

## ESCROW FUNDING AGREEMENT

**THIS ESCROW FUNDING AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **H.C. PECK AND ASSOCIATES, INC.**, a Colorado corporation whose address is 4001 Fox Street, Denver, Colorado 80216 (“Escrow Agent”), collectively referred to as the Parties.

1. **WORK TO BE PERFORMED:** The Escrow Agent, under the general direction of, and in coordination with, the Director of the Division of Real Estate, or other designated supervisory personnel (“Director”), shall diligently perform escrow services for the Platte to Park Hill Stormwater Systems Project (“Project”), and produce all deliverables required for owner and tenant relocations for the Project. The operating of the escrow account herein funded shall be governed by the Scope of Work attached as **Exhibit A**. The Escrow Agent agrees that during the term of this Agreement it shall fully coordinate all escrow services performed under this Agreement through the Director, or as otherwise directed by the City. The Escrow Agent shall submit a list of prepared checks complete with check number, description of work and back up approvals to the Director for approval to dispense relocation expenses. The Escrow Agent shall faithfully perform the services required by this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals who perform services of a similar nature to those described in this Agreement.

2. The term of the Agreement is from **March 29, 2017** to **December 31, 2020**, unless terminated earlier pursuant to the provisions of this Agreement.

3. **INVOICING:**

A. **Invoicing for Pass Through Payments:**

- (i) **Pass Through Expenses:** For Pass Through Expenses incurred by the Project to be paid through the Escrow Agent as outlined in subsection (a)(ii) below and as set forth in **Exhibit A**, such as relocation expenses, invoices from persons hired by owners and tenants as provided for by state and federal law, and all related relocation costs, the Escrow Agent shall provide written documentation as required by the Director including the form of

invoices from persons hired by owners and tenants and other appropriate documentation as requested by the Director. The Director will review and approve all invoices prior to payment by the Escrow Agent of such Pass-Through Expenses.

- (ii) In addition, Escrow Agent shall document and tabulate each invoice for Pass Through Expenses with the funds that are held in the Escrow Account so as to keep a balanced total for the Project accounting purposes ("Escrow Account Reconciliation"). Escrow Agent shall send such Escrow Account Reconciliation to the project Director on at least a monthly basis and upon reaching a point where the funds remaining in the Escrow Account are not sufficient to pay the expenses expected in the next two months, the Director shall work with the Escrow Agent and Escrow Agent to ensure that additional funds are received into the Escrow Account.

**B. Maximum Contract Liability:** Any other provision of this Agreement notwithstanding, in no event shall the City be liable for payment and expenses incurred by the Escrow Agent under the terms of this Agreement for any amount in excess of **FIFTEEN MILLION DOLLARS AND ZERO CENTS (\$15,000,000.00)**. The Escrow Agent acknowledges that the City is not obligated to execute any other Agreement or an amendment to this Agreement for any further funding. The City will fund the escrow account with **FIFTEEN MILLION DOLLARS AND ZERO CENTS (\$15,000,000.00)**, to be spent pursuant to **Exhibit A**.

The Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The Parties agree that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**4. STATUS OF CONTRACTOR:** The Parties agree that the status of the Escrow Agent shall be that of an independent contractor retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1E(x) of

the Charter of the City. It is not intended, nor shall it be construed, that the Escrow Agent or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

**5. TERMINATION:**

A. The City has the right to terminate this Agreement, with or without cause, on thirty (30) days written notice to the Escrow Agent. However, nothing herein shall be construed as giving the Escrow Agent the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Director.

B. The Escrow Agent has the right to terminate this Agreement with cause by giving not less than thirty (30) days written notice to the City.

C. The City may, by thirty (30) days written notice to the Escrow Agent, terminate this Agreement in the event the Escrow Agent or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Escrow Agent's business.

D. If this Agreement is terminated, the City shall take possession of all materials, equipment, tools and facilities owned by the City that the Escrow Agent is using by whatever method the City deems expedient. The Escrow Agent shall deliver to the City all drafts or other documents it has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City; and these documents and materials shall be the property of the City. Copies of work product incomplete at the time of termination shall be marked "DRAFT-INCOMPLETE". The City shall use any and all such incomplete documents or incomplete data at its own risk.

E. Upon termination of this Agreement by the City, the Escrow Agent shall not have any claim against the City by reason of such termination or by reason of any act incidental to termination, except for compensation for work satisfactorily performed as described in this Agreement.

**6. EXAMINATION OF RECORDS:** The Escrow Agent agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to

examine any books, documents, papers and records of the Escrow Agent, involving transactions related to this Agreement.

7. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any action by a Party constitute or be construed to be a waiver by that party of any breach of covenant or default which may then exist on the part of the other Party. A Party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that Party with respect to such breach or default; and 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 of any other breach.

