

AGREEMENT

THIS AGREEMENT, made and entered as of the last date set forth on the signature pages of this Agreement, is between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (“Denver”), with an address of 1437 Bannock Street, Room 350, Denver, Colorado 80202 and the DEPARTMENT OF TRANSPORTATION, STATE OF COLORADO (“CDOT”), with an address of 2000 South Holly Street, Denver, Colorado 80222, which may be referred to herein jointly as the “Parties” and individually as “Party”.

RECITALS

A. CDOT is in the process of a major road construction project, known as I-25/Santa Fe & Alameda Avenue Interchange Project, IM0252-394, Unit 2 (16311) (“Project”), in and along a portion of Interstate 25 from just north of Alameda Avenue through the Santa Fe bridge exit from Interstate 25 within the City and County of Denver.

B. This Project will impact certain land owned by Denver, including portions of the South Platte River Greenway (which contains the South Platte River Trail), the South Platte River, and Vanderbilt Park. In order to complete the Project, CDOT will require, as specified in this Agreement, an aerial easement and a property acquisition (“Land Transactions”) involving the above-described Denver-owned property.

C. CDOT has the power of eminent domain under the Colorado Constitution to compel such Land Transactions under the Colorado Constitution and State statutes.

D. CDOT and Denver agree that the Land Transactions will occur under the terms and conditions of this Agreement, which is being entered by CDOT and Denver in lieu of condemnation of Denver property, and that this Agreement authorizes Denver officials to execute such deeds and easements and perform such other tasks as specified in this Agreement.

E. The Land Transactions will adversely affect property under the jurisdiction of the Denver Department of Parks and Recreation at Valverde Park and Vanderbilt Park, necessitating measures, as part of the Project, to minimize harm and mitigate impacts on these properties, as required under Section 4(f) of the Department of Transportation Act of 1966 and its implementing regulations, Part 774 of Title 23 of the Code of Federal Regulations (“Section 4(f)").

F. In addition, the Project will have impacts, requiring mitigation measures, on portions of the South Platte River Greenway, the development of which was previously assisted

by funds received under Section 6(f) of the Land and Water Conservation Fund Act (“Section 6(f)”).

G. As set forth in this Agreement, CDOT will undertake, in satisfaction of its Section 4(f) and Section 6(f) obligations and as compensation for the Land Transactions, to re-construct a portion of West Exposition Avenue from Jason Street to Vanderbilt Park and to convey a triangular portion of land developed for water quality and open space between West Alameda Avenue to West Cedar Avenue, west of Platte River Drive, as all of this is provided in this Agreement.

H. In consideration for Denver agreeing to close a portion of South Platte River Drive from West Alameda Avenue to West Cedar Avenue, CDOT will re-construct a portion of South Lipan Street from West Alameda Avenue to West Cedar Avenue, as provided in this Agreement.

I. Other terms and conditions for this Project have been consented to by CDOT and Denver and are set forth in this Agreement.

J. CDOT has prepared and, on July 5, 2007, FHWA signed a document entitled Record of Decision for the I-25 Valley Highway, Logan to 6th Avenue, which includes the I-25/Santa Fe Drive single point urban interchange and the I-25/Alameda/Santa Fe/Kalamath offset partial urban interchange at I-25 and Alameda Avenue. The terms and conditions of this Agreement are consistent with and in furtherance of VHEIS ROD.

K. All necessary funds have been budgeted, appropriated and otherwise made available by the State for the Project to be carried out by CDOT, including the performance of all obligations of CDOT under this Agreement.

M. This Agreement is executed under the authority of § § 29-1-203, 43-1-110, 24-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S., as well as § § 2.3.3, 2.4.4 and 2.4.5 of the Denver City Charter. The authority for Denver to transfer title for designated park property to the State of Colorado by means of an agreement in lieu of condemnation is established under Welch v. City and County of Denver, 141 Colo. 587, 349 P.2d 352 (1960).

NOW, THEREFORE, in consideration of the premises set out above which are incorporated into and made part of this Agreement, and the terms and conditions set forth in the Agreement below, CDOT and Denver agree as follows:

1. The Project. The basic locations and properties involved with this Project are depicted in the attached **Exhibit A-1** for the Santa Fe Drive interchange (“Santa Fe Drawing”) and the attached **Exhibit A-2** for the West Alameda Avenue interchange (“Alameda Drawing”), both of which are incorporated herein by reference. All properties subject to this Agreement shall be identified as labeled on the Santa Fe Drawing and the Alameda Drawing.

