

PURCHASE AND SALE AGREEMENT
(41st/Ensenada Storm and Water Quality Facility)

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) made and entered into as of the Effective Date (defined below), between the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 (the “City”), and **GVR METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 18650 East 45th Avenue, Denver, CO 80249 (“Buyer” or “District”).

A. **WHEREAS**, the City owns certain real property that has been improved with a storm and water quality facility located in Denver; and

B. **WHEREAS**, subject to the terms of the Agreement, the City agrees to convey and the District agrees to acquire the property and such facility.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations set forth herein, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **SUBJECT PROPERTY**. Subject to the terms of the Agreement, the District shall acquire and the City shall convey the real property generally located at 41st and Ensenada, more particularly described in **Exhibit 1**, attached hereto and incorporated herein by reference, together with (i) all easements, rights of way and vacated roads, streets and alleys appurtenant to the property; (ii) all buildings, fixtures and improvements on the property, including the storm detention and water quality facilities (“Facilities”); and (iii) all of City’s right, title and interest in and to all utility taps, licenses, permits, contract rights, and warranties and guarantees associated with the property (collectively “Property”).

2. **DISCLOSURE AND INSPECTION**.

a. **Environmental Information**. Upon request within 15 days of the Effective Date, the City shall disclose all environmental information the Director of the Division of Real Estate (“Director”) has regarding any environmental contamination (including asbestos-contaminated soils) or the presence of any hazardous or toxic substances on, under, or about the Property.

b. **Property Information**. Upon request within 15 days of the Effective Date, the City shall disclose all property information the Director has relating to the Property, including copies of all lease(s) and survey(s) in Owner’s possession pertaining to the Property and shall disclose, in writing, to the City all easements, liens or other title matters not shown by the public records of which Owner has actual knowledge.

c. **Disclaimer**. The District acknowledges and agrees that all of the environmental and Property information provided by the City is without any warranty or representation, express or implied, oral or written, concerning the accuracy or completeness thereof and that the District will not rely thereon but instead will rely solely on the District’s own investigations.

d. **Title**. The District may obtain, at its own expense, a commitment for Owner’s title

insurance policy for the Property, including updates thereto, and all copies or abstracts of instruments or documents identified in the commitment (“Title Documents”). The District has the right to review the Title Documents.

e. **Review and Inspection.** The District, at its sole option and expense, may conduct or cause to be conducted environmental audits and perform other tests on the Property and has the right to inspect the physical condition and have an ALTA survey conducted of the Property. The City hereby grants the District and any of its employees and consultants access to the Property to perform such audits and tests.

f. **Notice of Unacceptable Conditions, Cure, Election.** By Ninety (90) days after the Effective Date, the District shall give notice to the City’s Director of any unacceptable conditions relating to the Property. The City may cure such unacceptable conditions by one hundred (100) days after the Effective Date. In the event the City declines to cure the unacceptable conditions by such date, the District, in its sole discretion, by One-Hundred Ten (110) days after the Effective Date may elect to waive such unacceptable conditions and proceed to Closing or treat the Agreement as terminated with no further obligation on the part of either party.

3. **CLOSING PRE-CONDITIONS.** The City shall fully cooperate with the District to do all things necessary, including execute affidavits as necessary and provide adequate assurances necessary for removal of the standard exceptions for defects, liens, mechanic’s liens, tax or assessment liens, title insurance, encumbrances, encroachments, prescriptive easements, adverse claims, or similar matters, regarding such matters.

4. **DATE OF CLOSING.** The date of closing will be on a date mutually agreed upon by the parties, but no later than One-Hundred Thirty (130) days after the Effective Date (“Closing”); provided, however, that the Closing date may be changed by the Director with agreement of the District. The Closing will be held at a time and place agreed to by the parties.

5. **TRANSFER OF TITLE.** Subject to compliance with the terms and provisions of the Agreement, the City shall execute and deliver the Quitclaim Deed in substantially the form set forth as **Exhibit 2** herein (“Deed”) to the District at Closing conveying the Property.

6. **POSSESSION.** Possession of the Property shall be delivered to the District at Closing.

7. **CLOSING COSTS, DOCUMENTS AND SERVICES.** The District shall pay for any title insurance policy to be issued on the Property for the benefit of the District and one-half of any fees for real estate closing services. The City shall pay for one-half of any fees for real estate closing services. The parties shall sign and complete all customary or required documents at or before Closing.

