

CONTRACT TO EXCHANGE PROPERTY

THIS CONTRACT TO EXCHANGE PROPERTY ("Agreement") is made this ____ day of _____, 2013 between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "City") and SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO ("DPS"), collectively "the Parties".

RECITALS

WHEREAS, the City desires to acquire property in central Denver for City purposes; and
WHEREAS, DPS owns a building in central Denver at 1330 Fox Street, Denver, Colorado 80204 and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as "Fox Street") which DPS is willing to sell to the City; and

WHEREAS, Fox Street has some deferred maintenance and tenant modification ("Maintenance") that needs to be done prior to occupancy by the City; and

WHEREAS, DPS desires to acquire property on which to build a school site in the vicinity of Havana Street and Girard Avenue; and

WHEREAS, the City owns approximately 11.7 acres of unimproved land located at the Northwest corner of Havana Street and Girard Avenue and more particularly described on Exhibit B attached hereto and incorporated herein by this reference (hereinafter referred to as "Hampden Heights"), which the City no longer needs, and which is a suitable school site; and

WHEREAS, the City and DPS desire to enter into this Contract to Exchange Property so that they may trade properties, provide for a cash payment from the City to DPS, perform the Maintenance of Fox Street and perform certain other activities as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the benefits of which will inure to each party and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree as follows:

Section 1. Transfer of Property and Agreements from City to DPS: According to the terms and conditions set forth herein, the City agrees to convey, transfer, grant, sell and deliver to DPS, and DPS agrees to purchase, accept and receive from the City the following:

2013-0264

(a) Quit Claim Deed, in substantially the form attached hereto as Exhibit C and incorporated herein, from the City to DPS conveying the Hampden Heights property more particularly described in Exhibit B, attached hereto and incorporated herein. Such Quit Claim Deed shall include the restrictive use covenant set forth therein. Any modifications of the Quit Claim Deed from the form attached hereto as Exhibit C shall be subject to the approval of the City's Director, Division of Real Estate ("Director").

Section 2. Transfer of Property and Agreements from DPS to the City. According to the terms and conditions set forth herein, DPS agrees to convey, transfer, grant, sell and deliver to the City, and the City agrees to purchase, accept and receive from DPS the following:

(a) Quit Claim Deed, in substantially the form attached hereto as Exhibit D and incorporated herein, from DPS to the City conveying the Fox Street property more particularly described in Exhibit A, attached hereto and incorporated herein.

Section 3. Purchase and Sale.

(a) Fox Street Purchase Price. The total price for the City's acquisition of Fox Street shall be the conveyance of Hampden Heights plus the sum of Seven Hundred Five Thousand Dollars (\$705,000.00) (the "Cash Payment"). The Cash Payment shall be paid by wire transfer, as follows: Three Hundred Fifty Thousand Dollars (\$350,000.00) shall be paid directly to DPS on or before June 30, 2013 and the remaining Three Hundred Fifty Five Thousand Dollars (\$355,000.00) shall be paid at the time of Closing 2, as defined below. The City may have the initial installment of the Cash Payment paid by the nonprofit entity that intends to run a Domestic Violence Center at Fox Street (the "Funder"), but payment of such installment shall remain the City's obligation.

(b) Hampden Heights Purchase Price. The sole consideration for Hampden Heights shall be the conveyance by DPS to the City of Fox Street and performing certain development management activities in conjunction with the Maintenance, as defined below.

Section 4. Due Diligence Period. (Note that the parties will be referred to as "Selling Party" and "Acquiring Party" with regard to due diligence and other matters set forth in this Agreement. The Selling Party shall be DPS as it relates to Fox Street, and shall be the City as it relates to Hampden Heights. The Acquiring Party shall be the City as it relates to Fox Street and DPS as it relates to Hampden Heights.) The time periods set forth below shall be calculated from the date which is three (3) days after the complete execution of the Agreement (the

“Inspection Date”). For a period of thirty (30) days thereafter (the “Due Diligence Period”), the City and DPS or their respective designees shall have the right to perform, at each party’s sole cost and expense, whatever investigations, tests and inspections it desires to conduct upon the Fox Street and Hampden Heights properties (including without limitation, the environmental audits and tests described in Section 5(c) below and the physical inspections described in Section 6 below) during normal business hours or as otherwise agreed upon by the parties; *provided, however,* that prior to such inspection, (i) the Acquiring Party shall give the Selling Party at least three (3) days’ prior notice thereof; (ii) Selling Party or its representative shall have the right to be present during any such audits, tests or inspections; (iii) each party shall require its contractors and subcontractors to be responsible and pay for any damages or losses that occur to the property inspected and/or are suffered by the Selling Party which arise out of such each such contractor’s and subcontractor’s audits, tests and inspections which are not caused by the negligence or willful misconduct of Selling Party; and (iv) each party shall not permit claims or liens of any kind against each property for work performed on said property in connection with such audits, tests and inspections. Except as expressly stated in this Agreement, the parties acknowledge and agree that each one’s purchase of Fox Street or Hampden Heights shall be on an “AS IS” “WHERE IS” basis, without representation or warranty, express or implied, with regard to the physical condition thereof, with both parties acknowledging that each has inspected or will inspect the property to be acquired to its satisfaction. The provisions of this Section shall survive Closing or the termination of this Agreement.

Section 5. Environmental Condition.

(a) Environmental Information. Within ten (10) days of the Inspection Date, each party shall disclose to the other all information it has regarding environmental contamination or the presence of any Hazardous Waste (defined below) or Toxic Substances (defined below) on, under or about the property each one is to convey. In the event the Selling Party subsequently acquires any additional information regarding environmental contamination, it has the ongoing duty to provide such information to the Acquiring Party up to the time of each Closing, and will do so within five (5) days of the receipt of such additional information. For purposes hereof, except for Permitted Amounts (defined below), (a) “Hazardous Wastes” mean all waste materials subject to regulation under the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund or CERCLA), 42 U. S. C., Sec. 9601 et seq., or

applicable state law, and any other applicable federal or state laws now in force or hereafter enacted relating to hazardous waste disposal; (b) “Toxic Substance” means and includes any materials present on the Property which are subject to regulation under the Toxic Substance Control Act (TSCA), 15 U. S. C., Sec. 2601 et seq., applicable state law, or any other applicable federal or state law now in force or hereafter enacted relating to toxic substances, including but not limited to asbestos, polychlorinated biphenyls (PCB’s), and lead-based paints; and (c) “Permitted Amounts” means with respect to any given level of Hazardous Wastes or Toxic Substances, that level or quantity of Hazardous Wastes and Toxic Substance in any form or combination of forms which does not constitute a violation of any environmental laws and is customarily employed in, or associated with, properties similar to the Property.

(b) Environmental Audits. In addition to environmental audits performed by the Selling Party pursuant to this Agreement, the Acquiring Party, at its sole option and expense, may conduct environmental audits and perform other environmental tests on the property during the Due Diligence Period to identify any existing or potential environmental problems located in, on, or under the property, including but not limited to, the presence of Hazardous Waste or Toxic Substances. Such environmental audits may be performed by a consultant or by the City’s Department of Environmental Health. Subject to the provisions of Section 4, Selling Party hereby grants the Acquiring Party and any of its employees and consultants access to the property to perform such audits and tests.

