

# STATE OF COLORADO

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Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

August 22, 2012

Michael Penny, City Manager of Littleton  
2555 West Berry Ave.  
Littleton, Colorado 80165

**RE: Compliance Order on Consent, Number: MC-120821-2**

Dear Mr. Penny:

Enclosed for the City of Littleton's records you will find your copy of the recently executed Compliance Order on Consent. Please remember that this agreement is subject to a thirty-day public comment period (paragraph 39). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Joe Campbell at (303) 692-2356 or by electronic mail at [joseph.campbell@state.co.us](mailto:joseph.campbell@state.co.us).

Sincerely,

Russell Zigler, Legal Assistant  
Compliance Assurance Section  
Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*

cc: Enforcement File

ec: Tom Butts, Tri-County Health Department ([tbutts@tchd.org](mailto:tbutts@tchd.org))  
Natasha Davis, EPA Region VIII ([davis.natasha@epa.gov](mailto:davis.natasha@epa.gov))  
Paul Kim, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Janet Kieler, Permits Section, CDPHE  
Barry Cress, DOLA

City of Littleton / City of Englewood

Compliance Order on Consent

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Michael Beck, Grants and Loans Unit, CDPHE

Joe Campbell, Case Person

Tania Watson, Compliance Assurance, CDPHE



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
DIVISION OF ADMINISTRATION  
WATER QUALITY CONTROL DIVISION**

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: MC-120821-2**

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**IN THE MATTER OF: CITY OF LITTLETON / CITY OF ENGLEWOOD  
LITTLETON/ENGLEWOOD WASTEWATER TREATMENT PLANT  
CDPS PERMIT NO. CO-0032999  
ARAPAHOE COUNTY, COLORADO**

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The Colorado Department of Public Health and Environment (“Department”), through the Water Quality Control Division (“Division”), issues this Compliance Order on Consent (“Consent Order”), pursuant to the Division’s authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act (“the Act”) §§25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of the City of Littleton and the City of Englewood (“L/E”). The Division and L/E may be referred to collectively as “the Parties.”

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are:
  - a. To resolve all alleged violations of the Act, the permit regulations (5 CCR 1002-61) and L/E’s Colorado Discharge Permit System permit (Number: CO-0032999) based on L/E’s sanitary sewer overflows (“SSOs”) and chemical discharges, listed in paragraph 11 below, that have occurred between August 30, 2006 and February 23, 2011.
  - b. To establish compliance requirements and criteria to prevent or minimize future spills from L/E’s Waste Water Treatment Plant (WWTP).

**DIVISION’S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS**

2. Based upon the Division’s investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding L/E, L/E’s WWTP and L/E’s compliance with the Act, and its implementing regulations and its Colorado Discharge Permit System permit.

3. At all times relevant to the alleged violations cited herein, the City of Littleton and the City of Englewood were home rule municipalities organized pursuant to §31-2-201 to 225, C.R.S.
4. L/E are each a “person” as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. L/E owns and operates a wastewater treatment plant, known as the L/E WWTP, which is located at or near 2900 South Platte River Drive in the City of Englewood, Arapahoe County, Colorado.
6. The L/E WWTP has a hydraulic flow (30-day average) design capacity of 50 million gallons per day (MGD) and 96,825 lbs. BOD<sub>5</sub> per day for organic loading (30-day average) generated from the City of Littleton and the City of Englewood as well as from twenty-one (21) connector districts within the seventy-five (75) square mile service area of the cities.

*Unauthorized Discharge and Land Application*

7. Pursuant to §25-8-501(1), C.R.S., no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.
8. L/E is the subject of a Colorado Discharge Permit System (“CDPS”) permit; permit number CO-0032999 (the “Permit”). The Permit authorizes L/E to discharge treated wastewater from the WWTP through three outfalls (Outfall 001A, Outfall 001B and Outfall 001C) to the South Platte River in accordance with effluent limitations, monitoring requirements, and other conditions set forth in the Permit.
9. Pursuant to 5 CCR 1002-61, §61.14(1)(a), L/E is required to obtain a permit for all land application discharges unless:
  - a. The discharge is exempted under 5 CCR 1002-61, §61.14(1)(b);
  - b. The discharge is subject to regulation by one of the implementing agencies described in 61.14(2); or
  - c. The owner of a land application system can demonstrate that: (i) the design and operation of the system will result in complete evapotranspiration of the effluent; (ii) there is adequate storage provided for the effluent during periods of inclement weather or where the ground has been frozen unless the provisions of (i) above can be met during the entire year; and, (iii) any augmentation plan or substitute supply plan for the land application site does not provide a credit for return of the effluent to ground water.
10. Part II, section A(8) of the Permit states, “Any discharge to the waters of the State from a point source other than specifically authorized herein is prohibited.”
11. Division records establish that L/E has reported the following eighteen (18) spills and one (1) chemical discharge from the L/E WWTP to the Division from August 30, 2006 through February 23, 2011:

<b>Release Date</b>	<b>Location</b>	<b>Quantity Discharged/Released (Gallons)</b>	<b>Receiving Water</b>
30-Aug-06	L/E WWTP	300	Upper South Platte River
29-Sept-06	L/E WWTP	500	Land Application
1-Oct-06	L/E WWTP	300	Land Application
18-Nov-06	L/E WWTP	1,000	Land Application
30-Nov-06	L/E WWTP	9,500	Upper South Platte River
21-May-07	L/E WWTP	9,000	Upper South Platte River
3-June-07	L/E WWTP	3,600	Upper South Platte River
10-June-07	L/E WWTP	Unknown	Land Application
3-July-07	L/E WWTP	87,000	Land Application
10-July-07	L/E WWTP	100,000	Upper South Platte River
11-July-07	L/E WWTP	285,000	Land Application
5-Feb-08	L/E WWTP	44,000	Land Application
28-Apr-08	L/E WWTP	1,000	Upper South Platte River
16-Aug-08	L/E WWTP	20,000	Upper South Platte River
5-Nov-08	L/E WWTP	560	Upper South Platte River
21-Nov-08	L/E WWTP	30	Upper South Platte River
18-Apr-09	L/E WWTP	15,000	Upper South Platte River
10-Jan-10	L/E WWTP	2,500 (chemical discharge)	Upper South Platte River
23-Feb-11	L/E WWTP	17,600	Upper South Platte River

12. Part I, section B(4) of the Permit provides in part: "The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control including all portions of the collection system and lift stations owned by the permittee (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems when installed by the permittee only when necessary to achieve

compliance with the conditions of the permit.”

