

BOARD OF COUNTY COMMISSIONERS FOR
ADAMS COUNTY, STATE OF COLORADO

RESOLUTION APPROVING A DEED OF CONSERVATION EASEMENT IN GROSS
FROM COMMERCE CITY TO ADAMS COUNTY FOR THE WE HOLDINGS AND
MULTI-CONTRACTORS PROPERTIES

Resolution 2014-017

WHEREAS, Commerce City ("City") and Adams County ("County") desire to work cooperatively in preserving Open Space in Adams County; and,

WHEREAS, the City has purchased the WE Holdings and Multi-Contractors properties ("Property") located south of 64th Avenue and west of Brighton Boulevard, between Sand Creek and Interstate 270; and,

WHEREAS, the City purchased the land using funds obtained per the State of Colorado Consent Decree for Natural Resource Damages under the Rocky Mountain Arsenal Settlement; and,

WHEREAS, the Consent Decree requires a conservation easement be granted to a qualified organization for the purpose of ensuring the City preserves the conservation values of the Property; and,

WHEREAS, the County is a qualified organization and has agreed to hold the conservation easement for Commerce City.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of the County of Adams, State of Colorado, that the Deed of Conservation Easement In Gross from Commerce City to Adams County on the WE Holdings and Multi-Contractors properties, a copy of which is attached hereto and incorporated herein by this reference, is hereby approved.

BE IT FURTHER RESOLVED that the Chair of the Board of County Commissioners is authorized to sign the aforementioned Conservation Easement In Gross on behalf of Adams County.

Upon motion duly made and seconded the foregoing resolution was adopted by the following vote:

Henry _____ Aye
Tedesco _____ Aye
Hansen _____ Aye

Commissioners

STATE OF COLORADO)
County of Adams)

I, Karen Long, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid do hereby certify that the annexed and foregoing Order is truly copied from the Records of the Proceedings of the Board of County Commissioners for said Adams County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Brighton, Colorado this 13th day of January, A.D. 2014.

County Clerk and ex-officio Clerk of the Board of County Commissioners
Karen Long:



By:



Deputy

CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT IN GROSS (hereinafter the "Easement"), is made and entered into this 17th day of January, 2014 (the "Effective Date"), by and between THE CITY OF COMMERCE CITY, COLORADO, a Colorado home rule municipality having its principal business address at 7887 East 60th Avenue, Commerce City, Colorado 80022-4199 ("Grantor"), and ADAMS COUNTY, COLORADO, a body politic and corporate, duly organized and existing under and by virtue of the laws of the State of Colorado, having an address at 4430 South Adams County Parkway, Brighton, CO 80601 ("Grantee").

RECITALS

- A. This Easement may not be encumbered, disposed of in any manner, or used for purposes inconsistent with its purposes.
- B. Grantor is the owner of five (5) parcels of property located in Adams County, Colorado, more particularly described on **Exhibit A**, attached hereto and incorporated herein by this reference, ("Grantor's Property"). Grantor's Property is generally depicted on the map attached hereto as **Exhibit B**, incorporated herein by this reference. A portion of Grantor's Property is legally described in **Attachment #1 to Exhibit A** and will be referred to herein as the "Unencumbered Parcel". Grantor's Property *except* the Unencumbered Parcel, shall be referred to herein as the "Property".
- C. Grantor's ownership of the Property comes as a result of a consent decree approved by the United States District Court for the District Court of Colorado in Civil Action No. 83-C-2386 (hereinafter the "Consent Decree") related to natural resource damage claims involving the Rocky Mountain Arsenal. The Consent Decree established a group of trustees (the "Trustees") to administer funds paid to the State of Colorado pursuant to the Consent Decree (the "Fund"). Per Section 6 of the Consent Decree, monies from the Fund are to be used solely for a "Greenway Project" as defined in §3(h) thereof. The Trustees passed resolutions dated July 31, 2012, and October 30, 2012, authorizing expenditures from the Fund for Grantor's Greenway Project, which Greenway Project was the purchase and restoration of the Property; and (ii) requiring a conservation easement to be placed on the Property to protect the conservation values determined to exist thereupon.
- D. The Property is located adjacent to Sand Creek near the confluence of Sand Creek and the Platte River and contains land, once restored, that will exist in a natural, scenic and open condition. The Property provides: 1) outdoor recreation and education of the general public; 2) relatively natural habitat; 3) open space; 4) scenic enjoyment; and 5) significant public benefits (collectively, the "Conservation Values"), which are of great importance to the residents of Adams County and the People of the State of Colorado.
- E. Grantor intends, pursuant to this Easement, that the Conservation Values be preserved and protected in perpetuity and that any uses be prohibited that would substantially diminish or impair the Conservation Values or that otherwise would be inconsistent with the purpose of the Easement.
- F. By the enactment of the Sections 38-30.5-101, *et seq.*, and Sections 33-1-101, *et seq.*, Colorado Revised Statutes, as amended, the State of Colorado has recognized the importance of efforts to preserve land in a natural, scenic, or open condition and for wildlife habitat uses consistent with the protection of open land having wholesome environmental quality.