2. Santa Fe Interchange. CDOT will replace the current Santa Fe bridge, as it is located within PE-209 on the Santa Fe Drawing, with a new Santa Fe bridge, to be located within PE-208 on the Santa Fe Drawing. Below are the elements of the Project for the Santa Fe Interchange work specific to this Agreement:

A. South Platte River Greenway: An aerial easement of approximately 55,105 square feet will be required for the new Santa Fe bridge across the South Platte River (PE-208)(“Aerial Easement”). Denver agrees to grant CDOT such an aerial easement, with the right for CDOT to install six new caissons for three piers to be located within or near the South Platte River. Denver shall retain all title and interests it currently holds to the South Platte River and its banks, subject to the rights granted to CDOT under this Aerial Easement, including the right of Denver to use the South Platte River and its bank in manner consistent with CDOT’s rights under the Aerial Easement. No financial compensation is required; consideration for this Aerial Easement shall be as provided in this Agreement. The legal description for the Aerial Easement is attached as **Exhibit B-1** and incorporated herein by reference.

B. Vanderbilt Park: An area of approximately 1,345 square feet of Vanderbilt Park will be required for the location, operation and maintenance of a caisson for a pier for the new Santa Fe bridge, located within RW-208 of the Santa Fe Drawing (“Vanderbilt Parcel”). Denver agrees to quitclaim to CDOT the fee title in said Vanderbilt Parcel. No financial compensation is required; consideration for the Vanderbilt Parcel shall be as provided in this Agreement. The legal description for the Vanderbilt Parcel is attached as **Exhibit B-2** and incorporated herein by reference. Except for work to be conducted by CDOT and its contractors on the Vanderbilt Parcel, Vanderbilt Park is to remain undisturbed by the Project. CDOT agrees to re-establish native vegetation on and about the Vanderbilt Parcel following construction. Upon transfer of the quitclaim deed for the Vanderbilt Parcel, CDOT and Denver acknowledge and agree that the Vanderbilt Parcel shall cease being designated park property under the Denver City Charter.

C. Existing Bridge Removal: CDOT agrees to remove, at its own expense, the existing Santa Fe Bridge (PE-209), including all superstructure and substructure elements of the existing bridge, and to restore the bed and banks of the South Platte River to a natural condition. Unless otherwise agreed by CDOT and Denver, the existing Santa Fe bridge shall be removed per CDOT specifications as part of the Project, but no later than six (6) months following the date the new Santa Fe bridge is completed.

D. South Platte River Trail Re-construction: As part of the Project, CDOT agrees to relocate and re-construct, at its own expense, a segment of the South Platte River Trail in accordance with the 100% plans prepared by or on behalf of CDOT known as Project FSA 0252-420, Code 18889, and previously approved by Denver (“Santa Fe Plans”). A detour route for pedestrian and bike traffic during the re-construction has been established. CDOT agrees to maintain the detour route. No change to the detour route shall occur without consulting the Denver Department of Parks and Recreation (“DPR”) and the Denver Department of Public Works-Transportation (“DPWT”). The final re-construction of the South Platte River Trail shall be subject to inspection and acceptance by DPR and DPWT.

E. West Exposition Avenue Re-construction: As part of the Project, CDOT agrees to re-construct, at its own expense, the segment of West Exposition Avenue lying between the entrance to the parking lot at Vanderbilt Park and Jason Street in accordance with the Santa Fe Plans. The final re-construction of this segment of West Exposition Avenue shall be subject to inspection and acceptance by DPWT.

F. Title and Environmental Condition; Title Insurance; Survey; Taxes. CDOT agrees to accept the Aerial Easement and the Vanderbilt Parcel “as is, where is” without any warranties or representations by Denver as to the title, physical or environmental condition of these properties. The protections Denver has under the prior sentence shall survive the transfer of the easement or title rights and shall not merge with any recorded instrument for the Aerial Easement or deed for the Vanderbilt Parcel. Title insurance for these properties may be obtained by CDOT at its own expense. Any ALTA/ACSM land title survey required for title insurance purposes shall be arranged by CDOT at its own expense. Denver affirms that these properties currently have a governmental tax exemption and, as a result, no taxes or assessments are or will be due and owing on these properties.

