

**STATE OF COLORADO**  
**acting by and through the**  
**Department of Natural Resources**

**FUNDING AGREEMENT**

with  
**Commerce City, a Colorado home rule municipality**

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**1. PARTIES**

This Funding Agreement (hereinafter called "FA" or "Contract") is entered into by and between the State of Colorado acting by and through the Department of Natural Resources (including all agents and contractors thereof shall hereinafter be called "DNR" or "State"), and the City of Commerce City, a Colorado home rule municipality (hereinafter "City" or "Contractor"), who may collectively be called the "Parties" and individually a "Party".

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

This FA is not effective or enforceable until it is approved and signed by each of the Parties and by the Colorado State Controller or his designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions.

**3. RECITALS**

**A. Authority, Source, and Approval**

Authority to enter into this FA, 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 ("Shell"), 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"). Required approvals, clearance and coordination have been

accomplished from and with appropriate agencies of the State and via resolution of the Trustees to make expenditures from the Fund.

**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 FA.

**C. Purpose**

Per §6 of the Consent Decree, monies from the Fund are to be used solely for the "Greenway Project" (defined in §3(h) of the Consent Decree). The Trustees passed resolutions dated July 31, 2012 and October 30, 2012 (hereinafter the "Resolutions") authorizing an expenditure of \$700,000 from the Fund (hereinafter this \$700,000 will be referred to as the "DNR Fund") as the \$700,000 purchase price (hereinafter the "Purchase Price") for a Greenway Project to be purchased by City per the minutes to Trustees meeting of July 31, 2012, the legal description of which is attached hereto as **EXHIBIT A** (the "Property").

The City has entered or will enter into a purchase and sale contract with WE Holdings, Inc. a Colorado corporation (hereinafter "Seller") for the purpose of acquiring the Property. DNR shall coordinate the approval, clearance and coordination of the DNR Fund to be used for the purchase of the Property. In such role, DNR may oversee the due diligence and closing process for the purchase of the Property and shall pay the City in accordance with the Consent Decree for the purchase of the Property in an amount not to exceed the DNR Fund.

In keeping with the intent and funding of the Greenway Project, the City shall, immediately upon its acquisition of the Property, grant a conservation easement (hereinafter the "Easement") encumbering the Property to Adams County (hereinafter the "County") to encumber the Property in perpetuity. DNR may oversee the due diligence and closing process for the grant of the Easement.

**4. TERM AND EARLY TERMINATION**

The Parties respective performances under this FA shall commence on the Effective Date. This FA shall terminate: (1) at 5:00 p.m. on January 31, 2014, or (2) after acquisition of the Property by the City and acquisition of the Easement by the County, whichever occurs first, unless sooner terminated or further extended as specified elsewhere herein. Either Party may terminate this FA by giving the other Party written notice setting forth the date of termination. Upon termination, the liabilities of the Parties for future performance hereunder shall cease, but the Parties shall perform their respective obligations up to the date of termination. Upon the date of termination the liabilities of the Parties for future performance hereunder shall cease.

**5. STATEMENT OF WORK**

**A. Fund Disbursement**

DNR shall disburse the DNR Fund at Closing (as defined in §5.C) of the purchase and sale of the Property. DNR shall only disburse the funds at Closing upon receipt of an Appraisal (defined in §5.B.ii) demonstrating the value of the Property equals or exceeds \$700,000. Furthermore, DNR shall only make payment to the City for the purchase of the Property out of the Fund if the due diligence items and closing conditions set forth below and detailed on **Exhibit B** attached hereto (hereinafter the "Closing Conditions") are met to the satisfaction of DNR or its agents and the Easement is granted to the County and accepted thereby as set forth in this Agreement.

## **B. Performance Contingencies for DNR**

DNR's performance hereunder is contingent upon successful completion or express waiver, done in accordance with the Closing Conditions enumerated on **Exhibit B** and each of the following conditions in this §5.B. If one or more of these Closing Conditions are not satisfied by Closing (as defined in this §5.C.i), and the Parties have not agreed in writing to allow additional time for satisfaction, then this FA shall automatically terminate and City and DNR shall be released from all further obligations and liabilities under this FA.