- G. Grantee, by acceptance of the grant made hereby, will forever honor the intentions of Grantor stated herein to preserve and protect in perpetuity the Conservation Values of the Property.
- H. Grantee is qualified to accept the grant of a conservation easement pursuant to C.R.S. Section 38-30.5-104(2).
- I. The parties hereby acknowledge that this Easement is subject to an existing easement held by SUNCOR ENERGY (U.S.A.) INC. and recorded in the Office of the Clerk of Adams County, Colorado on December 16, 2013, Reception Number 2013000104424.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, restrictions, and requirements contained herein, which are based upon both the common law and Sections 38-30.5-101, *et seq.*, C.R.S., as amended, Grantor does hereby grant and convey to Grantee a perpetual Easement in Gross consisting of the rights hereinafter enumerated, over and across the Property, situated in Adams County, Colorado, more particularly described above, subject to the terms and conditions set forth herein.

- 1. INCORPORATION OF RECITALS. The foregoing recitals are incorporated herein as if specifically restated verbatim in this paragraph.
- 2. PURPOSE. The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values and in particular the characteristics of the Property that make it valuable wildlife habitat for avian and other wildlife while allowing Grantor the Reserved Rights indentified in Paragraph 5, subject to certain limitations for the protection of the wildlife and wildlife habitat as set forth herein.
- 3. BASELINE DOCUMENTATION REPORT. The parties acknowledge that written reports have been prepared, reviewed and approved by both parties documenting an accurate representation of the Property's current condition (the "Baseline Reports"). Copies of the Baseline Reports will be on file with both parties and are incorporated herein by this reference. The parties acknowledge that the Baseline Reports are intended to establish the condition of the Property as of the Effective Date.
- 4. AFFIRMATIVE RIGHTS CONVEYED.
 - a. To accomplish the purposes of this Easement, Grantee shall have the following specific rights (hereinafter the "Affirmative Rights") on the Property:
 - i. The right to preserve and protect in perpetuity the Conservation Values and to require Grantor to restore the Property to its natural condition in the event of damage, and in particular, to protect the value of the Property as habitat for avian and other wildlife.
 - ii. The right to enter upon and access the Property at reasonable times by foot and motorized vehicle in order to monitor compliance with and otherwise enforce the terms of this Easement. Grantee shall, before entering the Property pursuant to this provision, provide Grantor with verbal or written notice not less than forty-eight (48) business hours prior to entry.
 - iii. The right to prevent any activity on or use of the Property inconsistent with the terms of this Easement or that may reasonably be expected to have a material adverse impact on the Conservation Values, and in particular, the value of the Property as wildlife habitat, and to require Grantor to restore such areas or features of the Property that are materially damaged by any inconsistent activity or use by Grantor.

- iv. The right to enforce and litigate the rights herein granted, by injunction and other means as necessary, in a manner that will not unreasonably interfere with the proper uses being made of the Property at the time of such enforcement.
 - b. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- 5. RESERVED RIGHTS. Grantor reserves to itself, and to its respective personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited or restricted herein and do not substantially diminish or impair the Conservation Values. Without limiting the generality of the foregoing, the following rights are expressly reserved:
 - a. Restoration and Remediation. Notwithstanding any provision herein to the contrary, Grantor has reserved the right to restore and remediate any known or perceived environmental hazards or contaminants and any other condition existing or perceived on the Property that is inconsistent with the Conservation Values.
 - i. A portion of the Property will be a part of the Voluntary Cleanup Program (“VCP”) administered by the Colorado Department of Public Health and the Environment (“CDPHE”). VCP provides property owners resources to facilitate cleanup as well as assurances against regulatory enforcement. Grantor will work closely with CDPHE to ensure the site is remediated in accordance with VCP standards.
 - ii. Grantee acknowledges and agrees that such restoration and remediation may disturb the surface of the Property, and Grantee consents to such restoration and remediation and agrees that it will not substantially diminish or impair the Conservation Values or otherwise be inconsistent with the purpose of this Easement. Further, Grantor shall have the right, but not the obligation, to excavate, fill and dredge the Property and to construct and maintain storm water detention facilities on the Property consistent with Urban Drainage and Flood Control District design and Best Management Practices. Any remediation and/or restoration conducted by Grantor shall be at no cost to Grantee.
 - b. Existing and Permitted Structures.
 - i. Grantor retains the right to demolish and remove all structures existing on the Property on the Effective Date; provided, however, that Grantor shall have the right, but not the obligation, to maintain, repair and, in the event of destruction, reconstruct existing roads, water impoundments/ponds, trails, wells and pipelines.
 - ii. Grantor further retains the right to construct and maintain recreational amenities to support passive use of the area such as multi-use trails, shade/picnic structures, restroom facilities, trail heads/parking areas and signage which have yet to be designed.
 - c. Fences. Grantor shall have the right, but not the obligation, to construct, maintain, repair and replace perimeter fences subject to the conditions identified below. Unless otherwise approved in writing by Grantee, existing fences or barriers, when replaced or reconstructed, and new fences when constructed, shall be no higher than forty-two (42) inches with no more