(c) City’s and DPS’ Election. Upon completion of each one’s environmental audit, either party, in its sole discretion, may elect to proceed to Closing or elect to not proceed to Closing. If the City or DPS elects not to close based upon environmental information, neither party shall have an obligation to convey property or money to the other party and this Agreement shall terminate and be of no further force and effect except for those provisions which are expressly stated or intended to survive termination. Written notice of either party’s election shall be given to the other party no later than five (5) days after the end of the Due Diligence Period (“Election Period”). If the Selling Party does not receive the notice from the Acquiring Party within the Election Period, the party(s) who doesn’t give such notice shall be deemed to have accepted the environmental condition of the property to be acquired. Such notice may be signed by, with respect to the City, the Director for the City.

Section 6. Inspection. In addition to the environmental audits described above, during the Due Diligence Period, each party or its designees shall have the right to inspect the physical condition of the property to be acquired at its sole expense. Upon completion of the inspection, either party may make the election to proceed with Closing or terminate this Agreement in the manner and within the time period as set forth in Section 4 above. If either party does not timely receive the other party's notice, signed by, with respect to the City, the Director for the City, within the Election Period, the Acquiring Party(s) shall be deemed to have accepted the physical condition of the property to be acquired.

Section 7. Title.

(a) Matters Not Shown by the Public Records. Within ten (10) days of the Inspection Date each party shall deliver to the other true copies of all lease(s) and survey(s) in the seller's possession pertaining to the property to be conveyed and shall disclose to the other party all easements, liens or other title matters not shown by the public records nor contained in the Title Documents (defined below) of which each one has actual knowledge. Each party shall have the right to inspect the other's property to determine if any third party has any right in such property not shown by the public records or the Title Documents (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Upon completion of such review and inspection, each party may make the election to proceed with Closing or terminate this Agreement in the manner and within the time period as set forth in Section 4 above. If the Selling Party does not timely receive the Acquiring Party's notice, each one shall be deemed to have accepted matters not shown by the public records nor contained in the Title Documents.

(b) Title Review. The Selling Party shall obtain an updated title commitment and all related title documents ("Title Documents") from First American Title Insurance Company (the "Title Company"), and shall deliver or cause to be delivered all documents to the Acquiring Party no later than fifteen (15) days from the Inspection Date so that each party may review such documents. Either party may give written notice to the other party of unmerchantability of title or of unsatisfactory title conditions within fifteen (15) days from delivery of such documents by or on behalf of Selling Party to the other party. Written notice by the City of unmerchantability of title or any other unsatisfactory title condition shall be signed by the Director for the City. If DPS does not receive the City's notice within fifteen (15) days from delivery of such documents by or on behalf of DPS to the City, the City shall be deemed to have

accepted the condition of title. If the City does not receive DPS' notice within fifteen (15) days from delivery of such documents by or on behalf of the City to DPS, DPS shall be deemed to have accepted the condition of title. If a Selling Party receives timely notice of any unsatisfactory title condition(s) and the Acquiring Party does not agree to waive the same, Selling Party shall have the option to either (a) cure such unsatisfactory condition(s) within thirty (30) days of receiving notice thereof from the other party; or (b) terminate this Agreement, in which case the Title Company shall return all of the funds and documents held, if any, to each party, and, except for those obligations which are stated or intended to survive termination, the parties shall have no further obligations hereunder. If Selling Party elects to cure the unsatisfactory condition(s) and fails to do so within the applicable time period, the Acquiring Party may make the election in the manner set forth in Section 5(c) above.

(c) Title Insurance Policy. Each party shall have the title insurance policy delivered to the other party as soon as practical after each Closing. The Selling Party shall pay the basic premium for such title policy which shall be in the amount as follows: Fox Street, \$3,505,000.00 and Hampden Heights, \$2,800,000.00, plus the cost of any endorsements to the title policy which the Selling Party elected to obtain to cure any unsatisfactory condition(s) which were timely objected to by the Acquiring Party, and the Acquiring Party shall pay all costs for endorsements, if any, requested by the Acquiring Party to such title policy, as well as any costs necessary for or related to the issuance of such endorsements.

(d) Survey. The Selling Party shall provide its most current ALTA survey for its property. The Acquiring Party may give written notice to the Selling Party of any unsatisfactory matter reflected on any such survey(s) on or before expiration of the Election Period. Written notice by the City of any such unsatisfactory matter shall be signed by the Director for the City. If either Selling Party does not receive the other party's notice on or before expiration of the Election Period, the Acquiring Party shall be deemed to have accepted all matters reflected on such survey(s). If the Selling Party receives timely notice of any unsatisfactory matters and the Acquiring Party does not agree to waive the same, Selling Party shall have the option to either (i) cure such unsatisfactory matters within thirty (30) days of receiving notice thereof from the City; or (ii) terminate this Agreement, in which case the Title Company shall return all of the Earnest Money Deposit or other item to the depositing party, and, except for those obligations which are stated or intended to survive termination, the parties shall

have no further obligations hereunder. If Selling Party elects to cure the unsatisfactory matters and fails to do so within the applicable time period, the Acquiring Party may make the election in the manner set forth in Section 5(c) above.

(e) After the Due Diligence Period, the Selling Party shall have the ongoing duty to disclose any new matters not previously disclosed to the Acquiring Party that come to its attention at any time prior to the Closing of the Selling Party's property. The Acquiring Party shall have ten (10) days to review and object to any such new disclosure in accordance with the procedures set forth in this Section 4.

(f) Status of Zoning and Other Entitlements. During the Due Diligence Period and thereafter, either party may explore zoning and other development entitlement matters, however, the obligations to convey the either the Fox Street or Hampden Heights properties shall not be contingent upon such matters being resolved or approved.

Section 8. Cure Period. In the event a party gives timely notice of any unsatisfactory condition(s) as set forth herein ("Objecting Party"), and the party receiving such notice shall have the option to either (a) cure such unsatisfactory condition(s) within thirty (30) days of receiving notice thereof from the Objecting Party; or (b) terminate this Agreement, in which case the Title Company shall return all things of value to the depositing party, and, except for those obligations which are stated or intended to survive termination, the parties shall have no further obligations hereunder. If a party elects to cure the unsatisfactory condition(s) and fails to do so within the applicable time period, the other party may make the election in the manner set forth in Section 5(c) above.

Section 9. Dates of Closings. The date of Closing for Hampden Heights shall be no later than ten (10) business days from the Election Period plus any applicable cure period or June 30, 2013, whichever is later, or such other date as may be mutually agreed upon by the parties ("Closing 1"). Subject to the provisions of Section 10(a) below, the date of Closing for Fox Street shall be on the later of (i) October 11, 2013 and (ii) the earlier of (A) five (5) business days after the completion of the Maintenance (and acceptance thereof by the City and Funder, both acting reasonably) or (B) upon ninety (90) days prior written notice from the City; or such other date as may be mutually agreed upon by the parties ("Closing 2"). The hour and place of the Closings shall be as mutually agreed upon by the parties. The date, time and place of Closing may be agreed upon, on behalf of the City, by the Director for the City.

Section 10. Conditions Precedent to Closing.

