

**PURCHASE AND SALE AGREEMENT**  
**(Property Address 4201 E. Arkansas Avenue)**

**THIS PURCHASE AND SALE AGREEMENT ("Agreement")** made and entered into as of the Effective Date, 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 **KRF ARKANSAS LLC ("Kentro")**. City and Kentro are collectively referred to herein as the "Parties" and individually as a "Party."

**RECITALS**

**A.** The City is under contract to purchase certain real property located at 4201 E. Arkansas Avenue in the City and County of Denver, State of Colorado consisting of approximately 12.93 acres which is legally described and depicted on **Exhibit 1** attached hereto and incorporated herein by this reference (the "**Real Property**"); and

**B.** The City's public purpose for entering into this transaction is the catalytic development of the Property ensuring development consistent with the existing neighborhood, area plans, economic and job development within the City and County of Denver; and

**C.** Subject to the terms of this Agreement, City agrees to acquire and sell and Kentro agrees to purchase the Property.

**NOW, THEREFORE**, in consideration of the promises 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. CONTINGENT AGREEMENT.** This Agreement is contingent upon City closing on the purchase of the Property from the Colorado Department of Transportation, pursuant to that certain Purchase and Sale Agreement dated the \_\_\_\_ day of \_\_\_\_\_ 2017, by and between the City and County of Denver as buyer, and the Colorado Department of Transportation ("**CDOT**") as seller ("**CDOT Agreement**"). During the term of this Agreement, the City shall undertake and satisfy all of its duties and obligations under the CDOT Agreement and shall use reasonable efforts to enforce all of CDOT's duties and obligations under the CDOT Agreement, all in a manner consistent with the Parties' rights and obligations under this Agreement. In the event the CDOT Agreement fails to close or terminates for any reason, the City shall deliver prompt written notice of the same to Kentro and this Agreement shall automatically terminate and the Parties shall be release from any further obligation hereunder, except for the return of materials and the confidentiality provisions pertaining thereto, if any.

**2. SUBJECT PROPERTY.** Subject to and in accordance with the terms and conditions of this Agreement, Kentro shall purchase and the City shall sell the Real Property together with City's interest, if any, in: (a) all easements and vacated roads and private alleys appurtenant to the Real Property; (b) all buildings and improvements on the Real Property; (c) any fixtures, personal property and equipment that remain on the Real Property at Closing; (d) all of City's right, title and interest in and to all existing utility taps, licenses, permits, contract rights, and warranties and guarantees associated with the Real Property; (e) all water rights and

conditional water rights that are appurtenant to or that have been used or are intended for use in connection with the Real Property, (f) any ditch, well, pipeline, channel, spring, reservoir or storage rights located on the Real Property, whether or not adjudicated or evidenced by any well, decree, order, stock certificate, permit or other instrument, (g) all rights with respect to nontributary or not nontributary groundwater (and other groundwater that is subject to the provisions of Colorado Revised Statutes Section 37-90-137(4) or the corresponding provisions of any successor statute) underlying the Real Property, (h) any permit to own, use or construct any water well on the Real Property (including those wells on the Real Property from which water is intended to be used in connection with the Real Property), and (i) any decreed or pending plan of augmentation or water exchange plan for the Real Property (collectively, the "**Property**"). The Real Property and the items described in subparagraphs (a) and (b) will be conveyed by quitclaim deed in the form attached hereto as **Exhibit 2** and incorporated herein by this reference, (the "**Deed**"). The items described in subparagraph (c) will be conveyed by bill of sale, without warranty or representation of any kind, in the form attached hereto as **Exhibit 3** and incorporated herein by this reference, (the "**Bill of Sale**"). The items described in subparagraph (d) will be conveyed by assignment, without warranty or representation of any kind, in the form attached hereto as **Exhibit 4** and incorporated herein by this reference, (the "**Assignment**"). The items in subparagraph (e), (f), (g), (h), and (i) will be conveyed by Bargain and Sale Deed in the form attached hereto as **Exhibit 5** and incorporated herein by this reference, (the "**Bargain and Sale Deed**"). Kentro agrees that at Closing it will take title to any fixtures, personal property and/or equipment remaining on the Real Property at Closing.

### 3. **PURCHASE PRICE.**

a. The total purchase price for the Property to be paid by Kentro at Closing (as defined in this Agreement as just compensation) is **FOURTEEN MILLION AND 00/100 DOLLARS (\$14,000,000.00)** ("**Purchase Price**"), which shall be paid in immediately available good funds via electronic wire transfer which comply with all applicable Colorado laws.

b. Kentro shall deposit Five Hundred Sixty Thousand and 00/100 Dollars (\$560,000.00) (together with any interest earned thereon, the "**Earnest Money**") into an interest bearing escrow account with First American Title Insurance Company through its national commercial division in Denver, Colorado ("**Title Company**") within ten (10) business days following mutual execution of this Purchase and Sale Agreement. The Earnest Money shall be refunded to Kentro if Kentro terminates this Agreement prior to the expiration of the Due Diligence Period (as defined below) or any extension thereof. If Kentro does not terminate this Agreement during the Due Diligence Period, the Earnest Money, plus any interest accrued, shall be applied to the Purchase Price; and the Earnest Money and the Additional Earnest Money (as defined in Section 7 below) shall be non-refundable, unless (1) the City is unable to deliver title to the Property as described in Section 6(e) below; (2) Closing fails to occur by reason of a breach or default of City; (3) this Agreement is terminated pursuant to the provisions of Section 4(d), Section 5(b), Section 6(c) or (d), Section 7, Section 10(a) or Sections 26, 27 or 28 of this Agreement; or (4) this Agreement has terminated in accordance with Section 1 hereof.

#### 4. ENVIRONMENTAL CONDITION.

a. Environmental Information. The City has delivered to Kentro those certain environmental reports set forth on Schedule 4a; and shall, no later than ten (10) days after the Effective Date, deliver any written notices of violation of any federal or state environmental laws regarding the Real Property in City's possession, (collectively, the "Environmental Information"). City has the ongoing duty to provide Kentro with any additional written notices of violation of any federal or state environmental law regarding the Real Property received by City up to the date of Closing, and will do so within five (5) days of the receipt of any such written notice of violation. Kentro acknowledges that City makes no representation or warranty with respect to the accuracy, completeness, reliability or source of any of the Environmental Information or other documents or information provided by the City to Kentro. Kentro acknowledges that some of the Environmental Information may have been obtained from third parties and City makes no representation or warranty as to the reputation or reliability of the persons or entities preparing the Environmental Information or the current accuracy of the Environmental Information. Kentro further acknowledges that, notwithstanding the City's delivery of the Environmental Information, Kentro will make its own investigation relative to the condition of the Property and will rely on its own investigation in determining the suitability of the Property for its use. In the event that, for any reason, the Closing does not occur, all Environmental Information and all other documents and materials delivered to Kentro and any copies thereof shall be returned to City forthwith.

b. Environmental Review. For the period of one hundred fifty (150) days after the Effective Date (the "Environmental Review Period"), Kentro, at its sole option and expense, may conduct or cause to be conducted environmental audits and perform other environmental tests on the Property to identify any existing or potential environmental problems located in, on, or under the Property, including, but not limited to, the presence of any hazardous waste, hazardous substances or toxic substances.

c. Access to Property for Inspections. Prior to entering the Property to perform such audits and tests, Kentro and its employees, consultants and agents (collectively, the "Kentro Representatives"), must comply with the following requirements.

