment via a Journal Entry from the General Fund's Public Works Department (attached is a copy of the report). The OpenEnglewood Financial Portal Payment Register provides transactions of physical payments made to external vendors by the City of Englewood. Payments that are made between City funds are processed with a Journal Entry. We are currently looking into how we can and best report these internal transactions via the OpenEnglewood Financial Portal.
- 2) In the OpenEnglewood Financial Portal Payment Register report what are the "Pre-Note" transactions?
The "Pre-Note" transactions are from the data conversion from Oracle to Tyler New World. Part of the set up for employees and vendors was to create "Pre-Note" transactions in order to process electronic payments. The system needed a Fund to run these zero dollar "Pre-Note" transactions and the Englewood Environmental Fund was used.
- 3) How are the City's accounting services reimbursed by the component units (EEF, EMRF-Englewood McLellan Reservoir Fund and EURA-Englewood Urban Renewal Authority)?
A portion of accounting's time is reimbursed by the component units on an annual basis (attached is a copy of the report).
- 4) How are the EEF Lease Payments accounted for?
The CAM payments from the property owners are recorded in the EEF.
The Debt Service payments that the EEF pays are reimbursed by the City. These transactions are recorded in the City's General Fund Debt Service Accounts (Principal 02-1401-70000 and Interest 02-1401-70001).

Thanks,

Jenny

Jennifer Nolan
Senior Financial Analyst

CR 18-182

Requested by: Council Member Sierra: Additional Budget Questions –

Response from Acting Director of Finance and Administrative Services Maria Sobota:

- A. Pencil marked in the picture. The 3.1M carry over funds. Are those coming over from the savings from the delta in revenues vs expenses in 2017 or 2018? I see 3.2M in Net Change in the Fund Balance in 2017 but only 1.1M estimated in 2018.

On page 161 of the Proposed 2019 Budget book, please note that the unassigned balances in 2017 (Actual) and 2018 (Estimated) are \$14,130,525 and \$15,241,922 respectively. The City, per the Fund Balance Policy, is required to retain at least a 16.7% unassigned fund balance (of total revenue plus Committed-LTAR). The 2017 and 2018 unassigned balances are 26.8% and 27.9%, both above the required amount. The \$3.1 million transferred out of the General Fund in the FY2019 Proposed Budget was transferred to the Capital Project Fund to pay for the City Center roof repairs and other capital projects as directed by City Council. Even with the transfer, the unassigned estimated 2019 ending fund balance is \$12,142,183 or 21.35%.

- B. Where do LTAR lease revenue get accounted? I'm not sure if they are part of the revenue breakdown at the top of the page or do they get accounted in a separate section of the budget? I pencilmarked #2 on the left hand side but don't think they are part of the committed LTAR line item.

On page 161 of the Proposed 2019 Budget book, the EMRF rent, which has in the past been used to increase the LTAR balance, is on the "Contribution from Component Units" line item under Revenues (last line before Total Revenue). In the 2019 Proposed Budget, Council agreed to use these revenues (\$1,548,000) to partially fund the Capital Projects mentioned in #1 above.

- C. Not a question but may be turning into one. If the budget doesn't get approved, we stick to the 2017 budget. That obviously means that the things we're asking for, additional dispatcher, patrol, fire marshal, etc won't get added in 2019. I guess it turns into a question now about how does anything pass in 2019 if nothing has been appropriated? Obviously year to year expenses rise with inflation so just wondering how much mayhem to get anything passed next year?

As a point of clarification, if the Proposed 2019 Budget is not approved, Staff would work to amend the FY2018 budget in the new year so that it would reflect appropriate increases and/or City Council directed changes for FY2019. However, because Council has already approved the contracts for the EEA (Englewood Employees Association) and the EPBA (Englewood Police Benefit Association), we are legally obligated to pay raises of a little over 3% on average in 2019. Benefits will also increase by about 15% in 2019. In order to meet these payments, the city would have little choice but to lay off some employees with associated reductions in service.



TO: City of Englewood, Colorado – City Councilmembers

FROM: Pieter Van Ry, South Platte Water Renewal Partners (SPWRP) Director *PVR*

DATE: October 9, 2018

RE: Responses to Councilmember questions from the September 17, 2018, City Council Regular Meeting

This memo is intended to provide the Council with follow-up clarification for questions that were raised during the Regular Meeting of Englewood City Council, held on Monday, September 17, 2018. South Platte Water Renewal Partners (SPWRP) staff was able to provide these responses below:

Ethernet Infrastructure:

- ***If this infrastructure upgrade is made, what will the new capacity be?***
- **SPWRP response:** Based on the new configuration, the capacity will be 3,048 usable IP addresses which will provide sufficient capacity for the foreseeable future.
- ***Will this upgrade be completed before the end of this year?***
- **SPWRP response:** The scope of the design phase of this project is expected to achieve substantial completion by December 31, 2018. An additional construction phase of this project is budgeted for in 2019 that will cover hardware procurement as well as programming, installation, startup and commissioning. Council can expect to see this request during Q1 of 2019.
- ***Do we anticipate the need for any redundancy while this upgrade is being made to ensure plant operations continue running?***
- **SPWRP response:** There will not be any additional need for redundancy during the design or installation of the new hardware. All new hardware will be configured prior to field installation so the process will not be interrupted as hardware is replaced.
- ***Council asked questions in regard to the bidding process that the SPWRP used, since only one bid was obtained. Council requested to see more information that SPWRP sent out to obtain the bids.***
- **SPWRP Response:** This RFP was advertised on the Rocky Mountain E-Purchasing Site for four weeks. A copy of the RFP is attached to this memo for your reference.



- ***Was there anything in the bid proposal that would've indicated that Carollo would be doing this project, or anything else that would have discouraged another company from submitting a proposal for this project? In the documents provided to Council, there was a NTE (not to exceed) amount of \$115,000. Maybe this was the reason no other proposals were submitted?***
- **SPWRP Response:** This project was drafted and scoped with as much information provided as possible so that any potential qualified bidders could confidently provide a proposal. There was no cost estimate or budget amount listed in the RFP (request for proposal). The NTE amount of \$115K was predicated from Carollo's proposal.

Purchase of Analytical AQ300- Discrete Analyzer:

- ***If we approve this purchase tonight, how long will it take for this to be replaced?***
- **SPWRP Response:** It would take approximately 6-8 weeks for the company to assemble and ship the analyzer.
- ***How long has this company been around?***
- **SPWRP Response:** They have been in business for 20 years.

Operator Plant Vehicle Replacement:

- ***How does the City of Englewood communicate to the public when these used vehicles are auctioned off?***
- **SPWRP Response:** All auctions are coordinated by Englewood Finance Department and handled by outside auction firms. Each of the auction houses uses a combination of print, mail and online public advertising.

Variable Frequency Drive (VFD) 2018 Replacement Project:

- ***Have we replaced any of the VFD already this year?***
- **SPWRP Response:** Yes. We have replaced 3 VFDs in our Centrate process area in 2018. These were very small VFDs and were below \$5k per unit.



Date: May 18, 2018

REQUEST FOR PROPOSAL

Consultant Services

For

South Platte Water Renewal Partners
Ethernet Control System Infrastructure Improvements Project

The City of Englewood, Colorado

RFP No.: 18-019

RFP Issuance Date: May 18, 2018

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Section 1. Introduction

1.1 Introduction

The City of Englewood (“City”) is seeking a qualified firm to perform consultant services for the South Platte Water Renewal Partners (SPWRP) Ethernet Control System Infrastructure Improvements Design (“Project”).

The City invites firms to submit Proposals in accordance to the requirements as set forth in the Request for Proposals (RFPs). Selected firms expressing interest must submit proposals by **June 14, 2018, 3:30 P.M.** prevailing time, at the SPWRP, 2900 South Platte River Drive, Englewood, Colorado 80110.

Proposals will be reviewed and evaluated using a competitive, best-value, selection process described in Section 4 of this RFP. It is the intent of this RFP to establish a ranking of selected firms. At the City’s discretion, the highest ranked firms (maximum of three) may be invited to conduct interview presentations. The preferred firm will be selected and a recommendation made for an award of contract pursuant to the terms and conditions of the City of Englewood Professional Services Agreement (see Attachment B – Sample Agreement).

Mr. Chong Woo, Project Manager, will serve as the City Contact and will administer the City’s contract with the selected firm for the City. All questions during the procurement period should be directed in writing to Mr. Chong Woo, Project Manager:

Mr. Chong Woo
Project Manager
South Platte Water Renewal Partners
2900 South Platte River Drive
Englewood, CO 80110
cwoo@englewoodco.gov

Project background documents have been included (Attachment C – Project Background Documents) for the sole purpose of preparing proposals and does not confer a license or grant any other use. The extent to which the firm may rely on such information is set forth in Attachment B (Sample Agreement).

1.2 Background

The South Platte Water Renewal Partners (formerly known as the Littleton/Englewood Wastewater Treatment Plant) is the 3rd largest Publicly Owned Treatment Works in Colorado. The plant serves the south metro Denver area and receives sanitary sewer from the cities of

Littleton and Englewood, as well as from 18 other connector districts within a 108 square mile service area.

The SPWRP was commissioned in 1977 as a Joint Use facility to combine the treatment needs from both the Littleton and Englewood WWTPs. The Joint Use facility was initially rated at 20 million gallons per day (mgd). Since the 1970s the L/EWWTP has been engaged in several plant expansion projects and facility upgrades needed to meet treatment capacity requirements and permit compliance.

The current plant is a large, advanced regional treatment facility required to exceed secondary treatment requirements by removing ammonia and nitrate from wastewater. The design capacity is 50 mgd with an approximate average daily flow of 24 mgd discharged to the South Platte River.

Section 2. Project Overview

2.1 Project Scope

The City seeks consultant services to provide the Ethernet Control System Infrastructure Improvements Design. The scope of services to include, at a minimum, the following four (4) sub-tasks:

2.1.1 Preliminary Design and Conceptual Definition

- Develop standard approach for the replacement of all existing ACC Ethernet switches from the obsolete Hirschmann Mice/rail switch platform to a current Hirschmann or Rockwell/Stratix platform with Industrial Ethernet/IP capability as a native feature.
- Evaluate and potentially eliminate all Copper to Fiber Transceivers for ControlNet connections.
- Evaluate the existing process control network architecture with the goal of creating VLANs at strategic locations to reduce broadcast network traffic, increase segregation and reduce the load of the existing PLC/HMI network.
- Develop approach for upgrading ACC fiber patch terminations from SC type to LC type.
- Upgrade ACC fiber patch terminations and patch cables from SC to LC connectors.
- Convert all ControlNet communications to Ethernet communications.

2.1.2 Final Design Documents

- Prepare contract drawings in 11" x 17" half-size.
- Prepare specifications and technical scope of work documents.
- Prepare Class 2 level (AACE) estimate of the cost of work.
- Develop baseline construction plan in Microsoft Project that indicates requirements for sequencing shut down and startup of new processes.

2.1.3 Contractor Procurement Services

- Prepare all submission requirements for procurement of contractor. The City will determine the method of project delivery for contractor.
- Prepare minimum contractor qualifications.
- Prepare Pre-Bid conference agenda and facilitate meeting presentation.
- Respond to contractor inquiries regarding various aspects of the Project. Prepare and issue up to two (2) addenda in conformance with City's standards.
- Assist in contractor selection.

2.1.4 Services During Construction

- Develop estimated level and scope for Services during construction.

It is the City's intent to procure the evaluation, design and contractor procurement as outlined in Sections 2.1.1 through 2.1.3 above as one Agreement. Services during construction (Section 2.1.4) will be negotiated and procured during contractor selection. Firms are requested to identify the specific scope of services, estimated schedule duration, and cost proposal for each of the sub-tasks identified in this Section.

2.2 Owner Objectives

The goal of this Project is to design and construct all improvements by December 31, 2019. The consultant is expected to coordinate its efforts with City staff; and other staff contracted with the City for other aspects of the Project as needed.

The City's objectives for delivery of the Project are as follows:

- **Quality:** Deliver the facilities consistent with the project drawings and specifications in full compliance with federal, state, and local regulations.
- **Cost:** Cost-effective construction to comply with City's project budget.
- **Schedule:** Achieve or beat the scheduled completion date for construction, and performance testing of the Project.
- **Risk:** Achieve an optimal balance of risk allocation between the City and the Consultant. Complete the Project with no process upsets and minimal impact to plant operations.
- **Safety:** Implement an effective safety program incorporating best industry practices for protection of City and Construction staff.

