

AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the “**City**”), and **COMMUNITY OPPORTUNITY FUND**, a Delaware nonprofit corporation, registered to conduct business in Colorado, whose office address is 144 Main Street, Cold Spring, New York 10516 (the “**Recipient**”), and **DENVER DRY PRESERVATION LLC**, a Colorado limited liability company, whose address is c/o Perry Rose LLC, 4500 W. 38th Avenue, Suite 210, Denver, Colorado, 80212 (the “**Owner**”), (collectively, the “**Parties**”).

RECITALS

WHEREAS, there are public purposes for converting buildings in the City from steam-generated energy to electricity-generated energy, including reducing greenhouse gas emissions to protect City residents and visitors from the adverse public health impacts associated with climate change, increasing safety for building occupants, and improving indoor air quality;

WHEREAS, the public purposes above will be furthered to a greater extent by buildings that are converted from steam to electricity than buildings that are converted from steam to natural gas;

WHEREAS, incentives are needed to encourage building owners to choose to convert from steam-generated energy to electricity-generated energy to further the public purposes above;

WHEREAS, the Recipient is a member of Denver Dry Preservation Manager LLC (the “**Managing Member**”), the managing member of the Owner;

WHEREAS, the Owner is willing to convert the Condominium units comprising its portion of a building, which is located within the City and County of Denver, from a steam to electric fuel system partly due to the availability of certain incentives provided by the City, as further described in this Agreement;

WHEREAS, this Agreement, and the conversion of Owner’s portion of the building from steam service to electric service within the City will advance the valid and valuable public purposes set forth above by reducing greenhouse gas emissions, increasing safety, and improving indoor air quality, as a result of the incentives described herein; and

NOW THEREFORE, for these reasons, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **RECIPIENT AND OWNER OBLIGATIONS.** This Agreement and the City's obligations hereunder are conditioned upon the Recipient advancing the incentive payments received pursuant to this Agreement to Owner and Owner converting its portion of the building located at **1565 California St., Denver, Colorado, 80202**, consisting of condominium units 15-2, 15-3, 15-456, 16-B, and 16-2, which will comprise 106 units of affordable housing restricted for tenants earning between 30% and 80% of the Area Median Income, (the "**Building**") from a steam to electric fuel system as set forth in **Exhibit A, Scope of Work**.

2. **TERM.** The term of this Agreement shall commence **on the date of execution set forth on the City's signature page and shall expire twenty-four (24) months thereafter**; provided, however, that this Agreement shall automatically terminate when the City's payment(s) hereunder equal the Maximum Contract Amount. Subject to the Executive Director's prior written authorization, the Recipient and Owner may complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

3. **INCENTIVE PAYMENTS.** Subject to the terms hereof, the City agrees to make incentive payments to the Recipient payable as follows:

a. **Budget.** The City shall reimburse Recipient for documented costs directly incurred by Recipient or Owner and allocable to the conversion of the Building from steam to electricity upon completion of each milestone of the Building's conversion as further detailed in **Exhibit B, the Budget**. Recipient's costs shall not exceed the line item amounts set forth in **Exhibit B**. The City acknowledges and agrees that the Recipient shall loan such reimbursed funds to Owner upon receipt from the City (the "**Project Loan**") and shall execute a note, loan agreement, deed of trust, and other ancillary documents as Recipient deems necessary to evidence the Project Loan (collectively, the "**Project Loan Documents**").

b. **Maximum Contract Amount.**

(1) Notwithstanding any other provision of the Agreement, the City's maximum incentive payment obligation shall not exceed **ONE MILLION THREE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,300,000.00) (the "Maximum Contract Amount")**.

(2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for purposes of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is

not intended to create a multiple fiscal year direct or indirect debt or financial obligation of the City.

c. **Petitions for Payment.** To receive an incentive payment hereunder, the Recipient shall petition the Executive Director of Climate Action, Sustainability, and Resiliency or her designee (the “Executive Director”).

(1) The petition for incentive payment shall contain the Recipient’s or the Owner’s supporting documentation evidencing eligible expenses as set forth in **Exhibit B**, and the Recipient’s and Owner’s satisfaction of the requirements contained in Section 1 above. To receive an incentive payment, the Recipient must petition the Executive Director at least forty-five (45) days before the expiration of the Term.