### **i. Approvals**

Final approvals of this transaction shall be received from the following entities and persons:

- a. DNR;
- b. Adams County Board of County Commissioners (for purposes of Easement only);
- c. Colorado State Controller or his designee; and
- d. The Council of the City.

### **ii. Appraisal and Other Closing Conditions**

#### **a. Appraisal**

The City shall, at its sole cost and expense, have an appraisal completed in accordance with CRS §24-30-202(5)(b) that supports the expenditure of the DNR Fund Amount and is satisfactory to and accepted by DNR ("the Appraisal"). The Appraisal shall be acceptable to any review appraiser. Copies of all Appraisals ordered by the City shall be provided to DNR and shall be no older than one year from the Closing Date.

#### **b. Contract**

The City shall provide DNR with an executed copy of the contract between the City and Seller relating to the purchase of the Property, which form is subject to DNR's approval.

#### **c. Reports**

The City shall, at its sole cost and expense, cause qualified professionals to prepare a baseline report documenting the condition of the Property at the time of Closing, and signed by the City and the Easement holder, a geologist's remoteness report and a Phase I Environmental Assessment, and should DNR deem them necessary, any additional environmental assessments on all or part of the Property if reasonably necessary to protect the interests of DNR. Copies shall be provided to DNR and such reports shall be acceptable to and approved by DNR as a condition of Closing and each shall be certified by the reporter as having been prepared for the benefit of DNR.

### **iii. Title Inspection and Review**

DNR's satisfaction with the title to the Property after the opportunity for physical inspection of the Property and after reviewing the documents and evidence of title thereto provided for in §0 is a Closing Condition. If any of DNR's objections made pursuant to this provision are not rectified to DNR satisfaction, then DNR may terminate this FA by written notice and both the City and DNR shall be released from any further obligations hereunder.

#### **a. Evidence of Title – Matters of Public Record**

As soon as practical, the City, at its sole cost and expense, shall obtain a Title Commitment and copies of all schedule B-2 Exceptions. The City shall also deliver to DNR copies of any abstracts of title covering all or any portion of the Property already in the City's possession. "Title Commitment" means a current standard ALTA form commonly used by a title company authorized to do business in the State of Colorado that said title company uses before issuing a title policy insuring the City's interest in the Property and County's interest in the Easement together with, as applicable, any

updates of the Title Commitment that are issued. Said Title Commitment and resulting policy shall insure the City's interest in an amount not less than the Purchase Price.

**b. Standard Title Exceptions**

The City shall require Seller to provide a Mechanic's Lien Indemnification Agreement and meet all other requirements for the deletion of or insuring over standard exceptions for mechanic's liens and defects, liens, encumbrances, adverse claims or other matters, if any are created, first appearing in the public records or attaching subsequent to the effective date of the Title Commitment of Schedule B-2 of the Title Commitment. The City shall require Seller to cause the Title Commitment to delete or insure over the standard exceptions regarding unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing. If the City and DNR determine that one or more of the following items must be deleted in the title insurance policy, then the City shall require Seller to cause the Title Commitment to delete or insure over the standard exceptions regarding (a) parties in possession, (b) unrecorded easements, (c) unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing. Any requirements for binding arbitration shall be removed from the final title policy to be issued by the title company (hereinafter the "Title Policy").

**c. Exceptions - Title Review - Matters of Public Record**

The City, without cost or expense to DNR, shall promptly cause a copy of the Title Commitment together with the following documents to be delivered to DNR: (a) copies of all plats, declarations, covenants, conditions, and restrictions burdening the Property, and (b) copies of other documents (or, if illegible, summaries of such documents) listed in the Additional Exceptions of Schedule B-2 of the Title Commitment.

**d. Title Review and Inspection - Matters Not Shown by the Public Records**

The City shall require Seller to deliver to the City and DNR true copies of all lease(s), survey(s), and other similar unrecorded documentary information in Seller's possession pertaining to the Property, and shall require Seller to disclose in writing to the City and DNR all easements, liens, or other title matters not shown by the public record of which Seller has knowledge. DNR and the City shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

**e. Unrecorded Burdens – City's Liability**

The City shall, at its sole cost and expense, cause Seller to discharge and/or cure any liens, charges, defects, encumbrances, claims, or causes of action (hereinafter called "burdens") existing on or before Closing and incurred by the City or Seller that attach to the Property which are not of record at the time of Closing and which were not disclosed pursuant to §0.