(a) Prior to conveyance of Fox Street to the City (unless waived by the City upon 90 days prior notice), in accordance with the terms of the development management agreement to be executed by and among DPS, the City and the Funder (the "Development Agreement"), a draft copy of which is attached hereto as Exhibit E, DPS shall cause the Maintenance to Fox Street to be performed in accordance with the Development Agreement. The cost for the Maintenance shall be paid by the Funder as provided in the Development Agreement. All construction shall be at no cost to DPS other than administrative costs DPS may incur in conjunction with the Maintenance. DPS shall continue to occupy Fox Street until October 1, 2013, or sixty (60) days after the Funder has provided evidence to DPS that Funder has secured the funds required for the Maintenance in accordance with Section 3.1 of the Development Agreement, whichever is later. In accordance with the terms of the Development Agreement, the City shall provide DPS with evidence of the funding for 85% of the cost of performing the Maintenance on or before July 1, 2014; if such evidence of funding, in form satisfactory to DPS, acting reasonably, is not provided on or before July 1, 2014, DPS shall have the right, but not the obligation, to terminate the Development Agreement. If the Development Agreement is so terminated by DPS, the City shall purchase Fox Street "AS IS" on a date selected by DPS (notice of which will be given by DPS to the City within fifteen (15) business days after termination of the Development Agreement) which date will be no later than September 30, 2014. Possession of the properties shall be delivered on the dates of Closing 1 and Closing 2, or as otherwise agreed by the parties.

(b) Any encumbrances required to be paid on either Fox Street or Hampden Heights shall be paid by the Selling Party of the property at or before closing.

(c) The City and DPS shall pay their respective closing costs at Closing 1 and Closing 2.

(d) General taxes and assessments for the year of closing and the most recent rents, water, sewer, other utility charges and any other customary items shall be prorated to the dates of Closing and shall be paid by the Selling Party at or before closing.

(e) The closing fee charged by the Title Company shall be split equally between the City and DPS.

Section 11. Transfer of Title. Subject to (i) tender of the Quit Claim Deeds and Cash

Payment, if applicable, at Closing as provided herein; and (ii) compliance with the other terms and provisions hereof, with both properties to be conveyed free and clear of all taxes except the general taxes for the year of closing, if any, and free and clear of all liens and encumbrances, including liens for special improvements installed as of the date of the Inspection Date, except (a) those matters accepted by the City or DPS as provided herein (including without limitation, those matters reflected in the Title Documents and accepted by the Acquiring Party in accordance with Section 7 above); (b) matters not shown by the public records of which the City's Director or DPS' Executive Director of Facilities has actual knowledge and which were accepted by the other party as provided herein; and (c) inclusion of the property within any special taxing district, if any, and subject to building and zoning regulation.

Section 12. Use of Fox Street. The City understands and agrees that DPS will continue to use Fox Street for a period of time. If DPS continues to utilize Fox Street, the City, through the Director, shall give 90 days prior notice of its intent to close on the property or that the Funder has secured the funds necessary to complete the Maintenance, which may require that DPS vacates Fox Street. While DPS occupies Fox Street, it will be the obligation of DPS to pay all operating and maintenance expenses for Fox Street.

Section 13. Time is of the Essence/Remedies: It is understood and agreed between the parties that time is of the essence hereof, and all the agreements herein contained 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 hereunder is not performed or waived as herein provided, there shall be the following remedies:

(a) If the City Is in Default. DPS may treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and both parties shall thereafter be released from all obligations hereunder.

(b) If DPS is in Default. The City may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and both parties shall thereafter be released from all obligations hereunder. Except as otherwise provided herein, the City, at its sole option, may elect to treat this Agreement as being in full force and effect and the City shall have the right to specific performance. In the event Closing 1 has occurred, the City may not rescind its disposition of Hampden Heights, but at its discretion,

shall have to ability to compel DPS, by specific performance, to convey Fox Street. DPS and the City agree that the terms and conditions and agreements set forth in this section will survive a default by any party.

(c) Costs and Expenses. Anything to the contrary herein notwithstanding, in the event of any litigation or arbitration arising out of this Agreement, the court may award to the prevailing party all reasonable costs and expense, including attorneys' fees.

Section 14. Termination. If this Agreement is terminated without a default by either party, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder.

Section 15. Authority to Execute. The parties represent that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind the respective parties and that appropriate processes to obtain approval have been accomplished.

Section 16. Cooperation of the Parties. In the event that any third party brings an action against the City or DPS regarding the validity or operation of this Agreement, both parties will reasonably cooperate, at no additional cost to the other party, in any such litigation. If the other party is named as a party by such third party, it shall bear its own legal costs.

Section 17. Severability. The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provision of this Agreement.

Section 18. No Discrimination in Employment. In connection with the performance of work under this Agreement, DPS agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color religion, national origin, gender, age military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

Section 19. When Rights and Remedies Not Waived. In no event shall any performance hereunder constitute or be construed to be a waiver by any party of any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any such breach of default exists shall in no way impair or prejudice any right of remedy available with respect to such breach of default. Further, no assent, expressed or

implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement shall be deemed or taken to be a waiver or any other default or breach.

Section 20. Subject to Local Laws; Venue. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Section 21. Notices. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to City:

Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, Colorado 80202

With copies to:

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

Director of Real Estate
201 West Colfax Avenue, Dept. 1010
Denver, Colorado 80202

If to DPS:

Denver Public Schools
Attn: General Counsel
900 Grant Street
Denver, Colorado 80203

With copy to:

Davis Graham & Stubbs LLP
Attn: Catherine A. Hance
1550 17th Street, Suite 500
Denver, Colorado 80202

Section 22. Parties' Liabilities. Each party shall be responsible for any and all suits, demands, costs, or action proximately resulting from its own individual acts or omissions.

Section 23. 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 hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties.

Section 24. Colorado Law. This Agreement is made, shall be deemed to be made, and shall be construed in accordance with laws of the State of Colorado.

Section 25. Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

Section 26. Third-Party Beneficiary. It is the intent of the parties that no third party beneficiary interest is created in this Agreement. The parties are not presently aware of any actions by them or any of their authorized representatives which 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.

Section 27. Counterparts. This Agreement shall be executed in at least two (2) counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document.

Section 28. Subject To Council Approval. This Agreement is subject to the approval of the City Council in accordance with the provisions of the City Charter, and this Agreement shall not take effect until its final approval by City Council and until signed by all appropriate City officials, including the Mayor, the Clerk and Recorder, the Manager of Finance and the Auditor.

Section 29. 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.

Section 30. 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 hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

Section 31. No Personal Liability. No elected official, director, officer, agent or employee of the City 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.

Section 32. Conflict of Interest by City Officer. DPS represents that to the best of its information and belief 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.

Section 33. Right to Extend Time for Performance. The parties agree that any time for performance of any term or condition hereunder may be extended for up to three (3) additional thirty (30) day periods by a letter signed by the Director and an authorized representative of DPS. All other amendments to this Agreement must be fully executed by the City and DPS.

Section 34. Merger. The parties intend that the terms of this Agreement shall survive closing and shall not be merged into the deeds conveying the properties.