(2) The Recipient or the Owner shall supply whatever additional information the City requests in order to substantiate the Recipient’s petition for incentive payments. The City may withhold incentive payments for which it has been petitioned by the Recipient if it reasonably determines that the petition is not substantiated by the supporting documentation submitted by the Recipient or the Owner. Such determination shall be provided to the Recipient in writing and shall be appealable to the Executive Director.

(3) Upon receipt of documentation satisfying the requirements of this Section 2.c., the City shall verify the Recipient’s petition and issue proper incentive payment consistent with the City’s Prompt Payment Ordinance, D.R.M.C. §§ 20-107–118.

d. **Repayment to City upon Repayment of Project Loan.** To the extent any amount of the Project Loan is repaid to Recipient, the Recipient is obligated to return such funds to the City. The repayment to the City shall occur within 30 days of Recipient receiving the funds. This repayment obligation shall survive the expiration or termination of this Agreement.

4. **STATUS OF CONTRACTOR.** The Recipient and Owner are independent contractors retained to perform professional or technical services for limited periods of time. Neither the Recipient, the Owner, nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

5. **TERMINATION.**

a. The City has the right to terminate the Agreement with cause upon written notice to the Recipient and Owner, effective immediately.

b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Recipient or Owner or any of its officers or employees are convicted, plead *nolo contendere*, enter

into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Recipient's and/or Owner's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

c. Upon termination of the Agreement, the Recipient and/or Owner shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for authorized expenses incurred pursuant to the terms of this Agreement prior to the date written notice of termination is received.

6. **EXAMINATION OF RECORDS AND AUDITS.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Recipient's and Owner's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Recipient and Owner shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require the Parties to make disclosures in violation of state or federal privacy laws. Recipient and Owner shall at all times comply with D.R.M.C. 20-276.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Recipient or Owner. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

8. **ASSIGNMENT AND SUBCONTRACTING.** The City is not obligated or liable under this Agreement to any party other than the Recipient and the Owner. Neither Recipient nor Owner shall assign or subcontract any of its rights, benefits, obligations or duties under this Agreement except upon

prior written consent and approval of the City.

9. INSURANCE.

a. General Conditions. The Recipient and Owner agree to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Recipient and Owner shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-VIII” or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Recipient and/or Owner shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. The Recipient and/or Owner shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Recipient or Owner. The Recipient and Owner shall maintain, each at their own expense, any additional kinds or amounts of insurance that they may deem necessary to cover their obligations and liabilities under this Agreement.

b. Proof of Insurance. Neither Recipient nor Owner may commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Prior to commencing services or work relating to this Agreement, the Recipient and Owner will each submit to the City’s Office of Climate Action, Sustainability, and Resiliency, a Certificate of Insurance consistent with the form in **Exhibit C**, preferably an ACORD form, and certify that the certificate of insurance complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the certificate of insurance. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Recipient’s and/or Owner’s breach of this Agreement or

of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds.** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), the Recipient's and Owner's and any subcontractor's insurers shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation.** For all coverages required under this Agreement, the Recipient's and Owner's insurers shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants.** The Recipient and Owner shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Recipient and/or Owner and appropriate to their respective primary business risks considering the nature and scope of services provided.

f. **Workers' Compensation and Employer's Liability Insurance.** The Owner shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

g. **Commercial General Liability.** The Recipient and Owner shall each maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

h. **Personal Automobile Insurance.** The Owner shall ensure personal automobile insurance is in force with current state minimum limits for all vehicles used in performing services under this Agreement. Owner represents, as material representations upon which the City is relying, that Owner does not own any fleet vehicles and that in performing services under the Agreement, Owner's owners, officers, directors, and employees use their personal vehicles. Owner shall ensure that any person operating a motor vehicle in performing services under the Agreement shall keep in full force Personal Automobile Liability coverage with minimum required limits.