i. Notice/Access. Kentro shall have the right, upon not less than five (5) days prior e-mail notice to Lisa Lumley at Lisa.Lumley@denvergov.org, JaNae Nelson at janae.nelson@state.co.us, David Fox at david.fox@state.co.us, and Kathryn Young at Kathy.Young@coag.gov, to enter the Property, or to have its consultants or contractors enter the Property, for the purposes of performing non-invasive tests, surveys, studies and analyses. Kentro shall make all inspections at times mutually agreed upon by Kentro and the City, in good faith and with due diligence and in a professional, sensitive and confidential manner which minimizes interference with occupants and users of the Property. Kentro agrees to conduct all such non-invasive inspections of the Property in a manner that will not harm or damage the Property. Kentro may have its surveyor, architect and general contractor enter the Property solely for purposes of conducting a walk-through without obtaining City's, prior consent; provided that all other provisions of this Agreement are satisfied and that Kentro delivers to the City evidence of the surveyor's, architect's or general contractor's insurance in conformance with Section 4(c)ii below prior to any such entry. Kentro may not conduct any intrusive, invasive or subsurface testing or

drilling on the Property (including, without limitation, soil tests and borings, percolation and compaction tests) unless specifically approved by City in advance and in writing, which approval may be granted or withheld by City in City's reasonable discretion. If any such request is approved by City, Kentro agrees to dispose of all test samples in accordance with all applicable laws and at no cost or expense to City. Kentro agrees to conduct all such inspections in a manner that will not materially or unreasonably interfere with the use or operation of the Property by CDOT or the City or any occupant or guest thereof. Kentro shall promptly remove (or bond over) any lien that may attach to any portion of the Property as a result of such inspection activities and shall promptly refill holes dug and otherwise repair any damage to any such portions of the Property. All inspection fees, engineering fees and other expenses of any kind incurred by Kentro relating to the inspection of the Property will be solely Kentro's expense. City shall cooperate with Kentro in all reasonable respects in making such inspections. City hereby reserves the right to have a representative present at the time of making any such inspection. Upon City's request, Kentro shall promptly deliver to City copies of all third party reports, surveys and studies obtained by or for Kentro with respect to the Property, whether obtained before or after the date of this Agreement. Kentro's obligations under this Section shall survive the termination of this Agreement and the Closing.

ii. Insurance. Prior to any entry on the Property by Kentro or Kentro Representatives, Kentro shall cause the activities of Kentro and the Kentro Representatives on and about the Property to be covered by a policy of commercial general liability insurance (i) in the amount of at least Two Million and 00/100 Dollars (\$2,000,000.00) combined single limit, (ii) with an insurance company having a rating of not less than A-VIII in Best's Insurance Guide or as otherwise reasonably acceptable to City, (iii) naming City and CDOT as additional insureds. Kentro or its contractor(s) shall deliver to the City a certificate evidencing the existence of the foregoing insurance coverage prior to any entry on the Property by Kentro or any Kentro Representatives, and its contractor(s) shall keep such insurance in effect until six (6) months after the termination of this Agreement or the Closing. Any entry on or to the Property by Kentro or Kentro Representatives shall be at the sole risk of Kentro. Kentro and Kentro Representatives shall cause their contractors, agents and representatives to defend, reimburse, indemnify and hold harmless the City from and against all damages, losses, liens, actions, causes of action, rights, demands, liabilities, costs or expenses whatsoever (including attorneys' fees, court costs and litigation expenses as and when they accrue) and claims caused by any acts or omissions of Kentro, Kentro Representatives or their respective contractors, agents and representatives during such investigations. Kentro's obligations under the foregoing sentence shall survive the termination of this Agreement and the Closing for a period of six (6) months.

iii. Confidentiality of Site Investigation Results. Kentro shall keep all information or data received or discovered in connection with any of the Property investigations strictly confidential, except for disclosures to Kentro's counsel, consultants, proposed purchasers and agents or as needed to obtain the governmental approvals and financing necessary for Kentro's intended acquisition of the Property; provided such disclosures are on an as needed basis for Kentro's acquisition of the Property, and such persons are instructed to keep the information strictly confidential, except for such disclosures that are necessary to comply with applicable laws. This Section shall survive any termination of this Agreement.

d. Notice of Unacceptable Environmental Conditions, Cure, City Election. Prior to the expiration of the Environmental Review Period, Kentro shall give written notice to City of any unacceptable environmental condition relating to the Property, (the "**Environmental Objections**"). If Kentro does not provide the Environmental Objection by the expiration of the Environmental Review Period, Kentro shall be deemed to have accepted the environmental condition of the Property. The City shall not be obligated to remedy any environmental conditions set forth in the Environmental Objections. Within fifteen (15) days after its receipt of the Environmental Objections, City shall provide written notice to Kentro specifying any environmental condition or conditions set forth in the Environmental Objections that City will remedy (the "**Environmental Response**"). If City fails to provide the Environmental Response within such fifteen (15) day period, City shall be deemed to have elected not to remedy the environmental conditions set forth in the Environmental Objections. If the City does not agree to remedy all conditions contained in the Environmental Objections, Kentro may elect to terminate this Agreement by written notice delivered to the City not later than seven (7) days after receipt of the Environmental Response and, upon such termination, the Earnest Money shall be returned to Kentro, and neither of the Parties shall have any further rights or obligations under this Agreement, except those that expressly survive termination. If Kentro does not give such notice of termination, Kentro's right to terminate on this basis shall be waived and Kentro shall be deemed to have accepted the environmental condition of the Property. If City agrees to remedy any such Environmental Objection, such remedy shall be the City's obligation the complete satisfaction of which shall be an additional condition of Kentro's obligation to close.

## 5. **PROPERTY INSPECTION.**

a. Property Information. Within ten (10) days after the Effective Date, City shall deliver to Kentro copies of (i) any and all agreements, contracts or arrangements for management, service, maintenance or operation with respect to the Property ("**Service Contracts**") and (ii) any existing soil reports, geotechnical reports, and traffic studies regarding the Property received from CDOT in City's possession, (the "**Property Information**"). Kentro acknowledges that the City makes no representation or warranty with respect to the accuracy, completeness, reliability or source of any of the Property Information or other documents or information provided by the City to Kentro. Kentro acknowledges that some of the Property Information may have been obtained from third parties and the City makes no representation or warranty as to the reputation or reliability of the persons or entities preparing the Property Information or the current accuracy of the Property Information. Kentro further acknowledges that, notwithstanding the City's delivery of the Property Information, Kentro will make its own investigation relative to the condition of the Property and will rely on its own investigation in determining the suitability of the Property for its use. In the event that for any reason the Closing does not occur, all Property Information and all other documents and materials delivered to Kentro and any copies thereof shall be returned to the City forthwith. At Closing (if any), Kentro shall assume, and the City shall not have any liability for, any Service Contracts then in effect that are terminable by Kentro after Closing upon not more than thirty (30) days' prior notice at no cost, and CDOT or the City shall continue to be responsible for any other Service Contracts.