Section 35. Electronic Signatures and Electronic Records. DPS consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

ATTEST:

CITY AND COUNTY OF DENVER

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

By: _____
Mayor

RECOMMENDED AND APPROVED:

By: _____
Director, Division of Real Estate

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH,
Attorney for the
City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance
Contract Control No _____

By _____
Assistant City Attorney

By: _____
Auditor

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

The foregoing instrument was acknowledged before me by _____ as Mayor of the City and County of Denver this ___ day of _____, 2013.

Witness my hand and official seal.

Notary Public

My commission expires _____.

**SCHOOL DISTRICT NO. 1 IN
THE CITY AND COUNTY OF
DENVER**

By: _____
Print Name: _____
Its: _____

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

The foregoing instrument was acknowledged before me by _____ as
_____ of School District No. 1 in the City and County of Denver this ____
day of _____, 2013.

Witness my hand and official seal.

Notary Public

My commission expires _____.


Approved as to form:

DPS General Counsel Office

EXHIBIT A

FOX STREET PROPERTY LEGAL DESCRIPTION

WITTERS 1ST ADD B19 L7 TO 15
TO ARLINGTON HEIGHTS
County of Denver, State of Colorado

EXHIBIT B

HAMPDEN HEIGHTS PROPERTY LEGAL DESCRIPTION

[SEE ATTACHED]

Note that the final legal description to be used for conveyance is subject to review and correction by the City Surveyor and DPS surveyor.

LEGAL DESCRIPTION

A parcel of land in the Northeast Quarter and Southeast Quarter of Section 34, Township 4 South, Range 67 West of the 6th Principal Meridian, City and County of Denver, State of Colorado, being more particularly described as follows:

For the purposes of this description the bearings are based on the City and County of Denver map projection, with the easterly line of the Northeast Quarter of Section 34, Township 4 South, Range 67 West, bearing North 00°26'41" East, a distance of 2639.69 feet, monumented by a 1" Iron Rod in a Denver Range Box at the Southeast Corner of said Northeast Quarter and a 3" Brass Cap in a City of Aurora monument box at the Northeast Corner of said Northeast Quarter.

Commencing at the Northeast Corner of the Southeast Quarter of Section 34;
 THENCE North 89°37'07" West, a distance of 166.51 feet, along the northerly line of the Southeast Quarter of said Section 34;
 THENCE South 01°12'19" West, a distance of 350.48 feet, along the westerly right of way line of Havana Street, also being State Highway 30 to the POINT OF BEGINNING;
 THENCE South 01°12'19" West, a distance of 799.81 feet, along said westerly right of way line to a point of curvature;
 THENCE along a curve to the right, with a radius of 15.04 feet, an arc length of 23.62 feet, having a delta angle of 89°58'08", with a chord bearing of South 46°11'23" West, and a chord length of 21.26 feet, being the northerly right of way line of Girard Avenue, as describe in Ordinance No. 81, Series of 1972, to a point of reverse curvature;
 THENCE along a reverse curve to the left, with a radius of 430.00 feet, an arc length of 117.75 feet, having a delta angle of 15°41'21", with a chord bearing of South 83°19'46" West, and a chord length of 117.38 feet, continuing along said northerly right of way;
 THENCE North 28°29'23" West, a distance of 1379.40 feet, along the northeasterly line of Cherry Creek Greens, P.B.G and along the northeasterly line of Block 21, Hampden Heights Third Filing;
 THENCE North 61°32'58" East, a distance of 263.38 feet;
 THENCE South 28°29'23" East, a distance of 363.47 feet;
 THENCE North 66°30'43" East, a distance of 118.88 feet;
 THENCE South 27°01'58" East, a distance of 180.00 feet;
 THENCE South 69°50'26" East, a distance of 224.70 feet, to the POINT OF BEGINNING.

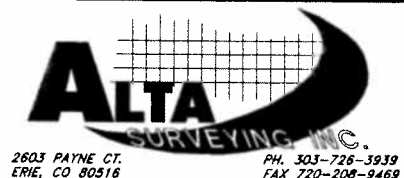
Containing an area of 469,181 Square Feet, or 10.771 Acres, more or less

ASI JOB NO.: 2306-019.1
 DATED: March 20, 2013
 For and on Behalf of ALTA SURVEYING, Inc.
 2603 Payne Ct
 Erie CO 80516
 303-726-3939
 John A. Dickson, PLS 28649