G. Closing; Transfer; Possession; Pre-possession Use. A closing will occur no later than sixty (60) days after the date of the full execution of this Agreement. Transfer of the Aerial Easement from Denver to CDOT shall be by an aerial easement agreement, in substantially the form attached as **Exhibit C-1** and incorporated herein by reference. Transfer of fee title for the Vanderbilt Parcel from Denver to CDOT shall be by a quit claim deed, in substantially the form attached hereto as **Exhibit C-2**. The right to possession shall be delivered to CDOT upon delivery of the aerial easement agreement and quit claim deed from Denver to CDOT. Pre-possession occupancy or use of the Aerial Easement and Vanderbilt Parcel by CDOT or its contractors is authorized upon written notice to Denver.

H. Right of Way. CDOT agrees that the Vanderbilt Parcel and the Aerial Easement are to be used as part of the design and construction of the Project and ultimately incorporated into the operation of the state highway. If any part of either of these properties is not ultimately needed for the operation of the state highway (“Remainder Property”), CDOT agrees to re-transfer the Remainder Property to Denver, upon request of Denver, at no cost to Denver. CDOT shall determine whether any portions of these properties qualify as a Remainder Property.

I. Obligations under this Section 2. The promises, commitments, terms, conditions, rights and obligations otherwise set forth in this Section 2 of the Agreement shall not merge with any easement agreement or deed delivered to CDOT, as provided above, and shall remain in full force and effect.

3. **Alameda Interchange.** The replacement of the West Alameda Avenue bridge crossing the South Platte River and I-25 shall require, among other things, the relocation and re-construction of a portion of the South Platte River Trail and result in impacts on other properties on the approach to the new bridge. Below are the elements of the Project for the Alameda Interchange work specific to this Agreement:

A. Valverde Park: The Project will require the re-construction of certain sidewalk and a ramp at the southeasterly corner of Valverde Park, which shall ultimately be an enhancement to the park. The City hereby grants a right of access to CDOT and its contractors to perform the re-construction.

B. Triangular Parcel: CDOT has acquired title to property shaped like a triangle and bordered by West Alameda Avenue, South Platte River Road and South Lipan Street

(the “Triangular Parcel”). The Triangular Parcel consists of three parcels: AP-1 (approximately 10,260 square feet), AP-2 (approximately 23,716 square feet), and AP-3 (approximately 12,795 square feet), as such parcels are depicted on the Alameda Drawing. As part of the Project, CDOT shall construct, at its own expense, a portion of South Lipan Street, a portion of West Alameda Avenue, and a water quality and detention facility on a portion of the Triangular Parcel, as well as a portion of the existing South Platte River Drive (the “WQ Facility”). The remainder of the Triangular Parcel is to be kept as open space. CDOT shall quitclaim this Triangular Parcel to Denver when the construction of the WQ Facility is complete. Operation, maintenance and repair responsibilities for the WQ Facility will be addressed in a separate agreement between CDOT and Denver. No less than 1350 square feet of open space in the Triangular Parcel, located outside of the WQ Facility, shall be incorporated into the South Platte Greenway after CDOT quitclaims the Triangular Parcel to Denver.

C. South Lipan Street/South Platte River Drive: In order to facilitate the location of the WQ Facility, Denver agrees to close a segment of South Platte River Drive running from West Alameda Avenue to West Cedar Avenue and to submit to its City Council an ordinance for the vacation of this segment of South Platte River Drive. If this vacation should occur prior to the transfer of title for the Triangular Parcel to Denver, CDOT agrees that it will transfer title to Denver of whatever portion of South Platte River Drive that CDOT obtained through the vacation at such time as when title to the Triangular Parcel is transferred to Denver. In return and as part of the Project, CDOT agrees to construct, at its own expense, South Lipan Street running from West Alameda Avenue to West Cedar Avenue to provide a new transportation link to replace the closed segment of South Platte River Drive. The final construction of this segment of South Lipan Street shall be subject to inspection and acceptance by DPWT.

D. South Platte River Trail Re-construction: As part of the Project, CDOT agrees to relocate and re-construct, at its own expense, a segment of the South Platte River Trail beneath and just beyond either side of the new West Alameda Avenue bridge. A detour route for pedestrian and bike traffic during the re-construction must be coordinated and agreed upon by CDOT, DPR, and DPWT. CDOT agrees to construct, maintain and remove the detour route upon completion and acceptance of the South Platte River Trail. The final re-construction of the South Platte River Trail shall be subject to inspection and acceptance by DPR and DPWT.