b. Due Diligence Period. For the period of one hundred fifty (150) days after the Effective Date (the "**Due Diligence Period**"), subject to and conditioned upon compliance with the requirements of Section 4.c. above, the Kentro Representatives shall have the right to enter

upon the Property or any portion thereof and make such engineering, land use, physical, market or geotechnical tests, investigations and studies concerning the Property (collectively, the "**Tests**") that they may elect to perform. This right to inspect is in addition to the right of Kentro to obtain an environmental audit. Kentro may terminate this Agreement for any reason or no reason at all in Kentro's sole and absolute discretion by delivering written notice to the City on or before the expiration of the Due Diligence Period. Alternatively, Kentro may give notice of any unacceptable physical condition of the Property to the City (the "**Objection Notice**") by the expiration of the Due Diligence Period. If Kentro does not provide the Objection Notice by the expiration of the Due Diligence Period, Kentro shall be deemed to have accepted the condition of the Property. The City shall not be obligated to remedy any conditions set forth in the Objection Notice. Within fifteen (15) days after its receipt of the Objection Notice, the City shall provide written notice to Kentro specifying any condition or conditions set forth in the Objection Notice that the City will remedy (the "**Objection Response**"). If the City fails to provide the Objection Response within such fifteen (15) day period, the City shall be deemed to have elected not to remedy the conditions set forth in the Objection Notice. If the City does not agree to remedy all conditions contained in the Objection Notice, Kentro may elect to terminate this Agreement by written notice delivered to the City not later than seven (7) days after receipt of the Objection Response and, upon such termination, the Earnest Money shall be returned to Kentro, and neither of the Parties shall have any further rights or obligations under this Agreement, except those that expressly survive termination. If Kentro does not give such notice of termination, Kentro's right to terminate on this basis shall be waived and Kentro shall be deemed to have waived its the objections set forth in the Objection Notice and accepted the physical condition of the Property. If the City agrees to remedy any condition set for the in the Objection Notice, such remedy shall be the City's obligation and a condition of Kentro's obligation to close.

c. Post-Closing Covenants. The Property is located adjacent to property upon which emergency warning towers (the "**Towers**") are located. Kentro understands and agrees that any development on the Property must be limited in height to allow the continued operation of the Towers. Prior to the expiration of the Due Diligence Period, the Parties will endeavor to agree upon the terms of a restrictive covenant for the benefit of the property upon which the Towers are located that will restrict the height of all temporary and permanent buildings, structures, equipment (including, without limitation, construction equipment such as cranes), signs, billboards and towers on the Property and be recorded against the Property at Closing (the "**Restrictive Covenant**"). If the Parties are unable to agree upon the terms of the Restrictive Covenant prior to the expiration of the Due Diligence Period, then either Party may terminate this Agreement by written notice to the other Party. Upon such termination, the Earnest Money shall be returned to Kentro, and the Parties shall have no further obligations hereunder except those obligations that expressly survive the termination hereof.

## 6. TITLE AND SURVEY.

a. Title and Survey Review. Within ten (10) business days following the Effective Date, the City shall provide to Kentro (i) a current title insurance policy commitment for the Property issued by the Title Company and best available copies of all instruments or documents identified therein (the "**Commitment**"), and (ii) a copy of any existing surveys of the Real Property in its possession. In addition, Kentro may obtain an ALTA survey referencing the Title Commitment and otherwise prepared in accordance with the Minimum Standard Detail

Requirements for the ALTA/ACSM Land Title Surveys, as revised in 2016, or update thereto in accordance with ALTA/NSPS Standards, and certified to the City, Kentro and the Title Company (the "**Survey**," together with the Commitment, the "**Title Documents**"). Kentro has the right to review the Title Documents

b. Matters Not Shown by the Public Records. By ten (10) days after the Effective Date, the City shall deliver to Kentro any copies of any leases, easements, licenses, right to use agreements, liens or written agreements delivered to the City by the Colorado Department of Transportation in accordance with the CDOT Agreement delivery requirement that are binding on the Property that are not included in the Title Documents, (the "**Off Record Documents**").

c. Notice of Unacceptable Condition, Cure, and Kentro Elections. Kentro shall give written notice to the City of any unacceptable condition of title or survey with respect to the Property, including any matters disclosed in the Title Documents and the Off Record Documents (the "**Title Objections**") on or before the date that is fifty-nine (59) days following Kentro's receipt of the Title Documents (the "**Title Review Period**"). If Kentro does not provide the Title Objections by the expiration of the Title Review Period, Kentro shall be deemed to have accepted the condition of title or survey with respect to the Property, including any matters disclosed in the Title Documents and the Off Record Documents. The City shall not be obligated to remedy any conditions set forth in the Title Objections. Within fifteen (15) days after its receipt of the Title Objections, the City shall provide written notice to Kentro specifying any condition or conditions set forth in the Title Objections that the City will remedy (the "**Title Response**"). If the City fails to provide the Title Response within such fifteen (15) day period, the City shall be deemed to have elected not to remedy the conditions set forth in the Title Objections. If the City does not agree to remedy all conditions contained in the Title Objections, Kentro may elect to terminate this Agreement by written notice delivered to the City not later than seven (7) days after receipt of the Title Response and, upon such termination, the Earnest Money shall be returned to Kentro, and neither of the Parties shall have any further rights or obligations under this Agreement, except those that expressly survive termination. If Kentro does not give such notice of termination, the Kentro's right to terminate on this basis shall be waived and Kentro shall be deemed to have waived its the objections set forth in the Title Objections and accepted the condition of title or survey with respect to the Property, including any matters disclosed in the Title Documents and the Off Record Documents. If the City agrees to remedy any condition set forth in the Title Objections, such remedy shall be the City's obligation and a condition of Kentro's obligation to close.

d. Subsequently Discovered Defects. At any time prior to Closing, if any matter affecting title or survey to the Property shall first appear in any subsequent title commitment or updated Survey which is not set out in the Commitment, the Survey or disclosed to Kentro by the City prior to the expiration of the Due Diligence Period, (each, a "**Defect**"), Kentro shall have the right to object to such Defect by the delivery to the City of notice of such Defect within five (5) days after Kentro discovers such Defect provided that, if such Defect is discovered within five (5) days prior to the Closing Date, the Closing shall be extended for such period as may be necessary to give effect to the provisions of this Section 6(d). Upon receipt of notice of Kentro's objection to any such Defect, the City shall have the right, but not the obligation, to cure such Defect to the satisfaction of Kentro and the Title Company for a period of five (5) days from the date of such notice; provided that if such cure period extends beyond the Closing Date, the Closing Date shall

be extended to three (3) days after the expiration of such cure period. If the City has not cured such Defect to the satisfaction of Kentro and the Title Company by the Closing Date (as extended hereunder), Kentro may elect to either (a) close on such Closing Date (and Kentro shall thereby be deemed to have waived such objection); or (b) extend the Closing Date by written notice to the City to allow the City such additional time set forth in such notice (up to thirty (30) additional days) to cure the Defect (and if such Defect is not then subsequently cured to Kentro's satisfaction, Kentro may then elect to its options under clause (a) or clause (c) hereof); or (c) terminate this Agreement, in each case by giving notice to the City before such Closing Date, in which case the Earnest Money and any Additional Earnest Money (as defined below) will be delivered to Kentro, and thereupon neither party will have any further obligation or liability to the other party hereunder, except as otherwise expressly provided herein. If, in the City's attempt to cure a Defect, other Defects not set out in the Commitment or Survey are discovered, such additional Defects shall be subject to the procedure set forth above.

e. Conveyance of Title—Permitted Exceptions. Title to the Property shall be conveyed to Kentro subject to taxes and assessments for the year of closing and subsequent years, and those Schedule B-2 exceptions set forth in the Title Commitment which have been accepted or deemed to have been accepted by Kentro pursuant to the terms hereof, (the "**Permitted Exceptions**"). Anything in this Agreement to the contrary notwithstanding, the following matters will not be Permitted Exceptions, and the City shall cause them to be removed (or, with the approval of Kentro in its sole discretion, endorsed over) on or before Closing: (i) any deed of trust, mortgage or other financing documents or mechanics' liens recorded against the Property that are created by the City, (ii) any option agreement to purchase all or any part of the Property recorded against the Property executed by the City (other than Kentro's rights under this Agreement), or (iii) any lease or other occupancy agreement for all or a portion of the Property that will Survive Closing (except rights under Section 8(c) below); or (iv) any Schedule B-2 exception pertaining to the power and authority of the City to enter into and perform its obligations under this Agreement (collectively, "**Mandatory Removal Exceptions**"). The Mandatory Removal Exceptions will not be Permitted Exceptions, whether Kentro objects to them or not, and whether or Kentro gives any notice thereof pursuant to Section 6(c) or Section 6(d).