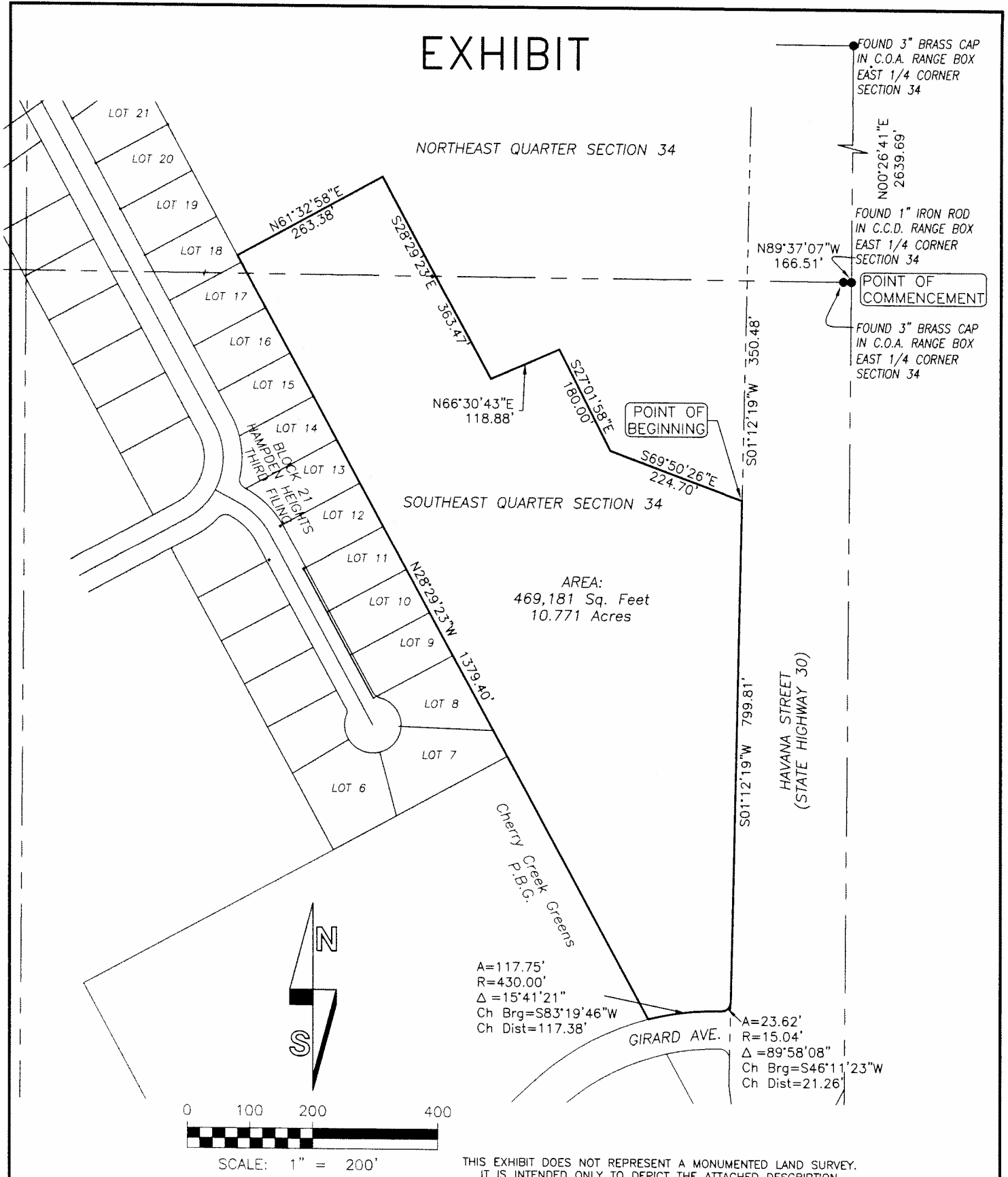


JOB NO.: 2306-022
SCALE: 1" = 200'
DATE: 3/20/13
SURVEYOR: JD
DRAWN BY: JD

NE 1/4 & SE 1/4
 SEC. 34, T-4-S, R-67-W
 CITY & COUNTY OF DENVER



EXHIBIT



JOB NO.: 2306-019.1
SCALE: 1" = 200'
DATE: 3/20/13
SURVEYOR: JD
DRAWN BY: JD

SE 1/4
SEC. 34, T-4-S, R-67-W
CITY & COUNTY OF DENVER

ALTA SURVEYING INC.
2603 PAYNE CT.
ERIE, CO 80516
PH. 303-726-3939
FAX 720-208-9469

EXHIBIT C

HAMPDEN HEIGHTS DEED FORM

[SEE ATTACHED]

WHEN RECORDED RETURN TO:

Exhibit C
QUIT CLAIM DEED
(Hampden Heights)

THE CITY AND COUNTY OF DENVER, a Colorado municipal corporation and home rule city (“Grantor”), whose address is 1437 Bannock Street, Denver, Colorado 80202, for good and valuable consideration, in hand paid, hereby sells and quitclaims to SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO (“DPS” or “Grantee”), whose address is 900 Grant Street, Room 401, Denver, Colorado 80203, the following real property, together with all improvements thereon, in the City and County of Denver, State of Colorado, to-wit (“Property”):

See legal description attached hereto as Exhibit A, and located within the City and County of Denver, Colorado

Also known by street and number as: _____, DENVER, COLORADO 802__

RESTRICTIVE USE COVENANT

This grant and deed is subject to the restrictive use covenant benefiting Grantor, set forth herein. Grantee, its successors and assigns, agree that, from the date of this deed until the date that is forty (40) years from the date of this deed (the “Restrictive Period”), the Property may only be used for an Educational Facility. “Educational Facility” shall mean a public, private or charter school, early childhood education center, or other related educational facility, including but not limited to administrative uses and activities related to education and/or storage of education related materials and supplies. In the event Grantee, its successors, assigns or lessees, ceases to operate an Educational Facility on the Property prior to the end of the forty (40) year time period, Grantor, by written notice signed by the Mayor, at its sole option, and as its exclusive remedy for the cessation of such operations, shall be entitled to repurchase the Property for the then fair market value of the Property, unless the Property has been put in use for an Educational Facility within the Cure Period. The fair market value of the Property shall be determined by an MAI certified appraiser jointly chosen by Grantee and Grantor or, if Grantee and Grantor fail to agree upon an MAI certified appraiser within thirty (30) days after the expiration of the Cure Period, each of Grantee and Grantor shall select within forty (40) days after the expiration of the Cure Period an MAI certified appraiser and such MAI certified appraisers shall meet and jointly select, within fifteen (15) days thereafter, an MAI certified appraiser to appraise the Property. The cost of the jointly selected MAI certified appraiser shall be split equally by Grantor and Grantee; the cost of each appraiser representing a single party shall be paid by the party selecting such appraiser. Prior to Grantor exercising its right to repurchase the Property, Grantee shall be

given the right to cure any deficiencies noted within sixty (60) days (or one hundred twenty (120) days as described below) (the "Cure Period") after notice from Grantor. If such cure is effected within the sixty (60) day period, or in the event the cure cannot be fully completed within sixty (60) days, and Grantee has started making good faith efforts to cure any violations, and has completed such actions within one hundred twenty (120) days, the repurchase right shall not be exercised. Determination of whether a cure has been effected shall be at the sole discretion of the Mayor.

Grantor, at its sole option, through the Mayor, may waive or modify the restrictive use covenants set forth in this deed, upon request by Grantee. Upon any waiver or modification of the restrictive use covenant by Grantor, Grantor shall execute an appropriate document in recordable form to waive, modify or relinquish the covenant and/or the right of entry set forth herein.

If the failure to operate an Educational Facility has not been cured within the Cure Period, Grantor shall cause the appraisal of the Property to be performed within ninety (90) days thereafter and shall deliver a copy thereof to Grantee. Grantor shall complete the repurchase of the Property within ninety (90) days thereafter. Notwithstanding any provision of this grant and deed to the contrary, if Grantor has not completed the repurchase of the Property within one (1) year after the Property has ceased to be used for an Educational Facility, Grantor shall be deemed to have waived the restrictive covenant set forth herein and the restrictive covenant shall be of no further force or effect and Grantor shall have no further right to enforce the restrictive covenant hereunder.

MISCELLANEOUS

In any event, the restrictive use covenant set forth herein shall terminate forty (40) years from the date of this deed. This restrictive use covenant runs with the land.

In addition to the restrictive use covenant, subject to the terms hereof, Grantee shall not sell the Property without first giving Grantor notice of such proposed sale, as hereinafter provided, and the first right to purchase the Property on the terms and conditions provided herein. Any contract to sell the Property shall be made specifically subject to the rights of Buyer provided herein. In the event that Grantee enters into a contract to sell the Property, or any part thereof, Grantee shall, within three (3) business days thereafter, give Grantor written notice thereof (the "Offer Notice") which shall include the following information: (i) a description of the Property; (ii) a copy of the contract of sale (the "Sale Contract") setting forth all terms of the sale; and (iii) the name and address of the prospective purchaser. Grantor shall have the optional right, which may be exercised within fifteen (15) business days from the date of receipt of the Offer Notice, to express its intent to purchase the Property on the terms specified in the Offer Notice. Such optional right may be exercised by Grantor by giving written notice executed by the Mayor (the "Acceptance Notice") thereof to Grantee, stating Grantee's intent to purchase the Property on the terms set forth in the Sale Contract (as such terms are modified as provided herein). The Mayor shall present such contract to City Council for approval in a timely manner and Grantor shall promptly notify Grantee upon receipt of such City Council approval. If Grantee timely delivers the Acceptance Notice, Grantee and Grantor shall have a contract for the sale of the Property on the terms and subject to the conditions stated in the Sale Contract and