2.3 Project Milestones

The City reserves the exclusive right to select the firm for award of the Agreement. The City also reserves the exclusive right to reject any or all Proposals or firms at its sole discretion,

with or without cause, at any time throughout the selection process, and it may waive formalities in the selection process as it deems appropriate.

Following are the project milestones to be met by the firm for the remainder of the selection process and completion of the Project:

RFP Issuance	May 18, 2018
Questions Deadline	May 29, 2018
Issue Final Addendum	June 4, 2018
Proposal Submission Due Date	June 14, 2018
Consultant Interviews *	June 18, 2018
Consultant Selection	July 5, 2018
Council Award of Agreement	August 6, 2018
Notice to Proceed	August 13, 2018
Final Design/Procurement Documents	December 31, 2018

* If necessary

Section 3. Proposal Submittal Requirements

3.1 Submittal Place and Deadline

The Proposal must be received by the City Contact before the due date and time specified in Section 1.1.

Each firm assumes full responsibility for timely delivery of its Proposal. **Any Proposal received after the submittal deadline will be deemed non-responsive and returned unopened.** The time/date stamp clock in the SPWRP's office, shall serve as the official authority to determine timeliness of the Proposal.

All Proposals must be submitted in a sealed box or envelope addressed to "The City of Englewood" and should contain *on the outside* the following information:

- Request for Proposals No. 18-019
- Proposal Submission Due Date
- Name of firm
- Return Address of the firm

Proposals may be amended or withdrawn only by written notice prior to the Proposal opening. Proposal amendments must be submitted in a sealed envelope. Amendments or withdrawals received after the Proposal opening will not be effective, and the original Proposal submitted will be considered. Telephonic, electronic, or faxed Proposals will not be considered. The firm agrees that its Proposal will not be withdrawn within ninety (90) calendar

days following opening of the Proposals, and that during such time its Proposal will remain firm and irrevocable. The City reserves the right to reject any or all Proposals, and to waive any technical defects in Proposals.

3.2 Format

Proposals must include one (1) bound copy and one electronic format in searchable PDF format with bookmarks. Proposals must not exceed 10 total pages (8.5"x11" size paper) with minimum 12pt font, excluding transmittal letter, index or table of contents, title pages, separate tabs, appendices, and front and back covers.

3.3 Content

The requirements set forth in this RFP represent the minimum content requirements for the proposal. It is the proposer's responsibility to include information to present all relevant qualifications and other materials.

At a minimum, the proposal must include the following:

3.3.1 – Executive Summary

Concise overview of the key elements of the proposal and summary of the submission requirements.

3.3.2 – Company Profile

Detailed description of the company to include:

- General information such as lines of business or service offerings, local and home office locations, number of employees, years in business, and licenses and certifications. Include location of where majority of work will be performed.
- Legal structure whether organized as corporation, Limited Liability Company, general partnership, limited partnership, joint venture, or other form of legal entity.
- Any material existing or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.
- Any pending or past (within five years) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to the owner.
- Any contract terminated due to alleged poor performance or default within the past five years.
- Convictions of any criminal conduct or found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past five years.

- Debarments, or under consideration for debarment, from bidding on public contracts by any federal, state, or local governments within the past five years.

3.3.3 – Project Team

Describe the composition, organization and management of the project team.

- Identify any other firms, including subcontractors and sub consultants, included on the project team. Define relationship, project percentage responsibilities, and project management structure.
- Identify all key personnel included on the project team. Describe firm affiliations, tenure and years of experience, area of expertise, and area of office location.
- Provide resumes of all key personnel (appendix).
- Provide organization chart detailing reporting relationships and responsibilities of the project team (appendix).

3.3.4 – Experience

Describe the performance history and capability of the project team. Include reference to related projects to demonstrate relevant experience. Each project description shall contain at least the following information:

- Project name and location.
- Name of owner.
- Owner reference and contact information.
- Role of the firm.
- Contract value.
- Year started and year completed.
- Description of the project showing relevance to this project.
- Firms and key personnel that participated in project and are included in this proposal, along with a clear description of the project role and responsibility of each.

3.3.5 – Project Approach

Provide a description of the firm's approach for managing and performing its services.

- Overview of the firm's general understanding of the project.
- Schedule of services intended.
- Implementation methodology.
- Owner engagement and partnership.
- Owner expectations and requirements.
- Work components critical to the project's success and how these components would be achieved.
- Key risk factors and how they will be identified and mitigated.
- Project schedule.
- QA/QC management.

3.3.6 – Fee and Rate Proposal

Cost proposal to include:

- Not to exceed lump sum cost.
- Rate schedule.

Section 4. Proposal Evaluation and Selection

4.1 General

The City will review and evaluate proposals in accordance with the requirements and criteria outlined in this Section. During the evaluation process, the City reserves the right to request clarification of information submitted and to request additional information of one or more firms after the Proposal Submission Due Date. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the proposer from further consideration.

The City Council has the sole authority to bind the City to the terms and conditions of a contract that has been approved in a public meeting of the City Council, executed by the Mayor and City Clerk, and approved by the City Attorney. The City Council reserves the right to modify or reject any contract for the acquisition of goods and/or services submitted to it for consideration.

4.2 Minimum Qualification Requirements

- Minimum of 5 years' experience in industrial water/wastewater applications in facilities 10 MGD or greater.
- Demonstrated understanding of network design and knowledge of Homeland Security best practices.
- Substantially completed at least five (5) successful projects in similar applications using Hirschmann or Stratix hardware.
- Permanent staff with demonstrated experience in Profibus DP, Profibus PA, DeviceNet and ControlNet.
- Permanent staff with Cisco CCNA-Industrial Certification, Hirschmann Industrial Network Engineer (HiNe) or equivalent industry recognized Industrial networking certification.
- Permanent office location within Colorado Front Range.

4.3 Evaluation Criteria and Ranking

The following criteria will be considered in the evaluation process:

- Company Profile, Consultant Team, Experience [40%]
- Project Approach [20%]
- Fee and rate proposal [40%]

The City's selection committee will evaluate and rank the responsive proposals using a 100-point scale multiplied by the percentage weight of each criteria established above.

4.4 Interviews

If requested by the City, up to the top three (3) highest ranked proposers may be short listed for invitation to conduct a presentation and interview. Short listed proposers will be notified of the interview process, including format, duration, and location, following the RFP short list selection. Proposers will be evaluated using the same point system as above, with the following additional criteria:

- Project team compatibility [30%]
- Demonstrated qualifications and competencies [25%]
- Approach to achieve project goals and objectives [35%]
- Intangible attributes [10%]

The top ranked proposer will be selected for recommendation for contract award. If the top ranked proposer fails to execute the terms and conditions of a contract, the next top ranked proposer will be selected. This process will be repeated until a contract has been executed.

Section 5. Proposal Conditions

5.1 Owner Authority

The SPWRP will act as the owner representative for this project. The SPWRP is a department of the City of Englewood. All procurement will be conducted through the City of Englewood.

5.2 Rights of the Owner

The SPWRP, at its sole discretion, reserves all rights available under applicable law, including without limitation, with or without cause and with or without notice, to the following:

- Cancel, withdraw, postpone, or extend this RFP, in whole or in part, at any time prior to the execution of the contract, without incurring any obligations or liabilities.
- Modify the schedule.

- Waive deficiencies, informalities and irregularities in a proposal and accept and review a non-conforming proposal.
- Suspend and terminate the procurement process or terminate evaluations of proposals received.
- Permit corrections to data submitted with any proposal.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the proposers to seek an improved understanding or clarification of any information contained in a proposal.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the proposals.
- Reject a proposal containing exceptions, additions, qualifications or conditions not called for in the RFP or otherwise not acceptable to the owner.
- Conduct an independent investigation of any information, including prior experience, included in a proposal by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a proposer during the evaluation process.

5.3 *Project Team Obligations*

Proposers are advised that all firms and key personnel identified in the RFP shall remain on the project team for the duration of the procurement process and execution of the project. If extraordinary circumstances require a change, it must be submitted in writing to the owner representative, who, at his or her sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the firm's control. Unauthorized changes to the project team at any time during the procurement process may result in elimination of the proposer from further consideration.

5.4 *Proprietary Information*

All materials submitted in response to this RFP become public property and are subject to future use, regardless of whether that proposal is selected or not. If a proposal contains proprietary information that the proposer does not want disclosed, each page containing such information must be identified and marked "PROPRIETARY" at the time of submittal. The SPWRP will, to the extent provided by law, endeavor to protect such information from disclosure. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request. Proposers shall not be permitted to mark the entire proposal as proprietary. Submission of information designates acceptance by the firm of the conditions contained in this RFP.

5.5 *Additional Conditions*

NON-COLLUSION: By submitting a Proposal in response to the RFP, the firm represents that, should the Proposal be accepted, the resulting contract(s) would not violate any provisions of federal law or regulations, or any ordinances or regulations established by the City.

ANTI-DISCRIMINATION: During the performance of the Contract, the firm agrees as follows:

- a. The firm will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin.
- b. Notices, advertisements and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirement of this section.

PROPOSAL PREPARATION COSTS: By submittal of a Proposal, the firm agrees that all costs associated with the preparation of his/her Proposal and interview preparation/materials (if applicable) will be the sole responsibility of the firm. The firm also agrees that the City bears no responsibility for any costs associated with the preparation of the Proposal and/or any administrative or judicial proceedings resulting from the solicitation process.

DRUG FREE WORKPLACE: The selected firm must provide a Drug Free Workplace in accordance with Colorado State law.

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA): In instances where such is applicable due to the nature of the matter with which this Proposal is concerned, all material, equipment, etc., as proposed and offered by firm must meet and conform to all OSHA requirements; the firm's signature upon the Proposal being by this reference considered a certification of such fact.

PATENT INFRINGEMENT, ETC: By submission of a Proposal the firm certifies that the services to be furnished will not infringe any valid patent, copyright, or trademark and the successful firm shall, at his/her own expense, defend any and all actions or suits charging such infringement and hold the City harmless in case of any such infringements.

VERIFICATION OF COMPLIANCE WITH C.R.S. 8-17.5-101 ET.SEQ. REGARDING HIRING OF ILLEGAL ALIENS:

- (a) **Employees, Consultants and Sub-consultants:** Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Consultant shall not contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2) (a) (I) & (II).]
- (b) **Verification:** Consultant will participate in either the E-Verify program or the Department program, as defined in C.R.S. 8-17.5-101 (3.3) and 8-17.5-101 (3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services. Consultant is prohibited from using the E-Verify program or the Department

program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

- (c) **Duty to Terminate a Subcontract:** If Consultant obtains actual knowledge that a sub-consultant performing work under this Contract knowingly employs or contracts with an illegal alien, the Consultant shall;
 - (1) notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and
 - (2) terminate the subcontract with the sub-consultant if, within three days of receiving notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.
- (d) **Duty to Comply with State Investigation:** Consultant shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation by that the Department is undertaking pursuant to C.R.S. 8-17.5-102 (5).
- (e) **Damages for Breach of Contract:** The City may terminate this contract for a breach of contract, in whole or in part, due to Consultant's breach of any section of this paragraph or provisions required pursuant to CRS 8-17.5-102. Consultant shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this DB Agreement/Contract.

5.6 Addenda

If any revisions or clarifications to the RFP or procurement process become necessary or desirable (at the City's sole discretion), the City may issue written addenda.

Failure of any firm to obtain any such addendum shall not relieve said firm from any obligation under the RFP as submitted. All addenda so issued shall become part of the Contract Documents and firm shall acknowledge receipt on the Affidavit of Authenticity Form provided in Attachment A.

ATTACHMENT A

Affidavit of Authenticity

By signing below, I agree to the terms and conditions of this RFP, except where expressly described. All information pertaining to and provided in the attached proposal is to the best of my knowledge, true and correct and if called upon to testify, I could testify competently thereto.

Falsification is cause to deem my proposal nonresponsive and therefore ineligible for consideration. In addition, falsification of information is cause to cancel a contract awarded based on one or both of the above preferences.

I acknowledge receipt of the Addenda to this RFP by identifying the following Addenda numbers and dates of receipt (if any): _____.