i. **Builders Risk.** Where the funds subject to this Agreement are disbursed for construction, the Owner shall maintain Builders Risk Insurance or an Installation Floater in the amount of

the value of the Building as improved and renovated, with the City named as loss payee.

j. Property. The Owner shall maintain property insurance satisfactory to the City in the amount of the value of the Building, with the City named as loss payee.

k. Commercial Crime. The Recipient shall maintain minimum limits of \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of the City's money, securities or valuable property by contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

10. DEFENSE AND INDEMNIFICATION.

a. The Recipient and the Owner hereby agree to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Recipient, the Owner, or their subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. The Recipient’s and the Owner’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. The Recipient’s and the Owner’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

c. The Recipient and the Owner will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Recipient and the Owner under the terms of this indemnification obligation. The Recipient and Owner shall obtain, at their own expense, any additional insurance that they deem necessary for the City’s protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

11. COLORADO GOVERNMENTAL IMMUNITY ACT. In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

12. TAXES, CHARGES AND PENALTIES. The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Owner shall promptly pay when due, all taxes, bills, debts and obligations it incurs converting the Building from a steam to electric fuel system and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

13. INUREMENT. The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

14. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, the Recipient and Owner may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Recipient and the Owner shall insert the foregoing provision in all subcontracts.

15. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS. This Agreement is intended as the complete integration of all understandings between the Parties. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

16. GOVERNING LAW; VENUE. The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

17. LEGAL AUTHORITY.

a. The Recipient and the Owner lack any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

b. The Recipient and the Owner represent and warrant that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

c. The person or persons signing and executing this Agreement on behalf of the Recipient and the Owner do hereby represent and warrant that he/she or they have been fully authorized by the Recipient and Owner, respectively, to execute this Agreement on behalf of the Recipient and Owner, and to validly and legally bind the Recipient and Owner to all the terms, performances and provisions herein set forth

d. The City shall have the right, at its option, to temporarily suspend or permanently terminate this Agreement, if there is a dispute that the legal authority of either the Recipient or Owner or the people signing this Agreement on their behalf is not sufficient to enter into this Agreement. The City shall not be obligated to the Recipient or Owner for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.

18. NO THIRD PARTY BENEFICIARY. Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City, the Recipient, or the Owner receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

19. SEVERABILITY. Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

20. CONFLICT OF INTEREST.

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Recipient and the Owner shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. The Recipient and the Owner shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Recipient and the Owner respectively represent that they have disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Recipient or the Owner by placing the Recipient's or the Owner's own interests, or the interests of any party with whom the Recipient or the Owner has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Recipient or Owner, as applicable, written notice describing the conflict.

21. COMPLIANCE WITH ALL LAWS. The Recipient and the Owner shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

22. NOTICES. All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Recipient or Owner at the respective address first above written, and if to the City at:

Executive Director of the Office of Climate Action, Sustainability & Resiliency or Designee
201 West Colfax Avenue, Suite 704
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. 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.

23. DISPUTES. All disputes between the City and the Recipient or Owner arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

24. NO CONSTRUCTION AGAINST DRAFTING PARTY. The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

25. ORDER OF PRECEDENCE. In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

26. SURVIVAL OF CERTAIN PROVISIONS. The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Recipient's and the Owner's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

27. ADVERTISING AND PUBLIC DISCLOSURE. Neither the Recipient nor the Owner shall include any reference to the Agreement or to incentives paid pursuant to the Agreement in any of the Recipient's or the Owner's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Recipient or the Owner, as applicable, shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

28. CITY EXECUTION OF AGREEMENT. The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

29. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS. The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

30. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS. The Recipient and Owner shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning

the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

31. COMPLIANCE WITH DENVER WAGE LAWS: To the extent applicable to the Owner's provision of Scope of Work hereunder, the Owner shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Owner expressly acknowledges that both the Recipient and Owner are aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Recipient and/or Owner, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

32. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Recipient and the Owner consent to the use of electronic signatures by the City. This 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 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.

List of Exhibits

Exhibit A – Scope of Work

Exhibit B – Budget

Exhibit C – Sample Certificate of Insurance.

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[SIGNATURE PAGES FOLLOW.]