7. GOVERNMENTAL APPROVALS. Kentro shall have until the date that is one hundred fifty (150) days after the Effective Date (the "**Governmental Approval Period**") in which to rezone the Property to C-MX 8 zoning, (the "**Governmental Approvals**"). The Governmental Approval Period may be extended by Kentro for three (3) periods of thirty (30) days each by (i) providing written notice to the City and the Title Company prior to the expiration of the then applicable Governmental Approval Period, and (ii) depositing with the Title Company an additional earnest money deposit in immediately available good funds in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000.00) for each extension ("**Additional Earnest Money**"). It shall be a condition to the effectiveness of each extension that the Additional Earnest Money be received by the Title Company prior to the expiration of the then applicable Governmental Approval Period. Kentro shall use commercially reasonable, good faith efforts to obtain the Governmental Approvals. Kentro shall promptly provide to the City copies of all entitlement submittals made by it or any other applicable governmental authorities hereunder to the following City's designated representative: Jeff Steinberg. Kentro acknowledges and agrees that it shall be solely responsible for any and all security and performance obligations arising in connection with Kentro's pursuit of the Governmental Approvals, including, without limitation,

the posting of any required bonds. Kentro agrees that no agreements, plats, site plans or other Governmental Approvals shall be recorded against the Property until Closing, shall not be binding on the Property until the Property is conveyed to Kentro and shall not be binding on the City unless approved by the appropriate City authority prior to recording. If Kentro has not obtained the Governmental Approvals prior to the expiration of the Governmental Approval Period, as the same may have been extended, then on or prior to the expiration of the Governmental Approval Period, Kentro shall provide the City with written notice of its election to either: (i) terminate this Agreement, in which case the Earnest Money and any Additional Earnest Money deposited with the Title Company shall be returned to Kentro and neither of the Parties shall have any further rights or obligations under this Agreement, except those that expressly survive termination; or (ii) proceed to the Closing in accordance with this Agreement. If Kentro fails to provide written notice prior to the expiration of the Governmental Approval Period, then Kentro shall be deemed to have elected to proceed to Closing.

## 8. COVENANTS.

a. Operation of the Property. From the Effective Date until the Closing Date or earlier termination of this Agreement, City or CDOT (a) shall operate, maintain and insure the Property in accordance with applicable laws and otherwise in the manner that it is currently being operated, maintained and insured by City or CDOT; (b) shall not enter into any new lease, lease modification, lease extension or other occupancy or use agreement that is binding on the Property without obtaining Kentro's prior written consent, which consent may be withheld or delayed in Kentro's sole and absolute discretion; and (c) shall not enter into any contracts or commitments that are binding on the Property that will survive the Closing without obtaining Kentro's prior written consent, which consent may be withheld or delayed in Kentro's sole and absolute discretion, except for any contract that: (i) may be terminated on no more than thirty (30) days' prior notice without penalty or other cost.

b. Post-Closing Covenants. Kentro acknowledges that the City's purpose in entering into this Agreement is the desire to support catalytic redevelopment of the Property, which includes the creation of new jobs, and increasing the tax base on the Property, as a result of Kentro's proposed development. Kentro further acknowledges the City's statement that the Purchase Price reflects the Office of Economic Development ("**OED**") monies which originally funded the City's acquisition transaction in part. Kentro covenants to develop the Property in a manner resulting in: (i) a minimum of 150,000 square feet of commercial development space; and (ii) a minimum of two hundred (200) new permanent jobs. In the event Kentro fails to develop the Property in a manner consistent with this provision 8(b) within seven (7) years from the Closing Date (as defined below), Kentro shall pay to the City (for the account of OED) a sum equal to Three Hundred Thousand Dollars (\$300,000.00), which amount equals the public benefit OED failed to receive in exchange for monies originally funded by OED. Notwithstanding anything to the contrary in this Agreement, this Section 8(b) shall not operate as a waiver, satisfaction or other alternative to Kentro's requirements under the Dedicated Funding for Affordable Housing Ordinance D.R.M.C. § 27-150, *et. al.* The provisions of this Section 8(b) shall survive the Closing and conveyance of the Property to the City and Kentro but not the earlier termination of this Agreement.

c. Shumate Release. Kentro acknowledges that the CDOT has disclosed to the City, which has disclosed to Kentro, a release of hazardous substances at the Shumate building on the Property, (the "**Shumate Release**"). The Shumate Release consisted of four (4) spent solvents that were stored in the former USTs, including 1,1,1-trichloroethane (1,1,1-TCA), trichloroethene (TCE), methylene chloride (DCM), and petroleum distillates. These compounds, their associated degradation products, and other minor constituents (including asphaltic compounds) have impacted the subsurface at the Property and areas downgradient of the Property. In addition, 1,4-dioxane is included as a site constituent of concern (COC) based on its detection in groundwater. City has informed Kentro that CDOT has performed remediation of the groundwater and indoor air in the neighborhood and has received a no further action determination for the indoor air part of the program from the Colorado Department of Public Health and Environment ("**CDPHE**"), a copy of which in the same form which was received by the City from CDOT has been delivered to Kentro prior to the Effective Date. Pursuant to the CDOT Agreement, CDOT will continue to work with CDPHE prior to and after the Closing to remediate the Shumate Release to the extent necessary to obtain a no further action determination from CDPHE for the Property for the Shumate Release; provided that such remediation will not require CDOT to demolish the Shumate building. After Closing, the City and Kentro agree to allow CDOT, its consultants and CDPHE access to the Property as necessary to remediate the Shumate Release. Kentro agrees that after Closing until a no further action determination has been issued by CDPHE it will not (i) take any action at the Property that will hinder, delay or increase the cost of the remediation of the Shumate Release, (ii) remove or damage any monitoring wells at the Property, or (iii) perform any demolition or reconstruction of the Shumate building or surrounding areas without the prior written consent of CDOT. Kentro agrees that it will obtain CDPHE's written approval of all planned uses and improvements at the Property. Kentro agrees that at Closing a notice of environmental conditions has or will be recorded against the Property in a form to be agreed upon by Kentro, CDOT and the City prior to the expiration of the Due Diligence Period. Such notice shall not be a Mandatory Removal Exception and shall not be removed from the Permitted Exceptions. The provisions of this Section 8(c) shall survive the Closing and conveyance of the Property to the City and Kentro.

**9. DATE OF CLOSING.** The date of closing will occur later of: (i) thirty (30) days after expiration of the Governmental Approval Period (as may be extended hereunder); (ii) five (5) days after CDOT vacates the Property; or (iii) on a date as otherwise agreed by the Parties in writing ("**Closing Date**").