13. Wastewater contains, among other substances, biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), and fecal coliform bacteria, which are “pollutants” within the meaning of section 25-8-102(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(76).
14. The South Platte River is “state waters” as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
15. The L/E WWTP and its ancillary equipment, as they relate to each discharge event identified above in paragraph 11, are a “point source” as defined by §25-8-103(14), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(75).
16. Each of L/E’s wastewater and chemical discharges identified above in paragraph 11 that reached state waters constitutes a "Discharge of Pollutants" as defined by §25-8-103(3), C.R.S.
17. Division records establish that the Permit does not authorize the wastewater or chemical discharges identified above in paragraph 11 and L/E does not have any other permits authorizing the wastewater or chemical discharges identified above in paragraph 11 into state waters.
18. Each of L/E’s surface water discharges identified in paragraph 11 above constitutes an unauthorized discharge of pollutants from a point source into state waters in violation of §25-8-501(1), C.R.S., and in violation of Part II, section A(8) and Part I, section B(4) of the Permit.
19. L/E’s discharge of wastewater from the L/E WWTP to the land, as identified in paragraph 11 above, constitutes "Land Application" as defined by 5 CCR 1002-61, §61.2(48).
20. L/E’s land application discharges, as identified in paragraph 11 above, do not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a), and therefore are subject to the land application discharge permit requirements.
21. Division records establish that L/E does not have any permits authorizing the land application of wastewater from its sanitary sewer collection system.
22. L/E’s discharge of wastewater from its sanitary sewer collection system to the land, as identified in paragraph 11 above, constitutes unauthorized land application in violation of 5 CCR 1002-61, §61.14(1)(a) and violations of Part II, section A(8) and Part I, section B(4) of the Permit.

#### L/E’s Position on the Alleged Violations

23. On November 3, 2010, as required by the Division, L/E delivered a written response to the Division regarding the matters described in the Division’s Compliance Advisory dated October 13, 2010. In the response, L/E generally denied all of the allegations made in the compliance advisory on the grounds that there was a lack of any evidence that any of the spill events resulted in any untreated wastewater reaching the South Platte River or the groundwater table, and that in all but one instance, L/E made such reports in a manner and time as required by the Division’s *Guidance for Reporting*

*Spills* of the spill events, and none of the spilled water was used for “Land Application” as defined by 5 CCR 1002-61, §61.2(48).

24. The Division finds that L/E’s position statement is not consistent with the information gathered in the course of the Division’s inspections and investigation of the incidents described herein and the inclusion of L/E’s position statement in this order should not be construed to constitute any admission or agreement by the Division as to the content of the position statement.

### **ORDER AND AGREEMENT**

25. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the alleged violations cited herein, the Division orders L/E to comply with all provisions of this Consent Order, including all requirements set forth below.
26. L/E agrees to the terms and conditions of this Consent Order. L/E agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. L/E also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by L/E against the Division:
- a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division’s authority to bring, or the court’s jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
27. Notwithstanding the above, L/E does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by L/E pursuant to this Consent Order shall not constitute evidence of fault and liability by L/E with respect to the conditions of the WWTP. L/E expressly reserves its rights to deny any of the Division’s factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

### **Compliance Requirements**

28. In order to minimize the potential for future sanitary sewer overflows and chemical discharges from the L/E WWTP, L/E shall undertake the following activities:
- a. Within thirty (30) calendar days of the effective date of this Consent Order, L/E shall have completed a detailed evaluation of its spill/release prevention and response policies/procedures and develop an implementation plan for enhancement or identified modifications. The evaluation shall take into account, and be consistent with, the spill reporting requirements of the Permit and the Division’s Guidance for Reporting Spills. The evaluation shall consider, at a minimum; response initiation triggers, notification and signage requirements (regulatory and downstream), response equipment availability, response equipment staging locations, personnel training requirements, interim mitigation measures (including field monitoring), and final remedial actions. In addition, the evaluation shall clarify, through scenarios, how proper spill reporting procedures will be performed.