Signature

Type or printed name

Company Name

Title

Company Mailing Address

Phone Number

City, State, Zip

Email address

Website

ATTACHMENT B

Sample Agreement

PROFESSIONAL SERVICES AGREEMENT
Contract Number PSA

This Professional Services Agreement (the “Agreement”) is made as of this 14th, day of October, 2016, (the “Effective Date”) by and between PKM Design Group, Inc. a Colorado corporation (“Consultant”), and The City of Englewood, Colorado, a municipal corporation organized under the laws of the State of Colorado (“City”).

City desires that Consultant, from time to time, provide certain consulting services, systems integration services, data conversion services, training services, and/or related services as described herein, and Consultant desires to perform such services on behalf of City on the terms and conditions set forth herein.

In consideration of the foregoing and the terms hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Definitions. The terms set forth below shall be defined as follows:

(a) “Intellectual Property Rights” shall mean any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (1) rights associate with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (2) trademark and trade name rights and similar rights, (3) trade secret rights, (4) patents, designs, algorithms and other industrial property rights, (5) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated) (including logos, “rental” rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (6) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

(b) “Work Product” shall mean all patents, patent applications, inventions, designs, mask works, processes, methodologies, copyrights and copyrightable works, trade secrets including confidential information, data, designs, manuals, training materials and documentation, formulas, knowledge of manufacturing processes, methods, prices, financial and accounting data, products and product specifications and all other Intellectual Property Rights created, developed or prepared, documented and/or delivered by Consultant, pursuant to the provision of the Services.

2. Statements of Work. During the term hereof and subject to the terms and conditions contained herein, Consultant agrees to provide, on an as requested basis, the consulting services, systems integration services, data conversion services, training services, and related services (the “Services”) as further described in Schedule A (the “Statement of Work”) for City, and in such additional Statements of Work as may be

executed by each of the parties hereto from time to time pursuant to this Agreement. Each Statement of Work shall specify the scope of work, specifications, basis of compensation and payment schedule, estimated length of time required to complete each Statement of Work, including the estimated start/finish dates, and other relevant information and shall incorporate all terms and conditions contained in this Agreement

3. Performance of Services.

(a) Performance. Consultant shall perform the Services necessary to complete all projects outlined in a Statement of Work in a timely and professional manner consistent with the specifications, if any, set forth in the Statement of Work, and in accordance with industry standards. Consultant agrees to exercise the highest degree of professionalism, and to utilize its expertise and creative talents in completing the projects outlined in a Statement of Work.

(b) Delays. Consultant agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Consultant's ability to meet the requirements of the Agreement, or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement or any Statement of Work. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

(c) Discrepancies. If anything necessary for the clear understanding of the Services has been omitted from the Agreement specifications or it appears that various instructions are in conflict, Consultant shall secure written instructions from City's project director before proceeding with the performance of the Services affected by such omissions or discrepancies.

4. Invoices and Payment. Unless otherwise provided in a Statement of Work, City shall pay the amounts agreed to in a Statement of Work within thirty (30) days following the acceptance by City of the work called for in a Statement of Work by City. Acceptance procedures shall be outlined in the Statement of Work. If City disputes all or any portion of an invoice for charges, then City shall pay the undisputed portion of the invoice by the due date and shall provide the following notification with respect to the disputed portion of the invoice. City shall notify Consultant as soon as possible of the specific amount disputed and shall provide reasonable detail as to the basis for the dispute. The parties shall then attempt to resolve the disputed portion of such invoice as soon as possible. Upon resolution of the disputed portion, City shall pay to Consultant the resolved amount.

5. Taxes. City is not subject to taxation. No federal or other taxes (excise, luxury, transportation, sales, etc.) shall be included in quoted prices. City shall not be obligated to pay or reimburse Consultant for any taxes attributable to the sale of any Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by Consultant. Upon written notification by City and subsequent verification by Consultant, Consultant shall reimburse or credit, as applicable, City in a timely manner, for any and all taxes erroneously paid by City. City shall provide Consultant with, and Consultant shall accept in good faith, resale, direct pay, or other exemption certificates, as applicable.

6. Out of Pocket Expenses. Consultant shall be reimbursed only for expenses which are expressly provided for in a Statement of Work or which have been approved in advance in writing by City, provided Consultant has furnished such documentation for authorized expenses as City may reasonably request.

7. Audits. Consultant shall provide such employees and independent auditors and inspectors as City may designate with reasonable access to all sites from which Services are performed for the purposes of performing audits or inspections of Consultant's operations and compliance with this Agreement. Consultant shall provide such auditors and inspectors any reasonable assistance that they may require. Such audits shall be conducted in such a way so that the Services or services to any other customer of Consultant are not impacted adversely.

8. Term and Termination. The term of this Agreement shall commence on the Effective Date, as first above written, and shall continue for one year, unless this Agreement is terminated as provided in this Section 8. At the end of the initial one year period, the parties may extend this Agreement by the execution of an amendment renewing the Agreement for an additional one year period, and will include a new statement of work. The parties agree and understand that any renewal of this Agreement will incorporate all of the original terms and conditions of this Agreement.

(a) Convenience. City may, without cause and without penalty, terminate the provision of Services under any or all Statements of Work upon thirty (30) days prior written notice. Upon such termination, City shall, upon receipt of an invoice from Consultant, pay Consultant for Services actually rendered prior to the effective date of such termination. Charges will be based on time expended for all incomplete tasks as listed in the applicable Statement of Work, and all completed tasks will be charged as indicated in the applicable Statement of Work.

(b) No Outstanding Statements of Work. Either party may terminate this Agreement by providing the other party with at least thirty (30) days prior written notice of termination if there are no outstanding Statements of Work.

(c) Material Breach. If either party materially defaults in the performance of any term of a Statement of Work or this Agreement with respect to a specific Statement of Work (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting party may terminate this Agreement or any or all outstanding Statements of Work by providing ten (10) days prior written notice of termination to the defaulting party.

(d) Bankruptcy or Insolvency. Either party may terminate this Agreement effective upon written notice stating its intention to terminate in the event the other party: (1) makes a general assignment of all or substantially all of its assets for the benefit of its creditors; (2) applies for, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, or liquidator for its business or all or substantially all of its assets; (3) files, or consents to or acquiesces in, a petition seeking relief or reorganization under any bankruptcy or insolvency laws; or (4) files a petition seeking relief or reorganization under any bankruptcy or insolvency laws is filed against that other party and is not dismissed within sixty (60) days after it was filed.

(e) TABOR. The parties understand and acknowledge that each party is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Agreement to the contrary, all payment obligations of City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of City's current fiscal period ending upon the next succeeding December 31. Financial obligations of City payable after the current fiscal year are contingent upon funds for that

purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of City and applicable law. Upon the failure to appropriate such funds, this Agreement shall be deemed terminated.

(f) Return of Property. Upon termination of this Agreement, both parties agree to return to the other all property (including any Confidential Information, as defined in Section 11) of the other party that it may have in its possession or control.

9. City Obligations. City will provide timely access to City personnel, systems and information required for Consultant to perform its obligations hereunder. City shall provide to Consultant's employees performing its obligations hereunder at City's premises, without charge, a reasonable work environment in compliance with all applicable laws and regulations, including office space, furniture, telephone service, and reproduction, computer, facsimile, secretarial and other necessary equipment, supplies, and services. With respect to all third party hardware or software operated by or on behalf of City, City shall, at no expense to Consultant, obtain all consents, licenses and sublicenses necessary for Consultant to perform under the Statements of Work and shall pay any fees or other costs associated with obtaining such consents, licenses and sublicenses.

10. Staff. Consultant is an independent consultant and neither Consultant nor Consultant's staff is, or shall be deemed to be employed by City. City is hereby contracting with Consultant for the Services described in a Statement of Work and Consultant reserves the right to determine the method, manner and means by which the Services will be performed. The Services shall be performed by Consultant or Consultant's staff, and City shall not be required to hire, supervise or pay any assistants to help Consultant perform the Services under this Agreement. Except to the extent that Consultant's work must be

performed on or with City's computers or City's existing software, all materials used in providing the Services shall be provided by Consultant.

11. Confidential Information.

(a) Obligations. Each party hereto may receive from the other party information which relates to the other party's business, research, development, trade secrets or business affairs ("Confidential Information"). Subject to the provisions and exceptions set forth in the Colorado Open Records Act, CRS Section 24-72-101 et. seq., each party shall protect all Confidential Information of the other party with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care. Without limiting the generality of the foregoing, each party hereto agrees not to disclose or permit any other person or entity access to the other party's Confidential Information except such disclosure or access shall be permitted to an employee, agent, representative or independent consultant of such party requiring access to the same in order to perform his or her employment or services. Each party shall insure that their employees, agents, representatives, and independent consultants are advised of the confidential nature of the Confidential Information and are precluded from taking any action prohibited under this Section 11. Further, each party agrees not to alter or remove any identification, copyright or other proprietary rights notice which indicates the ownership of any part of such Confidential Information by the other party. A party hereto shall undertake to immediately notify the other party in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall restrict either party with

respect to information or data identical or similar to that contained in the Confidential Information of the other party but which (1) that party rightfully possessed before it received such information from the other as evidenced by written documentation; (2) subsequently becomes publicly available through no fault of that party; (3) is subsequently furnished rightfully to that party by a third party without restrictions on use or disclosure; or (4) is required to be disclosed by law, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure.

(b) Know-How. For the avoidance of doubt neither City nor Consultant shall be prevented from making use of know-how and principles learned or experience gained of a non-proprietary and non-confidential nature.

(c) Remedies. Each of the parties hereto agree that if ~~any of them~~, their officers, employees or anyone obtaining access to the Confidential Information of the other party by, through or under them, breaches any provision of this Section 11, the non-breaching party shall be entitled to an accounting and repayment of all profits, compensation, commissions, remunerations and benefits which the breaching party, its officers or employees directly or indirectly realize or may realize as a result of or growing out of, or in connection with any such breach. In addition to, and not in limitation of the foregoing, in the event of any breach of this Section 11, the parties agree that the non-breaching party will suffer irreparable harm and that the total amount of monetary damages for any such injury to the non-breaching party arising from a violation of this Section 11 would be impossible to calculate and would therefore be an inadequate remedy at law. Accordingly, the parties agree that the non-breaching party shall be entitled to temporary and permanent injunctive relief against the breaching party, its officers or employees and such other rights and remedies to which the non-breaching party may be entitled to at law, in equity or under this

Agreement for any violation of this Section 11. The provisions of this Section 11 shall survive the expiration or termination of this Agreement for any reason.

12. Project Managers. Each party shall designate one of its employees to be its Project Manager under each Statement of Work, who shall act for that party on all matters under the Statement of Work. Each party shall notify the other in writing of any replacement of a Project Manager. The Project Managers for each Statement of Work shall meet as often as either one requests to review the status of the Statement of Work.

13. Warranties.

(a) Authority. Consultant represents and warrants that: (1) Consultant has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (2) the execution of this Agreement by Consultant, and the performance by Consultant of its obligations and duties hereunder, do not and will not violate any agreement to which Consultant is a party or by which it is otherwise bound under any applicable law, rule or regulation; (3) when executed and delivered by Consultant, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (4) Consultant acknowledges that City makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement

(b) Service Warranty. Consultant warrants that its employees and consultants shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

(c) Personnel. Unless a specific number of employees is set forth in the Statement of Work, Consultant warrants it will

provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement or as set forth in the Statement of Work.. During the course of performance of Services, City may, for any or no reason, request replacement of an employee or a proposed employee. In such event, Consultant shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. Consultant shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies.

(d) Compensation and Benefits.

Consultant shall provide for and pay the compensation of employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Consultant or to any employee for Consultant's failure to perform its compensation, benefit, or tax obligations. Consultant shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

14. Indemnification.

(a) Consultant Indemnification.

Consultant shall indemnify, defend and hold harmless City, its directors, officers, employees, and agents and the heirs, executors, successors, and permitted assigns of any of the foregoing (the "City Indemnitees") from and against all losses, claims, obligations, demands, assessments, fines and penalties (whether civil or criminal), liabilities, expenses and costs (including reasonable fees and disbursements of legal counsel and accountants), bodily and other personal injuries, damage to tangible property, and

other damages, of any kind or nature, suffered or incurred by a City Indemnitee directly or indirectly arising from or related to: (1) any negligent or intentional act or omission by Consultant or its representatives in the performance of Consultant's obligations under this Agreement, or (2) any material breach in a representation, warranty, covenant or obligation of Consultant contained in this Agreement.