Contract Control Number: CASR-202579275-00
Contractor Name: Community Opportunity Fund and
Denver Dry Preservation LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL **CITY AND COUNTY OF DENVER:**

ATTEST: By: _____

APPROVED AS TO FORM: **REGISTERED AND COUNTERSIGNED:**
Attorney for the City and County of Denver
By: _____ By: _____

By: _____

Contract Control Number:
Contractor Name:

CASR-202579275-00
Community Opportunity Fund and
Denver Dry Preservation LLC

Entity: Community Opportunity Fund

By:  _____
1555A358EAC047D...

Name: Dawn Mottram
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: _____


Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

CASR-202579275-00
Community Opportunity Fund and
Denver Dry Preservation LLC

Entity: Denver Dry Preservation LLC

By:  Signed by:
958846A7714F4C8...

Name: JONATHAN F.P. ROSE
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Steam-to-Electric Conversion Program

EXHIBIT A – SCOPE OF WORK

1. Summary

The City has identified a public purpose to improve the study and construction of properties converting from steam heating to electric heating and cooling, specifically in downtown Denver. This program offers a financial incentive for the installation of electric heating and cooling systems in existing properties that formerly relied on steam heating. The financial incentive is calculated based on the differential between the cost of converting to electric heating and cooling and the cost of converting to a system reliant on other fuel types, such as natural gas.

The City has selected Community Opportunity Fund (the Recipient), a Delaware non-stock organization, as a recipient of a financial incentive for a Steam-to-Electric Conversion Incentive project study and construction at 1565 California Street, Denver, CO 80202.

2. PROJECT DESCRIPTION

2.1. Project. Recipient and Owner will complete the project objectives, workplan, milestones, and schedule based on the Recipient's Program Application to City, as approved by the City Program Manager.

2.1.1. Recipient and Owner's project includes the following:

The Denver Dry Goods building is an existing mixed-use building located in downtown Denver. In 2023, Perry Rose LLC received an allocation of competitive 4% + State Low Income Housing Tax Credits (LIHTC) to redevelop seven floors of the building into 106 units of affordable housing reserved for tenants earning between 30% and 80% of Area Median Income. This portion of the building will be owned by Denver Dry Preservation LLC (the Owner). Perry Rose LLC is the fee developer responsible for managing the redevelopment. Community Opportunity Fund is a non-profit organization focused on service provision in affordable housing and is a partial owner of Denver Dry Preservation LLC.

The redevelopment will a) renovate 51 units of rental housing on four floors of the Denver Dry Goods building and b) convert three floors of commercial space into 55 units of affordable housing. When the renovation is complete, it will provide 106 units of affordable housing restricted for tenants earning between 30% and 80% of Area Median Income.

Currently, the Denver Dry Goods building is reliant on a steam heating system. As part of the redevelopment, the development team will transition the seven floors of the building that comprise the LIHTC renovation to electric heating and cooling. The majority of units will be heated and cooled using electric Split System Heat Pumps; certain units will be heated using electric baseboard heating and cooled using Packaged Terminal Air Conditioners. The intent of electrification is to reduce building operating costs, contribute to the goals of Energize Denver, and allow each tenant to control and meter their heating and cooling usage.

Steam-to-Electric Conversion Program

2.1.2. The City may consider and approve changes to the project that meet or advance the intent of the project and broader Steam-to-Electric Conversion Incentive Program objectives, subject to the terms of the Agreement and the Maximum Contract Amount.

2.2. Responsibilities. Recipient and Owner shall be responsible for the completion of the work and to provide required documentation to the City as specified herein.

2.2.1. Recipient and Owner agree to cooperate with the City to submit applications for supportive funding and/or resources from relevant sources including but not limited to utility and federal programs.

2.2.2. Recipient and Owner agree to cooperate with the City to submit an application pursuant to the Steam-to-Electric Conversion Incentive Program adhering to all rules and eligibility requirements imposed by the program.

2.2.2.1. Eligibility Requirements. Recipient and Owner confirm that the project meets the following eligibility requirements:

- Property is located in the City & County of Denver.
- Property is not owned by the City & County of Denver.
- Property is an acquisition-rehabilitation affordable housing development that will comply with the requirements set forth in any applicable affordable housing financing agreements with the City.
- Property and equipment meet all applicable code requirements. Recipient and Owner are solely responsible for the costs of permits, inspections, licenses, and similar costs.