- b. Within sixty (60) calendar days of the effective date of this Consent Order, L/E shall submit to the Division the implementation plan, as referenced in Paragraph 28a, on the evaluation of its spill/release prevention and response policies/procedures. The submitted plan shall become a condition of this Consent Order and L/E shall comply with the plan as submitted unless notified by the Division, in writing within sixty (60) calendar days of the submittal, that modifications or an alternate plan is appropriate. If the Division imposes modifications or an alternate plan, it shall also become a condition of this Consent Order.
- c. Within thirty (30) calendar days of the effective date of this Consent Order, L/E shall have completed development of an implementation plan or program to perform a detailed risk evaluation (relating to spill and discharge prevention/mitigation) prior to conducting non-routine plant maintenance, construction activities, and equipment testing. The evaluation shall consider, at a minimum; worst case scenarios, flow paths, and available response equipment and personnel.
- d. Within sixty (60) calendar days of the effective date of this Consent Order, L/E shall submit to the Division the implementation plan or program, as referenced in Paragraph 28c, for the risk evaluation of its non-routine plant maintenance, construction activities, and equipment testing as they relate to spill and discharge prevention/mitigation. The submitted plan shall become a condition of this Consent Order and L/E shall comply with the plan as submitted unless notified by the Division, in writing within sixty (60) calendar days of the submittal, that modifications or an alternate plan or program is appropriate. If the Division imposes modifications or an alternate plan or program, it shall also become a condition of this Consent Order.
- e. Within sixty (60) calendar days of the effective date of this Consent Order, L/E shall have completed a review and, if applicable, a revision of its current Site Operating Procedures (SOP) as it relates to the emergency response of spills/releases. The SOP shall include, at a minimum; best management practices for spill/release responses, ongoing training of facility personnel in spill/release response procedures, training and spill/release response procedures as they relate to contactor operations, training of operational staff on the avoidance or mitigation of spills/releases, the operations and maintenance of onsite spill response equipment, and clean up expectations of spills/releases.
- f. Within ninety (90) calendar days of the effective date of this Consent Order, L/E shall submit to the Division a copy of its up-to-date Site Operating Procedures (SOP) for the L/E WWTP as it relates to the emergency response of spills/releases, as referenced in Paragraph 28e. Any revisions to the current Site Operating Procedures (SOP), as it relates to the emergency response of spills/releases, shall become a condition of this Consent Order and L/E shall comply with the revisions as submitted unless notified by the Division, in writing within sixty (60) calendar days of the submittal, that modifications or an alternate SOP is appropriate. If the Division imposes modifications or an alternate SOP, it shall also become a condition of this Consent Order.
- g. Within sixty (60) calendar days of the effective date of this Consent Order, L/E shall have completed a process to integrate the L/E WWTP's SCADA system and telecommunications system into L/E's spill prevention and response procedures. The SCADA system modifications

shall include, at a minimum; the revision of control logic programming and instrumentation calibration, UPS back-up of SCADA servers, and installation of programmable logic controllers.

- h. Within ninety (90) calendar days of the effective date of this Consent Order, L/E shall submit to the Division a summary report outlining how L/E integrated the L/E WWTP's SCADA system and telecommunications system into L/E's spill prevention and response procedures.
- i. Within sixty (60) calendar days of the effective date of this Consent Order, L/E shall perform a detailed evaluation of the L/E WWTP's in-plant sewer system. The evaluation shall consider, at a minimum, the engineering design and capacity of the in-plant sewer system and identify the need for any corrective measures.
- j. Within ninety (90) calendar days of the effective date of this Consent Order, L/E shall submit to the Division the results of the evaluation of the L/E WWTP's in-plant sewer system, as referenced in Paragraph 28i. Any corrective measures and associated implementation schedules identified as a result of the evaluation shall become a condition of this Consent Order and L/E shall implement the corrective measures/time schedules as submitted unless notified by the Division, in writing within sixty (60) calendar days of the submittal, that alternate measures or time schedules are appropriate. If the Division imposes an alternate plan, it shall also become a condition of this Consent Order.

#### **CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

- 29. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, the Division has determined that a penalty of One Hundred Five Thousand One Hundred Fifty Dollars (\$105,150.00) is appropriate for the violations cited herein.
- 30. Through the application of the criteria set forth in the Colorado Department of Public Health and Environment's Final Agency-Wide Policy on Settling Administrative and/or Civil Penalties Against Eligible Governmental Entities, the Division has determined that the Cities of Littleton and Englewood are eligible governmental entities and that the entire penalty can be mitigated through the completion of the following Supplemental Environmental Projects ("SEPs") identified by L/E, which are valued at One Hundred Five Thousand One Hundred Fifty Dollars (\$105,150.00).
- 31. L/E shall undertake the SEPs, described in Exhibits A and B, which the Parties agree are intended to secure significant environmental or public health protection and improvements.
- 32. L/E shall not deduct the expenses associated with the implementation of the above-described SEPs for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
- 33. L/E hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEPs. L/E further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEPs. In the event that L/E has, or will receive credit under any other legal obligation for the SEPs, L/E shall pay One Hundred Five

Thousand One Hundred Fifty Dollars (\$105,150.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division.

34. All SEPs must be completed to the satisfaction of the Division, within eighteen (18) months of the effective date of this Consent Order, and must be operated for the useful life of the SEPs. In the event that L/E fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEPs, L/E shall be liable for penalties as follows:
  - a. Payment of a penalty in the amount of One Hundred Five Thousand One Hundred Fifty Dollars (\$105,150.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEPs.
  - b. L/E shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division.
35. The SEP Completion Reports shall be submitted to the Division by October 31, 2013 for both the City of Littleton's portion of the SEP (Exhibit A) the City of Englewood's portion of the SEP (Exhibit B). The SEP Completion Reports shall contain the following information:
  - a. A detailed description of the SEP as implemented;
  - b. A description of any operating problems encountered and the solutions thereto;
  - c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
  - d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
  - e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).
36. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.
37. L/E shall include the following language in any written public statement making reference to the SEPs: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for alleged violations of the Colorado Water Quality Control Act."

#### **SCOPE AND EFFECT OF CONSENT ORDER**

38. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein.
39. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and L/E each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.

40. This Consent Order constitutes a final agency order or action upon a determination by the Division following the public comment period. Any violation of the provisions of this Consent Order by L/E, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
41. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
42. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
43. Notwithstanding paragraph 27 above, the alleged violations described in this Consent Order will constitute part of L/E's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against L/E. L/E agrees not to challenge the use of the cited violations for any such purpose.
44. This Consent Order does not relieve L/E from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.
45. Nothing herein shall be construed as prohibiting, altering, or in any way limiting the ability of the Division to seek any further remedies or sanctions available by virtue of L/E's violation of this agreement or, except with respect to those violations identified herein, of the statutes and regulations upon which this agreement is based or any other applicable provision of law.

#### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

46. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of violations cited herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
47. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
48. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.

49. Upon the effective date of this Consent Order, L/E releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
50. L/E shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of L/E, or those acting for or on behalf of L/E, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. L/E shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by L/E in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

### **SITE ACCESS AND SAMPLING**

51. The Division shall be authorized to oversee any and all work being performed under this Consent Order. The Division shall be authorized to access the L/E WWTP property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining L/E's compliance with the Act, the Regulations, and this Consent Order. The Division shall be authorized to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview L/E personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the L/E WWTP.

### **FORCE MAJEURE**

52. L/E shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of L/E, and which cannot be overcome by due diligence.
53. Within seventy-two (72) hours of the time that L/E knows or has reason to know of the occurrence of any event which L/E has reason to believe may prevent L/E from timely compliance with any requirement under this Consent Order, L/E shall provide verbal notification to the Division. Within seven (7) calendar days of the time that L/E knows or has reason to know of the occurrence of such event, L/E shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
54. The burden of proving that any delay was caused by a force majeure shall at all times rest with L/E. If the Division agrees that a force majeure has occurred, the Division will so notify L/E. The

Division will also approve or disapprove of L/E 's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of L/E 's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to L/E. Within fifteen (15) calendar days of receipt of the explanation, L/E may file an objection.

55. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, L/E shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

### **DISPUTE RESOLUTION**

56. If the Division determines that that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by L/E to mitigate the delay caused by a force majeure are inadequate; that L/E's Notice of Completion should be rejected pursuant to paragraph 61 the Division shall provide a written explanation of its determination to L/E. Within fifteen (15) calendar days of receipt of the Division's determination, L/E shall:
- a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute of the determination.

If L/E fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

57. If the Division imposes additional, modified or alternate measures, plans, programs, SOPs or time schedules pursuant to paragraphs 28(b), 28(d), 28(f) or 28(j), within fifteen (15) calendar days of receipt of the Division's notice of such measures, plans, programs, SOPs or time schedules, L/E shall:
- a. Submit a notice of acceptance of the additional, modified or alternate measures, plans, programs, SOPs or time schedules and begin implementation of such;
  - b. Submit a notice of dispute of the additional, modified or alternate measures, plans, programs, SOPs or time schedules.

If L/E fails to do any of the above within the specified time, L/E shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

58. If L/E files any notice of dispute pursuant to paragraph 56 or 57 the notice shall specify the particular matters in the Division's determination that L/E seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by L/E. The Division and L/E shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to reach an agreement. If agreement cannot be reached on all issues within this thirty (30) calendar day period, the Division shall confirm or modify its decision within an additional fourteen (14) calendar days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the APA.

## NOTICES

59. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CAS-B2  
Attention: Joe Campbell  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.2356  
E-mail: joe.campbell@state.co.us

For L/E:

Gary Sears, City Manager of Englewood  
1000 Englewood Parkway  
Englewood, Colorado 80110  
Telephone: 303.762.2310

Michael Penny, City Manager of Littleton  
2555 West Berry Ave.  
Littleton, Colorado 80165  
Telephone: 303.796.3700

Dennis Stowe, Manager  
L/E/ WWTP  
2900 South Platte River Drive  
Englewood, Colorado 80110  
Telephone: 303.762.2600

## MODIFICATIONS

60. This Consent Order may be modified only upon mutual written agreement of the Parties.

## COMPLETION OF REQUIRED ACTIONS

61. L/E shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject L/E's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects L/E's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. L/E shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:

City of Littleton / City of Englewood  
Littleton/Englewood Wastewater Treatment Plant  
Compliance Order on Consent  
Page 12 of 13

- a. Submit a notice of acceptance of the determination; or
- b. Submit a notice of dispute.

62. If L/E fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

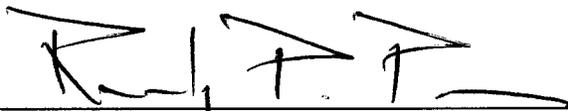
**NOTICE OF EFFECTIVE DATE**

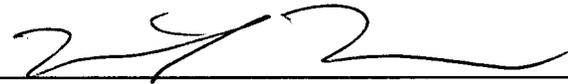
63. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period referenced in paragraph 39.

**BINDING EFFECT AND AUTHORIZATION TO SIGN**

64. This Consent Order is binding upon L/E and its elected officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. L/E agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR L/E:**

 Date: 8-9-12  
 Randy P. Penn, Mayor  
 City of Englewood

 Date: 7/25/12  
 Michael Penny, City Manager of Littleton

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:**

 Date: 8/21/12  
 Steven H. Gunderson, Director  
 WATER QUALITY CONTROL DIVISION

**Exhibit A**

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)  
PROPOSAL/AGREEMENT FORM**

The entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment (the department) for consideration.

<b>Enforcement Action Information</b>	MC-120821-2
<b>Project Manager</b>	Charles Blosten, Director Public Services Department City of Littleton 303-795-3863 <a href="mailto:cblosten@littletongov.org">cblosten@littletongov.org</a>
<b>CDPHE Contact Person</b>	Rachel Wilson-Roussel, Sustainability Program, 303-692-2976 and Joe Campbell, Water Quality Control Division, 303-692-2356
<b>Geographical Area to Benefit Most Directly From Project</b>	South Suburban Metro Area
<b>Project Name</b>	<b>City Ditch Bicycle Trail</b>
<b>Project Type</b>	First Party to Benefit a Third Party
<b>SEP Category</b>	Public Health
<b>Project Summary</b>	The City of Littleton's proposed City Ditch Trail will provide public access (pedestrian and bicycle) along the historic City Ditch through the central part of Littleton. Thanks to a significant grant through Great Outdoors Colorado, the city intends to construct a one and three-quarter mile crusher fine (gravel) trail from Lee Gulch, on the south, to Big Dry Creek (north). The SEP funds will directly support the construction of a neighborhood spur which will provide immediate access for the residents of the north Littleton area with a direct connection to the City Ditch Trail.