**10. CLOSING.** The Closing shall take place at the offices of the Title Company and shall be completed on or before 4:00 p.m. Denver time on the Closing Date ("**Closing**"). Kentro or the City (or both) may elect to close in escrow without attending the Closing, in accordance with escrow instructions not inconsistent with the terms and conditions of this Agreement.

a. Conditions Precedent. Kentro's obligation to consummate the transaction contemplated by this Agreement is subject to satisfaction of all of the conditions set forth in this Section 10(a) (collectively, the "**Conditions Precedent**") as of the Closing Date. Kentro may waive any or all of such conditions in whole or in part but any such waiver shall be effective only if made in writing.

i. The City shall not be in default in the performance of any material covenant or material agreement to be performed by the City under this Agreement.

ii. During the period from the Execution Date to the Closing Date, no Material Event (as herein defined) shall have occurred. For purposes hereof, the term "**Material Event**" shall mean (a) any material and adverse change in the environmental condition of the Property; (b) the issuance by any applicable governmental authority having jurisdiction over the Property of any written notice of any violation of law, or institution of any litigation, suit or proceeding against the Property, any part thereof, or the City which materially affects Kentro's proposed development or use of the Property; or (c) any new Title Documents, not previously disclosed to Kentro pursuant to Section 6 affecting the Property.

iii. The Title Company shall be prepared to deliver to Kentro an Owner's Title Insurance Policy (ALTA Form 2006) (the "**Title Insurance Policy**") issued pursuant to the Commitment in the amount of the Purchase Price insuring title to the Property subject to the Permitted Exceptions.

If one or more of the Conditions Precedent has not been fulfilled by the Closing Date, then Kentro may elect, no later than the Closing Date, to terminate this Agreement or waive the Conditions Precedent and complete the Closing. If Kentro elects to terminate this Agreement as provided in the preceding sentence, the Earnest Money and any Additional Earnest Money shall promptly be returned to Kentro.

b. Obligations of the City at Closing. The following events shall occur at the Closing:

i. The City shall execute and deliver to the Title Company the Quit Claim Deed conveying the Property subject to the Permitted Exceptions and taxes for the year of Closing and subsequent (with proration as provided herein), the Bargain and Sale Deed, the Bill of Sale and the Assignment.

ii. The City shall cause the execution and delivery to the Title Company of the Restrictive Covenant approved in accordance with Section 5(c).

iii. The City shall deliver to the Title Company such other agreed upon instruments and documents as may be reasonably required by the Title Company to issue the Title Insurance Policy, including, without limitation, any affidavit or agreement reasonably required by the Title Company, subject to compliance with all laws including, but not limited to the Denver City Charter.

c. Obligations of the Kentro at Closing. The following events shall occur at Closing:

i. Kentro shall deliver or cause to be delivered to the Title Company immediately available good funds payable to the order of the City in the amount of the Purchase Price plus or minus prorations and other adjustments in accordance with this Agreement, if any.

ii. Kentro shall execute and deliver to the Title Company an acknowledgment of the Restrictive Covenant in recordable form approved in accordance with Section 5(c).

iii. Kentro shall deliver to the Title Company such other instruments and documents as may be reasonably required by the Title Company to issue the Title Insurance Policy, including, without limitation, any affidavit or agreement reasonably required by the Title Company.

d. Closing Costs. Kentro shall pay all costs of ordering the Commitment and the Survey and issuing the Title Insurance Policy; and Kentro shall also pay for all costs of extended coverage (to the extent in excess of the cost of standard coverage) and any endorsements to the Title Insurance Policy which Kentro obtains from the Title Company. Kentro shall pay for all fees for real estate closing services but excluding any state documentary fee or other real estate transfer tax for which the City, the State of Colorado or an instrumentality thereof, is exempt pursuant to Colorado Revised Statutes § 39-13-104(1)(a).

e. Prorations. To the extent the Property is not otherwise exempt from property tax pursuant to Colorado Revised Statutes § 39-3-105 as a result of CDOT's or the City's ownership thereof, 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.

**11. [Intentionally deleted.]**

**12. REPRESENTATIONS AND WARRANTIES**

a. City and Kentro Representations. Each Party hereto represents to the other Party that as of the Effective Date and on the Closing Date:

i. It has the requisite power and authority to execute and deliver this Agreement and the related documents to which such Party is a signatory;

ii. The execution and delivery of this Agreement by such Party has been duly authorized by all requisite action(s) and creates valid and binding obligations of such Party, enforceable in accordance with its terms subject to the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors;

iii. To the actual knowledge of the individual signing this Agreement on behalf of such party, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree or other restriction of any governmental

authority or conflict with, result in a breach of, or constitute a default under any contract, lease, license instrument or other arrangement to which such Party is bound;

iv. It is authorized to execute this Agreement on behalf of its officers, directors, representatives, employees, subsidiaries, affiliates, members/shareholders, agents, trustees, beneficiaries, attorneys, insurers, successors, predecessors and assigns and each person who signs this Agreement in a representative capacity represents that he or she is duly authorized to do so;

v. It has not sold, assigned, granted or transferred to any other person, natural or corporate, any chose in action, demand or cause of action encompassed by this Agreement; and

vi. It is freely and voluntarily entering into this Agreement uncoerced by any other person and that it has read this Agreement and has been afforded the opportunity to obtain the advice of legal counsel of its choice with regard to this agreement in its entirety and understands the same.

b. Survival of Representations and Warranties. The representations and warranties set forth in this Section 12 shall be deemed to be remade as of the Closing Date and shall survive the Closing and the delivery of the Deed for a period of six (6) months from the Closing Date. Notice of any claim as to a breach of any representation or warranty must be made to the breaching Party prior to the expiration of such period or it shall be deemed a waiver of the right of the Party claiming such breach to assert such claim.

### **13. AS-IS AND RELEASE.**

a. AS-IS. Kentro acknowledges that it is purchasing the Property based solely on its inspection and investigation of the Property and that Kentro will be purchasing the Property "AS IS" and "WITH ALL FAULTS" based upon the condition of the Property as of the Closing Date, subject only to the City's representations in Section 12 of this Agreement (the "**Express Representations**") and except for the obligations regarding the Shumate Release, pursuant to Section 8(c). Subject to the foregoing, Kentro acknowledges that, except for the Express Representations and except for the City's obligations regarding the Shumate Release, pursuant to Section 8(c), the City and its agents have not made, do not make and specifically negate and disclaim any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, with respect to the Property, including, without limitation, the condition of the Property, the existence or nonexistence of Hazardous Substances, water or water rights, development rights, taxes, bonds, covenants, conditions and restrictions, topography, drainage, soil, subsoil, utilities, zoning, or other rules and regulations affecting the Property. EXCEPT FOR THE EXPRESS REPRESENTATIONS, THE CITY MAKES NO WARRANTY OR REPRESENTATION EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROPERTY.

b. Full Investigation. Kentro acknowledges that the City is obligated herein to afford Kentro the opportunity for full and complete investigations, examinations and inspections of the Property. Kentro acknowledges and agrees that the City has not made any independent investigation or verification of, or has any knowledge of, the accuracy or completeness of any the information about the Property furnished to Kentro at its request and for the convenience of Kentro. Kentro is relying solely on its own investigations of the Property. Except for a breach by the City of any of the Express Representations, or the City's obligations regarding the Shumate Release, pursuant to Section 8(c), Kentro releases the City and its agents and representatives from any and all liability with respect to the Property Information that has been delivered to the Kentro by the City.

c. Release. Kentro's closing upon the acquisition of the Property shall operate as the Kentro's full and irrevocable release of the City and its agents and representatives, from any and all claims that Kentro may now have, hereafter acquire or assert against the City or the City's affiliates, or their respective agents or representatives for any cost, loss, liability, damage, expense, action or cause of action, whether foreseen or unforeseen, arising from or related to the physical condition of the Property, the presence of Hazardous Substances, any violation of environmental laws, or any other patent conditions affecting the Property, excepting only to the extent of claims against the City that are premised upon the breach of an Express Representation and except for the City's obligations regarding the Shumate Release, pursuant to Section 8(c). Kentro further acknowledges and agrees that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and suspected claims, damages and causes of action.