**iv. Easement**

The City and the County shall execute the Easement at Closing. Such Easement shall be in a form approved by DNR prior to Closing.

**C. CLOSING**

**i. Date and Time**

The date and time of Closing shall be at the mutual agreement of the City and Seller, but not later than 5:00 p.m. on January 31, 2014 (hereinafter "Closing"). Closing shall occur at the offices of the title company. At Closing, Seller shall deliver to the City a properly executed general warranty deed substantially in the form of Exhibit C as well as a fully

executed Easement as approved by DNR (to be recorded promptly following the Closing), and the City shall deliver to Seller payment of the Purchase Price. The DNR Fund at the direction of DNR may be in the form of a DNR warrant or electronic funds transfer, which shall be at DNR's discretion. DNR's payment shall be made under instructions that said payment shall be returned to DNR if for any reason the acquisition of the Property and granting of the Easement and recording of both does not occur.

**ii. Closing at Title Company**

Closing shall be completed by the title company furnishing the Title Commitment and subsequent title insurance policy. Seller and the City shall sign and complete all customary or required documents at or before Closing.

**6. LIMITATION ON STATE LIABILITY**

**A. Definitions**

**i. Environmental Laws**

"Environmental Laws" means any past, present or future federal, state or local law relating to (i) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials into the environment (including, without limitation, air, surface water, groundwater or land) or (ii) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials.

**ii. Hazardous Materials**

"Hazardous Materials" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. §6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601); (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. §6991); (viii) any hazardous or toxic materials, materials or wastes as now or hereafter designated or regulated under any Environmental Law including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls, and freon and other chlorofluorocarbons.

**B. REPRESENTATIONS, INDEMNITY, WAIVER, AND WARRANTIES**

**i. Due Diligence**

The City represents that it has conducted or will conduct its own due diligence related to the purchase of the Property and is not relying on any due diligence conducted or overseen by DNR in making the Purchase and waives any right to rely on any due diligence conducted or overseen by DNR, its employees, agents or contractors. City also waives any claims it may have in law or equity now or in the future against DNR and its employees, agents, and contractors based on due diligence conducted or overseen by or on behalf of DNR.

**ii. Independent Professional Advice**

The City has received such independent legal, environmental, and financial advice regarding this purchase of the Property as the City deemed necessary and prudent to adequately protect its interests, and based thereon, and the City's informed judgment, has decided to continue with purchasing the Property.

### iii. Indemnity

The City is aware that the Property may contain Hazardous Materials and may be in violation of Environmental Laws. With full knowledge of the risks involved, the City wishes to proceed with the purchase of the Property despite the possible presence of Hazardous Materials thereon. If any liability attaches to DNR, its employees, agents or contractors for violations of Environmental Laws due to the presence of Hazardous Materials on the Property, the City shall, to the extent allowed under Colorado law, defend, indemnify, save, and hold DNR, its employees, agents and contractors harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorney fees, consultant fees and expert fees) which arise. Such indemnification also includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Materials, pollutants, or contaminants present in the soil or groundwater on or under the Property. Nothing in this FA shall be construed as giving rise to any right or ability in DNR, nor shall DNR have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act 1980, as amended ("CERCLA"). This prohibition does not impose liability on DNR nor shall DNR be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.

### 7. PAYMENTS-MAXIMUM AMOUNT

The maximum amount payable under this FA to the City by DNR is \$700,000 as outlined in §5.A., as determined by DNR from available funds sourced as set forth in §3.A.

### 8. CONFIDENTIAL INFORMATION-STATE RECORDS

Each Party shall treat the confidential information of the other Party with the same degree of care and protection it affords to its own confidential information. Each Party shall notify the other Party immediately if it receives a request or demand from a third party for records or information of the other Party.