Project Background:

The historic City Ditch is an irrigation canal that was originally constructed in 1860; the surveyor for canal was Richard Little, the city's founder. Some sections of the current ditch are still in its original 19<sup>th</sup> century condition with little or no changes. The City Ditch still provides water to several Littleton properties, including the Cities of Littleton & Englewood.

The City Ditch Trail will involve installation of an 8' wide pedestrian/bicycle trail passing by some of the most historic sites in the city:

- The 1912 Arapahoe County Courthouse
- The Littleton Cemetery; earliest grave marker is dated 1864
- Downtown Littleton
- Slaughterhouse Gulch

The City Ditch Trail will provide an important pedestrian/bicycle path connection between the existing Lee Gulch Trail on the south and the Big Dry Creek Trail on the north. The historic City Ditch will allow pedestrians to "walk in the footsteps of pioneers". With its central location and proximity to both residential and commercial districts, the City Ditch Trail will be a very substantial asset, serving the residents of Littleton and Englewood as well as countless others in the south suburban area.

**Project Description**

As indicated in the Littleton Community Trails Master Plan, the Ditch Trail offers unique potentials on a number of levels:

- It will provide trail access to a scenic corridor rich in history and interpretive value.
- It will provide a close-in multi-use recreational opportunity running through the core of Littleton linking both downtown and residential area destinations.
- It will connect, directly or indirectly, to several parks including: Cornerstone Regional Park, Belleview Park, Lower Ridgewood Park, Sterne Park, the Douglas Buck Recreation Center, Arapahoe Community College, Historic Main Street, the Historic County Courthouse Building, the Littleton Depot Arts Center, and other important community destinations.
- It will link with several regional trails including: the Lee Gulch Trail, the Big Dry Creek Trail, the Little's Creek Trail and the Slaughterhouse Gulch Trail.
- It will also connect directly to the Mary Carter Greenway via the Lee Gulch and Big Dry trails forming a new close-in trail loop. There is also potential to connect to the Littleton and Arapahoe County government centers and the Mary Carter Trail via Slaughterhouse Gulch.
- It will help promote downtown businesses as well as enhance community development as a distinct amenity.

	<p><u>SEP Objective:</u>  The neighborhood spur connection constructed through this SEP will provide easy access to the City Ditch Trail for residents of the north Littleton area. While approximately \$1.1 million in total project funding has been committed to date, there is not funding available for construction of the neighborhood trail spur outside of this SEP. The neighborhood that will be served by this spur trail is comprised of low to moderate income residents and this is one of the areas in Littleton that qualifies for Community Development Block Grant projects.</p> <p><u>Project Implementation Tasks:</u></p> <p>For overall City Ditch Trail:</p> <ul style="list-style-type: none"> <li>• Concept planning (complete)</li> <li>• Construction engineering (complete for both Phases I and II)</li> <li>• Right-of-way and easement acquisition/approvals (in progress)</li> <li>• Construction of Phase I (anticipated to begin in mid-2012)</li> </ul> <p>For Neighborhood Spur Trail:</p> <ul style="list-style-type: none"> <li>• Concept planning &amp; engineering (complete)</li> <li>• Bid process for construction (will begin upon SEP approval)</li> <li>• Construction of spur (begin Summer 2012)</li> </ul> <p><u>Need for the Project in the Community:</u></p> <p>The City of Littleton has numerous trails and historic locations in the immediate vicinity of the proposed trail. This pedestrian link will allow users to easily connect to other trails and observe historic sites along the way.</p> <p>The neighborhood spur is needed to provide residents in north Littleton easily access to the larger City Ditch Trail.</p> <p>See attached concept planning maps for the neighborhood spur.</p>		
<p><b>Expected Environmental and/or Public Health Benefits</b></p>	<p>The expected benefits from this project are public health benefits from increased exercise, recreational opportunities and improved non-motorized public transportation routes.</p> <p>The City Ditch Trail will connect to the Lee Gulch Trail, on the south, and the Big Dry Creek Trail, on the north. Without the neighborhood spur trail connection, the north Littleton neighborhood will not have easy access to the City Ditch Trail. With the new spur trail, the residents of this area can walk just a few yards to get onto the main trail.</p>		
<p><b>Project Budget</b></p>	<p><b>Category</b></p>	<p><b>Description</b></p>	<p><b>SEP Funds</b></p>
	<p>Construction</p>	<p>Construction of crusher fine trail spur and concrete culvert.</p>	<p>\$53,000</p>
	<p><b>Total:</b></p>	<p><b>\$53,000</b></p>	