2.2.2.2. Program Rules:

- Incentive awards are based on the cost differential between the cost of converting the existing property from steam heating to all-electric heating and cooling and the cost of converting to natural gas. The cost differential is based upon cost proposals reviewed and approved by the program administrator as part of the Property's application to the incentive program. The program reserves the right to request As Built documentation or to conduct on-site verification to confirm final incentive payments. The Property as built must comply with the terms of the Agreement and any applicable affordable housing financing agreements with the City.
- Recipient and Owner must inform the program administrator if you are receiving another rebate or tax credit from the state, federal government, Xcel Energy, or any other utility company or Denver agency. The combined amount of any rebates, payments, and incentive awards cannot exceed the actual cost of the service or equipment to the Recipient or Owner. If the

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project plans to receive the Steam-to-Electric incentive, the same piece of equipment cannot receive any other rebates from Denver's Climate Action Rebate Program.

- Recipient and Owner shall allow City representatives, including Michaels Energy, or contractors to review and approve the start-up and commissioning plan to ensure that it is in accordance with the manufacturer's recommendations, prior to commencing start-up; review start-up and commissioning reports; verify the start-up and commissioning was completed as recommended by the manufacturer and in accordance with best practices; visit the building as needed to verify project completion; attend the owner's training by the certified manufacturer's equipment representative; collect pre- and post- project data; and provide facilitation services. To support these activities, the Recipient and Owner shall designate a point of contact for the project to keep City representatives updated and to coordinate access to the site, in a timely fashion, on dates mutually agreed upon between by the parties. Recipient and Owner shall promptly update the City if the points of contact change.
- Recipient and Owner shall participate in interviews, surveys, focus groups and other engagements to provide feedback to the City and its representatives on the rebate program design, challenges faced, and suggestions for improvement.
- Recipient and Owner shall provide City staff with utility and cost data and building construction information to create case studies based on the building project. Information to be provided includes but is not limited to architectural and MEP plans, equipment specifications, approved submittals, narrative documentation explaining design and equipment choices, trade-offs, lessons learned, and costs associated to the project. The Recipient and Owner will be given the opportunity to review the case study and ask for information to be removed but the City & County of Denver retains the final decision as to what is included in the case studies and all documentation is subject to CORA. Documentation will be made publicly available on the City's website and/or shared on the City's social media channels.
- Recipient and Owner are responsible for ensuring that the contractors they hire are licensed with the City & County of Denver and properly pull a permit for the work, and possess any equipment manufacturer's certifications required to validate extended warranties. Anything installed without a permit or by a contractor not licensed with the City & County of Denver is not eligible for funding.

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3. DELIVERABLES

3.1. Outcome. The final outcome of this Agreement is completed when the following deliverables are provided for each task in accordance with §3.3 of this Exhibit.

3.2. Performance Measures. Recipient and/or Owner shall comply with the following performance measures:

Performance Measure/Recipient and/or Owner will:	By:
Award and finalize subcontract(s).	Within 60 days after the Effective Date of this Agreement.
Submit Reimbursement Requests and Project Status Reports at each milestone	See §3.3 below
Submit Project Final Report	At least 2 months prior to the Expiration Date of this Agreement

3.3. Progress Payments and Project Status Reports. The Recipient shall submit reimbursement requests and project status reports on a quarterly submission schedule. Each request shall provide a description of work completed, documentation of the amounts and types of reimbursable expenses, records of supplier invoices, and proof of Recipient or Owner payment of the requested reimbursable expenses. Upon agreement execution, Recipient and/or Owner shall submit IRS W9's and Xcel Energy (or other utility) Data Release forms. Specific task deliverables to be included in Project Status Reports are as follows:

- The approved start-up and commissioning plan that is in accordance with the manufacturer's recommendations,
- Start-up and commissioning report completed as recommended by the manufacturer and in accordance with best practices
- Approved Equipment Submittal Package and specifications
- Installation and Operation Manuals
- Verification that owner Training has been completed with a list of attendees
- Invoices of materials showing delivery schedule, payment terms, and compliant specifications that align with design drawings.
- As-built drawings and documentation indicating final equipment count.
- Copies of permits (building, mechanical, electrical, plumbing, etc.)
- Photos of construction/equipment installation at milestone stages. Milestones include, but are not limited to, groundbreaking, framing, HVAC and water

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heating equipment installation, solar panel or other electrification-related system installation, and other photos from construction/equipment installation applicable to the scope in this Exhibit.

