

DRAFT
STATE OF COLORADO
Department of Natural Resources
Funding Agreement with
Commerce City

1. PARTIES

This Funding Agreement (hereinafter called "Agreement" or "Contract") is entered into by and between Commerce City, a Municipality located at 7887 E. 60th Ave. Commerce City, CO 80022 (hereinafter called "Contractor"), and the STATE OF COLORADO acting by and through the Department of Natural Resources, located at 1313 Sherman Street, #423 Denver, CO 80203 (hereinafter called the "State" or "DNR").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS**A. Authority, Appropriation, And Approval**

- i. Authority to enter into this Funding Agreement, and funding therefore, exists as a result of a consent decree approved by the United States District Court for the District Court of Colorado in Civil Action No. 83-C-2386, State of Colorado, Plaintiff, United States of America Shell Oil Company, et al., defendants, (hereinafter the "Consent Decree") related to natural resource damage claims involving the Rocky Mountain Arsenal. The Consent Decree created trustees (hereinafter the "Trustees") to administer funds paid by Shell to the State pursuant to the Consent Decree, which, in §6, provided for a \$10 million dollar donation from Shell into a fund created by C.R.S. §24-33-108 for the monies donated to DNR by Shell, and the funds have been paid into a DNR account called the Colorado Natural Resources Foundation Fund (hereinafter the "Fund").
- ii. Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in encumbrance document #C1####.
- iii. The Trustees have approved the project for which this Agreement provides funding; and
- iv. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

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

C. Purpose

The purpose of this Agreement is to fund the approved project outlined in Exhibit A.

D. References

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

E. Selection

These services are exempt from the Procurement Code under CRS §24-101-105 and procurement rule R-24-101-105-01.

4. DEFINITIONS

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

A. Budget

"Budget" means the budget for the Work described in Exhibit B.

B. Development

"Development" is defined as restoration, enhancement, and creation.

C. Evaluation

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

D. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

Exhibit A (Scope of Work), and

Exhibit B (Budget – Grant Funding Allocation Summary)

E. Goods

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

F. Party or Parties

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

G. Project

“Project” (as shown on Exhibit A) means a specific defined deliverable or set of deliverables. Each project has a specific begin date and end date and specific objectives. When the objectives are met, the project is considered complete.

H. Review

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

I. Services

“Services” means the required services to be performed by Contractor pursuant to this Agreement.

J. Sub-Contractor

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

K. Work

“Work” means the tasks and activities Contractor is required to perform to fulfill its obligations under this Agreement and Exhibit A., including the performance of the Services and delivery of the Goods.

5. TERM and EARLY TERMINATION.

A. Initial Term-Work Commencement

The Parties respective performances under this Agreement shall commence on the the Effective Date.

This Agreement shall terminate on December 31, 2018 unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

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

6. STATEMENT OF WORK

A. Completion

Contractor shall complete the Work and its other obligations as described herein and in Exhibit A during the Performance Period. Contractor shall undertake the Scope of Work (the “Project”) described in this Agreement and Exhibit A. Prosecution of the Project shall be under the general supervision of the Contractor. The State may, at its discretion, require that a representative of the State be present at the Project location while work is being conducted. For construction projects costing more than \$100,000, the Contractor shall retain a registered professional engineer who shall approve Project engineering plans and specifications, approve the feasibility determination, supervise construction, and furnish a report of final inspection to the State. The State shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Agreement.

B. Goods and Services

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

C. Employees

All persons employed by Contractor or Sub-Contractors shall be considered Contractor's or Sub-Contractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Agreement.

7. PAYMENTS TO CONTRACTOR

The State shall, in accordance with the provisions of this §7, pay Contractor in the following amounts and using the methods set forth below:

A. Maximum Amount

The State shall reimburse Contractor up to a maximum amount of \$1,160,000.00 (One Million one Hundred Sixty Thousand Dollars), which shall be from available Funds for the completion of the Project described in Exhibit B during the Performance Period.

B. Payment

i. Interim and Final Payments

Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State.

a. Project costs are reimbursed after the work is completed and documented.

(1) Invoices should be submitted to the DNR Project Manager for payment. Invoices must be submitted by the actual grant recipient, not by other entities.

(2) Monthly invoicing is allowed

(a) All work performed within a state fiscal year (July 1 – June 30) must be invoiced on or before June 30 each year of the project (this requirement applies to multiple-year agreements). Invoices should include the following information:

(i) Date of invoice.