8. **INSURANCE:**

A. **General Conditions:** Escrow Agent agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Escrow Agent shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Escrow Agent. Escrow Agent shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Escrow Agent. The Escrow Agent shall maintain, at its own expense, any

additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. **Proof of Insurance:** Escrow Agent shall provide a copy of this Agreement to its insurance agent or broker. Escrow Agent may not commence services or work relating to the Agreement prior to placement of coverage. Escrow Agent certifies that the certificate of insurance, attached as **Exhibit B**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Escrow Agent's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Escrow Agent and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. **Waiver of Subrogation:** For all coverages required under this Agreement, with the exception of Professional Liability - if required, Escrow Agent's insurer shall waive subrogation rights against the City.

E. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement, but not independent entities not doing work for the City, but rather those entities that must be paid pursuant to state statute or judicial order, which is paid out of the Escrow Account) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Escrow Agent. Escrow Agent shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Escrow Agent agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. **Workers' Compensation/Employer's Liability Insurance:** Escrow Agent shall maintain the coverage as required by statute for each work location and shall

maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Escrow Agent expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Escrow Agent's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Escrow Agent executes this Agreement.

**G. Commercial General Liability:** Escrow Agent shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**H. Business Automobile Liability:** Escrow Agent shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**I. Professional Liability (Errors & Omissions):** Escrow Agent shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

**J. Additional Provisions:**

- (a) For Commercial General Liability the policies must provide the following:
  - (i) That this Agreement is an Insured Contract under the policy;
  - (ii) Defense costs are in excess of policy limits;
  - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
  - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (b) For claims-made coverage:
  - (i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier
- (c) Escrow Agent shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence

limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Escrow Agent will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**9. INDEMNIFICATION:**

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

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

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

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Escrow Agent under the terms of this indemnification obligation. The Escrow Agent shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

F. For matters concerning only the Pass-Through Payments, Escrow Agent shall defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property resulting from the Pass-Through Payments in which the Escrow Agent is negligent.

10. **COLORADO GOVERNMENTAL IMMUNITY ACT:** The Parties agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

11. **TAXES, CHARGES AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* The Escrow Agent shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under this Agreement and shall allow no lien, mortgage, judgment or execution to be filed against City property, including but not limited to land, facilities, improvements or equipment.

12. **ASSIGNMENT AND SUBCONTRACTING:**

A. The Escrow Agent agrees that it will not assign or transfer any of its rights or obligations under this Agreement without first obtaining the written consent of the Director. A transfer will include a merger, consolidation, liquidation or change of ownership by which fifty percent (50%) or more of the outstanding voting stock is transferred. Any attempt by the Escrow Agent to assign or transfer its rights or obligations without the prior written consent of the Director shall, at the option of the Director, terminate this Agreement and all rights of the Escrow Agent. Consent to the assignment may be granted or denied at the sole and absolute discretion of the Director. If the City consents to an assignment, then any assignment will not become effective until the assignee unequivocally in a signed document satisfactory to the Director (1) assumes the obligations under this Agreement; and (2) agrees to be bound by all of the terms, covenants and conditions of this Agreement. Any consent of the City pursuant to this provision must be executed with the same formality as this Agreement. The rights and obligations of the Parties under this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns permitted under this Agreement.

B. The Escrow Agent agrees that it will not subcontract any of its obligations under this Agreement without first obtaining the written consent of the Director, which consent may be withheld in the absolute discretion of the City. If the City consents to the subcontract, such action shall not be construed to create any contractual relationship between the City and the Escrow Agent's subcontractor. The Escrow Agent shall remain fully responsible to the City according to the terms of this Agreement.

13. **NO THIRD PARTY BENEFICIARY:** The Parties agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any claim or right of action to any third person. The Parties intend that any person other than the City or the Escrow Agent receiving services or benefits pursuant to this Agreement shall be deemed to be an incidental beneficiary only.

14. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Escrow Agent has no authority to bind the City on any contractual matters. Final approval of all contractual matters that obligate the City must be by the City, as required by Charter and ordinance.

15. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect nor bind the City. This Agreement and any amendments to it shall be binding upon the Parties and their successors and assigns.

16. **SEVERABILITY:** The Parties agree that if any provision of this Agreement or any portion thereof, except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of the Parties can be fulfilled

17. **CONFLICT OF INTEREST:** The Parties agree that no employee of the City shall have any personal or beneficial interest in the services or property described in this

Agreement; and the Escrow Agent further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

The Escrow Agent agrees that it will not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. The Escrow Agent represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Escrow Agent by placing the Escrow Agent's own interests, or the interests of any party with whom the Escrow Agent has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given the Escrow Agent written notice which describes the conflict. The Escrow Agent shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner that is acceptable to the City.