3.4. City Acknowledgement. The Recipient and Owner agree to acknowledge the City and more specifically the Office of Climate Action, Sustainability, and Resiliency (“CASR”) and the Climate Protection Fund in any and all materials or events designed to promote or educate the public about the work and the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

3.4.1. The Recipient and Owner must get approval from the Executive Director prior to publicizing activities or projects funded by the Agreement or prior to any radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods for any activities or projects funded by CASR. In any event, all such publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Department of Climate Action, Sustainability and Resiliency.” The Recipient and Owner shall acknowledge CASR in any events regarding the project being funded, including groundbreakings and openings.

4. ADMINISTRATIVE REQUIREMENTS

4.1. Reporting. Recipient or Owner shall submit the following reports to the City. The City may withhold payment(s) if such reports are not submitted timely.

- 4.1.1. Project Status Reports shall be submitted to the City in accordance with §3.3 of this Exhibit.
- 4.1.2. Within 30 days before Project completion, Recipient or Owner shall notify the City of Denver to schedule a site visit and interview for case study development and documentation of installed equipment.
- 4.1.3. Within 90 days after the completion of the Project, Recipient or Owner shall submit the final Pay Request and Status Report to the City. The final Project Status Report should include a summary of the project, lessons learned, and any remaining deliverables from those identified within §3.3 of this Exhibit.
- 4.1.4. No later than eighteen (18) months following the completion of the Project, the Owner shall provide a supplemental report to the City containing: (a) utility consumption data for the Building covering the first full heating and cooling season post-completion; (b) a summary of tenant feedback and satisfaction with the new system; and (c) an updated "lessons learned" summary based on the first year of system operation.

4.2. Monitoring. City shall monitor this work on an as-needed basis. The City may choose to audit the records for activities performed under this Agreement. Recipient and

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Owner shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Agreement. Such books and records shall contain documentation of the Recipient's and Owner's pertinent activity under this Agreement in accordance with generally accepted accounting principles.

- 4.2.1. Recipient and Owner shall monitor its subcontractors, if any, during the term of this Agreement. Results of such monitoring shall be documented by Recipient and Owner and maintained on file.
- 4.2.2. Copies of any and all contracts entered into by the Recipient and/or Owner in order to accomplish this Project shall be submitted to the City upon request, and any and all contracts entered into by the Recipient and/or Owner or any of their respective subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

4.3. System Performance and Building Energy Data.

- 4.3.1. Recipient and/or Owner is required to complete an "Xcel Energy: Consent to Disclose Utility Customer Data" form for the timeframe associated with the 5 years after equipment installation.
- 4.3.2. Recipient and/or Owner is required to provide data and information upon request to demonstrate the efficacy of the System and/or to inform an assessment of greenhouse gas reduction at the property.

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EXHIBIT B – BUDGET & INVOICING