such other terms as agreed to between Grantee and Grantor (if any), subject to City Council approval, except that notwithstanding any provision in the Sale Contract to the contrary, closing on the sale of the Property from Grantee to Grantor shall occur on the sixtieth (60th) day after approval by City Council. If Grantor fails to deliver the Acceptance Notice within said fifteen (15) business day time period, or delivers the Acceptance Notice but fails to obtain City Council approval within sixty (60) days after delivery of the Acceptance Notice or close on the purchase of the Property in accordance with the Sale Contract as modified above, Grantee shall thereafter be free to sell the Property in its sole discretion and free from Grantor's right of first refusal as set forth herein. Grantor shall promptly execute, following request therefor from Grantee, such documentation as reasonably requested by Grantee to evidence the termination of Grantor's right of first refusal as set forth herein. To the fullest extent permitted by law, Grantor will indemnify, defend and hold harmless Grantee, its officers, agents, employees, successors and assigns, from and against any and all losses, damages, costs or expenses (including any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses incurred in connection with the institution or defense of any actual or threatened action, proceeding or claim including appellate proceedings, and any collection costs or enforcement costs) arising out of, or in connection with any failure to by Grantor to deliver any acknowledgment of the termination of the right of first refusal set forth herein. Grantee shall be entitled to recover any and all attorneys' fees and costs incurred by Grantee in enforcing Grantor's obligation to deliver any acknowledgment of the termination of the right of first refusal set forth herein.

SIGNED this _____ day of _____, 2013.

ATTEST:

CITY AND COUNTY OF DENVER

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

By: _____
Mayor

APPROVED AS TO FORM:
DOUGLAS J. FRIEDNASH,
Attorney for the City and County of Denver

By: _____
Assistant City Attorney

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____,
2013 by _____, Mayor of the City and County of Denver.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT D

FOX STREET DEED FORM

[SEE ATTACHED]

WHEN RECORDED RETURN TO:

Exhibit D
QUIT CLAIM DEED
(Fox Street)

SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO ("Grantor"), whose address is 900 Grant Street, Room 401, Denver, Colorado 80203, for good and valuable consideration, in hand paid, hereby sells and quitclaims to THE CITY AND COUNTY OF DENVER, a Colorado municipal corporation and home rule city ("Grantee"), whose address is 1437 Bannock Street, Denver, Colorado 80202, the following real property, together with all improvements thereon, in the City and County of Denver, State of Colorado, to-wit ("Property"):

WITTERS 1ST ADD B19 L7 TO 15
TO ARLINGTON HEIGHTS

Also known by street and number as: _____, DENVER,
COLORADO 802__

SIGNED this _____ day of _____, 2013.

**SCHOOL DISTRICT NO. 1 IN THE CITY
AND COUNTY OF DENVER**

By: _____
Print Name: _____
Its: _____

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

The foregoing instrument was acknowledged before me by _____ as
_____ of School District No. 1 in the City and County of Denver this ____
day of _____, 2013.

Witness my hand and official seal.

Notary Public

My commission expires _____.

Approved as to form:



DPS General Counsel Office

EXHIBIT E

DEVELOPMENT MANAGEMENT AGREEMENT FORM
[SEE ATTACHED]

DEVELOPMENT MANAGEMENT AGREEMENT

THIS DEVELOPMENT MANAGEMENT AGREEMENT (this "**Agreement**") is made and entered into effective as of the ____ day of _____, 2013, (the "**Effective Date**"), by and between SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO ("**Developer**"), CITY AND COUNTY OF DENVER, a municipal corporation and home rule city of the State of Colorado ("**City**"), and [Nonprofit funder] (the "**Funder**"). Developer, City and Funder are sometimes referred to individually as a "**Party**" and, collectively, as the "**Parties**."

W I T N E S S E T H:

WHEREAS, Developer and City are parties to that certain Contract to Exchange Property which will be filed at Denver City Clerk File No. 13-____ (the "**Exchange Contract**") pursuant to which Developer has agreed to sell to City the building in central Denver at 1330 Fox Street, Denver, Colorado 80204 and more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference ("**Fox Street**") on and subject to the terms set forth in the Exchange Contract.

WHEREAS, prior to the transfer of Fox Street to City, City has requested that certain maintenance, alterations and improvements be made to Fox Street, as more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Maintenance**").

WHEREAS, the Parties are entering into this Agreement to provide for the performance of the Maintenance.

NOW THEREFORE, in consideration of the mutual promises in this Agreement and other good and valuable consideration, the sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

ARTICLE I
DEFINITIONS

In addition to those terms defined elsewhere in this Agreement, for the purposes of this Agreement, the following definitions apply:

"**Business Days**" means all days except for Saturdays, Sundays, and days on which banks in the Denver, Colorado metropolitan area are not open for the regular transaction of business.

"**Claim**" means any obligation, liability, claim (including any claim for damage to property or injury to or death of any persons), lien or encumbrance, loss, damage, cost or expense (including any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim including appellate proceedings, and any collection costs or enforcement costs).

“**Completion of the Project**” shall mean the substantial completion of the Project and all improvements associated therewith in accordance with this Agreement.

“**Construction Agreement**” means the agreement to be entered into between Developer and Contractor for the Maintenance.

“**Contractor**” means a general contractor selected in the normal course of business by Developer.

“**Construction Means**” has the meaning given in Section 2.2.

“**Escrow Agent**” has the meaning given in Section 3.2.

“**Escrow Agreement**” has the meaning given in Section 3.2.

“**Design Aspects**” has the meaning given in Section 2.2.

“**Project Budget**” has the meaning given in Section 2.1.

“**Project Costs**” has the meaning given in Section 2.1.

“**Project Agreements**” has the meaning given in Section 2.2.

ARTICLE II

PERFORMANCE OF MAINTENANCE

2.1 General Engagement. On and subject to the terms of this Agreement, Developer will engage Contractor to perform the Maintenance in accordance with the terms of the Construction Agreement. Developer will negotiate the terms of the Construction Agreement including the fixed price for performance of the Maintenance, which fixed price will be subject to approval by City and the Funder, not to be unreasonably withheld, conditioned or delayed. Developer will use commercially reasonable efforts to provide City and the Funder with the fixed price for the Maintenance from the Contractor on or before the sixtieth (60th) day after Developer has received all of the following: (i) the final project budget for the Maintenance from Funder (the “**Project Budget**”), (ii) Funder’s final construction drawings for the Maintenance and (iii) evidence of funding of the Maintenance in accordance with Section 3.1 below. All costs of performance of the Maintenance, including but not limited to the costs payable pursuant to the Construction Agreement and all costs for performance of any Design Aspects for the Maintenance, shall be payable by Funder, as more particularly set forth herein. Such costs include, but are not limited to, all costs of design, construction, permitting and inspection of the Maintenance. Neither Funder nor City shall be obligated to reimburse Developer for Developer’s internal employee costs, however, any out-of-pocket and/or third party costs incurred by Developer in causing the Maintenance to be installed or performed, including but limited to any legal fees or costs incurred by Developer pursuant to this Agreement (including in enforcing any obligations of City or Funder hereunder), as well as all costs of enforcement of the Construction Agreement or any other contract related to the performance of the Maintenance and all costs of operation and maintenance of Fox Street from and after the date on which Developer vacates occupancy of Fox Street until completion of the transfer of Fox Street to the City

pursuant to the Exchange Contract, shall be reimbursed by Funder to Developer in accordance with the terms of this Agreement. All such costs described in this Section 2.1 are hereinafter referred to as the "**Project Costs**".