**18. NOTICES:** Notices, bills, invoices or reports required by this Agreement shall be sufficiently delivered if sent by the Parties in the United States mail, postage prepaid, to the Parties at the following addresses:

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

Denver City Attorney's Office  
201 West Colfax Avenue, Department 1207  
Denver, Colorado 80202

Escrow Agent: H.C. Peck and Associates, Inc.  
4001 Fox Street  
Denver, Colorado 80216

The addresses may be changed by the Parties by written notice.

**19. DISPUTES:** All disputes between the City and Escrow Agent regarding this Agreement shall be resolved by administrative hearing pursuant to the procedure established by

D.R.M.C. § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the Director.

20. **GOVERNING LAW; VENUE:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code, including any amendments. 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. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

21. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of services under this Agreement, the Escrow Agent 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. The Escrow Agent agrees to insert the foregoing provision in all subcontracts hereunder.

22. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Escrow Agent shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision can result in the City terminating this Agreement or barring the Escrow Agent from City facilities or from participating in City operations.

23. **LEGAL AUTHORITY:** Escrow Agent represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Escrow Agent represents and warrants that he has been fully authorized by Escrow Agent to execute this Agreement on behalf of Escrow Agent and to validly and legally bind Escrow Agent to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Escrow Agent or the person signing the Agreement to enter into this Agreement.

24. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** Each of the Parties acknowledge that they and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions were prepared by a particular Party.

25. **ORDER OF PRECEDENCE:** . In the event of any conflicts between the language of this Agreement and the Scope of Work, the language of the Agreement shall control.

26. **SURVIVAL OF CERTAIN PROVISIONS:** The Parties agree that all terms and conditions of this Agreement, together with any exhibits and attachments, which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement, by expiration of the term or otherwise, shall survive termination and shall continue to be enforceable. Without limiting the generality of this provision, the Escrow Agent's obligations to provide insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

27. **COMPLIANCE WITH ALL LAWS:** All of the services performed under this Agreement by the Escrow Agent shall comply with all applicable laws, rules, regulations and codes of the United States and State of Colorado and with the charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver, as amended.

28. **NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

A. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

B. The Escrow Agent certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**C. The Escrow Agent also agrees and represents that:**

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.**
- (2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Escrow Agent that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.**
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program.**
- (4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Escrow Agent to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.**
- (5) If it obtains actual knowledge that a sub-Escrow Agent or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Escrow Agent will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.**
- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment**

under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

D. The Escrow Agent is liable for any violations as provided in the Certification Ordinance. If Escrow Agent violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Escrow Agent shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Escrow Agent from submitting bids or proposals for future contracts with the City.

29. **ADVERTISING AND PUBLIC DISCLOSURE:** The Escrow Agent shall not include any reference to this Agreement or to services performed pursuant to this Agreement in any of its advertising or public relations materials without first obtaining the written approval of the Director, which will not be unreasonably withheld. Any oral presentation or written materials related to services performed under this Agreement shall include only services that have been accepted by the City. The Director shall be notified in advance of the date and time of any such presentation. Nothing in this provision shall preclude the transmittal of any information to officials of the City, including without limitation the Mayor, the Director, City Council or the Auditor.

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

31. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

32. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Escrow Agent 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.

**[SIGNATURES ON FOLLOWING PAGES]**

Contract Control Number: FINAN-201733769-00

Contractor Name: H C PECK & ASSOCIATES INC

By: Lee Satterfield Hamre

Name: Lee Satterfield Hamre  
(please print)

Title: President  
(please print)

ATTEST: [if required]

By: Joe Parker, Jr.

Name: JOE PARKER, JR.  
(please print)

Title: GRAND SECRETARY  
(please print)



**Contract Control Number:** FINAN-201733769-00

**Contractor Name:** H C PECK & ASSOCIATES INC

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of  
Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



## **Exhibit A**

### **H.C. Peck & Associates Platte to Park Hill Stormwater Systems Project Scope of Work**

All activities will be performed will generally comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, under the oversight and direction of the City & County of Denver.

1. Complete Acquisition Stage Relocation Plan (7-B Study) of affected properties.
  - a. Interview relocatees to determine special relocation needs.
  - b. Search for availability of suitable replacement sites.
  - c. Determine if relocation can be accomplished in the time frame given.
2. Prepare Relocation Determinations, request payments, settle claims for moving costs.
3. Present approved moving benefits to each business and offer relocation assistance.
4. Secure 2 move estimates from Commercial Movers per relocatee.
5. Coordinate or provide property management, including utility shut offs, any required disconnects, secure each structure, contract security services, rekey locks as necessary, provide access to project personnel, weed and rodent control as needed, and any other task as directed by the City and County of Denver.
6. File closeout - QA/QC of all files with any and all necessary copies to appropriated partners and project personnel to secure row clearances, property real estate closings, and/or court proceedings.
7. Provide reimbursable associated with this scope of work, including reproduction costs (third party), recording, notary, license & permit fees, maps, mileage at the IRS reimbursement rate, delivery and express mail, parking and tolls, long distance telephone and fax costs.
8. Assist litigation attorneys and provide litigation support including project appraiser, project negotiator, expert witnesses, exhibits, etc. for any eminent domain actions associated with this project.
9. Provide appropriate documentation for approval and, upon approval, pay all required payments related to ROW relocation for the project, including but not limited to: Project