- 1. Budget.** The City will award up to \$1,300,000 (“Maximum Contract Amount”) to the Recipient for documented costs of the Recipient/Owner’s project as further detailed in this Exhibit.
 - 1.1. Activities for the Award are set forth in Exhibit A, Scope of Work (“SOW”).
 - 1.2. Recipient and Owner may increase the total project cost or contribute to the project “Other Funds” (e.g., non-City award) secured and provided by the Recipient or Owner and such change does not require an amendment. City will verify the Recipient’s and Owner’s contribution of Other Funds and compliance with this section at Project Closeout.
- 2. Disbursement Request Procedures and Project Status Reports.** Disbursements shall be processed through the Office of Climate Action, Sustainability & Resiliency (“CASR”) and the Department of Finance (“DOF”). CASR will disburse funds to the Recipient for approved incentive payment amounts covered by this agreement upon the Recipient’s written request delivered to CASR (the “Disbursement Request”). The Disbursement Request shall be in the form approved or required by CASR and DOF and may be submitted no more frequently than four times per year. Disbursement Requests must be submitted by Recipient electronically to the assigned CASR staff member who will review the submission for completeness and accuracy.
 - 2.1. All Disbursements will be via check sent by regular mail unless ACH or other method of disbursement is requested.
 - 2.2. Recipient may request advanced payment if deemed necessary (as determined by City in its sole discretion), for successful completion of the project. Advance payments are limited to ten percent (10%) of a specific task or deliverable item in the budget. Recipient may not make an advanced payment request until such funds are needed to pay costs of the Project. Recipient and/or Owner shall account for the expenditure of all advance funds on expenses authorized under this Agreement.
 - 2.3. The amount of each Disbursement Request must be limited to the amount needed to reimburse costs actually incurred and paid by the Recipient or Owner at the time of the Disbursement Request. The Disbursement Request may not include items previously submitted to and reimbursed by other lenders or funds to be placed into escrow accounts. Disbursement Requests containing amounts for prospective or future needs or advances in lump sums will be limited to the terms outlined in section 2.2 of this Exhibit. Regardless of the amounts of the Disbursement Requests, 5% of the Maximum Contract Amount will be withheld and released only upon Project completion and submission of a Disbursement Request in accordance with section 2.5 of this Exhibit; it will be released with or as the final incentive payment and must comply with all other requirements for Disbursement Requests (including that it is for reimbursement

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of costs actually incurred and paid by the Recipient or Owner at the time of the Disbursement Request).

- 2.4. Each Disbursement Request must be accompanied by documentation acceptable to CASR and DOF that evidences payments for which a Disbursement Request has been made. CASR and DOF will review documentation for incurred costs that match the Disbursement Request. Disbursement Request shall include, as applicable, but not limited to:
 - 2.4.1. A description of the work completed and what approved incentives the Recipient and/or Owner is seeking reimbursement for.
 - 2.4.2. Documentation of the amounts and types of reimbursable expenses.
 - 2.4.3. Invoices and records of supplier invoices, and proof of Recipient and/or Owner payment of the requested reimbursable expenses. All invoices must have the Property address.
 - 2.4.4. Documentation required under section 3.3 of Exhibit A for Tasks included in the Disbursement Request.
- 2.5. For the City to release the final 5% of the Maximum Contract Amount, a Disbursement Request must be submitted along with the following information, as applicable:
 - 2.5.1. All documents, reports, or other information required to be submitted to the City not previously provided;
 - 2.5.2. Documentation that all equipment for which a rebate was received has been installed at the Property;
 - 2.5.3. Documentation that the Project and all installed equipment has passed inspection;
 - 2.5.4. Final unconditional lien waivers or proof of release of liens in form and substance satisfactory to the City from all applicable contractors, subcontractors, and suppliers, as applicable.
 - 2.5.5. A copy of the completed AIA G704 Form for the senior lender, signed by the architect, general contractor, and Borrower that shows -\$0.00- as the cost estimate of work that is incomplete or defective, as applicable.
 - 2.5.6. A copy of the completed AIA G706 Form for the senior lender, signed by the general contractor and notarized, verifying that all debts and claims have been settled, as applicable.
 - 2.5.7. A copy of the completed AIA G706A Form for the senior lender, signed by the general contractor and notarized, stating that all releases or waivers of liens have been received, as applicable.
 - 2.5.8. A certificate of occupancy.

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2.5.9. Current certificates of insurance.

2.5.10. Updated title policy with date down endorsement or copy of date down endorsement for senior lender.

2.5.11. The Project must also pass a HUD standard inspection performed by the City.

2.5.12. Any other information required by the City.

3. Recapture of Advanced Funds. To maximize the use of City funds, the City shall evaluate Recipient's and Owner's expenditure of the incentive funds for timeliness and compliance with the terms of this Agreement. The City reserves the right to recapture advanced incentive funds when Recipient and/or Owner has not or is not complying with the terms of this Agreement. When the City elects to recapture advance funds, the Recipient and/or Owner shall return the funds to City within sixty (60) days of receiving written notice from the City.