(b) Infringement.

Consultant will indemnify, defend, and hold City harmless from all Indemnifiable Losses arising from any third party claims that any Work Product or methodology supplied by Consultant infringes or misappropriates any Intellectual Property rights of any third party; provided, however, that the foregoing indemnification obligation shall not apply to any alleged infringement or misappropriation based on: (1) use of the Work Product in combination with products or services not provided by Consultant to the extent that such infringement or misappropriation would have been avoided if such other products or services had not been used; (2) any modification or enhancement to the Work Product made by City or anyone other than Consultant or its sub-consultants; or (3) use of the Work Product other than as permitted under this Agreement.

(c) Indemnification Procedures.

Notwithstanding anything else contained in this Agreement, no obligation to indemnify which is set forth in this Section 14 shall apply unless the party claiming indemnification notifies the other party as soon as practicable to avoid any prejudice in the claim, suit or proceeding of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge and gives the other party the opportunity to control the response thereto and the defense thereof; provided, however, that the party claiming indemnification shall have the right to participate in any legal proceedings to contest and defend a claim for indemnification involving a third party and to be represented by

its own attorneys, all at such party's cost and expense; provided further, however, that no settlement or compromise of an asserted third-party claim other than the payment/money may be made without the prior written consent of the party claiming indemnification.

(d) Immunity. City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to City, its officers, or its employees.

15. Insurance.

(a) Requirements. Consultant agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance during the term of this Agreement:

(1) The Consultant shall comply with the Workers' Compensation Act of Colorado and shall provide compensation insurance to protect the City from and against any and all Workers' Compensation claims arising from performance of the work under this contract. Workers' Compensation insurance must cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, as well as the Employers' Liability within the minimum statutory limits.

(2) Commercial General Liability Insurance and auto liability insurance (including contractual liability insurance) providing coverage for bodily injury and property damage with a combined single limit of not less than three million dollars (\$3,000,000) per occurrence.

(3) Professional Liability/Errors and Omissions Insurance covering acts, errors and omissions arising out of Consultant's operations or Services in an amount not less

than one million dollars (\$1,000,000) per occurrence.

(4) Employee Dishonesty and Computer Fraud Insurance covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Consultant personnel, acting alone or with others, in an amount not less than one million dollars (\$1,000,000) per occurrence.

(b) Approved Companies. All such insurance shall be procured with such insurance companies of good standing, permitted to do business in the country, state or territory where the Services are being performed.

(c) Certificates. Consultant shall provide City with certificates of insurance evidencing compliance with this Section 15 (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Certificates of insurance will list the City of Englewood as an additional insured. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially change the insurance afforded under the above policies unless thirty (30) days' notice of such cancellation, reduction or material change has been provided to City.

16. Rights in Work Product.

(a) Generally. Except as specifically agreed to the contrary in any Statement of Work, all Intellectual Property Rights in and to the Work Product produced or provided by Consultant under any Statement of Work shall remain the property of Consultant. With respect to the Work Product, Consultant unconditionally and irrevocably grants to City during the term of such Intellectual Property Rights, a non-exclusive, irrevocable, perpetual, worldwide, fully paid and royalty-free license, to reproduce, create derivative works of, distribute, publicly perform and publicly display

by all means now known or later developed, such Intellectual property Rights.

(b) Know-How. Notwithstanding anything to the contrary herein, each party and its respective personnel and consultants shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information of the other party.

17. Relationship of Parties. Consultant is acting only as an independent consultant and does not undertake, by this Agreement, any Statement of Work or otherwise, to perform any obligation of City, whether regulatory or contractual, or to assume any responsibility for City's business or operations. Neither party shall act or represent itself, directly or by implication, as an agent of the other, except as expressly authorized in a Statement of Work.

18. Complete Agreement. This Agreement contains the entire agreement, including all Exhibits, Statements of Work, and other Attachments that have been executed by the parties and are attached hereto and made a part of this Agreement.

19. Applicable Law. Consultant shall comply with all applicable laws in performing Services but shall be held harmless for violation of any governmental procurement regulation to which it may be subject but to which reference is not made in the applicable Statement of Work. This Agreement shall be construed in accordance with the laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Agreement shall be brought before the state or federal court situated in Arapahoe County, Colorado and each party hereto consents to jurisdiction and venue before such courts.

(a) Attorney Fees. In the event that either party to this Agreement shall commence any action against the other party arising out of or in connection with this Agreement, or contesting the validity of the Agreement or any provision of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and related costs, fees and expenses incurred by the prevailing party in connection with such action or proceeding.

20. Scope of Agreement. If the scope of any provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its fullest extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent to and agree that such scope may be judicially modified accordingly and that the whole of such provision of this Agreement shall not thereby fail, but that the scope of such provision shall be curtailed only to the extent necessary to conform to law.

21. Additional Work. After receipt of a Statement of Work, City, with Consultant's consent, may request Consultant to undertake additional work with respect to such Statement of Work. In such event, City and Consultant shall execute an addendum to the Statement of Work specifying such additional work and the compensation to be paid to Consultant for such additional work.

22. Sub-consultants. Consultant may not subcontract any of the Services to be provided hereunder without the prior written consent of City. In the event of any permitted subcontracting, the agreement with such third party shall provide that, with respect to the subcontracted work, such sub-consultant shall be subject to all of the obligations of Consultant specified in this Agreement.

23. Notices. Any notice provided pursuant to this Agreement shall be in writing to the parties at the addresses set forth below and shall be deemed given (1) if by hand delivery,

upon receipt thereof, (2) three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested or (3) one (1) day after deposit with a nationally-recognized overnight courier, specifying overnight priority delivery. Either party may change its address for purposes of this Agreement at any time by giving written notice of such change to the other party hereto.

24. Assignment. This Agreement may not be assigned by Consultant without the prior written consent of City. Except for the prohibition of an assignment contained in the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

25. Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the parties hereto and shall not confer any rights upon any person or entity not a party to this Agreement.

26. Headings. The section headings in this Agreement are solely for convenience and shall not be considered in its interpretation. The recitals set forth on the first page of this Agreement are incorporated into the body of this Agreement. The exhibits referred to throughout this Agreement and any Statement of Work prepared in conformance with this Agreement are incorporated into this Agreement.

27. Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not effect in any way the full right to require such performance at any subsequent time; nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

28. Force Majeure. If performance by Consultant of any service or obligation under this Agreement is prevented, restricted,

delayed or interfered with by reason of labor disputes, strikes, acts of God, floods, lightning, severe weather, shortages of materials, rationing, utility or communications failures, earthquakes, war, revolution, civil commotion, acts of public enemies, blockade, embargo or any law, order, proclamation, regulation, ordinance, demand or requirement having legal effect of any governmental or judicial authority or representative of any such government, or any other act whether similar or dissimilar to those referred to in this clause, which are beyond the reasonable control of Consultant, then Consultant shall be excused from such performance to the extent of such prevention, restriction, delay or interference. If the period of such delay exceeds thirty (30) days, City may, without liability, terminate the affected Statement of Work(s) upon written notice to Consultant.

29. Time of Performance. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

30. Permits. Consultant shall at its own expense secure any and all licenses, permits or certificates that may be required by any federal, state or local statute, ordinance or regulation for the performance of the Services under the Agreement. Consultant shall also comply with the provisions of all Applicable Laws in performing the Services under the Agreement. At its own expense and at no cost to City, Consultant shall make any change, alteration or modification that may be necessary to comply with any Applicable Laws that Consultant failed to comply with at the time of performance of the Services.

31. Media Releases. Except for any announcement intended solely for internal distribution by Consultant or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Consultant, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or

marketing material) by Consultant or its employees or agents relating to this Agreement or its subject matter, or including the name, trade mark, or symbol of City, shall be coordinated with and approved in writing by City prior to the release thereof. Consultant shall not represent directly or indirectly that any Services provided by Consultant to City has been approved or endorsed by City or include the name, trade mark, or symbol of City on a list of Consultant's customers without City's express written consent.

32. Nonexclusive Market and Purchase Rights. It is expressly understood and agreed that this Agreement does not grant to Consultant an exclusive right to provide to City any or all of the Services and shall not prevent City from acquiring from other suppliers services similar to the Services. Consultant agrees that acquisitions by City pursuant to this Agreement shall neither restrict the right of City to cease acquiring nor require City to continue any level of such acquisitions. Estimates or forecasts furnished by City to Consultant prior to or during the term of this Agreement shall not constitute commitments.

33. Survival. The provisions of Sections 5, 8(g), 10, 11, 13, 14, 16, 17, 19, 23, 25 and 31 shall survive any expiration or termination for any reason of this Agreement.

34. Verification of Compliance with C.R.S. 8-17.5-101 ET.SEQ. Regarding Hiring of Illegal Aliens:

(a) Employees, Consultants and Sub-consultants: Consultant shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Consultant shall not contract with a sub-consultant that fails to certify to the Consultant that the sub-consultant will not knowingly employ or contract with an illegal alien to perform work under this Contract. [CRS 8-17.5-102(2)(a)(I) & (II).]

(b) Verification: Consultant will participate in either the E-Verify program or the Department program, as defined in C.R.S. 8-17.5-101 (3.3) and 8-17.5-101 (3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services. Consultant is prohibited from using the E-Verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

(c) Duty to Terminate a Subcontract: If Consultant obtains actual knowledge that a sub-consultant performing work under this Contract knowingly employs or contracts with an illegal alien, the Consultant shall;

(1) notify the sub-consultant and the City within three days that the Consultant has actual knowledge that the sub-consultant is employing or contracting with an illegal alien; and

(2) terminate the subcontract with the sub-consultant if, within three days of receiving notice required pursuant to this paragraph the sub-consultant does not stop employing or contracting with the illegal alien; except that the Consultant shall not terminate the contract with the sub-consultant if during such three days the sub-consultant provides information to establish that the sub-consultant has not knowingly employed or contracted with an illegal alien.

(d) Duty to Comply with State Investigation: Consultant shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation by that the Department is undertaking pursuant to C.R.S. 8-17.5-102 (5)

(e) Damages for Breach of Contract:

The City may terminate this contract for a breach of contract, in whole or in part, due to Consultant's breach of any section of this paragraph or provisions required pursuant to CRS 8-17.5-102. Consultant shall be liable for actual and consequential damages to the City in addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract under this Paragraph 34.

SAMPLE

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed by their authorized officers as of the day and year first above written. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY OF ENGLEWOOD, COLORADO

By: _____ Date: _____
(Department Director)

By: _____ Date: _____
(City manager)

(Consultant Name)

Address

City, State, Zip Code

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____

SCHEDULE A

OUTLINE OF STATEMENT OF WORK (Provide the requested below information)

1. GENERAL

[Identification of parties and date of execution]

[Reference to Professional Services Agreement by date]

2. NAMES OF PROJECT COORDINATORS

3. SUMMARY OF PURPOSE FOR STATEMENT OF WORK

[General description of work or services]

4. EQUIPMENT AND PROGRAMMING TO BE PROVIDED BY CITY (IF ANY)

5. OTHER CONSULTANT RESOURCES

[If desired, provide for the Consultant's commitment of its own staff, facilities, and other resources by nature or item]

6. DESCRIPTION OF WORK PRODUCT AND DELIVERABLES

[Include functional and technical specifications of Work Product and Documentation, and refer to any specific enhancements that may be sought.]

[Describe prototype or components to be delivered.]

[Include as Deliverables copies of the reports of all project reviews, inspections, and tests conducted during the course of performance.]

7. SPECIAL TERMS, IF ANY

8. MODE OF PAYMENT

9. PAYMENT SCHEDULE

City will pay Consultant for the work in accordance with the following payment schedule. All payments to Consultant are contingent on Consultant's satisfying the Deliverables/Milestones set forth in the Payment Schedule. Payments shall be made upon City's written confirmation to Consultant that the Deliverables-Milestones have been satisfied.

[Insert payment schedule]

10. SCHEDULE AND PERFORMANCE MILESTONES

This schedule sets for the target dates and performance milestones for the preparation and delivery of the Deliverables by Consultant.

Performance Milestone	Responsible Party	Target Date
-----------------------	-------------------	-------------

11. ACCEPTANCE AND TESTING PROCEDURES

12. LOCATION OF WORK FACILITIES

Substantially all of the work will be conducted by Consultant at its regular office located in _____.