8. **PRORATIONS.** The City shall pay any and all taxes and special assessments accrued and owed on the Property prorated through the date of Closing. Based on the most recent levy and the most recent assessment, at or before Closing, the City shall pay all utility, water and sewer charges, and other items related to the Property prorated through the date of Closing.

9. **TIME IS OF THE ESSENCE/REMEDIES.** Time is of the essence. All the agreements and representations set forth in the Agreement shall be binding upon and for the benefit of each party's successors and assigns. If any payment due in accordance with the Agreement is not paid, honored or tendered when due, or if any other obligation under the Agreement is not performed or waived as provided in the Agreement, there shall be the following remedies:

a. **If City Is In Default.** District may treat the Agreement as canceled and the parties shall thereafter be released from all obligations under the Agreement. District expressly waives the remedies of specific performance and damages.

b. **If District Is In Default.** The City may elect to (i) treat the Agreement as canceled, in which case all payments and things of value received under the Agreement shall be returned and the parties shall thereafter be released from all obligations under the Agreement (ii) treat the Agreement as being in full force and effect and seek specific performance or damages, including delay damages and attorney fees, or both, or any other legal or equitable remedy.

10. **TERMINATION.** If the Agreement is terminated, all payments and things of value received under the Agreement shall be returned and the parties shall be relieved of all obligations under the Agreement.

11. **AUTHORITY TO EXECUTE.** The District represents that the persons who have executed the Agreement have all necessary and sufficient authority to bind the District.

12. **COOPERATION OF THE PARTIES.** In the event that any third party brings an action against a party to the Agreement regarding the validity or operation of the Agreement, the other party will reasonably cooperate in any such litigation. Any party named in an action shall bear its own legal costs.

13. **NO BROKER'S FEES.** The City and the District represent to each other that they have had no negotiations through or brokerage services performed by any broker or intermediary that would require the City to pay any commission or fees. Any arrangements that the District has with a broker or other intermediary regarding the sale of the Property shall be solely at the cost of the District.

14. **SEVERABILITY.** The promises and covenants contained in the Agreement are several in nature. Should any one or more of the provisions of the Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of the Agreement.

15. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance duties under the Agreement, the District agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts relating to the Agreement.

16. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event shall any performance under the Agreement constitute or be construed to be a waiver by any party of any breach of covenant or condition or of any default that may then exist. The rendering of any such performance when any breach of default exists in no way impairs or prejudices any right of remedy available with respect to the breach of default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement may be deemed or taken to be a waiver or any other default or breach.

17. **SUBJECT TO LOCAL LAWS; VENUE.** The Agreement is subject to and is to be construed in accordance with the laws of the local jurisdiction and the State of Colorado, including all ordinances, rules and regulations enacted or promulgated pursuant to these state and local provisions. The aforementioned provisions are incorporated into the Agreement by this reference. Venue for any action arising out of the Agreement is in the District Court of the jurisdiction where the property is located.

18. **NOTICES.** All notices provided for herein must be in writing and be personally delivered, sent via facsimile, electronic mail, or mailed by registered or certified United States mail, postage prepaid, return-receipt requested, if to the District at the address first listed above and if to the City at the addresses or facsimile numbers given below. Notices delivered personally or sent electronically or by facsimile are effective when sent. Notices sent by certified or registered mail are effective upon receipt. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification.

If to City:

Stephen E. Wirth
Division of Real Estate
Department of Finance
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202
e-mail: steve.wirth@denvergov.org
facsimile: 720.865.7585

and

Manager
Department of Public Works
201 West Colfax Avenue, Department 608
Denver, Colorado 80202
facsimile: 720.865.8795

and

Denver City Attorney's Office
Attn: Karen Aviles
201 W. Colfax, Department 1207
Denver, Colorado 80202

If to District:

GVR Metropolitan District
18650 East 45th Avenue
Denver, Colorado 80249

19. **PARTIES' LIABILITIES.** Each party is responsible for any and all suits, demands, costs, or action proximately resulting from its own individual acts or omissions.
20. **RIGHT TO ALTER TIME FOR PERFORMANCE.** The parties may alter any time for performance set forth in the Agreement by a letter signed by the Director of the Division of Real Estate and an authorized representative of the District.
21. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS.** The Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment to the agreement will have any force or effect whatsoever, unless embodied in writing in the Agreement. Except as expressly provided for in the Agreement, no subsequent notation, renewal, addition, deletion, or other amendment to the Agreement shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties.
22. **THIRD-PARTY BENEFICIARY.** It is the intent of the parties that no third party beneficiary interest is created in the Agreement except for an assignment pursuant to the Agreement. The parties are not presently aware of any actions by them or any of their authorized representatives that would form the basis for interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of the Agreement.
23. **APPROPRIATION BY CITY COUNCIL.** All obligations of the City under and pursuant to the Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of the Agreement and paid into the Treasury of the City.
24. **REASONABLENESS OF CONSENT OR APPROVAL.** Whenever under the Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.
25. **NO PERSONAL LIABILITY.** No elected official, director, officer, agent or employee of the City nor any director, officer, employee or personal representative of District shall be charged personally or held contractually liable by or to the other party under any term or provision of the Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of the Agreement.
26. **CONFLICT OF INTEREST BY CITY OFFICER.** The District represents that to the best of the District's information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in the Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

27. **MERGER.** The terms of the Agreement survive Closing and do not merge into the Deed conveying the Property.

28. **CONSTRUCTION.** The Agreement may not be interpreted in favor of or against either Owner or the City merely because of their respective efforts in preparing it. The rule of strict construction does not apply to the Agreement. This instrument is subject to the following rules of construction:

a. Specific gender references are to be read as the applicable masculine, feminine, or gender neutral pronoun.

b. The words “include,” “includes,” and “including” are to be read as if they were followed by the phrase “without limitation.”

c. The words “party” and “parties” refer only to a named party to the Agreement.

d. Unless otherwise specified, any reference to a law, statute, regulation, charter or code provision, or ordinance means that statute, regulation, charter or code provision, or ordinance as amended or supplemented from time to time and any corresponding provisions of successor statutes, regulations, charter or code provisions, or ordinances.

29. **ASSIGNMENT.** The City is not obligated or liable under the Agreement to any party other than the District. The District understands and agrees that it may not assign any of its rights, benefits, obligations, or duties under the Agreement without the City’s Manager of Public Works’ prior written approval.

30. **CITY EXECUTION OF AGREEMENT.** The Agreement is subject to, and will not become effective or binding on the City until full execution by all signatories of the City.

31. **COUNTERPARTS.** The Agreement may be executed in two (2) counterparts, each of which is an original and together constitute the same document.

32. **EFFECTIVE DATE.** The effective date shall be the date set forth on the City signature page below.

33. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The District consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed and affixed their seals, if any, at Denver,
Colorado as of:_____.

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
DEBRA JOHNSON,

By: _____
MAYOR

Clerk and Recorder, Ex-Officio Clerk

of the City and County of Denver

APPROVED AS TO FORM:
D. SCOTT MARTINEZ, City Attorney
For the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Assistant City Attorney

By: _____
Manager of Finance

By: _____
Auditor

"CITY"

GVR METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

**GREEN VALLEY RANCH
METROPOLITAN DISTRICT, a**

By: Michael E. George

Name: Michael E. George
[print name]

Title: District Board Pres.

State of Colorado)
) ss
County of Denver)

The foregoing instrument was acknowledged before me this 19th day of March,
 , by Michael George as President of GVR Metropolitan District

Witness my hand and official seal.
My commission expires: January 11, 2017

Micaela Duffy
Notary Public

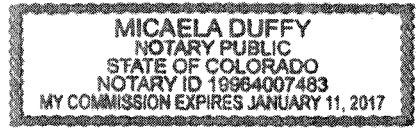


EXHIBIT 1

(Legal Description of Property)

EXHIBIT 1

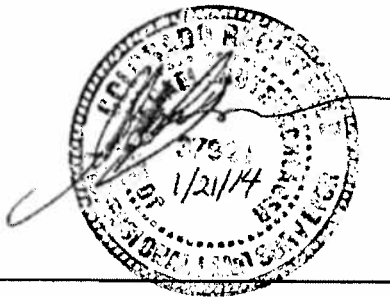
Land Description:

A parcel of land located in the Southeast 1/4 of Section 22, Township 3 South, Range 66 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

All of Tract A, Green Valley Ranch Filing No. 20 as recorded on July 9th 1997, by Reception Number 970088416. City and County of Denver Clerk and Recorder's Office, State of Colorado.