than four (4) strands of wire. Under no circumstances may tight or woven wire fencing be used to repair or reconstruct existing fences. Nothing herein shall be construed as requiring Grantor to alter, repair or replace existing fences or to install any new fencing except as specifically provided herein.

- d. Public Access. Grantor shall have the right to allow or exclude any member of the Public from the Property. Nothing herein contained shall be construed as guarantying public access to any portion of the Property, although Grantor may permit, at its discretion, public access on such terms and conditions as it deems appropriate, provided such access is consistent with the protection of the Conservation Values.
 - e. Recreation Access. To make use of the Property for recreational uses that are consistent with protection of the Conservation Values including, by way of example and not limitation, activities such as trail hiking, shelter picnicking, wildlife viewing and education, provided such activities comply with all applicable laws and regulations.
 - f. Resource Management. To control noxious weeds on the Property by chemical, biological and mechanical methods. For purposes of this Easement, "noxious weeds" shall be those undesirable plant species designated to be "noxious weeds" pursuant to the Colorado Noxious Weed Act, § 35-5.5-101, *et seq.*, C.R.S., as amended or as may be amended (including, without limitation, any amendments to such State statute, or under any similar statute which is subsequently enacted). This right shall not include the right to conduct aerial herbicide or insecticide spraying operations on the Property without the written permission of the Grantee.
 - g. Storm Water Detention Facilities. Grantor shall have the right, but not the obligation, to excavate, fill and dredge the Property and to construct and maintain storm water detention facilities consistent with Urban Drainage and Flood Control District design and Best Management Practices.
 - h. Grazing. Grantor shall have the right to allow grazing of livestock on the Property.
6. PROHIBITED USES. Except as otherwise provided in Paragraphs 4, 5 and 7 herein, use of the Property inconsistent with the purposes of this Easement, including, but not limited to, any of the following (the "Prohibited Uses") are prohibited:
- a. Conservation Values. Materially changing, disturbing, altering or impairing the Conservation Values.
 - b. Subdivision. Further dividing, subdividing, partitioning or de facto subdividing the Property into two or more parcels, separate interests or interests in common. Grantor, and each of its successors and assigns who hold any interest in the Property in joint tenancy or in tenancy in common forever waive any statutory or common law right to further partition the Property into separate parcels.
 - c. Commercial or Industrial Activity. Establishing or operating any commercial or industrial uses.
 - d. New Structures and Improvements. Constructing, placing or erecting any structures or facilities, including, but not limited to, buildings, houses, offices, trailers, camping accommodations, permanent tent facilities, temporary living quarters of any sort, Quonset huts, mobile homes, storage sheds and enclosures of any sort.