appraisers and other consultants, owner's appraisers and other consultants, utility bills, court and litigation costs, relocation payments as described herein, just compensation, immediate possession payments and all other payments related to ROW relocation as directed by the City and County of Denver.

10. Provide an escrow account funded by the project to pay for all matters associated with this Scope of Work and the ROW relocation for the Project. Funds will only be paid out of the Escrow Account upon approval by the City.

ACORD™

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/25/2017

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

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

|                                                                                                              |                                             |                |
|--------------------------------------------------------------------------------------------------------------|---------------------------------------------|----------------|
| PRODUCER<br>Holmes Murphy -Colorado<br>7600 East Orchard Rd, Ste 330<br>South<br>Greenwood Village, CO 80111 | CONTACT NAME:                               |                |
|                                                                                                              | PHONE (A/C, No, Ext): 515 223-6800          | FAX (A/C, No): |
| INSURED<br>H.C. Peck & Associates, Inc<br>4001 Fox Street<br>Denver, CO 80216                                | E-MAIL ADDRESS:                             |                |
|                                                                                                              | INSURER(S) AFFORDING COVERAGE               |                |
|                                                                                                              | INSURER A : Twin City Fire Insurance Co     |                |
|                                                                                                              | INSURER B : Hartford Casualty Insurance Com |                |
|                                                                                                              | INSURER C : Property & Casualty Ins Co of H | 34690          |
|                                                                                                              | INSURER D : Landmark American Insurance Co  | 33138          |
| INSURER E :                                                                                                  |                                             |                |
| INSURER F :                                                                                                  |                                             |                |

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                                           | ADDL SUBR INSR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS     |                                                                                                                                                                                                                                           |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|---------------|-------------------------|-------------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br><input type="checkbox"/> OTHER: | x                  | x             | 34UUNRA8992             | 01/25/2017              | 01/25/2018 | EACH OCCURRENCE \$1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000<br>MED EXP (Any one person) \$10,000<br>PERSONAL & ADV INJURY \$1,000,000<br>GENERAL AGGREGATE \$2,000,000<br>PRODUCTS - COMP/OP AGG \$2,000,000<br>\$ |
| A        | AUTOMOBILE LIABILITY<br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS                                                                            | x                  | x             | 34UUNRA8992             | 01/25/2017              | 01/25/2018 | COMBINED SINGLE LIMIT (Ea accident) \$1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$                                                                            |
| B        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10000                                                                                                                                                     |                    |               | 34RHURA8342             | 01/25/2017              | 01/25/2018 | EACH OCCURRENCE \$2,000,000<br>AGGREGATE \$2,000,000<br>\$                                                                                                                                                                                |
| C        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                           |                    | x             | 34WEKA5069              | 01/25/2017              | 01/25/2018 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER<br>E L EACH ACCIDENT \$1,000,000<br>E L DISEASE - EA EMPLOYEE \$1,000,000<br>E L DISEASE - POLICY LIMIT \$1,000,000                                        |
| D        | Profess Liab                                                                                                                                                                                                                                                                                                                                |                    |               | LHR758841               | 08/08/2016              | 08/08/2017 | \$2,000,000 claim/agg<br>\$10,000 ded                                                                                                                                                                                                     |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: P2P Escrow Contract

The following are Additional Insureds as respects General Liability and Excess Liability only if required by written contract and coverage applies only as respects ongoing operations performed by the Insured for the Additional Insureds. All coverage terms, conditions and exclusions of the policy apply.

(See Attached Descriptions)

## CERTIFICATE HOLDER

## CANCELLATION

City and County of Denver  
Division of Real Estate  
201 W Colfax ave, Dept 1010  
Denver, CO 80202

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

AUTHORIZED REPRESENTATIVE

*Craig Merten*

© 1988-2014 ACORD CORPORATION. All rights reserved.

## DESCRIPTIONS (Continued from Page 1)

**Additional insured is included on automobile liability if required by written contract according to terms and conditions of the policy.**

**Additional Insureds: City and County of Denver, its elected and appointed officials, employees and volunteers**

**The General Liability coverage is Primary and Non-Contributory per the policy terms & conditions only if required by written contract.**

**The Workers' Compensation, Business Automobile and General Liability policies include a Waiver of Subrogation in favor of the Additional Insureds only if required by written contract.**