Containing 4.90 acres more or less.

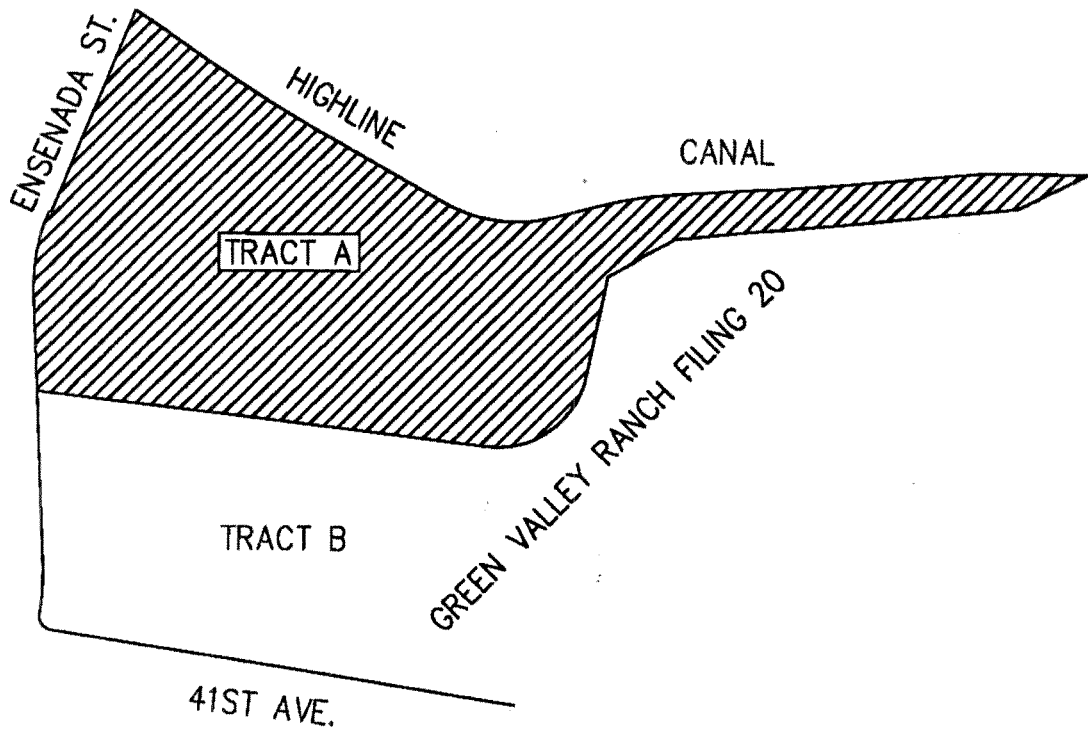
**Prepared for & behalf of the
City and County of Denver
201 W. Colfax Ave. Dept. 507
Denver Co. 80202
Date: January 21, 2014**



By: John Michael Lautenschlager PLS 37921

Exhibit 1

SE1/4 Section 22 Township 3 South, Range 66 West,
6th Principal Meridian, City & County of Denver,
State of Colorado



Note: This exhibit does not represent a
monumented land survey. It is intended
only to depict the attached description.



EXHIBIT 2
(Form of Deed)

Return to:
Denver City Attorney's Office
201 W. Colfax Avenue, Dept. 1207
Denver, CO 80202

QUITCLAIM DEED
(41st/Ensenada Storm Drainage Facility)

THE CITY AND COUNTY OF DENVER, a Colorado municipal corporation and home rule city ("Grantor"), whose address is 1437 Bannock Street, Denver, Colorado, 80202, for the consideration of TEN DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sells and quitclaims to the GVR METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("Grantee"), whose address is 18650 East 45th Ave., Denver Colorado 80249, the following real property and improvements thereon in the City and County of Denver, State of Colorado, to-wit ("Property"):

SEE EXHIBIT 1 ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

PROVIDED HOWEVER, that the Property shall only be used for storm drainage and/or other wastewater facilities unless approved in writing by Grantor's Manager of Public Works, which written approval shall be recorded by Grantee.

SIGNED this _____ day of _____, 2014.

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:
D. Scott Martinez, Denver City Attorney

By: _____
Assistant City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by _____, Mayor of the City and County of Denver.

Witness my hand and official seal.

My commission expires:

Notary Public