

REAL ESTATE CONVEYANCE AGREEMENT

This REAL ESTATE CONVEYANCE AGREEMENT (“Agreement”) is made as of the ___ day of _____, 2015, by and between EL PASO COUNTY by and through THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (“County”) and the CITY OF COLORADO SPRINGS, COLORADO, a home rule city and Colorado municipal corporation (“City”). County and City may each be referred to as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the City, on behalf of its enterprise Colorado Springs Utilities (“Utilities”), holds title to multiple parcels of land in and around the Bear Creek watershed collectively known as Jones Park (the “Property”); and

WHEREAS, the Property is surplus property of no operational use and its disposal complies with section 6-80 of the City Charter, does not violate Utilities’ bond covenants, and is in the public interest; and

WHEREAS, the City desires to dispose of the Property subject to appropriate terms, conditions and restrictions for uses of the property to ensure the Property continues to fulfill its function as a necessary and essential watershed resource; and

WHEREAS, *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests* authorizes the disposal of properties for less than fair market value upon a finding of a public purpose; and

WHEREAS, evidence has been presented to the City Council that the County is the appropriate and one logical, potential purchaser/donee of the Property; and

WHEREAS, the County has expressed its willingness to accept conveyance of the Property from the City and implement the trail and stream improvement work identified and to be identified in the USFS Bear Creek Watershed Restoration Project final decision; and

WHEREAS, the County possesses and maintains a publicly supported parks, trails and open space system which uniquely qualifies it as the one, logical public steward ensuring the perpetual recreational use and the protection of the greenback cutthroat trout within Jones Park; and

WHEREAS, a donation of the Property to the County, subject to appropriate terms, conditions and restrictions, will serve a public purpose and is consistent with applicable laws and regulations; and

WHEREAS, the City has exchanged drafts of the scope of work for purposes of an application for a grant from the Colorado Water Conservation Board for improvements within

the Property in the amount of \$250,000, and the City desires to transfer its right, title and interest in such grant to the County as a condition of the conveyance of the Property.

NOW THEREFORE, in consideration of the mutual promises herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS

1. CONVEYANCE AND RELEASE:

a. According to the title commitment of Land Title Guaranty Company, Order Number SC55033742 dated July 11, 2011, the City is the owner of certain interests in and to the real property as identified in the Recitals above and known as Jones Park (the "Property").

b. City agrees to transfer the Property that is legally described in **Exhibit A**, which is attached hereto and made a part hereof. City shall execute and deliver to the County a Quitclaim Deed as provided in Section 2 ("Closing") below.

c. The City, pursuant to *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests* ("RES Manual") is authorized to dispose of properties for less than fair market value upon a finding of a public purpose. As evidenced by City Council Resolution No. ____-15 ("**Exhibit B**"), the City Council has made a determination that there is a public purpose for transferring Jones Park to the County at a cost of zero dollars (\$0.00).

d. At closing, County agrees to reimburse City's Utilities Enterprise for all costs associated with cultural resources studies and appraisals on the Jones Park property in an amount not to exceed \$41,478.18.

e. The Parties agree that no additional consideration, other than that set forth in this Agreement, shall be required of either Party.

f. As both Parties are tax exempt entities, transfer of the Property contemplated herein will not be recognized by the City or the County as a donation for IRS purposes.

g. Within twenty four (24) months of transfer of ownership from the City to the County, the County shall impose upon the Property a conservation easement with conversation values consistent with the restrictions contained in the quitclaim deed and the USFS Bear Creek Watershed Restoration Project final decision, which will be held by an appropriate certified conservation easement holder. This provision shall survive closing.

h. The City has exchanged drafts of the scope of work for purposes of an application for a grant from the Colorado Water Conservation Board for improvements within the Property in the

amount of \$250,000, and the City will transfer its right, title and interest, if any, in such grant to the County.

2. **CLOSING:**

a. **Time and Place.** The closing of the transfer of the Property contemplated herein (“Closing”) shall be at the offices of Land Title Guarantee Company, located at 102 S. Tejon Street, Suite 760, in Colorado Springs, Colorado, 80903, (“Title Company”) at a date and time to be determined by the Parties, but no later than February 15, 2015 (“Closing Date”) unless extended in writing, with the escrow instructions to be based on the terms and conditions set forth in this Agreement.

b. **Procedure.** At Closing, the following shall occur:

i. City shall deliver the fully executed Quitclaim Deed, as shown in **Exhibit C**, attached hereto and made a part hereof, conveying the Property to County.

ii. City shall deliver a fully executed City Council Resolution (“**Exhibit B**”) identifying the Real Estate Manager and Mayor as authorized to execute documents on behalf of the City with respect to the transactions contemplated herein. County shall deliver a fully executed Board Resolution (“**Exhibit D**”) authorizing acceptance of the Property and identifying the authorized official(s) to execute documents on behalf of the County.

iii. County shall pay all recording fees, applicable documentary fees, transaction costs, and for Title Company’s closing and escrow fees.

iv. The Parties shall instruct the Title Company to record this Agreement and the Quitclaim Deed with the El Paso County Clerk and Recorder’s Office.

c. **Title:** County shall instruct the Title Company to prepare an updated title insurance commitment (“Title Commitment”) for the Property. County shall have the right to review the Title Commitment. The County shall pay the costs associated with the Title Commitment, title examinations, updates, and any surveying. The City, through its Utilities Enterprise, shall pay the premium for a title insurance policy in an amount not to exceed \$1,425.00.

d. **Termination:** Closing must occur on or before the Closing Date, unless the Parties mutually extend the Closing Date in writing. If Closing does not occur prior to or on Closing Date, this Agreement will automatically terminate and the Parties shall be relieved of all obligations hereunder with the exception of payments for fees and services contracted for by the Parties for purposes of this Agreement.