(ii) Invoice number (please number consecutively).

(iii) Contract, purchase order, or task order number.

(iv) Details and dates of specific project costs and activities to be reimbursed.

(v) Total invoice amount.

(vi) Vendor contact information.

(3) Upon notification from CONTRACTOR that a project included in this Agreement has been completed, and invoicing by Contractor, the State shall accompany CONTRACTOR to the site to verify that the project has been satisfactorily completed, and shall then approve payment for that portion of the contract.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Contractor so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Agreement in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Agreement shall be made only from available funds encumbered for this Agreement and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may immediately terminate this Agreement in whole or in part without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Agreementee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Agreement or other Agreements, between the State and Contractor or by other appropriate

methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Agreement Funds shall be used only for eligible costs identified herein and/or in the Budget.

D. Matching Funds

- i. Contractor shall provide matching funds as provided in Exhibit B. Contractor shall report to the State regarding the status of match funds upon request.
- ii. Projects must meet the requirement for matching funds as outlined in Exhibit B. Matching funds can come from donated labor, materials, equipment or contract sources and a detailed, well documented and verifiable description of the sources must be included in Exhibit B. All funding will be provided on a reimbursement basis.

8. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

Contractor shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting and monitoring requirements, if any, set forth in Exhibit A.

- i. Quarterly Reports
 - a. Each calendar quarter (March 31, June 30, September 30, and December 31) through project completion, the Contractor must submit a project update (electronically) to DNR. This update should include:
 - (1) A summary of accomplishments to date
 - (2) Specific details of project accomplishments during the reporting period.
 - (3) Expected project completion date.
 - (4) Financial status of project – DNR and partner funds authorized, spent, available, etc.
 - (5) Any changes in project scope, problems and recommended solutions.
- ii. Final Report
 - a. Upon project completion and before the final invoice will be paid, a final project report must be submitted. This report should include:
 - (1) Project title.
 - (2) Date of final project completion.
 - (3) A narrative summary of the project (≤250 words), suitable for use in accomplishment reports.
 - (4) Detailed, itemized financial contributions (cash and in-kind) from each partner and funding source.

B. Litigation Reporting

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

C. Performance Outside the State of Colorado and/or the United States

[Not applicable if Contract Funds include any federal funds] Following the Effective Date, Contractor shall provide written notice to the State, in accordance with **§16 (Notices and Representatives)**, within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this **§8.C** shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this **§8.C** shall constitute a material breach of this Contract.

D. Noncompliance

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Agreement.

E. SubContractors

Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subGrants be governed by the laws of the State of Colorado.

9. CONTRACTOR RECORDS

Contractor shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

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

B. Inspection

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

C. Monitoring

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

D. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Agreement, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

Contractor shall notify its agent, employees, Sub-Contractors, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements

set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

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

D. Disclosure-Liability

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

11. CONFLICTS OF INTEREST

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

12. REPRESENTATIONS AND WARRANTIES

Contractor make the following specific representations and warranties to the State, the assurance of each of which was relied on by the State in entering into this Agreement.

A. Standard and Manner of Performance

Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Agreement.

B. Legal Authority – Contractor and Contractors Signatory

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

C. Licenses, Permits, Etc.

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

13. INSURANCE

Contractor and Contractor's Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

A. Contractor

i. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA.

ii. Non-Public Entities

If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subcontractors that are not "public entities".

B. Subcontractors

Contractor shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this Contract, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 **each occurrence**; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Contractor a certificate or other document satisfactory to Contractor showing compliance with this provision.

iii. Automobile Liability

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

iv. Additional Insured

The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any Subcontractors hereunder.

v. Primacy of Coverage

Coverage required of Contractor and Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Contractor's receipt of such notice.

vii. Subrogation Waiver

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

C. Certificates

Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, Contractor and each Subcontractor shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any subcontract, Contractor and each Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

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

B. Notice and Cure Period

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

15. REMEDIES

If Contractor is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

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

i. Obligations and Rights

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

ii. Payments

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

iii. Damages and Withholding

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

B. Early Termination in the Public Interest

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

i. Method and Content

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

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

iii. Payments

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

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

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

ii. Withhold Payment

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Contractor's employees, agents, or Sub-Contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, Contractor shall, at the State's option (a) obtain for the State or Contractor the right to use such products and services; (b) replace any

Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

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

A. State:

Ed Perkins
Colorado Parks and Wildlife
6060 Broadway, Denver, CO 80216
Phone: 303-291-7466
ed.perkins@state.co.us