City will provide the City office space and support as it agrees may be appropriate, at its _____ facility.

IN WITNESS WHEREOF, pursuant and in accordance with the Professional Services Agreement between the parties hereto dated _____, 20__, the parties have executed this Statement of Work as of this _____ day of _____, 20__.

CITY OF ENGLEWOOD, COLORADO

By: _____
(Signature)

(Print Name)

Title: _____

Date: _____

Consultant Name

By: _____
(Signature)

(Print Name)

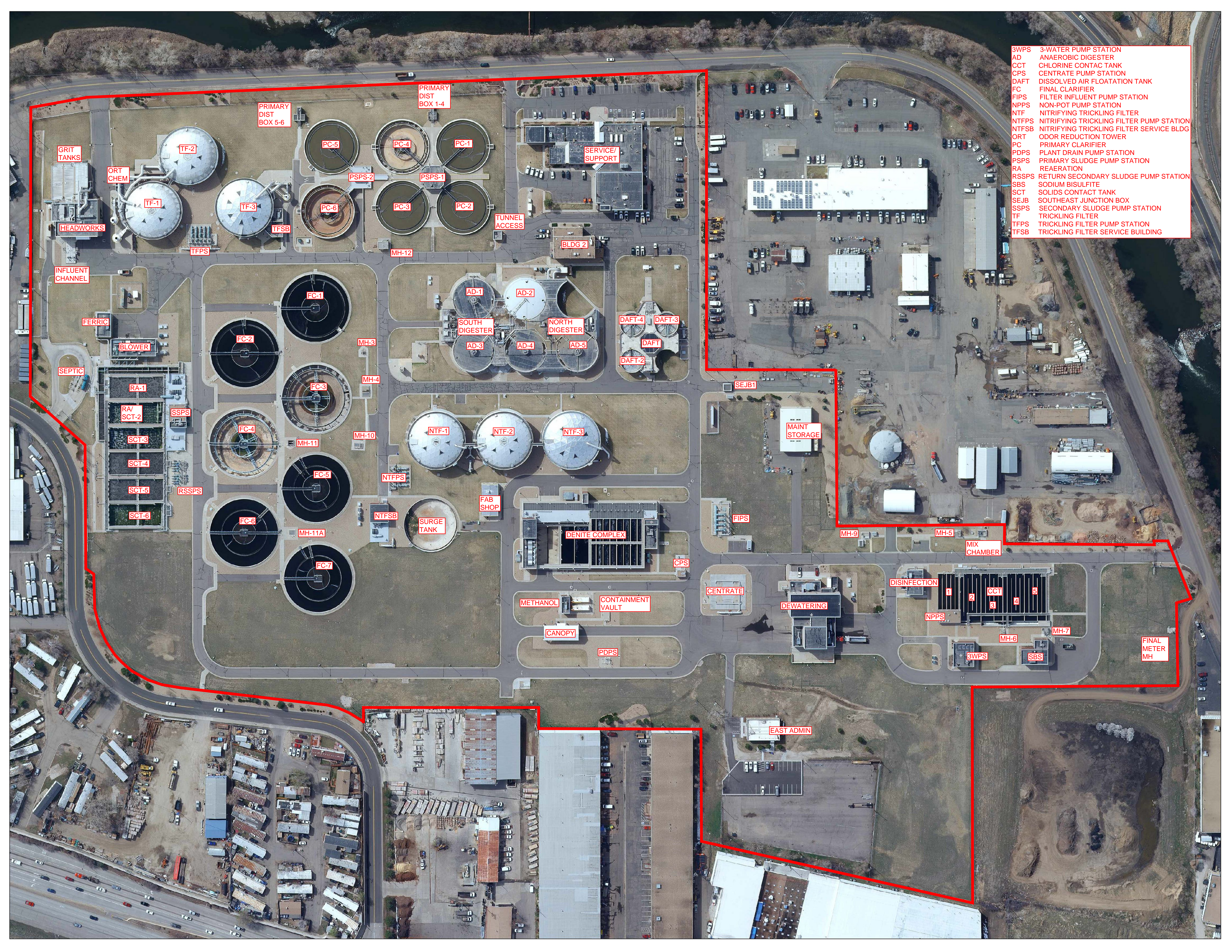
Title: _____

Date: _____

ATTACHMENT C

Project Background Documents

- I. SPWRP (L/WWTP) Site Plan***
- II. SPWRP (L/WWTP) Network Architectural Diagram***
- III. Ethernet Switch List***
- IV. ControlNet Summary***



- 3WPS 3-WATER PUMP STATION
- AD ANAEROBIC DIGESTER
- CCT CHLORINE CONTACT TANK
- CPS CENTRATE PUMP STATION
- DAFT DISSOLVED AIR FLOTATION TANK
- FC FINAL CLARIFIER
- FIPS FILTER INFLUENT PUMP STATION
- NPPS NON-POT PUMP STATION
- NTF NITRYFING TRICKLING FILTER
- NTFPS NITRYFING TRICKLING FILTER PUMP STATION
- NTFSB NITRYFING TRICKLING FILTER SERVICE BLDG
- ORT ODOR REDUCTION TOWER
- PC PRIMARY CLARIFIER
- PDPS PLANT DRAIN PUMP STATION
- PSPS PRIMARY SLUDGE PUMP STATION
- RA REAERATION
- RSSPS RETURN SECONDARY SLUDGE PUMP STATION
- SBS SODIUM BISULFITE
- SCT SOLIDS CONTACT TANK
- SEJB SOUTHEAST JUNCTION BOX
- SSPS SECONDARY SLUDGE PUMP STATION
- TF TRICKLING FILTER
- TFPS TRICKLING FILTER PUMP STATION
- TFSB TRICKLING FILTER SERVICE BUILDING

GRIT TANKS

ORT CHEM

TF-2

TF-1

TF-3

PC-5

PC-4

PC-1

PC-6

PC-3

PC-2

PSPS-2

PSPS-1

SERVICE/SUPPORT

TUNNEL ACCESS

BLDG 2

MH-12

HEADWORKS

PRIMARY DIST BOX 5-6

PRIMARY DIST BOX 1-4

INFLUENT CHANNEL

FERRIC

BLOWER

FC-1

AD-1

AD-2

DAFT-4

DAFT-3

SEPTIC

FC-2

AD-3

AD-4

DAFT-1

DAFT-2

RA-1

FC-3

NTF-1

NTF-2

NTF-3

MH-3

MH-4

MH-10

FC-4

FC-5

NTFPS

FAB SHOP

DENITE COMPLEX

CPS

RAV

SCT-2

SSPS

SCT-3

SCT-4

SCT-5

SCT-6

RSSPS

FC-6

MH-11A

FC-7

NTFSB

SURGE TANK

FAB SHOP

METHANOL

CONTAINMENT VAULT

CANOPY

PDPS

CENTRATE

DEWATERING

DISINFECTION

NPPS

CCT 1

CCT 2

CCT 3

CCT 4

CCT 5

MH-6

MH-7

MIX CHAMBER

3WPS

SBS

FINAL METER MH

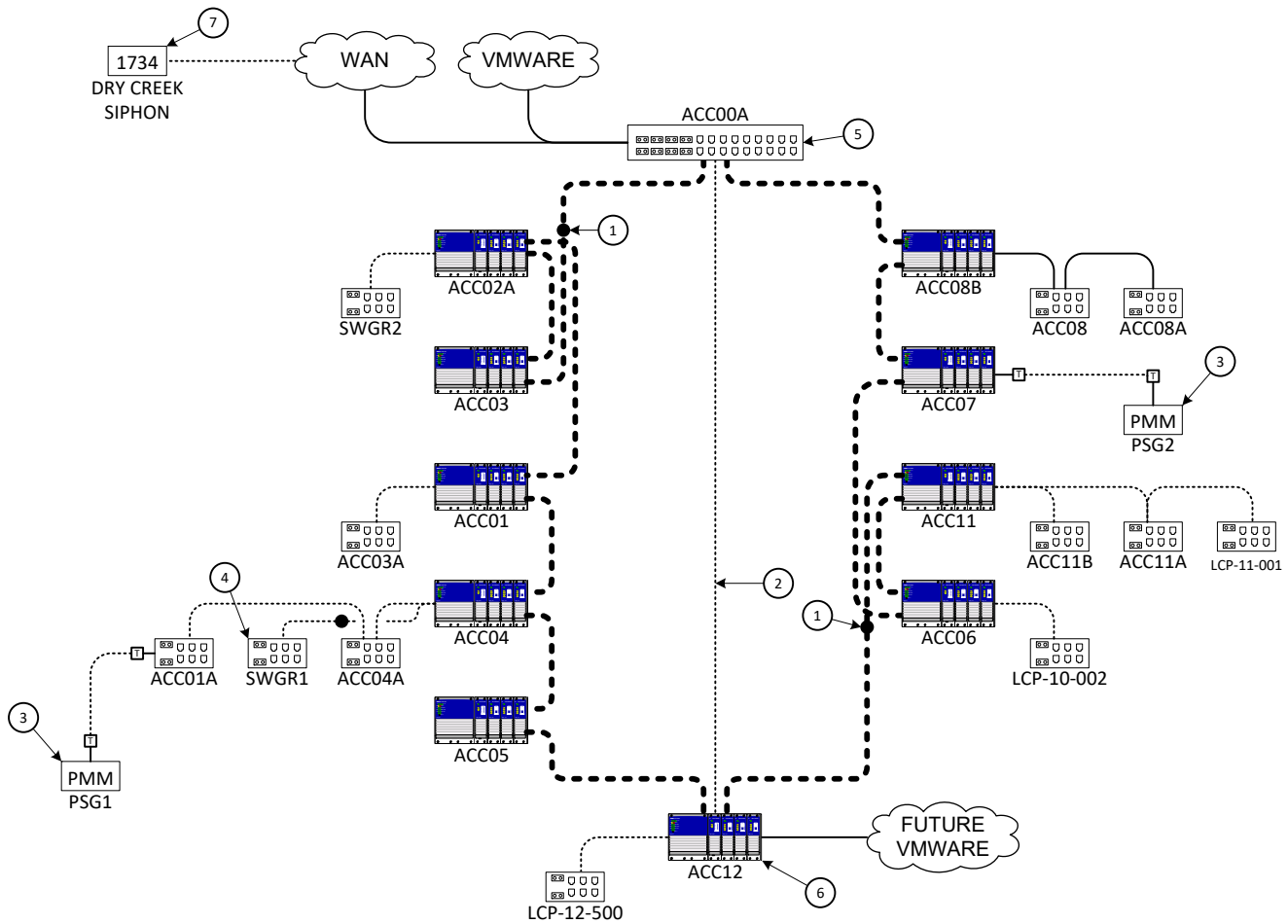
MAINT STORAGE

FIPS

MH-9

MH-5

EAST ADMIN











KEY NOTES:

1. DUE TO PHYSICAL DUCTBANK ROUTING, MAIN LOOP FIBER IS PATCHED AT LOCATIONS SHOWN.
2. FIBER FROM ACC00 TO ACC12 IS NOT CURRENTLY USED
3. 10MB FIELD DEVICE USES 10MB TRANSCEIVERS
4. SWGR1 PATCHED FROM ACC04 VIA ACC04A DUE TO LIMITED FIBER PORTS AT ACC04A
5. CONNECTIONS TO VIRTUALIZATION AND UPLINK TO LAYER 3 IS AT ACC00A
6. FUTURE REDUNDANT VIRTUALIZATION SYSTEM AT ACC12
7. DRY CREEK SIPHON CONNECTED VIA FIBER TO WAN SWITCH WITH .13 VLAN PORT

GENERAL NOTES:

1. DASHED LINES ARE FIBER-OPTIC, SOLID LINES ARE COPPER CONNECTIONS
2. MAIN FIBER RING IS 1GB SPEED
3. ALL FIBER-OPTIC CABLES ARE 62.5/125 MULTI-MODE WITH TYPE "SC" CONNECTORS
4. ALL SCADA SWITCHES AND DEVICES ARE ON A SINGLE VLAN (.13) AND ARE LAYER 2