3.1.1. If upon completion the project cost is less than the Award Value, City shall reduce the subsequent payment accordingly. Recipient and/or Owner shall refund to the City any awarded amount in excess of the completed project cost within sixty (60) days of notification of the reduction.

3.1.2. Erroneous Payments. City may recover, at the discretion, payments made to Recipient and/or Owner in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Recipient and/or Owner. The City may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the City and Recipient and/or Owner, or by any other appropriate method for collecting debts owed to the City.

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4. Project Quote

Projected Project Quote	
Task	Amount
<p>Task #1 Complete installation and commissioning of energy systems at the Denver Dry Adaptive Reuse Project, located at 1565 California Street, Denver, CO 80202. Installation of all-electric systems to include:</p> <ul style="list-style-type: none"> • Installation and commissioning of Electric Split System Heat Pumps (Floors 15-2, 3, and all non-alley units on Floors 4, 5, and 6) • Installation of Packaged Terminal Heat Pump Air Conditioners on Floor 16-2 and all alley units on Floors 4, 5, and 6) • Community Opportunity Fund will provide invoices for completion (parts and labor) of energy system installation. <p>Refer to 3.3.1 of Exhibit A for required deliverables.</p>	\$1,300,000*
Total Awarded Value	\$1,300,000

*As noted above, 5% (or \$65,000) will be withheld and released only upon Project completion and submission of a Disbursement Request in accordance with section 2.5 of this Exhibit.

EXHIBIT C – SAMPLE CERTIFICATE OF INSURANCE

[See attached]



City and County of Denver Contractor Certificate of Insurance

Contractors, Please provide this sample certificate to your insurance agent or broker
Certificates must mirror this sample

Note the Additional Insured special instructions below

ACORD® CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: Insurance Broker Name & Address

CONTACT: NAME, PHONE (A/C, No, Ext), FAX (A/C, No), E-MAIL, ADDRESS

INSURER(S) AFFORDING COVERAGE: INSURER A, INSURER B, INSURER C, INSURER D, INSURER E, INSURER F

NAIC #

INSURED: Contractor's Legal Name and Address

COVERAGES: TYPE OF INSURANCE, ADDL. BUS. INSR. W/O, POLICY NUMBER, POLICY EFF. DATE (MM/DD/YYYY), POLICY EXP. DATE (MM/DD/YYYY), LIMITS

GENERAL LIABILITY: COMMERCIAL GENERAL LIABILITY, CLAIMS-MADE, OCCUR, E&O, AGGREGATE LIMIT, APPLIES PER, POLICY, PER, LOC

AUTOMOBILE LIABILITY: ANY AUTO, ALL OWNED AUTOS, SCHEDULED AUTOS, NON-OWNED AUTOS, HIRED AUTOS

UMBRELLA LIAB. EXCESS LIAB. OCCUR, CLAIMS-MADE

WORKERS COMPENSATION AND EMPLOYERS' LIABILITY: ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below

Cyber Liability, Information Security, Privacy Liability, Network Security, Cyber Security

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101. Additional Remarks Schedule, if more space is required)

Contract Name/Number

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured as respects the Commercial General Liability and Business Auto

CERTIFICATE HOLDER: City & County of Denver, Applicable Dept Address, Denver, CO 80XXX

CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

Contractor's Legal Name

Types of insurance required in contract

If other insurance (Cyber Liability, Professional Liability, for example) is required, please list it here

Additional insured language in this box*

Verify correct address & contact information

Policy limits must be same or greater than required in the contract

Policy start date must be prior to effective date of the contract

*The Additional Insured language must state "As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured" with regards to the appropriate policies ONLY.

Project/contract detail such as the contract name and number can be added to the description box.

Qualifying language such as "subject to the terms and conditions of this policy" and "if required per written contract" CAN NOT BE ADDED.

DO NOT attach additional insured endorsements or policies.

If the requirements can not be complied with, we reserve the option to move on to another contractor.