d. Radon. Kentro acknowledges that the City neither claims nor possesses any special expertise in the measurement or reduction of radon. Kentro further acknowledges that the City has not undertaken any evaluation of the presence or risks of radon with respect to the Property nor has it made any representation or given any other advice to Kentro as to acceptable levels or possible health hazards of radon. EXCEPT FOR THE EXPRESS REPRESENTATIONS, THE CITY HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENCE OR ABSENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS WITHIN THE PROPERTY, OR THE RESIDENCE TO BE CONSTRUCTED ON THE LAND, OR THE SOILS BENEATH OR ADJACENT TO THE LAND. Kentro, on behalf of itself and its successors and assigns, hereby releases the City from any and all liability and claims with respect to radon gas, except for a breach of the Express Representations.

e. Survival of Provisions. The provisions of this Section 13 shall survive Closing and any termination of this Agreement.

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

a. If Kentro Is in Default. If Closing shall not occur as a result of a breach or default by Kentro, the City, as its sole and exclusive remedy, shall have the right to terminate this Agreement and receive the Earnest Money and any Additional Earnest Money as liquidated damages. Upon any such termination, the Parties shall have no further obligations under this Agreement except those that expressly survive the termination of this Agreement. The City expressly waives the remedies of specific performance and damages, including delay damages and attorney fees, or both, or any other legal or equitable remedy. Nothing herein waives, impairs, limits or modifies the City's power and authority of condemnation.

b. If the City Is in Default. If Closing shall not occur as a result of a breach or default by the City (including the material breach of any representation hereunder), Kentro, as its sole and exclusive remedy, may elect either to (i) terminate this Agreement, in which case the Earnest Money and any Additional Earnest Money shall be returned to Kentro and the Parties shall have no further obligations under this Agreement except those that expressly survive the termination of this Agreement, or (ii) treat this Agreement as being in full force and effect and seek specific performance, but not damages. Nothing herein waives, impairs, limits or modifies the City's power and authority of condemnation.

c. Default after Closing. Nothing herein contained shall limit the rights or obligations of the Parties with respect to a default under this Agreement occurring from and after the Closing Date, and in such case the Parties shall have all rights and remedies available at law, in equity or otherwise, including, without limitation, the right to specific performance except neither Party shall have the right to recover (and each Party waives the right to) any speculative, consequential, or punitive damages from such default.

**15. COOPERATION OF THE PARTIES.** In the event that any third party brings an action against a Party to this Agreement solely regarding the validity or operation of this Agreement, the other Party will reasonably cooperate in any such litigation provided that the interests of the Parties are not in conflict. Any Party named in an action shall bear its own legal costs.

**16. BROKER COMMISSION.** The City and Kentro each represent that no real estate broker except Dennis McLin, d/b/a McLin Commercial ("**Broker**"), were in any way involved in this transaction. Kentro will be responsible for payment of a sales commission due to Dennis McLin, d/b/a McLin Commercial, pursuant to a separate agreement.

**17. SEVERABILITY.** In the event that any provision of this Agreement would be held to be invalid, prohibited, or unenforceable in any jurisdiction for any reason, unless narrowed by construction, this Agreement shall, as to such jurisdiction, be construed as if such invalid, prohibited, or unenforceable provision had been more narrowly drawn so as not to be invalid, prohibited, or unenforceable in any jurisdiction for any reason. Such provision, as to such jurisdiction, shall be ineffective to the extent of such invalidity, prohibition, or unenforceability, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

**18. NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance duties under the Agreement, the Parties agree 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 identity or gender expression, marital status, or physical or mental disability; and further agree to insert the foregoing provision in all subcontracts relating to the Agreement.

**19. WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event shall any performance under this Agreement constitute or be construed to be a waiver by either 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 this Agreement may be deemed or taken to be a waiver or any other default or breach.

**20. VENUE.** Venue for any action arising out of this Agreement will be exclusively in the District Court of the City and County of Denver, Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

**21. NOTICES.** All notices provided for in this Agreement must be in writing and be personally delivered, sent via overnight mail by a recognized overnight delivery service, facsimile, or mailed by registered or certified United States mail, postage prepaid, return-receipt requested, if to the Kentro at the addresses or facsimile numbers listed below and if to the City or CDOT, at the addresses or facsimile numbers given below. Notices delivered personally or sent by facsimile are effective when sent (with proof of transmission); provided, however, that any facsimile sent after 5:00 p.m. on a business day or sent on a nonbusiness day shall be deemed received on the next business day. Notices sent via overnight mail are effective one business day after deposit with a recognized overnight delivery service. 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:

Lisa Lumley  
Division of Real Estate  
Department of Finance  
201 West Colfax Avenue, Department 1010  
Denver, Colorado 80202  
Facsimile Number: 720-913-5180

and

Manager  
Department of Public Works  
201 West Colfax Avenue, Department 608  
Denver, Colorado 80202  
Facsimile Number: 720-865-8795

With copies of termination and similar notices to:

Mayor  
City and County of Denver  
1437 Bannock Street, Room 350  
Denver, Colorado 80202  
Facsimile Number: 720-865-8787

and

Denver City Attorney's Office  
201 W. Colfax Ave. Dept. 1207  
Denver, Colorado 80202  
Facsimile Number: 720-913-3180

With a copy to CDOT:

Colorado Department of Transportation  
Attn: David Fox  
15285 S Golden Rd, Bldg 47  
Golden, Colorado 80401  
Facsimile Number: (303) 512-5550

And Required Copy to:

Colorado Attorney General's Office  
Attn: Kathryn Young  
1300 Broadway, 10<sup>th</sup> Floor  
Denver, Colorado 80203  
Facsimile Number: 720-508-6032

And Required Copy to:

Foster Graham Milstein & Calisher LLP  
Attn: Jerri L. Jenkins, Esq.  
360 So. Garfield Street, #600  
Denver, Colorado 80209  
Facsimile Number: 303-333-9786

If to Kentro:

Kentro Group  
Attn: Jimmy Balafas  
1509 York Street, Suite 201  
Denver, Colorado 80206  
Facsimile Number: (303) 500-0948

And Required Copy to:

Fox Rothschild LLP  
Attn: Janet E. Perlstein, Esq.  
1225 17<sup>th</sup> Street, #2200  
Denver, Colorado 80202  
Facsimile Number: 303-292-1300

22. **DEADLINES.** In the event any date for a party's performance occurs on a Saturday, Sunday or state or national holiday, the date for such performance shall occur on the next regular business day following such weekend or state or national holiday.

23. **RIGHT TO ALTER TIME FOR PERFORMANCE.** The Parties may alter any time for performance set forth in this Agreement by a letter signed an authorized representative of the City or its designated assignee and an authorized representative of Kentro.

24. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment to this Agreement will have any force or effect whatsoever, unless embodied in writing in this Agreement. Except as expressly provided for in this Agreement, no subsequent novation, modification, renewal, addition, deletion, or other amendment to this Agreement shall have any force or effect unless embodied in a written amendatory or other agreement executed by both Parties.

25. **THIRD-PARTY BENEFICIARY.** It is the intent of the Parties that no third party beneficiary interest is created in this Agreement except for any assignment pursuant to this 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 this Agreement.