<p><b>Budget Discussion</b></p>	<p>The city has accumulated about \$1.1 million in total funds to be used on the main trail project. The funds were received from Great Outdoors Colorado (\$500,000), Arapahoe County Open Space (\$483,000), South Suburban Parks &amp; Recreation (\$100,000), and the City of Littleton (\$100,000). The current Littleton allocation of \$100,000 will be used for the main trail project and not the neighborhood spur.</p> <p>The city estimates that the total cost of the neighborhood spur is \$53,000. Any cost overruns will be paid for by the city in order to complete the neighborhood spur trail.</p>	
<p><b>Project Schedule</b></p>	<p>Complete planning and design:</p>	<p>1<sup>st</sup> Quarter 2012</p>
	<p>Initiate construction of neighborhood trail spur:</p>	<p>Summer 2012</p>
	<p>SEP Status Report Deadline:</p>	<p>September 30, 2012</p>
	<p>Project completion:</p>	<p>May 31, 2013</p>
	<p>SEP Completion Report Deadline</p>	<p>September 30, 2013</p>
<p><b>Reporting</b></p>	<p><u>Status Reports</u></p> <p>The city of Littleton will submit a project status report to the department's SEP Coordinator by September 30, 2012. The status reports will include the following information:</p> <ul style="list-style-type: none"> <li>• A description of activities completed to date;</li> <li>• A budget summary table listing funds expended to date by budget category; and</li> <li>• A discussion of any anticipated changes to the project scope or timeline.</li> </ul> <p><u>SEP Completion Report</u></p> <p>A full expense accounting, including documentation of all payments, will be provided in the SEP Completion Report. The SEP Completion report will contain at a minimum:</p> <ul style="list-style-type: none"> <li>• A detailed description of the project as implemented;</li> <li>• A description of any operating problems encountered and the solutions thereto;</li> <li>• Itemized costs, documented by copies of purchase orders and receipts or canceled checks;</li> <li>• Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Consent Order; and</li> <li>• A description of the environmental and public health benefits resulting from implementation of the SEP along with <b>quantification</b> of the outcomes and benefits.</li> </ul> <p>Additional information may include photographs of the completed SEP.</p>	

Map for Phase I of the overall City Ditch Trail:

# **Slaughterhouse Gulch Park Greenway/City Ditch**

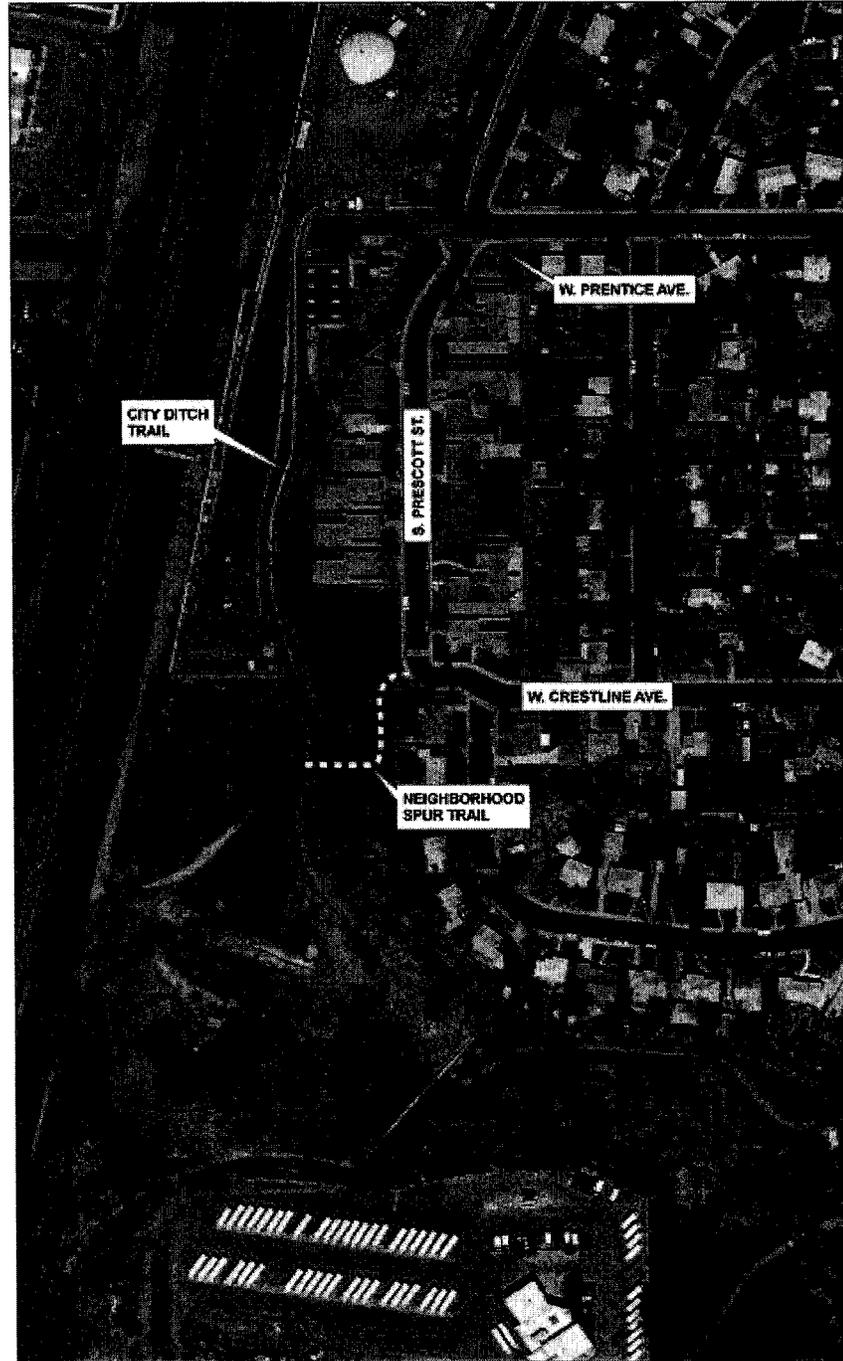
**City of Littleton, Colorado**



**Other Relevant  
Information**

Prepared By   
Greenway Team / DHM Design  
January 26, 2010

Map showing location of neighborhood spur:



**Other Relevant Information**  
(continued)

**Has the applicant entered into any prior commitments to fund this project, voluntary or otherwise? If yes, please explain.**

No, the City of Littleton has not designated any funds for the construction of the neighborhood spur trail. All currently identified and committed funding will be used for construction of the main City Ditch Trail only.

## Exhibit B

### SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP) PROPOSAL/AGREEMENT FORM

The entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment (the department) for consideration.