LEGEND

-  HIRSCHMANN MACH 4002 RACK-BASED SWITCH
-  HIRSCHMANN MICE MS3124-4 SYSTEM
-  HIRSCHMANN RS2-FX/FX OR RS2-16M 2MM SC
-  FIBER-OPTIC HYPER RING
-  FIBER-OPTIC SPUR (NOT PART OF HYPER RING)
-  FIBER-OPTIC PATCH
-  FIBER OPTIC TRANSCEIVER
-  ALLEN-BRADLEY POINT-I/O SYSTEM
-  POWER METERING MODULE



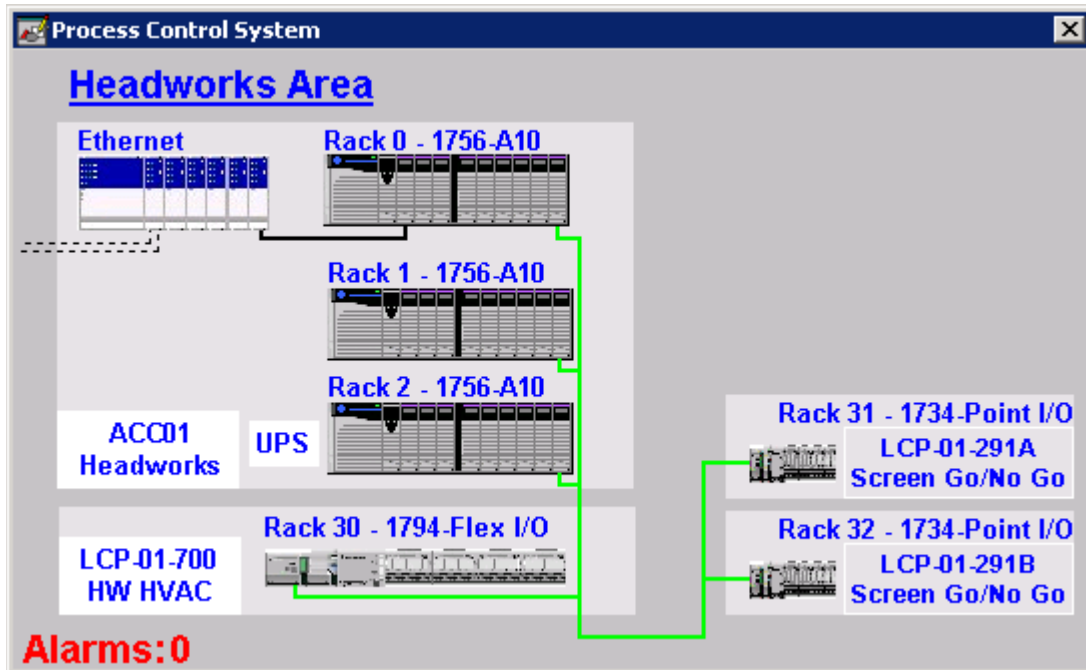
ATTACHMENT C – PROJECT BACKGROUND DOCUMENTS
NETWORK ARCHITECTURE DIAGRAM

Ethernet Switch List

Tag	Name	Description	Existing Type	Existing GB Ports	Existing Total Ports	Future VFDs	Ports Used	Total Ports (Min)	Ring From	Ring To	Notes
ACC01	PCS_HW_Enet	HEADWORKS ACC	Hirschmann Mice	4	28	13	23	36	ACC04	ACC02A	Spur to ACC03A
ACC01A	PCS_Ferric_EnetA	HW FERRIC CHLORIDE ACC	Hirschmann Rail		16	0	6	6			Spur from ACC04A, 10MB transceiver to PSG1
ACC02A	PCS_Pri_EnetA	PRIMARY SLUDGE PS 1 ACC	Hirschmann Mice	4	16	0	10	10	ACC01	ACC03	Spur to SWGR2
ACC03	PCS_TFSB_Enet	TF SERVICE BUILDING ACC	Hirschmann Mice	4	12	6	8	14	ACC00	ACC02A	
ACC03A	PCS_TF_ChemBldg_EnetA	TF CHEMICAL BUILDING ACC	Hirschmann Rail		16	0	4	4			Spur from ACC01
ACC04	PCS_Sec_SSPS_Enet	SEC SSPS ACC	Hirschmann Mice	4	20	13	12	25	ACC05	ACC01	Spurs to ACC04A and SWGR1 via ACC04A patch
ACC04A	PCS_Sec_Blwr_EnetA	SEC BLOWER BUILDING ACC	Hirschmann Rail		16	0	10	10			Spur from ACC04, to ACC01A
ACC05	PCS_NTFSB_Enet	NTFSB ACC	Hirschmann Mice	4	12	5	10	15	ACC04	ACC12	
ACC06	PCS_Dew_Enet	DEW BUILDING ACC	Hirschmann Mice	4	20	7	14	21	ACC11	ACC07	Fiber Spur to LCP-10-002
ACC07	PCS_DAFT_Enet	DAFT BUILDING ACC	Hirschmann Mice	4	16	6	10	16	ACC08B	ACC06	10MB transceiver to PSG2
ACC08	PCS_Dig_South_Enet	DIG SOUTH ACC	Hirschmann Rail		16	8	6	14			Copper Spurs from ACC08B, to ACC08A
ACC08A	PCS_Dig_Cogen_EnetA	DIG COGEN ACC	Hirschmann Rail		16	0	5	5			Copper Spur from ACC08
ACC08B	PCS_Dig_North_EnetB	DIG NORTH ACC	Hirschmann Mice	4	20	0	13	13	ACC07	ACC00	Copper Spur to ACC08
ACC11	PCS_Dis_PW_Enet	DISINFECTION 3WPS ACC	Hirschmann Mice	4	16	4	13	17	ACC12	ACC06	Spurs to ACC11A and ACC11B
ACC11A	PCS_Dis_SHC_EnetA	DISINFECTION SHC ACC	Hirschmann Rail		16	0	4	4			Spur from ACC11, to LCP-11-001
ACC11B	PCS_Dis_SBS_EnetB	DISINFECTION SBS ACC	Hirschmann Rail		16	0	6	6			Spur from ACC11
ACC12	PCS_Denite_Enet	DENITRIFICATION ACC	Hirschmann Mice	4	20	15	14	29	ACC05	ACC11	Spur to LCP-12-500
SWGR1	PCS_Elec_SWGR1_Enet	HW AREA - MAIN SWITCHGEAR	Hirschmann Rail		7	0	4	4			Spur from ACC04 via ACC04A patch. Prefer to connect directly to ACC04A.
SWGR2	PCS_Elec_SWGR2_Enet	PRIMARY AREA - MAIN SWITCHGEAR	Hirschmann Rail		7	0	4	4			Spur from ACC02A
ACC00A	PCS_Admin_EnetA	SERVICE AND SUPPORT 7-11	Hirschmann Mach 4002	24	24	0	9	9	ACC03	ACC08B	Replace this single switch with 2 switches and redundant connections to VMWare Ethernet Infrastructure.
LCP-10-002					4	3	2	5			Spur from ACC06
LCP-12-500					4	0	1	1			Spur from ACC12. Do not replace

Attachment C – ControlNet Summary

Headworks Area

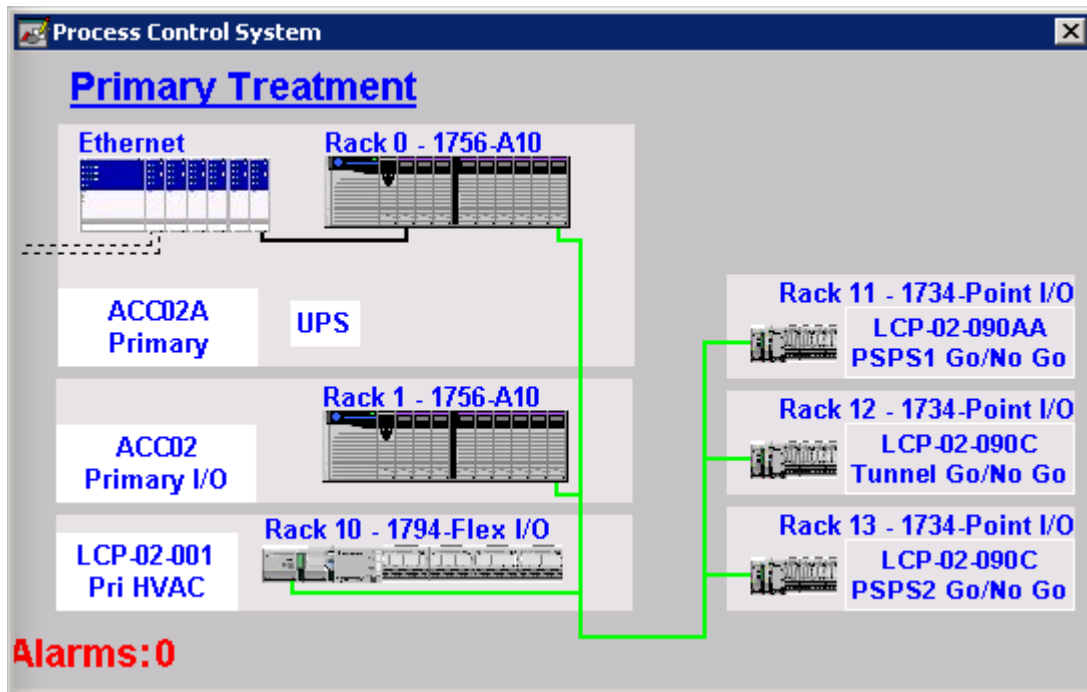


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in the electrical room except for Go/No Go panels which are located at exterior doors.

Attachment C – ControlNet Summary

Primary Treatment

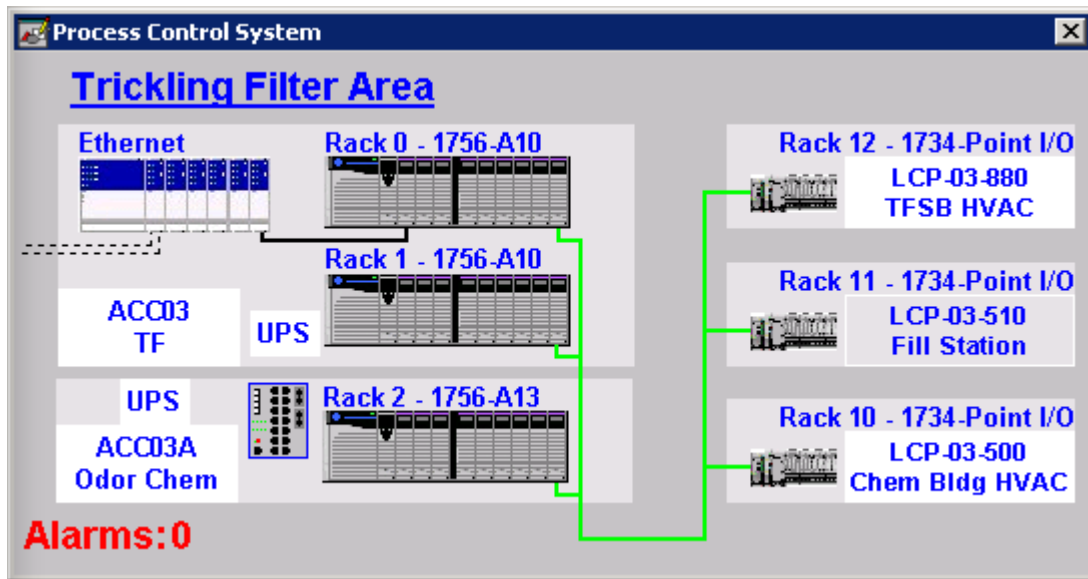


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in the electrical room except for Go/No Go panels which are located at exterior doors.