2.2 Developer Entitled to Rely on Advice of Professionals. Contractor and each of the other design and construction professionals and consultants engaged by Developer or subcontracted by any of them will have special skill and expertise relative to the specific construction means, methods, techniques, sequences and/or procedures, and for safety precautions and programs in connection with the work of such party providing the Maintenance (the "**Construction Means**"), and will provide the technical engineering, architectural and design aspects (the "**Design Aspects**") for the Maintenance as reflected in the Construction Agreement, construction documents drawings, working drawings, renderings, depictions, specifications and other similar materials and plans relating to the Project (the "**Project Agreements**"), as applicable to each professional discipline. Developer is entitled to rely on the professional advice, conclusions and work product of the parties to such Project Agreements and each of the other construction professionals engaged by Developer or subcontracted by any of the above, as applicable, in carrying out the Maintenance. Developer shall have no obligation for any defects or errors in the Construction Means or the Design Aspects, but shall, if it becomes aware thereof, notify City and Funder of such defect or error and make recommendations as to corrective actions. If City or Funder become aware of any defects or errors in the Construction Means or Design Aspects, City or Funder will notify Developer of such defect or error and may make recommendations as to corrective actions.

ARTICLE III **PERFORMANCE OF MAINTENANCE**

3.1 Availability of Funding. Prior to commencement of the Maintenance, but in any event no later than July 1, 2014, Funder shall deliver to Developer evidence of immediately available funds in an amount no less than eighty-five percent (85%) of the amount of the Project Budget. If Funder is unable to deliver evidence of such available funds on or before July 1, 2014, unless otherwise agreed upon in writing by all of the Funder, Developer and the City's Director of Real Estate, this Agreement shall terminate and be of no further force or effect, closing of the transfer of Fox Street from Developer to City shall occur in accordance with the terms of the Exchange Contract thereafter and Developer shall have no obligation pursuant to this Agreement or the Exchange Contract to cause any portion of the Maintenance (described in the Exchange Contract as the Maintenance) to be performed and the City shall accept Fox Street in its then as-is, where is condition in accordance with the remaining terms of the Exchange Contract (excluding any obligation with respect to the Maintenance). Notwithstanding any provision of this Agreement to the contrary, Funder shall provide Developer with not less than sixty (60) days prior notice of when Funder holds immediately available funds in an amount no less than eighty-five percent (85%) of the amount of the Project Budget.

3.2 Escrow. If Funder delivers evidence of such available funds on or before July 1, 2014, within ten (10) Business Days thereafter, Developer, Funder and [_____] ("**Escrow Agent**") shall enter into that certain escrow agreement, in the form attached hereto as **Exhibit C** and incorporated herein by this reference (the "**Escrow Agreement**") and Funder shall deposit immediately available funds in an amount equal to eighty-five percent (85%) of the amount of

the Project Budget with Escrow Agent in accordance with the terms of the Escrow Agreement. The deposited funds will be disbursed from time to time in accordance with the terms of the Escrow Agreement in payment of the Project Costs. Notwithstanding the amount deposited pursuant to the Escrow Agreement, Funder shall be liable for the entirety of the Project Costs (including any portion thereof in excess of the amount deposited with Escrow Agent). Upon determination of the final fixed price for the Maintenance pursuant to the Construction Agreement, if the final fixed price for the Maintenance exceeds the amount of the Project Budget, Funder shall, within twenty (20) days after determination of such final fixed price increase the amount of the funds held by Escrow Agent pursuant to the Escrow Agreement to an amount equal to eighty-five percent (85%) of the final fixed price for the Maintenance pursuant to the Construction Agreement. If the final fixed price is less than the amount of the Project Budget, but exceeds eighty-five percent (85%) of the amount of the Project Budget, all amounts held by the Escrow Agent pursuant to the Escrow Agreement shall remain in escrow with Escrow Agent. If the final fixed price is less than an amount equal to eighty-five percent (85%) of the amount of the Project Budget, the Escrow Agent shall retain an amount equal to the entirety of the final fixed price in escrow pursuant to the Escrow Agreement, and the excess, if any, from the initial deposit made by Funder shall be released to Funder. If the funds in escrow with the Escrow Agent are equal to less than the entirety of the final fixed price for the Maintenance pursuant to the Construction Agreement, Developer shall notify Funder and City when Contractor has reached sixty percent (60%) completion of the Maintenance and Funder shall, within ten (10) Business Days after receipt of such notice, deposit with Escrow Agent an amount necessary to cause the funds held by Escrow Agent pursuant to the Escrow Agreement to equal the entirety of the final fixed price (less draw payments previously made to Contractor) or Developer may, in its sole discretion, direct Contractor to cease work on the Maintenance until such time as such deposit is made by Funder. If Funder fails to make such additional deposit within thirty (30) days after receipt of said notice from Developer, Developer shall have the right to exercise the remedies set forth in Section 3.4 below. All costs arising from any discontinuation of performance of the Maintenance shall be a part of the Project Costs.

3.3 Performance of Maintenance. Promptly after execution of the Escrow Agreement, but in no event prior to October 1, 2013, Developer shall cause Contractor to commence, and thereafter diligently pursue to completion, construction of the Maintenance in accordance with the Project Documents and all applicable laws. Developer shall promptly notify Funder and City upon completion of construction of the Maintenance and closing shall thereafter occur in accordance with the terms of the Exchange Contract.

3.4 Project Costs. If, prior to completion of the Maintenance, Developer determines, in its commercially reasonable determination that there are inadequate funds held by Escrow Agent pursuant to the Escrow Agreement, Developer may require Funder to replenish the funds held by Escrow Agent pursuant to the Escrow Account in an amount equal to the remaining cost to complete the Maintenance, as reasonably determined by Developer. Funder shall deliver such additional funds to Escrow Agent within ten (10) Business Days after delivery of notice thereof from Developer to City and Funder, which notice will be accompanied by supporting detail of the necessary additional funds. Developer shall have the right to discontinue performance of the Maintenance until such time as such additional funds are delivered and, any costs arising from any such discontinuance shall be a part of the Project Costs. If Funder fails to deliver such additional funds, and such failure continues for thirty (30) days after delivery of any notice from

Developer, Developer shall have the right to terminate the Construction Agreement and discontinue completion of the Maintenance closing of the transfer of Fox Street from Developer to City shall occur in accordance with the terms of the Exchange Contract and Developer shall have no obligation pursuant to this Agreement or the Exchange Contract to complete the Maintenance and the City shall accept Fox Street in its then as-is, where is condition in accordance with the remaining terms of the Exchange Contract (excluding any obligation with respect to the Maintenance).

3.5 Progress Meetings. Developer will schedule and attend meetings with City and Funder, at such frequency as may be reasonably required by City and Funder (but not more frequently than once per month) to discuss the progress of the Maintenance. Such meetings will be held at a time and location mutually agreed to by City, Funder and Developer.

3.6 Performance of Duties. Developer will devote such time as reasonably required to cause the Maintenance to be constructed in the manner contemplated by this Agreement.