<b>Enforcement Action Information</b>	MC-120821-2
<b>Project Manager</b>	Dennis Stowe Manager Littleton/Englewood Wastewater Treatment Plant City of Englewood <a href="mailto:dstowe@englewoodgov.org">dstowe@englewoodgov.org</a>
<b>CDPHE Contact Person</b>	Rachel Wilson-Roussel, SEP Coordinator, 303-692-2976 OR Joe Campbell, WQCD Enforcement Case Person, 303-692-2356
<b>Geographical Area to Benefit Most Directly From Project</b>	City of Englewood, Colorado
<b>Project Name</b>	Trail Enhancement Projects for City of Englewood, Colorado
<b>Project Type</b>	First Party to Benefit a Third Party
<b>SEP Category</b>	Public Health
<b>Project Summary</b>	The Englewood Trail Enhancement Project will provide improved trails and enhance access to the current trail systems within the city. Trail connection improvements are proposed for Hosanna Athletic Complex (adjacent to Englewood High School), Belleview Park and Emerson Park. These trail enhancements will provide a link (Hosanna – 315 l.f., Belleview – 175 l.f., Emerson – 205 l.f.) between on-street bike routes and off street trails. Please see attached aerial diagrams.
<b>Project Description</b>	<b>Background</b> The City of Englewood is nearing the completion of a Tri-County Health Department sponsored Communities Putting Prevention to Work (CPPW) grant focused on the development of on-street regional and local bicycle route connections. The CPPW grant does not provide any funding pertaining to this SEP grant request. The City is proposing constructing three newly identified trail connections to assist bicyclists in making seamless transitions between on-street bicycle routes and off-street trails. (See attached aerial photographs)

### **Project Objective and Description**

The objective of the Englewood Trail Enhancement Project is to provide improved access and a direct link between on street bike routes within the City of Englewood and existing trails located at Hosanna Athletic Complex, Belleview Park and Emerson Park.

**Hosanna Athletic Complex:** located north of and adjacent to Englewood High School. This trail enhancement will provide a direct access point to the Little Dry Creek Trail and the high school with the Kenyon Avenue bike route. This trail is heavily used by high school students and residents of the area as a transportation corridor to numerous businesses in the downtown Englewood area.

**Belleview Park:** located on the north side of the park along Whitaker Drive. The trail connection will provide an important link from the neighborhood north of Belleview Park and connect users with the Big Dry Creek Trail. The Big Dry Creek Trail runs through Belleview Park and connects trail users from Greenwood Village to the South Platte River/Mary Carter Greenway Trail.

**Emerson Park:** located adjacent to Bates Avenue bike route and Clarkson Street bike route. This trail connection will provide an off street link between the two bike routes and Emerson Park.

### **Planning**

The three trail connection projects were identified over the course of an extensive assessment of on-street bicycle routes that were proposed in the 2004 Englewood Master Bicycle Plan. The plan can be accessed using the following link:

[www.engagewoodgov.org/Modules/ShowDocument.aspx?documentid=3803](http://www.engagewoodgov.org/Modules/ShowDocument.aspx?documentid=3803)

Through the course of the route selection phase, three trail connection projects are needed to create seamless transitions between on-street bicycle routes and existing off-street trails were identified.

### **Implementation**

Upon acceptance of this proposal, the City of Englewood will initiate requests for bid and award a contract for the construction of trail connections on the above mentioned projects.

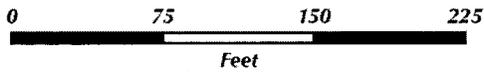
<p><b>Expected Environmental and/or Public Health Benefits</b></p>	<p>The expected benefits from this project are public health benefits from increased exercise, recreational opportunities and improved non-motorized public transportation routes. The benefits will be measured using a random sampling of periodic visitor assessments, which is how Englewood monitors other facilities.</p>		
<p><b>Project Budget</b></p>	<p><b>Category</b></p>	<p><b>Description</b></p>	<p><b>Cost</b></p>
	<p>Construction</p>	<p>Remove vertical curb and gutter</p>	<p>\$312</p>
		<p>Remove walk</p>	<p>\$488</p>
		<p>Saw asphalt</p>	<p>\$92</p>
		<p>Saw concrete</p>	<p>\$162</p>
		<p>Concrete trail</p>	<p>\$30,300</p>
		<p>6" mono</p>	<p>\$757</p>
		<p>Curb ramp</p>	<p>\$3,516</p>
		<p>Asphalt patch</p>	<p>\$149</p>
		<p>Compacted aggregate basecourse</p>	<p>\$2,118</p>
		<p>Unclassified excavation</p>	<p>\$1,946</p>
<p style="text-align: right;"><b>Subtotal</b></p>	<p><b>\$39,840</b></p>		
<p>Engineering</p>	<p>15%</p>	<p>\$5,976</p>	
<p>Contingency</p>		<p>\$6,334</p>	
<p style="text-align: right;"><b>Project Total:</b></p>	<p><b>\$52,150</b></p>		
<p><b>Budget Discussion</b></p>	<p>Currently, there are no other sources of funding for this project outside of the SEP request for funds. This project will not move forward unless SEP funding is attained. The contingency funds and engineering estimate will be returned if not needed or fully expended.</p> <p>Alternatively, unexpended funds may be used for monitoring use of the trails. The type and extent of monitoring would depend on funds available at the completion of construction. Monitoring would be performed during the summer of 2013.</p>		
<p><b>Project Schedule</b></p>	<p>Project Start Date</p>	<p>Within 30 days of the effective date of the COC.</p>	
	<p>Begin construction:</p>	<p>August 2012</p>	
	<p>Status Report to CDPHE:</p>	<p>September 30, 2012 March 31, 2013</p>	
	<p>SEP Completion:</p>	<p>September 30, 2013</p>	
	<p>SEP Completion Report Due:</p>	<p>October 31, 2013</p>	