E. Alameda Plans. All of the Alameda Interchange work described in Sub-sections 3.A. through D. of this Agreement is to be performed in accordance with plans prepared by or on behalf of CDOT for this part of the Project and eventually approved by Denver (“Alameda Plans”). Currently, 90% plans known as **Phase 2.0 FOR Plans, dated July, 2015, FSA 0252-420, Code 18889**, are the plans tentatively approved by Denver. The 100% plans, once prepared, are subject to the final review and approval of Denver with respect to the work described in Sub-sections 3.A. through D. of this Agreement.

F. Due Diligence for Triangular Parcel Transfer. Prior to the transfer of title to the Triangular Parcel, Denver shall have the right, at its own expense, to review the title for the Triangular Parcel, to inspect the Triangular Parcel and the WQ Facility constructed by CDOT on the Triangular Parcel, and to conduct an environmental assessment of the Triangular Parcel. If Denver finds any unacceptable title, physical or environmental conditions, it may request that CDOT resolve these unacceptable conditions to the reasonable satisfaction of Denver. If the conditions are so resolved, Denver agrees to accept title to the Triangular Parcel by means of a quit claim deed in substantially the form as set forth in **Exhibit D**. If the conditions are not so resolved, Denver reserves the right, at its discretion, either to not accept title to the Triangular Parcel or to accept the title as provided above and thereby waive the unacceptable conditions. In all cases, the title to the Triangular Parcel must be free and clear of any deeds of trust or other liens for financial or debt interests in the property. Acceptance of the quit claim deed from CDOT for the Triangular Parcel shall not constitute any obligation on the part of Denver to undertake the operation, maintenance and repair responsibilities for the WQ Facility on the Triangular Parcel, which responsibilities will be addressed in a separate agreement between CDOT and Denver.

G. Alameda Bridge Easements. Two permanent easements are required for the expansion of the West Alameda Avenue bridge over the South Platte River (“Alameda Bridge Easements”). The Alameda Bridge Easements are identified as PE-208A (approximately 4,916 square feet) and PE-208B (approximately 6,879 square feet) on the Alameda Drawing. Denver agrees to grant CDOT the Alameda Bridge Easements. Denver shall retain all title and interests it currently holds to the South Platte River and its banks, subject to the rights granted to CDOT under these Alameda Bridge Easements, including the right to use the South Platte River and its bank in manner consistent with CDOT’s rights under the Alameda Bridge Easements. No

financial compensation is required; consideration for these Alameda Bridge Easements shall be as provided in this Agreement. The legal descriptions for the Alameda Bridge Easements are attached as **Exhibit E-1** and **Exhibit E-2**, both of which are incorporated herein by reference. The provisions of Sub-sections 2.F. and G. of this Agreement shall be applicable to the Alameda Bridge Easements. Transfer of the Alameda Bridge Easements from Denver to CDOT shall be by an easement agreement, in substantially the form attached as **Exhibit F** and incorporated herein by reference. The right to possession shall be delivered to CDOT upon delivery of the easement agreement from Denver to CDOT. Pre-possession occupancy or use of the Alameda Bridge Easements by CDOT or its contractors is authorized following approval of the Alameda Plans, as provided in Sub-section 3.E. above and upon written notice to Denver. The promises, commitments, terms, conditions, rights and obligations otherwise set forth in this Sub-section 3.G. of the Agreement shall not merge with any easement agreement delivered to CDOT, as provided above, and shall remain in full force and effect.

H. Alameda ROW. Fee title for various properties is needed for the expansion and re-construction of West Alameda Avenue running from the intersections with South Lipan Street and South Platte River Drive through the intersections with South Kalamath Street and South Santa Fe Drive (“Alameda ROW”). The Alameda ROW consists of the following parcels: RW-201 (approximately 71,691 square feet), RW-203 (approximately 1,179 square feet), RW-204 (approximately 1,935 square feet), RW-205 (approximately 3,023 square feet), RW-206 (approximately 2,661 square feet), RW-206a (approximately 579 square feet), RW-207 (approximately 288 square feet), and RW-230 (approximately ___ square feet), as depicted on the Alameda Drawing. CDOT agrees to acquire, at its own expense, and commit the Alameda ROW to this Project and to the ultimate dedicated right of way for West Alameda Avenue.