B. Contractor:

Traci Ferguson
Parks Planner
City of Commerce City
6060 E. Parkway Dr.,
Commerce City, CO 80022
Phone: 303-227-8788
tferguson@c3gov.com

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractors's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

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

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Agreements and inclusion of Agreement performance information in a statewide Agreement management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal Agreement administration process and Contractor's performance will be systematically recorded in the statewide

Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Agreement Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the State, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future Agreements. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and Subcontracts

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification-General

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

G. Jurisdiction and Venue

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

H. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly

executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

ii. **By Operation of Law**

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

I. **Order of Precedence**

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

- i. Colorado Special Provisions
- ii. The provisions of the main body of this Agreement,
- iii. Exhibit A (Scope of Work),
- iv. Exhibit B (Budget – Grant funding Allocation Summary),

J. **Severability**

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

K. **Survival of Certain Agreement Terms**

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

L. **Taxes**

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

M. **Third Party Beneficiaries**

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

N. **Waiver**

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

O. **CORA Disclosure**

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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21. COLORADO SPECIAL PROVISIONS

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

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR

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

E. COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW.

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

G. BINDING ARBITRATION PROHIBITED.

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

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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

I. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the

performance of Contractor's services and Contractor shall not employ any person having such known interests.

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

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

K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

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

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

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

SPs Effective 1/1/09

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22. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

CONTRACTOR CONTRACTOR, Inc. By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual _____ *Signature Date: _____	STATE OF COLORADO John W. Hickenlooper, GOVERNOR Department of Natural Resources Robert Randall, Executive Director _____ Date: _____
2nd Contractor Signature if Needed By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual _____ *Signature Date: _____	LEGAL REVIEW Cynthia Coffman, Attorney General By: _____ Signature - Assistant Attorney General Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Susan Borup, DNR Controller Date: _____
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EXHIBIT A

MONITORING CRITERIA

A. PERFORMANCE MEASURES AND STANDARDS: As a condition of being a recipient of these grant funds, Grantee agrees to the following:

Timeline and deliverables: By June 2018, complete the Tasks 1-7 described above.

Approach: Grantee will select a consultant experienced with the project's Tasks to design, construct and complete the proposed improvements.

B. REPORTING REQUIREMENTS (Accountability): As required in Section 8 of the Grant Agreement, reports from Grantee will be submitted to the State's Representative.

C. MONITORING REQUIREMENTS: The State will monitor Grantee's performance by reviewing the quarterly reports required in Section 8 of the Grant Agreement. Site visit(s) will be conducted prior to making final payments on any work performed by the Grantee.

D. NONCOMPLIANCE RESOLUTION: Any problems with the project will follow the resolution process outlined below, before the remedies in Section 15 are immediately applied. In the event the State and the Grantee need to escalate a case regarding noncompliance, the following Resolution Team members and responsibilities have been identified.

Division of Natural Resources	Grantee
<u>State / CPW Wildlife Biologist</u> ☐ Entry point contact to the resolution process ☐ Is responsible for ascertaining the project impacts based on the information provided ☐ Owns resolution of most issues ☐ Responsible for contacting Natural Resources Damages Trustee's Staff in writing for situations which cannot be resolved at project level	<u>Commerce City / Traci Ferguson, Parks Planner</u> ☐ Entry point contact to the resolution process ☐ Owns resolution of most issues
<u>Resolution Project Manager – (CPW) NRD Trustee's Staff (Ed Perkins)</u> ☐ CPW advocate during the resolution process ☐ Is responsible for ascertaining the timeline and financial impacts based on the information provided ☐ Owns the problem and the overall action plan ☐ Provides written notification to the Grantee identifying the noncompliance issue and expected actions on the part of the Grantee in order to remedy the situation ☐ Obtains DNR and NRD Trustee approval for the action plan ☐ Works to ensure that all parties are properly informed throughout the resolution ☐ Responsible for contacting next level Resolution Manager if needed	<u>Commerce City / Mike Brown, Parks Planning and Operations Manager</u> ☐ Subgrantee advocate during the resolution process ☐ Obtains additional resources, as needed ☐ Works to ensure that Subgrantee parties are properly informed throughout the resolution ☐ Responsible for contacting next level Resolution Manager for the Subgrantee if needed
<u>Resolution Director – NRD Trustee (Bob Randal)</u> ☐ Next additional level contact if needed	

**Sand Creek Open Space Remediation and Restoration Project
WE Holdings & Multi-Contractor Sites**

Scope of Work
Summer 2017

INTRODUCTION AND BACKGROUND

The Sand Creek Open Space Remediation and Restoration Project is part of the City of Commerce City (City) Sand Creek Master Plan to reclaim former industrialized property and restore riparian and native habitats along Sand Creek. The former Weaver Electric Holdings (WE Holdings) and Multi-Contractor property sites were purchased by the City as Opportunity Sites to fulfill the re-greening initiative outlined in the Sand Creek Master Plan.