<p><b>Reporting</b></p>	<p><u>Status Reports</u>  The city of Englewood will submit two project status reports to the department’s SEP Coordinator. The first report will be submitted by September 30, 2012. The second report will be submitted by March 30, 2013. The status reports will include the following information:</p> <ul style="list-style-type: none"> <li>• A description of activities completed to date;</li> <li>• A budget summary table listing funds expended to date by budget category; and</li> <li>• A discussion of any anticipated changes to the project scope or timeline.</li> </ul> <p><u>SEP Completion Report</u></p> <p>The city of Englewood will provide a full expense accounting, including documentation of all payments, in the SEP Completion Report. The SEP Completion report will contain at a minimum:</p> <ul style="list-style-type: none"> <li>• A detailed description of the project as implemented;</li> <li>• A description of any operating problems encountered and the solutions thereto;</li> <li>• Itemized costs, documented by copies of purchase orders and receipts or canceled checks;</li> <li>• Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Consent Order; and</li> <li>• A description of the environmental and public health benefits resulting from implementation of the SEP along with <b>quantification</b> of the outcomes and benefits.</li> </ul> <p>Additional information may include photographs of the completed SEP.</p>
<p><b>Has the applicant entered into any prior commitments to fund this project, voluntary or otherwise? If yes, please explain.</b></p>	<p>No.</p>

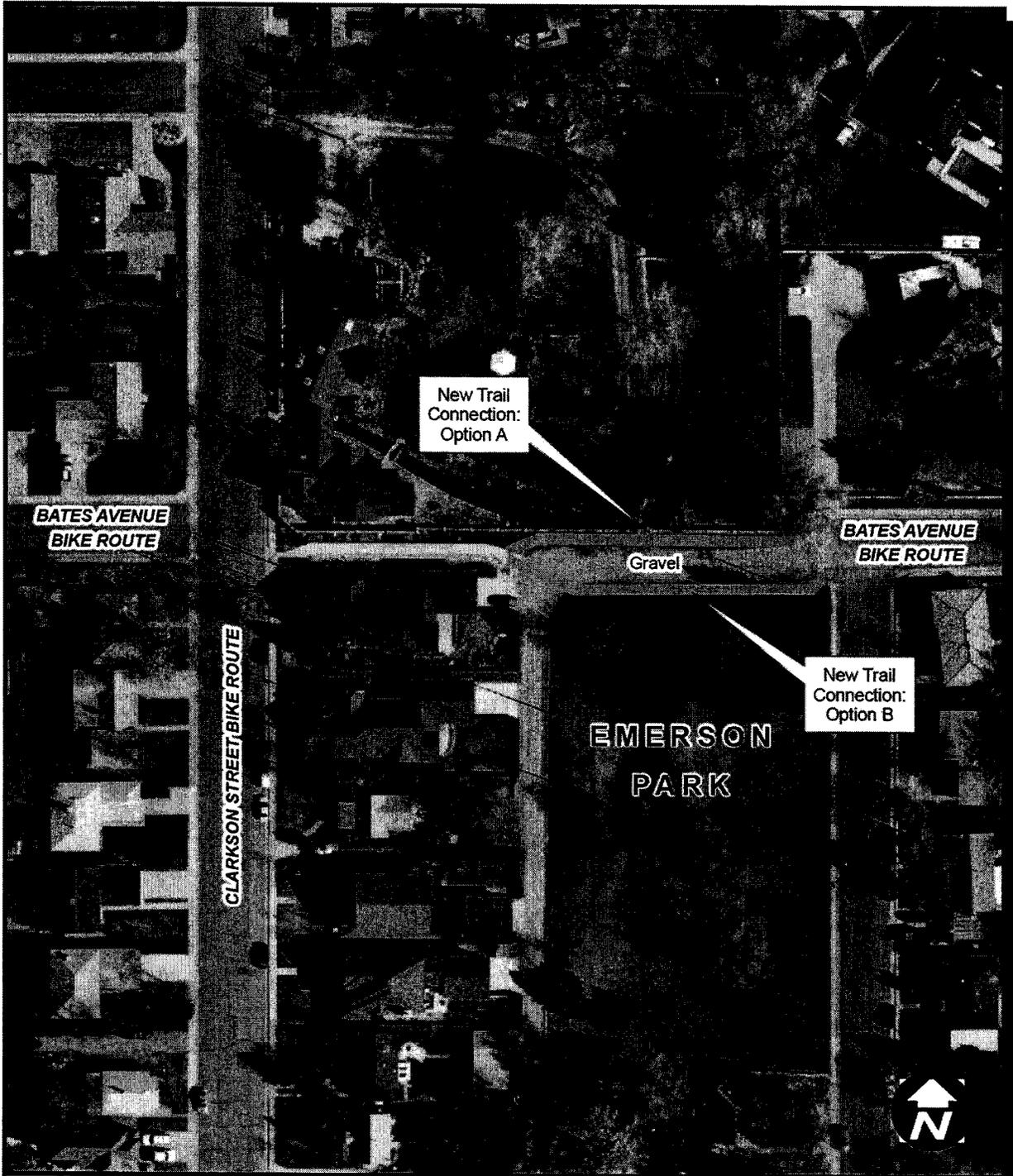




**Trail Connection Enhancement Project: Kenyon Avenue Bike Route/Little Dry Creek Trail**



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**BATES AVENUE  
BIKE ROUTE**

**BATES AVENUE  
BIKE ROUTE**

**CLARKSON STREET BIKE ROUTE**

Gravel

New Trail  
Connection:  
Option B

**EMERSON  
PARK**



***Trail Connection Enhancement Project: Bates Avenue Bike Route***