26. **APPROPRIATION BY CITY COUNCIL.** All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City. In addition, if the City fails to make such appropriations as required under the CDOT Agreement, then this Agreement shall terminate and the Parties shall have no further obligations under this Agreement, except those that expressly survive the termination of this Agreement. The City shall notify Kentro in writing, if any required appropriations are not obtained, and in such event, this Agreement shall terminate and the Earnest Money and all Additional Earnest Money shall be refunded to Kentro.

27. **APPROPRIATION BY CITY.** The Parties acknowledge that (i) financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available; (ii) the Parties by this Agreement do not irrevocably pledge present cash reserves for payments in future fiscal years; and (iii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the Parties, except to the extent that the funds are currently encumbered or can be legally made available. The City shall notify Kentro in writing, if any required appropriations are not obtained, and in such event, this Agreement shall terminate and the Earnest Money and all Additional Earnest Money shall be refunded to Kentro.

**28. MULTIPLE YEAR OBLIGATIONS.** The Parties acknowledge that (i) the City by this Agreement does not irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall notify Kentro in writing, if the City is required to terminate the Agreement pursuant to this Section 28, and in such event, this Agreement shall terminate and the Earnest Money and all Additional Earnest Money shall be refunded to Kentro.

**29. REASONABLENESS OF CONSENT OR APPROVAL.** Whenever under this 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.

**30. NO PERSONAL LIABILITY.** No elected official, director, officer, agent or employee of the City nor any director, officer, employee or personal representative of Kentro shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

**31. CONFLICT OF INTEREST BY CITY OFFICER.** Kentro represents that to Kentro's actual knowledge no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

**32. MERGER.** The terms of this Agreement that expressly state that they survive Closing do not merge into the Deed conveying the Property.

**33. CITY SPECIAL PROVISIONS.**

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

b. Governmental Immunity. No term or condition of this Agreement 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, C.R.S. § 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.

c. Binding Arbitration Prohibited. The City does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

d. Software Piracy Prohibition. Any City or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Kentro hereby certifies that, during the term of this Agreement and any extensions, Kentro has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the City determines that Kentro is in violation of this provision, the City may exercise any remedy

available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

e. Employee Financial Interest/Conflict of Interest. C.R.S. §§ 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 Agreement. The City has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the City's services and the City shall not employ any person having such known interests.

f. Choice of Law. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. 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 Agreement, to the extent capable of execution

**34. CONSTRUCTION**. This Agreement may not be interpreted in favor of or against either the City or Kentro merely because of their respective efforts in preparing it. The rule of strict construction against the drafter does not apply to this 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 this 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.

e. The recitals set forth in this Agreement are intended solely to describe the background of this Agreement and form no part of this Agreement. Headings and captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provisions hereof.

**35. ASSIGNMENT**. Neither the City nor Kentro is obligated or liable under this Agreement to any party other than the other Party named in this Agreement. Neither the City nor Kentro may assign any of its rights, benefits, obligations, or duties under this Agreement without the other Party's prior written approval, except that Kentro may, upon prior written notice to the

City but without the City's consent, assign all of Kentro's rights herein to a Kentro Affiliate (as defined below) if such assignee expressly assumes all of Kentro's obligations hereunder with respect to any fact, event or circumstance first arising from and after the effective date of such assignment. Kentro shall not be released from its obligations herein in the event of any such assignment. As defined herein, "**Kentro Affiliate**" shall mean: (a) Kentro Group, L.L.C., its members, and all of its direct and indirect subsidiaries; and (b) any limited liability company, corporation, partnership or other entity that is owned in whole or in part by any of the entities described in subparagraph (a) above; and (c) any person or entity that together with its affiliates owns, directly or indirectly, securities representing more than twenty percent (20%) of the partnership, general partnership, membership or other ownership interests (based upon value or vote) of any entity.

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

**37. COUNTERPARTS.** This Agreement may be executed in two (2) counterparts, each of which is an original and together constitute the same document. This Agreement may be executed by facsimile or electronically scanned signatures which shall be deemed an original for all purposes.

**38. EFFECTIVE DATE.** The "**Effective Date**" of this Agreement shall be the date the City delivers a fully executed copy of this Agreement to the Kentro, notwithstanding any date on the signature pages to the contrary.

**39. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** Each Party consents to the use of electronic signatures by the other Party. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this 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 this 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.

**40. NO RELIANCE.** The Parties expressly assume any and all risks that the facts and law that may be or become different from the facts and law as known to, or believed to be, by the Parties as of the date of this Agreement. In executing this Agreement, no Party has relied upon any information supplied by the other or by their attorneys, or upon any obligation or alleged obligation of the other Party to disclose information relevant to this Agreement other than the information specifically required to be disclosed by this Agreement.

**41. ATTORNEYS' FEES.** Each of the parties will pay its own attorneys' fees, except that the party adjudged to be a prevailing party in any judicial proceedings or arbitration between any of the parties will be entitled to be awarded all of its costs and expenses, including, without limitation, reasonable attorneys' fees, expert witnesses' fees, the cost of transcripts and similar expenses related to litigation or arbitration.

**[Remainder of Page Intentionally Left Blank]**

**IN WITNESS WHEREOF**, the parties have executed and affixed their seals, if any, at Denver, Colorado as of \_\_\_\_\_, 2017 (the "**Effective Date**").

**Placeholder for City Signature Page**

**KRF Arkansas LLC, a Colorado limited liability company**

By:   
\_\_\_\_\_

Manager

**EXHIBIT 1**  
(Legal Description of Property)

**EXHIBIT 2**  
(Form of Quitclaim Deed)

After recording, return to:  
Division of Real Estate  
City and County of Denver  
201 West Colfax Avenue, Dept. 1010  
Denver, Colorado 80202

**QUITCLAIM DEED**

**THIS DEED** is dated \_\_\_\_\_, and is made between \_\_\_\_\_  
\_\_\_\_\_ (whether one, or more than one), the "Grantor," of the \_\_\_\_\_  
\_\_\_\_\_ County of \_\_\_\_\_ and State of \_\_\_\_\_, and \_\_\_\_\_  
\_\_\_\_\_ (whether one, or more than one), the  
"Grantee," whose legal address is \_\_\_\_\_ of the \_\_\_\_\_ County of  
\_\_\_\_\_ and State of \_\_\_\_\_.

**WITNESS**, that the Grantor, for and in consideration of the sum of  
\_\_\_\_\_ DOLLARS, (\$ \_\_\_\_\_), the receipt and  
sufficiency of which is hereby acknowledged, does hereby remise, release, sell and QUITCLAIM  
unto the Grantee, and the Grantee's heirs and assigns, forever, all the right, title, interest, claim and  
demand which the Grantor has in and to the real property, together with any improvements thereon,  
located in the City and County of Denver, and State of Colorado, described as follows:

also known by street address as:

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and  
privileges thereunto belonging, or in anywise thereunto appertaining, including, without limitation,  
all easements, vacated roads and private alleys, and all the estate, right, title, interest and claim  
whatsoever of the Grantor, either in law or equity, to the only proper use, benefit and behoof of  
the Grantee, and the Grantee's heirs and assigns, forever.

IN WITNESS WHEREOF, the Grantor has executed this Deed on the date set forth above.

**ATTEST:**

**GRANTOR:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT 3**  
(Form of Bill of Sale)

**BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS, THAT \_\_\_\_\_,  
("Seller") for consideration of TEN DOLLARS AND OTHER GOOD AND VALUABLE  
CONSIDERATION, paid by the City and County of Denver (the "City"), the receipt and  
sufficiency of which are hereby acknowledged, has bargained and sold, and by these presents does  
grant and convey unto the City, without warranty or representation of any kind, including, without  
limitation, any express or implied warranties, all improvements, personal property, equipment and  
fixtures located on the real property described in **Exhibit A** attached hereto and incorporated herein  
by this reference.