3.7 Inspections of City and Funder. City and Funder, or their respective representatives, will have the right to conduct inspections of the Maintenance, at any time during normal business hours, upon reasonable prior notice. Any such inspections will be conducted by City and Funder in a manner that will not unreasonably interfere with or disrupt the construction of the Maintenance.

3.8 Warranties and Guaranties. Developer will take commercially reasonable efforts to assign to City and Funder, as appropriate, all warranties or guaranties, including but not limited to any and all rights pursuant to the Construction Agreement, with respect to the workmanship or construction of the Maintenance and will cooperate, at no expense to Developer, with any enforcement action with respect thereto.

3.9 Management Services Only. Notwithstanding anything to the contrary in this Agreement, (i) Developer's duties and responsibilities under this Agreement consist only in managing, supervising, and the work of other third parties to complete the planning, design and construction of the Maintenance, and (ii) this Agreement does not obligate Developer itself to prepare applications for or pursue any governmental approvals or to prepare any architectural or engineering plans, designs, or specifications, to procure any labor, materials, furniture, fixtures or equipment, or to perform any construction required for the Maintenance.

ARTICLE IV **INDEMNIFICATION; LIABILITY**

4.1 Indemnification by City and Funder. To the fullest extent permitted by law, each of Funder and the City will indemnify, defend and hold harmless Developer, its officers, agents, employees, successors and assigns, from and against any and all Claims arising out of, or in connection with, the Maintenance, other than the breach by Developer of any of its obligations under this Agreement. Without limiting the foregoing, to the fullest extent permitted by law, each of Funder and the City will indemnify, defend and hold harmless Developer, its officers, agents, employees, successors and assigns, from and against any and all Claims arising out of, or

in connection with any failure to comply with prevailing wage or similar legal requirements with respect to the Maintenance.

4.2 Consequential, Incidental and Enhanced Damages. Notwithstanding any provision of this Agreement to the contrary, each Party waives all claims for, and neither Party will have any liability to the other for, consequential or incidental damages incurred by either Party or punitive, exemplary or enhanced damages arising out of or in connection with the Project or any action or inaction of the other Party.

4.3 No Design or Construction Liability. Each of City and Funder acknowledges that Developer is not itself preparing, and shall not be liable for defects or errors in, applications for or pursuing development approvals or any other permits, licenses, consents, authorizations, zoning variances or changes, preparing any architectural or engineering plans, designs, or specifications, procuring any materials, furniture, fixtures or equipment, or performing any construction of the Maintenance. Each of City and Funder further acknowledges that Developer is not responsible for, and shall not be liable for, defects or errors with the Construction Means or the Design Aspects. This Agreement is not to be construed to obligate Developer to guarantee or insure any work to be performed by any other party in connection with the planning, design, or construction of the Maintenance or to impose upon Developer any liability for cost overruns.

4.4 Force Majeure Event Delay Liability. Each of City and Funder acknowledges and agrees that Developer is not responsible for, and will not be liable for, any delays to or necessary extensions of the anticipated completion date of the Maintenance and any Claims by or damages to either of said Parties related thereto if such delays or extensions are due to a Force Majeure Event or caused by or attributable to the Contractor, or any other vendors, contractors or professionals performing the Maintenance.

ARTICLE V MISCELLANEOUS

5.1 Relationship between Parties. It is understood and agreed that the relationship between City, Funder and Developer is one of independent contractors.

5.2 Confidentiality. Subject to the terms hereof, the Parties will keep confidential all confidential or proprietary information obtained by one from the other in connection with this Agreement. The Parties will not disclose such information to any person (other than their respective agents, representatives and legal counsel) unless specifically authorized in writing by the other Party or if disclosure is required by subpoena, court order, judicial decree, or law, or is otherwise required to obtain development approvals or to enable Developer to perform its duties under this Agreement. This confidentiality obligation will not be binding on any Party with respect to information in the public domain or information that enters the public domain through no fault of that Party.

5.3 Notice. Any notice, communication, request, reply, or advice (collectively, “**Notice**”) provided for or permitted by this Agreement to be made or accepted by either Party must be in writing. Notice may, unless otherwise provided in this Agreement, be given or served by depositing the same in the United States mail, postage paid, registered or certified, and

and several sections hereof. All words in the neuter gender will be deemed to include words in the male or female gender, and vice versa, whenever the context will so require. Likewise, all words in the singular will be deemed to include words in the plural, and vice versa, whenever the context will so require.

5.5 Amendments; Entire Agreements; Counterparts. This Agreement (a) may be modified or amended only by a writing signed by each of the Parties; (b) may be executed in several counterparts, and by the Parties in separate counterparts, and each counterpart, when executed and delivered, will constitute an original agreement enforceable against all who signed it without production of or accounting for any other counterpart, and all separate counterparts will constitute the same agreement, and (c) embodies the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter.

5.6 Invalidity or Unenforceability. The invalidity or unenforceability of any particular provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision was omitted.

5.7 Waiver. No waiver of any of the terms and conditions of this Agreement or of the exercise of any right or remedy hereunder will be valid unless signed by the Party against whom such waiver is asserted. A failure or delay to enforce the rights by the holder thereof will not constitute a waiver of said rights or be considered as a basis for estoppel. The holder may exercise his rights despite said delay or failure to enforce said rights.

5.8 Binding Effect. This Agreement will be binding upon the Parties and their respective successors and assigns.

5.9 Time Limits. Time is of the essence in this Agreement. Accordingly, all time limits will be strictly construed and rigidly enforced.

5.10 Further Assurances. The Parties will execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding and enforceable as between them and as against third parties.

5.11 Governing Law, Jurisdiction. This Agreement will be construed in accordance with the laws of the State of Colorado. Any and all disputes will be resolved by litigation. Any Party will have the right to commence litigation or other legal proceedings, including, without limitation, proceedings for specific performance and damages. The Parties agree that the state and federal courts located in Denver, Colorado, will have exclusive jurisdiction over any such proceedings.

5.12 Attorneys' Fees. In the event of any dispute, the prevailing Party will, in addition to its other rights and remedies hereunder, recover from the party in default all reasonable costs and expenses incurred by the prevailing Party in enforcing its rights and remedies hereunder, including reasonable attorneys fees, court costs and investigation costs.

5.13 Interpretation. No provisions of this Agreement will be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party having or being deemed to have structured or dictated such provision.

5.14 Non-Assignment. Each Party binds themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party with respect to this Agreement.

5.15 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.

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

[The remainder of this page intentionally left blank]

DRAFT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

CITY:

ATTEST:

CITY AND COUNTY OF DENVER

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

By: _____
Mayor

RECOMMENDED AND APPROVED:

By: _____
Director, Division of Real Estate

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH,
Attorney for the
City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance
Contract Control No _____

By _____
Assistant City Attorney

By: _____
Auditor

DRAFT

FUNDER:

By: _____

Name: _____

Title: _____

DEVELOPER:

**SCHOOL DISTRICT NO. 1 IN THE CITY AND
COUNTY OF DENVER**

By: _____

Name: _____

Its: _____

DRAFT

EXHIBIT "A"

FOX STREET

WITTERS 1ST ADD B19 L7 TO 15
TO ARLINGTON HEIGHTS

County of Denver, Colorado

DRAFT

EXHIBIT "B"
MAINTENANCE