Over the last 20 years, the City has worked with Sand Creek Regional Greenway Partnership, Adams County Open Space, and Great Outdoors Colorado to invest over \$6 million to revitalize and create open space in the Sand Creek Corridor, cleaning up trash and debris, creating new parks and natural areas, reclaiming former industrial property for green space, and building over 4 miles of recreation trails within the Sand Creek Corridor. Terracon Consultants, Inc. (Terracon) and the City have been working together since 2013 to develop a remediation and reclamation strategy for restoring these two sites to open green space.

WE Holdings Project Site (Previously referred to as Sand Creek 1)

WE Holdings is approximately 20 acres of land consisting of three adjacent parcels located northwest of the intersection of Brighton Boulevard and Interstate 270, Commerce City, Adams County, Colorado. The parcels included in the site boundary are identified by the Adams County Assessor as parcel numbers: 0182512102040, 0182512102041, and 0182512102042. The site was partially occupied with an apparent livestock-related corral from at least 1937 until the early 1960s. Between the early 1960s and the mid-1970s, the site was reportedly utilized as an Adams County-permitted landfill designed as the Viking Steel Landfill. Approximately 160,000 cubic yards of solid waste from unknown origin(s) is reported to have been brought into the landfill. The landfill was closed, and reportedly capped in the mid-1970s.

In the mid-1970s, Weaver Electric utilized the site for storage of PCB and other VOC-containing transformers and petroleum product-containing large electric motors. The site is listed as the "Transformer Lot along I-270" / "Weaver Electric Company Lot #2" / "Weaver Electric Storage Yard" on the Colorado Emergency Response Notification System (CO ERNS), PCB Activity Database System (PADS), Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), Potentially Responsible Party (PRP), Facility Index System (FINDS), and Resource Conservation and Recovery Act Non Generator (RCRA NonGen / NLR) databases. According to files, reports, and the databases reviewed, the site has been under investigation by the EPA's criminal investigative team under CERCLIS as a potential National Priorities List (NPL) site, since the early 1990s. This site did not meet the requirements for a NPL site, but WE was named the non-NPL PRP for the onsite PCB contamination.

Environmental investigations performed by Terracon and others at the site have identified polychlorinated biphenyls (PCBs) and other volatile organic compounds (VOCs) in the soil and groundwater in exceedance of regulatory guidance action levels and regulatory standards. The site has been entered into the Colorado Department of Public Health and Environment (CDPHE) Voluntary Cleanup Program (VCP) to remediate the property and mitigate risks associated with the planned redevelopment of the property. Redevelopment of the property consists of the completion of the Sand Creek Regional Greenway Trail and a trail-side park associated with the Sand Creek Greenway.

Exhibit B- Budget - Grant Funding Allocation Summary - Sand Creek Properties						
Task	Description	Total Cost	Funding by Source	Request from Trustees (Foundation Fund)	Match that Meets NRDs Criteria	Other Match
1	Construction Mgmt/ Project Mgmt	\$ 326,550.00	Commerce City			\$ 326,550.00
2	Removals, Grading & Excavation	\$ 140,425.00	Commerce City			\$ 140,425.00
3	ET Cover Construction	\$ 1,752,974.75	NRD	\$ 1,160,000.00		
			Commerce City		\$ 142,974.75	
			Adams County Open Space		\$ 450,000.00	
4	Planting & Revegetation	\$ 142,966.00	Commerce City		\$ 142,966.00	
5	Monitoring Well Replacement	\$ 20,000.00	Commerce City			\$ 20,000.00
	<i>Subtotal</i>	<i>\$ 2,382,915.75</i>				
6	Contingency	\$ 119,145.79	Commerce City			\$ 119,145.79
	Totals	\$ 2,502,061.54		\$ 1,160,000.00	\$ 735,940.75	\$ 606,120.79
				Leverage	63.44%	115.69%