4. 4(f) and 6(f) Obligations/Compensation. CDOT and Denver acknowledge and affirm that the work and property transfers described in Sections 2 and 3 of this Agreement satisfy the mitigation requirements of Section 4(f) and Section 6(f), as noted in Recitals E. and F. of this Agreement. Sections 2 and 3 of this Agreement will be performed by CDOT as set forth in the two letters, one under Section 4(f) and the other under Section 6(f), dated October 31, 2013, signed by Jordan Rudel, Environmental Project Manager, on behalf of CDOT, and concurred with by Lauri Dannemiller, as Manager [now Executive Director] of the Denver Department of Parks and Recreation (“Section 4(f) and Section 6(f) Letters”). In the event there

is a conflict or discrepancy between the terms and conditions of this Agreement and those stated in the Section 4(f) and Section 6(f) Letters, the terms and conditions of this Agreement shall control unless Denver and CDOT agree, in writing, that legal requirements or other considerations compel a different result.

5. Temporary Access for Construction. It is anticipated that temporary access to allow contractors to perform the construction for the Project may be required on certain City property. Outside of the Vanderbilt Parcel and the driveway to the parking lot at Vanderbilt Park, no access, staging, or construction work for the Project shall be conducted in Vanderbilt Park. CDOT contractors may apply for temporary construction access permits from the appropriate divisions of Denver Public Works for other locations needed for temporary access, staging or construction work for the Project.

6. General Provisions.

A. Reasonable Efforts; Good Faith; Relationship. CDOT and Denver agree to work diligently together and in good faith, to take all actions necessary to perform the terms and conditions of this Agreement, to resolve any unforeseen issues and disputes, and to expeditiously take such actions as are necessary and appropriate to perform the duties and obligations of this Agreement. Notwithstanding any other provision to the contrary, CDOT and Denver acknowledge and agree that neither Party shall be deemed or regarded as being an agent of the other Party, with each Party being an independent contractor under this Agreement.

B. Fair Dealing. In all cases where the consent or approval of one Party is required before the other may act, or where the agreement or cooperation of the Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing in this Agreement shall be construed as imposing on either Party any greater non-contractual duty or obligation to the other than that which already exists as a matter of Federal or Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arm's length. Furthermore, any other agreement (other than an amendment to this Agreement) entered by CDOT and Denver with respect to the Project shall not be construed to contain or constitute waivers, exceptions or

modifications of any promises, commitments, terms, conditions, rights or obligations of this Agreement.

C. Financial Interests. The Parties agree and covenant that any financial interests created in, or used to secure financing and payment for the costs of, any work performed or improvements made under this Agreement, including but not limited to any bonds, certificates of participation, purchase agreements, and Uniform Commercial Code filings, shall expressly exclude, and not encumber, property title, rights and interests held by Denver from such debt or financial security contained in such financial instruments. The terms and conditions of this Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created by the financial instrument(s) are subordinate to this Agreement.

D. Appropriation. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that the rights and obligations under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being budgeted, appropriated and otherwise made available by the respective Parties. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party, except to the extent that capital improvement funds that are lawfully appropriated can be lawfully carried over to subsequent years. Nevertheless, the Parties shall endeavor to make reasonable efforts, act in good faith, and engage in fair dealing as set forth in Sub-sections 6.A. and B. of this Agreement.

E. Non-waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

F. Examination of Records/Audit. The Parties agree that, during the term of this Agreement and for a period of at least three (3) years after the expiration or termination of this Agreement, any duly authorized representative of either Party, including the Denver Auditor or designee, shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the other Party involving any matter related to this Agreement. Any Party shall be entitled to review and audit the performance of this Agreement at that Party's sole expense.

G. Applicable Law/Exercise of Authority. The Parties agree to comply with all applicable Federal, State and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the effective date of this Agreement or as may be subsequently enacted or adopted and become applicable, including any applicable Federal, State or local environmental law; provided, however, both Parties agree that neither Party shall enact or adopt any ordinance, resolution, rule, regulation, policy or standard (other than those necessary to comply with a lawful citizen initiative or referendum) which would substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this Agreement, in whole or part, but otherwise this paragraph shall not limit the powers and authority of the respective Parties.

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

I. Conflict of Interest. The Parties agree that no official, officer or employee of Denver shall have any personal or beneficial interest whatsoever in the services or property described herein, and CDOT further agrees not to hire or contract for services any official, officer or employee of Denver or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

J. Liability.

1) To the extent authorized by law, CDOT shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any action or omission of CDOT or its officers, employees, and agents in connection with the subject matter of this Agreement.

2) To the extent authorized by law, Denver shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by Denver, or its officers, employees, and agents in connection with the subject matter of this Agreement.