Attachment C – ControlNet Summary

Trickling Filter Area

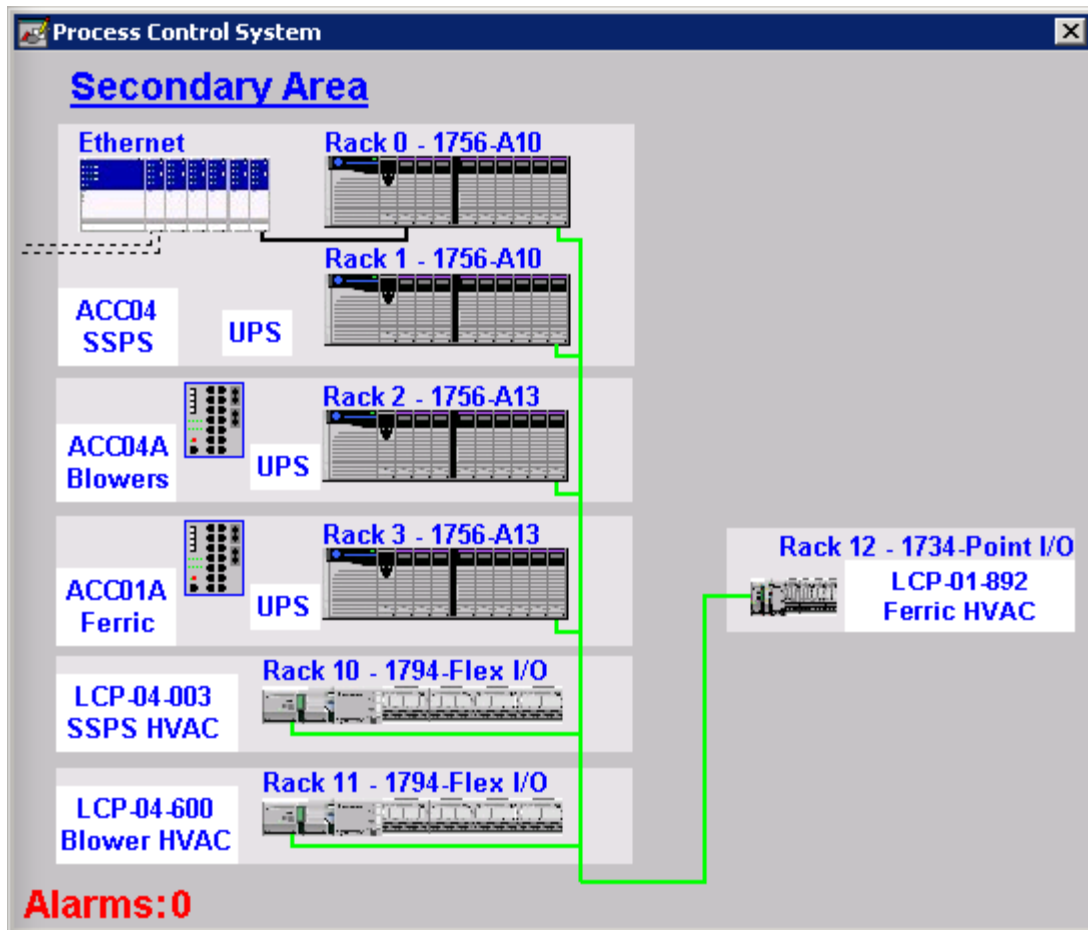


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in two buildings and connected via copper and fiber-optic cabling.

Attachment C – ControlNet Summary

Secondary Area

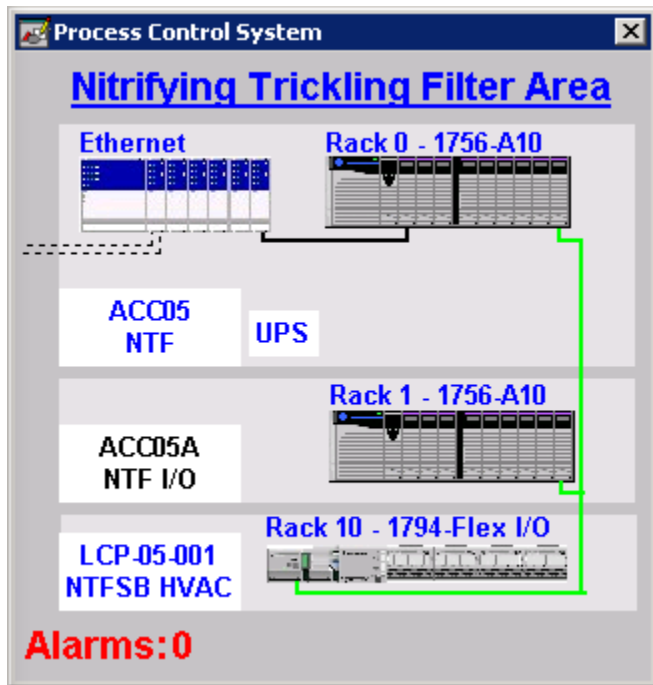


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in three buildings and connected via copper and fiber-optic cabling.

Attachment C – ControlNet Summary

Nitrifying Trickling Filter Area

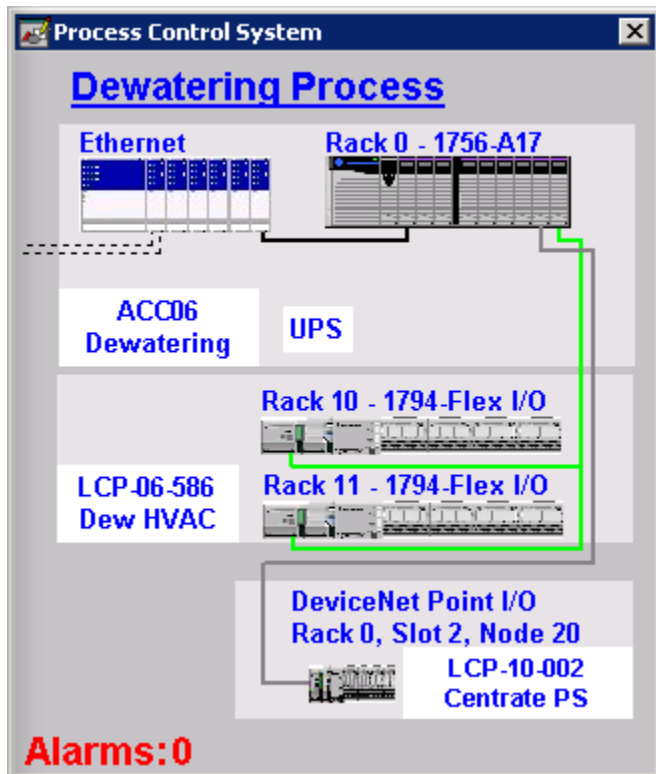


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in the electrical room.

Attachment C – ControlNet Summary

Dewatering

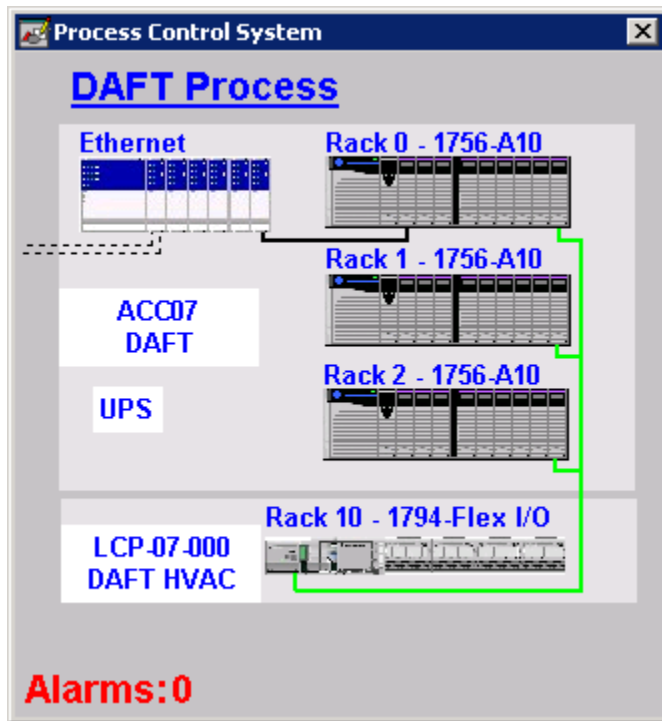


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in the electrical room.

Attachment C – ControlNet Summary

DAFT Process

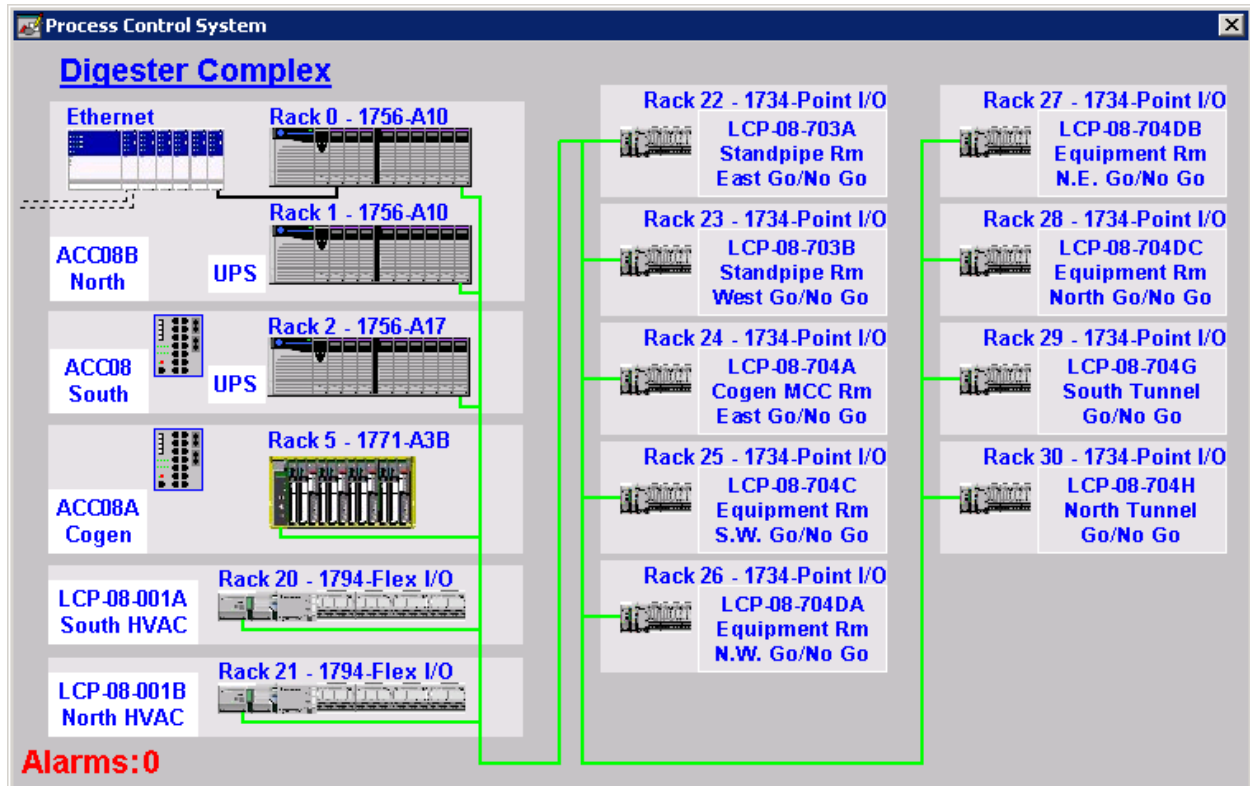


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in the electrical room.