### 9. NOTICE 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.

**DNR**  
c/o Anne Kelson  
Real Estate Manager  
Division of Parks and Wildlife  
Denver, CO 80216  
[anne.kelson@state.co.us](mailto:anne.kelson@state.co.us)

**With a copy to:**  
Maggie Van Cleef

**Commerce City**  
Parks Planning and Operations Manager  
City of Commerce City  
6060 E. Parkway Dr.  
Commerce City, CO 80022  
[mbrown@c3gov.com](mailto:mbrown@c3gov.com)

**With a copy to:**  
City Attorney's Office

Purchasing Director  
1313 Sherman Street #423  
Denver, CO 80203  
[maggie.vancleef@state.co.us](mailto:maggie.vancleef@state.co.us)

City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022  
[ggraham@c3gov.com](mailto:ggraham@c3gov.com)

## **10. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

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 contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, 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 contract administration process and Contractor's performance will be systematically recorded in the statewide Contract 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 Contract 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 Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract 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 Department of Natural Resources, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. 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 a showing of good cause.

## **11. GENERAL PROVISIONS**

### **A. Assignment**

The rights and obligations of each Party hereunder are personal to such Party and may not be transferred, assigned or subcontracted without the prior, written consent of the other Party.

### **B. Order of Precedence**

In the event of conflicts or inconsistencies between this FA and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Colorado Special Provisions, the remainder of the provisions of this FA, and then the Exhibits.

### **C. References**

All references in this FA 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.

**D. Third Party Beneficiaries-Negation**

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

**E. Entire Understanding**

This FA 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**

The City shall, to the extent allowed under Colorado law, indemnify, save, and hold harmless DNR, its employees and agents, against any and all claims, damages, liability and court awards, up to the amount of the Purchase Price, together with costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by City, or its employees, agents, subgrantees, or assignees pursuant to the terms of this FA; 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 or actions related to this FA shall be filed and proceedings held in the State of Colorado and venue shall be in the County in which the Property is located. Venue shall be proper in any county in which the Property is located if it is situate in more than one county.

**H. Survival of Certain Contract Terms**

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

**I. CORA Disclosure**

To the extent not prohibited by federal law, this FA 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.

## **12. COLORADO SPECIAL PROVISIONS**

These 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 valid until it has been approved by the 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. COMPLIANCE WITH LAW.**

The Parties 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.

### **E. 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.

### **F. BINDING ARBITRATION PROHIBITED.**

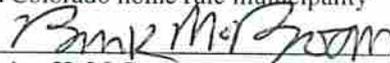
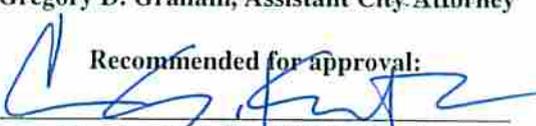
The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

13. SIGNATURE PAGE

**THE PARTIES HERETO HAVE EXECUTED THIS GRANT FUNDING AGREEMENT**

Persons signing for Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.

<p style="text-align: center;"><b>GRANTEE</b></p> <p style="text-align: center;">City of Commerce City, a Colorado home rule municipality</p> <p style="text-align: center;"> _____ Brian K. McBroom, City Manager</p> <p style="text-align: center;"><b>ATTEST:</b></p> <p style="text-align: center;"> _____ Laura J. Bauer, CMC, City Clerk</p> <p style="text-align: center;"><b>Approved as to form:</b></p> <p style="text-align: center;"> _____ Gregory D. Graham, Assistant City Attorney</p> <p style="text-align: center;"><b>Recommended for approval:</b></p> <p style="text-align: center;"> _____ Carolyn J. Keith, CPRP, Director Department of Parks, Recreation &amp; Golf</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b></p> <p style="text-align: center;">John W. Hickenlooper, Governor Mike King, Executive Director Director</p> <p>By: _____ Robert Randall, Deputy Director</p> <p>Date: _____</p>
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**ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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

<p><b>STATE CONTROLLER</b> Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
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**EXHIBIT A (Legal Description of Property)**

Exhibit A

Parcel Number: 0182512102040

SUB:RIETHMANN GARDENS DESC: PLOTS 25 AND 26 EXC PARCS

Parcel Number: 0182512102041

SUB:RIETHMANN GARDENS DESC: THAT PT OF PLOTS 26 27 28 35 36 37 & 63 RIETHMANN GARDENS SUBD OF A PT 12/3/68 DESC AS BEG AT N4 COR OF SD SEC TH S ALG N/L C/L 186/20 FT TO A PT ON WLY ROW LN OF I-270 TH S 45D 39M E 963/85 FT TO TRUE POB TH CONT S 45D 39M E 1675 FT TH S 44D 20M W 40 FT TH N 56D 41M W 347 FT TH N 62D 37M W 1249/74 FT TO A PT ON NELY LN OF CHANNEL OF SAND CREEK TH N 56D 22M W 141/47 FT TH N 44D 20M E 497/19 FT TO TRUE POB