3) Nothing in this Sub-Section 6.J. or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Parties may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the Parties against third parties by law.

K. *Force Majeure.* Neither Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*, and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any *force majeure*. Timely notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other Party. “*Force majeure*” shall mean causes beyond the reasonable control of a Party such as, but not limited to, adverse weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities other than the Parties.

L. *Further Assurances.* From time to time, upon the request of a Party, the other Party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting Party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting Party, be necessary or desirable in order to effectuate, complete or perfect the rights of said Party under this Agreement, provided said requesting Party is currently in full compliance with the provisions of this Agreement and has tendered or offered to tender any reciprocal instruments, certificates and documents to which the other Party is entitled under the Agreement.

M. *Contracting or Subcontracting.* Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract. No Party shall be liable or have a financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which the other Party contracts or has a contractual arrangement.

N. *Enforcement.* The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages (notwithstanding termination of the Agreement), as may be available according to the

laws and statutes of the State of Colorado; provided, however, the Parties agree to and hereby release any claims for incidental, consequential, or punitive damages; provided, further, no provision of this Agreement nor the rules and regulations of CDOT may be enforced by the creation or recording of any type of lien against real property owned by Denver. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to these terms and conditions contained in this Agreement, and that any failure to comply which results in any recoverable damages shall not cause, by itself, the termination of any rights or obligations under this Agreement.

O. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in either the District Court in and for the City and County of Denver.

P. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to CDOT and Denver; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of CDOT and Denver that any person or entity other than CDOT and Denver receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Q. Claims. In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the Parties related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other Party.

R. Notice. All notices, demands or consents required under this Agreement shall be in writing and delivered personally or by certified mail, return receipt requested, to the following:

To CDOT:

Zachary Miller
CDOT Region 6
2000 South Holly Street
Denver, Colorado 80222

To Denver:

Executive Director
Denver Department of Parks and Recreation
201 West Colfax Avenue, Department 601
Denver, Colorado 80202

Executive Director
Denver Department of Public Works
201 West Colfax Avenue, Department 608
Denver, Colorado 80202

City Attorney
City and County of Denver
1437 Bannock Street, Room 353
Denver, Colorado 80202

The persons or addresses set forth above may be changed at any time by written notice in the manner provided herein. Day-to-day coordination between CDOT and its contractors and the Denver Department of Parks and Recreation and/or the Denver Department of Public Works shall be such means as mutually specified by these parties.

S. Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

T. Amendment. Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

U. No Assignment. No Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Party.

V. Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions nevertheless shall remain effective and the Parties shall forthwith enter into good faith

negotiations and proceed with due diligence to draft and agree to a term or condition that will achieve the original intent and purposes of the Parties hereunder.

W. Disputes. Should disputes or disagreements occur as to any matter pertaining to the rights and obligations under this Agreement, both CDOT and Denver agree to collaborate to resolve the dispute. If the CDOT Region 6 Director and the Executive Directors for the Denver Department of Parks and Recreation and the Denver Department of Public Works cannot achieve resolution within a thirty (30) day period, this matter shall be submitted jointly to the Chief Engineer for CDOT and the Mayor of the City and County of Denver or the Mayor's designee to reach final resolution. If the Chief Engineer and the Mayor are unable to resolve the dispute within thirty (30) days, then either Party may seek resolution through the Colorado courts in the manner and to the extent authorized in this Agreement.

X. Deed Corrections & Minor Modifications. It is anticipated that certain error corrections and minor modifications to the deeds or easement agreements specified in this Agreement and the associated legal descriptions may be needed subsequent to transfer of title or easement. The Executive Directors of the Denver Department of Parks and Recreation and the Denver Department of Public Works and the authorized representative of CDOT shall, from time to time, upon written demonstration by the requesting Party that there is a need for error correction(s) or minor modification(s) as specified herein, execute and deliver such instruments of transfer and take such other actions as may be reasonably necessary in order to consummate the transactions contemplated by this Agreement and to assure that the interests and rights of the Parties are protected as contemplated by this Agreement.

Y. Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

Z. Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement.

AA. Execution of Agreement. This Agreement shall not be or become effective or binding, and shall not be dated, until it has been fully executed by all required signatories of Denver and the State of Colorado.

BB. Electronic Signatures and Electronic Records. CDOT consents to the use of electronic signatures by Denver. The Agreement, and any other documents requiring a signature hereunder (except deeds and easement agreements), may be signed electronically by Denver in the manner specified by Denver. 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.