IN WITNESS WHEREOF, the Seller has executed this Bill of Sale this \_\_\_\_ day of  
\_\_\_\_\_ 20\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 4**

(Form of Assignment)

**ASSIGNMENT**

Reference is hereby made to that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2017 (the "**Agreement**"), pursuant to which \_\_\_\_\_ ("**Seller**"), has agreed to sell to \_\_\_\_\_ ("**Buyer**"), the Property (as defined in the Agreement), together with the improvements located thereon and the rights, privileges and entitlements incident thereto.

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned Seller hereby sells, transfers, assigns, conveys and delivers to Buyer any right, title and interest that Seller may have in all of Seller's right, title and interest in and to all utility taps, licenses, permits, contract rights, and warranties and guarantees associated with the real property described in **Exhibit A** attached hereto. Any rights conveyed by this Assignment are conveyed on an as is, where is basis without warranty or representation of any kind, express or implied.

Date: \_\_\_\_\_

"SELLER"

[SELLER],

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Doc. Fee Exempt – Consid. Less than \$500 – C.R.C. § 35-13-102(2)(a)

**EXHIBIT 5**

(Form of Bargain and Sale Deed)

AFTER RECORDING RETURN TO:

**BARGAIN AND SALE DEED**

THIS BARGAIN AND SALE DEED, made as of this \_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_ ("Grantor"), and \_\_\_\_\_ ("Grantee"), whose address is \_\_\_\_\_.

Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by Grantee, the receipt and sufficiency of which are hereby acknowledged, does hereby SELL AND CONVEY TO GRANTEE, ITS SUCCESSORS AND ASSIGNS, FOREVER, all of Grantor's interest in and to all of the following that are appurtenant to, or associated with, or in, on or under that certain real estate situated in Denver County, Colorado, which is described on **Exhibit A** attached hereto and incorporated herein by this reference ("Land"): (a) all water rights and conditional water rights that are appurtenant to or that have been used or are intended for use in connection with the Real Property, (b) any ditch, well, pipeline, channel, spring, reservoir or storage rights located on the Real Property, whether or not adjudicated or evidenced by any well, decree, order, stock certificate, permit or other instrument, (c) all rights with respect to nontributary or not nontributary groundwater (and other groundwater that is subject to the provisions of Colorado Revised Statutes Section 37-90-137(4) or the corresponding provisions of any successor statute) underlying the Real Property, (d) any permit to own, use or construct any water well on the Real Property (including those wells on the Real Property from which water is intended to be used in connection with the Real Property), and (e) any decreed or pending plan of augmentation or water exchange plan for the Real Property

IN WITNESS WHEREOF, Grantor has executed this instrument effective the day and year first set forth above.

**GRANTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

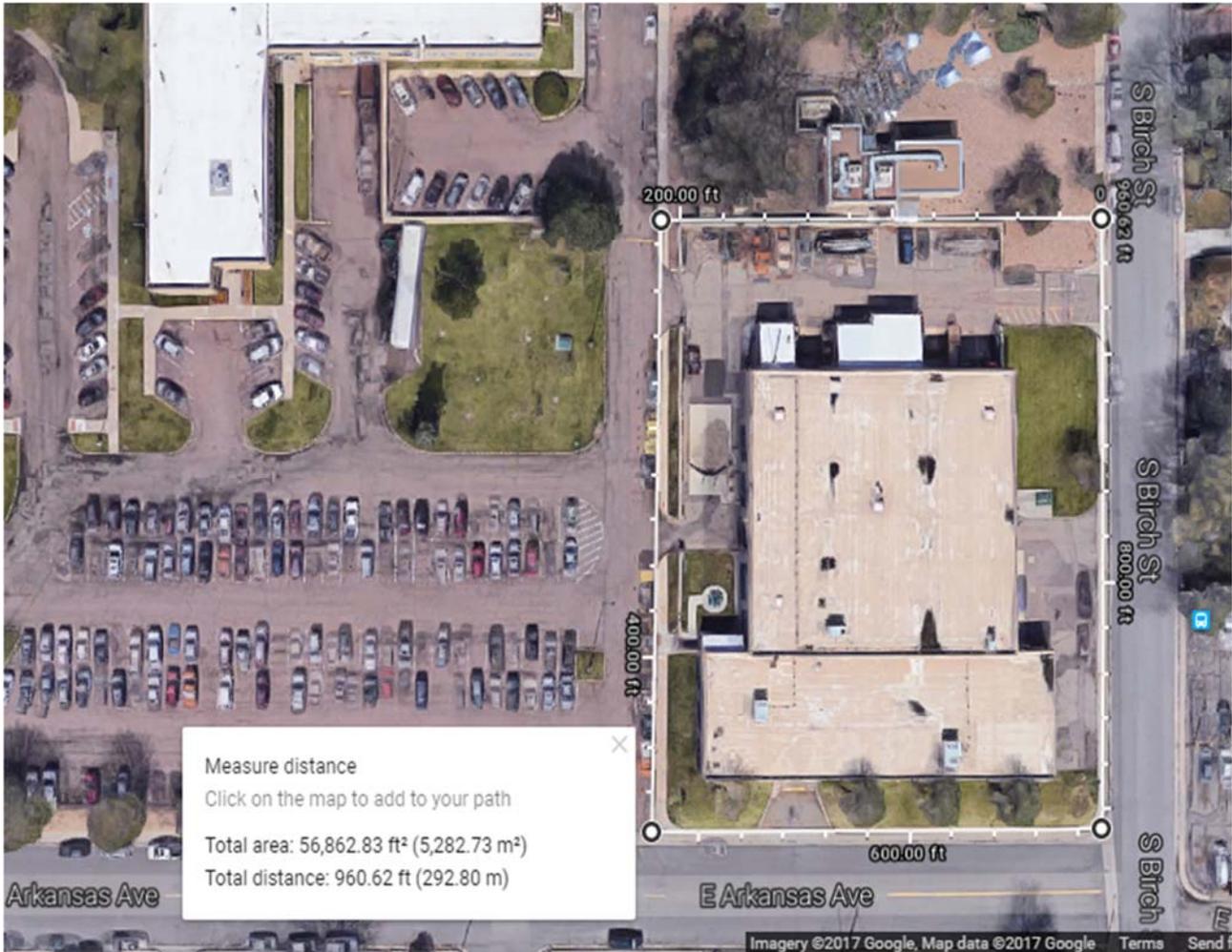
**STATE OF COLORADO** )  
 ) ss  
**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_.

WITNESS my hand and official seal.  
My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT 6**  
**Depiction of Motor Pool Property**



## **SCHEDULE 4a**

These five (5) documents were delivered as part of the contract.

1. 2015 Annual Summary Report dated April 2016.
2. Colorado Department of Transportation (CDOT) Addendum Summary of 2013 Systems Shutdown Report CDOT Materials Testing Laboratory Letter dated August 27, 2014.
3. Colorado Department of Transportation (CDOT) Proposed Long-Term Groundwater Monitoring Plan for 1, 4-Dioxane CDOT Materials Testing Laboratory Letter dated June 22, 2016.
4. 2014 Annual Summary Report dated April 2015.
5. Colorado Department of Public Health and Environment Proposed Long-Term Groundwater Monitoring Plan for 1, 4-Dioxane, CDOT Materials Testing Laboratory letter dated April 18, 2016.