Parcel Number: 0182512102042

SUB:RIETHMANN GARDENS DESC: THAT PT OF PLOTS 35 36 37 & 63 RIETHMANN GARDENS SUBD OF PT 12/3/68 DESC AS BEG AT N4 COR OF SD SEC TH S ALG N/S C/L 186/20 FT TO A PT ON SLY ROW LN OF I-270 TH S 45D 39M E 2638/85 FT TO TRUE POB TH CONT S 45D 39M E 468/15 FT TO A PT ON WLY ROW LN OF BRIGHTON BLVD TH S 36D 03M W 90 FT TO A PT ON NELY LN OF THE CHANNEL OF SAND CREEK TH N 56D 22M W ALG SD NELY LN OF THE CHANNEL OF SAND CREEK 2052/23 FT TO A PT TH S 62D 37M E 1249/74 FT TH S 56D 41M E 347 FT TH N 44D 20M E 40 FT TO TRUE POB

## EXHIBIT B (Closing Conditions)

### City shall provide the following Due Diligence Items to DNR for approval prior to Closing and the disbursement of Funds

At least 75 days before Closing:

1. Executed Purchase and Sale Agreement
2. Title Commitment and related documents per Section 5 of Funding Agreement
3. Water Rights due diligence demonstration

At least 60 days before Closing:

4. Draft Conservation Easement
5. Survey (if necessary)
6. Execution of acknowledgement of state's limitation on liability
7. Phase 1 Environmental Site Assessment
8. Geologist's Mineral Assessment

At least 7 days before Closing:

9. Approved Appraisal and Review Appraisal
10. Baseline Report
11. Wire Transfer Instructions, Draft Settlement Statement and Closing Instructions
12. Resolution or proof of authority to accept property interest
13. Draft of all other documents to be signed/recorded at Closing

**EXHIBIT C (General Warranty Deed)**

See attached.

Exhibit A

Parcel Number: 0182512102040

SUB:RIETHMANN GARDENS DESC: PLOTS 25 AND 26 EXC PARCS

Parcel Number: 0182512102041

SUB:RIETHMANN GARDENS DESC: THAT PT OF PLOTS 26 27 28 35 36 37 & 63 RIETHMANN GARDENS SUBD OF A PT 12/3/68 DESC AS BEG AT N4 COR OF SD SEC TH S ALG N/L C/L 186/20 FT TO A PT ON WLY ROW LN OF I-270 TH S 45D 39M E 963/85 FT TO TRUE POB TH CONT S 45D 39M E 1675 FT TH S 44D 20M W 40 FT TH N 56D 41M W 347 FT TH N 62D 37M W 1249/74 FT TO A PT ON NELY LN OF CHANNEL OF SAND CREEK TH N 56D 22M W 141/47 FT TH N 44D 20M E 497/19 FT TO TRUE POB

Parcel Number: 0182512102042

SUB:RIETHMANN GARDENS DESC: THAT PT OF PLOTS 35 36 37 & 63 RIETHMANN GARDENS SUBD OF PT 12/3/68 DESC AS BEG AT N4 COR OF SD SEC TH S ALG N/S C/L 186/20 FT TO A PT ON SLY ROW LN OF I-270 TH S 45D 39M E 2638/85 FT TO TRUE POB TH CONT S 45D 39M E 468/15 FT TO A PT ON WLY ROW LN OF BRIGHTON BLVD TH S 36D 03M W 90 FT TO A PT ON NELY LN OF THE CHANNEL OF SAND CREEK TH N 56D 22M W ALG SD NELY LN OF THE CHANNEL OF SAND CREEK 2052/23 FT TO A PT TH S 62D 37M E 1249/74 FT TH S 56D 41M E 347 FT TH N 44D 20M E 40 FT TO TRUE POB