Attachment C – ControlNet Summary

Digester Complex

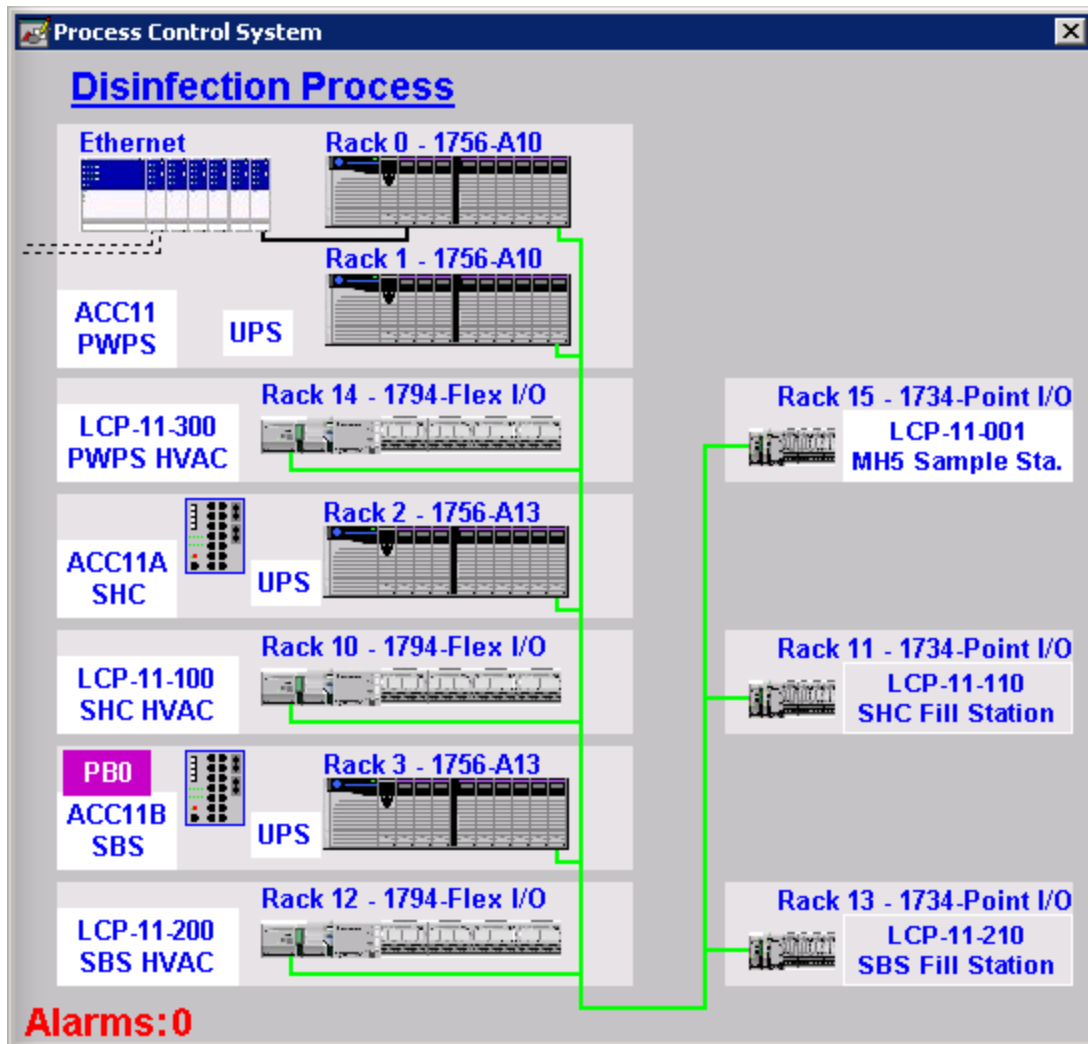


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located two electrical rooms, the cogen room, and Go/No Go panels located at exterior doors.

Attachment C – ControlNet Summary

Disinfection Process

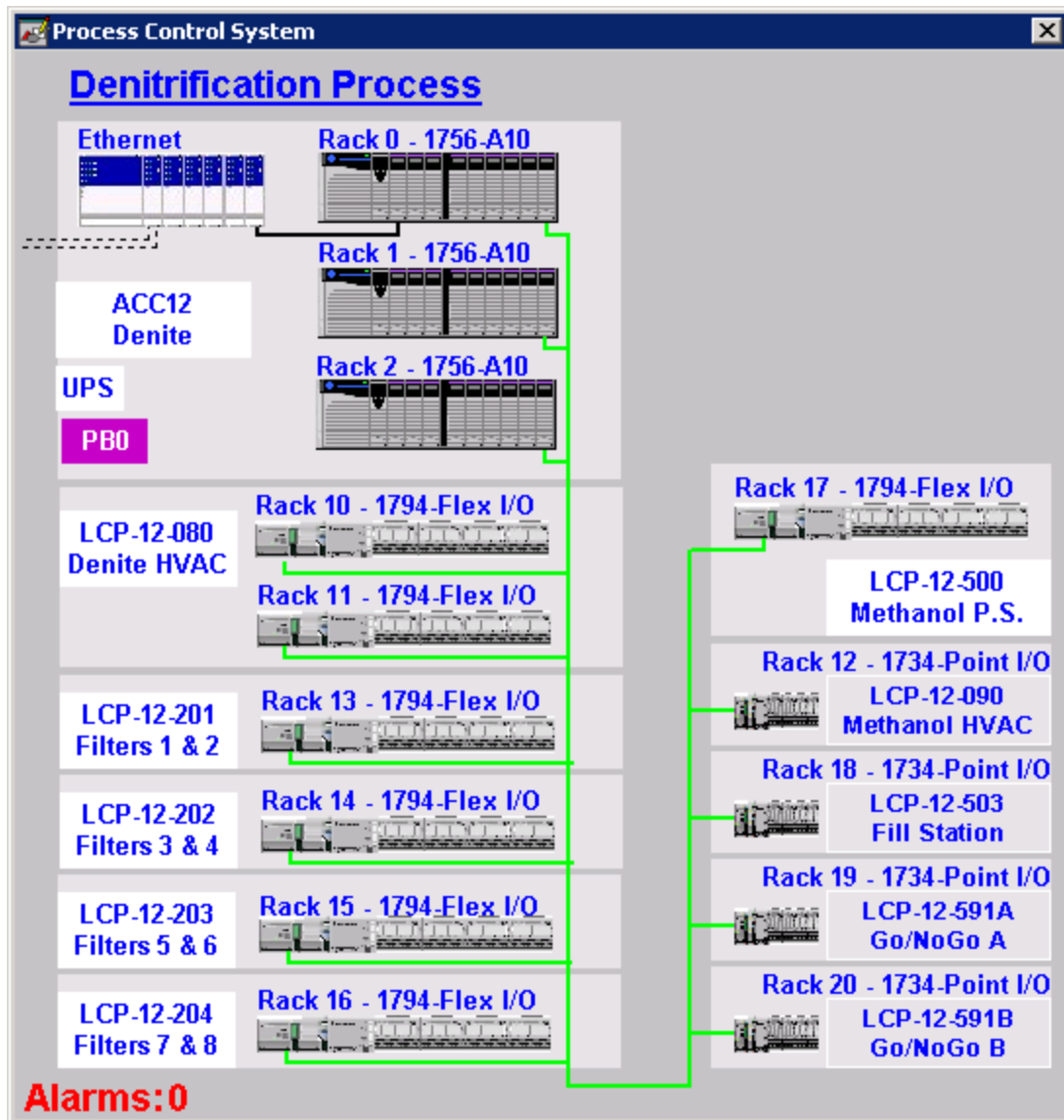


Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in three buildings and connected via fiber-optic cabling, plus one remote panel connected via copper and fiber-optic cabling..

Attachment C – ControlNet Summary

Denitrification Process



Area ControlNet Notes:

1. Diagram is informational only and provided to convey the general system configuration and complexity.
2. Diagram does not depict physical routing of cabling or order of devices.
3. Diagram is not intended to depict accurate Ethernet configuration.
4. Panels are located in two buildings plus the filter gallery and connected via copper and fiber-optic cabling.

MEMORANDUM

To: Mayor Olson
City Council
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: October 11, 2018

Re: Council Request: Amy Martinez
Questions from citizens: 1) regarding public hearing matters, 2) indirect benefits

ISSUE 1: I have a quick legal question about the Public Hearing regarding ADU's. Is Council member, Cheryl Wink allowed to vote in regards to the ADU issue considering she was absent for the hearing?
Thank you, Sara Harkness

ANSWER: The decision concerning whether to approve the proposed code change is made based upon three factors: 1) written staff recommendation which is provided to council, 2) written planning & zoning recommendation which is provided to council, and 3) information received from the public and presented during the council's public hearing. The public hearing was videotaped so that anyone, including members of the city council, may review the evidence and statements presented. Any member of council who has reviewed the three sources of information and evidence may vote on the outcome.

LAW: The legal issue concerning a member of council's right to vote if not present for a public hearing is made based upon whether the public hearing is legislative or quasi-judicial. This determination is confusing, especially for Chapter 16 zoning matters, as Section 16 only uses the term "public hearing", rather than 'legislative/administrative public hearing' or 'quasi-judicial public hearing.' The determination of which type of public hearing is being held is made based upon context.

Legislative Action: A legislative action affects the rights of individuals only in the abstract. *Cherry Hills Resort Development Co. v. City of Cherry Hills Village, supra*. The purpose of a legislative public hearing is to obtain information to enable the City Council to determine legislative policy.

Quasi-judicial Action: An action is **quasi-judicial** if the decision at issue is likely to adversely affect the protected interests of specific individuals or specific property, and it is reached by application of preexisting legal standards or policy considerations to the facts presented. *Sherman v. City of Colorado Springs Planning Comm'n*, 763 P.2d 292, 295-96 (Colo.1988). (*Churchill v. UC at Boulder*, 293 P.3d 16 (Colo. Ct. App. 2010)).

E.M.C. Amendments to the Text of Title 16 (UDC). 16-2-6 (E) The City Council shall review the recommendation of City staff, and the recommendation of the Commission, and shall hold a public hearing on the proposed amendment. Following such hearing, the Council may approve, deny, or modify the proposed amendment.

Official Zoning Map Amendments. 16-2-7 (G)(1) The Council shall review the proposed rezoning, the recommendation of City staff, and the recommendation of the Commission, and shall hold a public hearing on the proposed amendment. Following such hearing, the Council may approve, deny, or refer a proposed amendment back to the Commission.

DECISION-MAKING CRITERIA: E.M.C. 16-2-6(F) *Criteria.* Amendments to the text of this Title shall be made in the interest of promoting the health, safety, and general welfare of the community. The review- or decision-making body shall only recommend approval of, or shall only approve, a proposed amendment if it finds that the proposed amendment meets at least one of the criteria listed below:

1. It corrects an error in the current text of this Title, and correction of such error will be consistent with the adopted Comprehensive Plan;
2. Events, trends, or facts evident after adoption of the text of this Title have changed the character or condition of the community so as to make the proposed amendment inconsistent with the Comprehensive Plan, and the amendment is necessary to promote the public health, safety, or welfare of the community.

ISSUE 2: If a City Council member has been overheard stating that they might be interested in utilizing the proposed code amendments have the created a conflict of interest?

ANSWER: The answer to this question comes down to the type of benefit received: direct or indirect. There is no question that a City Council member may not act upon any matter for which they or their spouse will receive a **direct financial benefit**.

There is no prohibition against receipt of indirect benefits. City Council members, as members of the community for which they take official actions, often experience an **indirect benefit** from their decisions. For example, approving a zoning action changing the designation of a parcel of land from commercial to residential may increase the availability of housing available for friends and family, create more construction jobs in the area potentially benefitting their company, encourage more construction workers to eat at local restaurants including one owned by their family, put more homes into the real estate market benefitting realtors, reduce the commercial properties available to business competitors, etc. It is not difficult to make an argument that some level an indirect benefit accrues to council members from many of the decisions that they make.

LAW: While the City of Englewood has adopted its own ethical rules within its city council policy manual, it helps to clarify this topic by reviewing the State law.

24-18-109. Rules of conduct for local government officials and employees. All local government officials and employees have a fiduciary duty to uphold the interests of the City.

- (4) It shall not be a breach of fiduciary duty and the public trust for a local government official or local government employee to: **(b)** Accept or receive a benefit as an indirect consequence of transacting local government business.



MEMORANDUM

To: Mayor Olson
City Council
City Manager's Office

From: Alison McKenney Brown, City Attorney

Date: Thursday, October 11, 2018

Re: Requested by: Mayor Pro Tem Russell. The I.R.S. status of EEF and EMRF

ISSUE(S): What is the I.R.S. status of EEF and EMRF?

FACTS/BACKGROUND: On December 2, 1998 the City of Englewood received a copy of a document issued by the Department of the Treasury. That letter ruling found that EEF was a foundation under 170(b)(1)(A) of the Federal Tax Code. A similar determination was made in association with EMRF on May 9, 2000.

LAW: In both letter rulings the I.R.S. stated the following:

In this case, City X, a political subdivision of State Y, exercises complete control over Foundation. City X created Foundation by ordinance; all of Foundation's directors and officers are City X employees who are assigned to work on Foundation matters. Further, City X has made a significance financial contribution to Foundation. Virtually all of the funds that Foundation needed for property acquisition, remediation, and management purposes came directly from City X. Upon dissolution of Foundation, Foundation's net remaining assets will be returned to City X. Based upon these factors, Foundation is an integral part of City X.

ANALYSIS: EEF and EMRF are not 501 c 3 tax exempt entities which are required to file annual IRS returns. EEF and EMRF are tax exempt as political subdivisions under section 170 of the IRS code and are therefore exempt from yearly filings. Per the I.R.S. regulations associated with political subdivisions the only documents EEF and EMRF are required to file with the IRS are 1099 forms for vendors that are subject to 1099 reporting. 1096 forms are used by Foundations to summarize and submit vendor 1099's