2. **POSSESSION:** The County shall take immediate possession of the Property upon Closing.

3. **SPECIAL PROVISIONS:**

a. This Agreement is a contract and shall bind the Parties only when signed by both the City and the County and is approved as to form by the City Attorney's Office and the County Attorney's Office. This Agreement shall extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the Parties.

b. Pursuant to Chapter 2, subsection 2.11 of the City's RES Manual, the City's Real Estate Services Manager, or designee, shall execute the necessary escrow instructions and/or additional instructions, and acceptance of property interests which may be required to complete the closing of this real property transaction.

c. City and County represent and warrant that each is duly authorized to conduct the transactions contemplated in this Agreement. The applicable Council Resolution and Board Resolution shall be recorded concurrently with the Quitclaim Deed.

4. **NOTICES**. Any notice or other documents or materials required or permitted to be delivered by this Agreement shall be deemed properly delivered upon receipt by the Party to whom the documents or materials are to be delivered. Notices may be hand delivered, sent by first-class mail, return receipt requested, with postage prepaid, or transmitted by electronic facsimile. Notices shall be addressed and delivered as follows:

COUNTY:

ATTN: Board of County Commissioners
200 S. Cascade Avenue, Suite 150
Colorado Springs, CO 80903

COPY TO:

Executive Director
Community Services Department
2002 Creek Crossing
Colorado Springs, Colorado 80905
Phone: (719) 520-7529
Fax: (719) 520-6389

CITY:

City of Colorado Springs
Manager, Real Estate Services
30 S. Nevada, Suite 502
Colorado Springs, CO 80903
Phone: (719) 385-5605
Fax: (719) 385-5610

Either Party may, by notice properly delivered, change the person or address to which future notices or deliveries to that Party shall be made.

5. **SUCCESSORS AND ASSIGNS**: This Agreement is binding on County and City and their heirs, devisees, executors, administrators, legal representatives, successors, assigns, and designees.

6. **ASSIGNMENT**: Neither Party shall assign or otherwise transfer this Agreement or any right or obligation under this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld.

7. **NO THIRD PARTY BENEFICIARY**: It is specifically agreed between the Parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage

pursuant to the terms, conditions, or provisions of this Agreement. The Parties do not waive or intend to waive any protection, immunity, or other provision of the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as now written or amended in the future.

8. **APPROPRIATION OF FUNDS**: This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, or the Board of County Commissioners of El Paso County, Colorado, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of either the City or the County which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City or the County. With respect to the City, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

9. **GOVERNING LAW**: This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, ordinances, rules and regulation of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, and under applicable rules and regulations of El Paso County, Colorado. Court venue and jurisdiction shall be exclusively in the Colorado District Court for El Paso County, Colorado. The Parties agree that this Agreement shall be deemed to have been made in, and the place of performance is deemed to be in, the City of Colorado Springs, El Paso County, State of Colorado.

10. **HEADINGS**: The headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

11. **ENTIRE AGREEMENT**: This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and any prior agreements pertaining to the subject of this Agreement, whether oral or written, have been merged into and integrated into this Agreement. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the Parties, or enforceable unless made in writing and signed by the Parties. Any covenant, term, condition, obligation or agreement set forth in this Agreement or in the attached deed shall survive closing and continue in full force and effect and will not be merged by execution of this Agreement.

(THE REMAINDER OF THIS PAGE IS BLANK WITH SIGNATURES PROVIDED IN
COUNTERPART ON THE FOLLOWING PAGES)

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

County:

BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO

By: _____
Dennis Hisey, Chair
Board of County Commissioners of El Paso County

Date: _____

ATTEST:

By: _____
Chuck Broerman
El Paso County Clerk and Recorder

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this day of , 2015, by Dennis Hisey, Chair of the Board of County Commissioners of El Paso County, Colorado, and attested to by Chuck Broerman, El Paso County Clerk and Recorder.

Witnesseth my hand and official seal.

My commission expires: _____

Notary Public

City:

CITY OF COLORADO SPRINGS:

By: _____
Steve Bach, Mayor

Date

State of Colorado)
) ss.
County of El Paso)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015,
by Steve Bach, Mayor on behalf of the City of Colorado Springs, Colorado.

Witness my hand and official seal

My commission Expires: _____

Notary Public

By: _____
Ronn Carlentine, Real Estate Services Manager

Date

State of Colorado)
) ss.
County of El Paso)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015,
by Ronn Carlentine, Real Estate Services Manager for the City of Colorado Springs, Colorado.

Witness my hand and official seal

My commission Expires: _____

Notary Public

Approved as to form:

City Attorney's Office

Approved as to form:

County Attorney's Office

“EXHIBIT A”

LEGAL DESCRIPTION OF THE PROPERTY

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, THE SOUTH HALF OF THE SOUTHWEST QUARTER, THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER, AND THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 14 SOUTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO.

THE SOUTH HALF OF THE NORTHEAST QUARTER, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 14 SOUTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO.

THE WEST HALF OF THE SOUTHEAST QUARTER, THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER, THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, THE EAST HALF OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 14 SOUTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO.

THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, THE EAST HALF OF THE NORTHEAST QUARTER, AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 14 SOUTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF TELLER, STATE OF COLORADO.

THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 14 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO.

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, THE SOUTH HALF OF THE NORTHWEST QUARTER, AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 14 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO.

THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER, THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER, AND THE EAST HALF OF LOT 1 OF SECTION 31, TOWNSHIP 14 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO.

THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 14 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO.

EXHIBIT B

City Council Resolution No. _____-15

EXHIBIT C

Quitclaim Deed

EXHIBIT D

Board of County Commissioners Resolution