- e. Livestock Feedlot. Establishing or operating any feedlot. "Feedlot" shall mean a permanently constructed, confined area or facility used for the purpose of engaging in the business of receiving and feeding livestock.
- f. Paving and Road and Trail Construction. Building, constructing or developing any new roads, bridges or parking lots, except as necessary to accomplish the restoration/remediation of the Property and to provide recreational/maintenance access to or through the Property.
- g. Excavation. Filling, excavating, or dredging the surface of the Property.
- h. Mining. The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance.
- i. Trash. Disposing, dumping, discarding, leaving, accumulating, treating, burning, incinerating, reclaiming, recycling, storing, abandoning or otherwise depositing any waste-like materials, hazardous or otherwise, including, but not necessarily limited to, trash, litter, garbage, junk or solid or liquid non-agricultural wastes. This provision shall not be interpreted to make Grantee an "owner of" or "responsible party for" the Property for purposes of any federal or state environmental law or regulation.
- j. Timber Harvesting. Cutting, removing or unnecessarily damaging any plants or vegetation unless such activity has been approved in advance in writing by Grantee. This prohibition shall not restrict Grantor's right to cut and remove from the Property: (i) trees and shrubs to control any imminent threat of disease or insect infestation; (ii) dead, diseased or downed shrubs and trees that present a safety hazard or obstruction; (iii) invasive, non-native species; (iv) trees and shrubs that interfere with fencing; and (v) any plants and vegetation on roads or other locations necessary for the installation and maintenance of facilities allowed under this Easement.
- k. Agriculture. Engaging in cultivated agricultural practices, including, but not limited to, the cultivation and harvesting of plants or crops and the tilling or plowing of the soil, except wildlife habitat projects or other purposes agreed upon by the parties.
- l. Soil. Intentionally undertaking or implementing any activity, action or use detrimental or adverse to the detention and conservation of soil.
- m. Fires. Igniting outdoor fires, unless such activity has been agreed upon expressly and in writing by the Grantee.
- n. Utilities. Building or installing any aboveground public or private utilities, including but not limited to electrical transmission lines, wind generator towers, antennas, radio and television telecommunication towers, unless approved in advance in writing by the Grantee.
- o. Motorized and Non-motorized Vehicles. The operation of any motorized or non-motorized vehicles, including bicycles, off established roadways, except motorized or non-motorized vehicles used in conjunction with Grantor's maintenance, restoration and/or remediation of the Property. Bicycles may be permitted on recreation trails.
- p. Captive Wildlife. Conducting, constructing or operating any farm for captive wildlife or alternative livestock or otherwise holding captive wildlife or alternative livestock on the Property. "Captive wildlife or alternative livestock" shall include those animals regulated or

prohibited pursuant to C.R.S. § 33-1-121 or § 33-4-102(2)(f), as amended (including amendments to any similar statutes), and shall further include, but not be limited to, penned, enclosed or privately-owned bison, mountain lions, any species of bear and any species cloven-hoofed ungulate indigenous to Colorado or cloven-hoofed ungulate that could interbreed with or spread disease to any indigenous cloven-hoofed ungulate.

- q. Fences. Building, erecting or installing any new fences anywhere in the interior of the Property unless approved in writing by Grantee.
 - r. Wildlife Harassment. Intentionally disturbing, harassing or bothering wildlife.
 - s. Wildlife Release. Intentionally introducing or releasing any fish, animal or plant, except as expressly approved in writing by the Grantee.
 - t. Remote Control Aircraft. Operating and flying remote controlled aircraft.
 - u. Active Recreation. Developing or using facilities for intensive or active recreational activities. "Intensive or active recreational activities" shall mean recreational activities that concentrate people in a relatively confined area for significant periods of time. Examples of such facilities include, but are not limited to, athletic and sport fields, playgrounds or campgrounds with toilet facilities and outdoor amphitheaters.
 - v. Water Rights. Except as otherwise provided for herein, engaging in any of the following activities regarding water rights without the prior written approval of the Grantee: (i) constructing or permitting the construction of any new diversion, storage or other water structures upon the Property; (ii) developing any conditional water rights for use on the Property; and (iii) otherwise undertaking any new development of water resources for use on the Property.
7. COSTS AND LIABILITIES. Grantor and its successors and assigns, during their respective periods of ownership of the Property, shall bear all responsibility for and all costs of operation, upkeep and maintenance of the Property except for those activities undertaken or required by Grantee under this Easement.
8. ASSIGNMENT OF GRANTEE'S INTEREST. Grantee may assign its rights and obligations under this Easement only to an organization that: (i) is authorized to acquire and hold conservation easements under Colorado law; (ii) is a "qualified organization" under § 170(h) of the U.S. Internal Revenue Code, as amended; and (iii) has been approved in advance in writing by Grantor. As a condition of such assignment, Grantee shall require the assignee to expressly agree, in writing, to carry out and uphold the purposes of this Easement and otherwise assume all of the obligations and liabilities of Grantee as set forth herein or created hereby. After such assignment, Grantee shall have no further obligations or liability under this Easement.
9. GRANT IN PERPETUITY. The Easement shall be a burden upon and shall run with the Property in perpetuity and shall bind both Grantor and Grantee and their respective successors and assigns forever.
10. WAIVER OF CERTAIN DEFENSES. Grantor hereby waives any defense of laches, estoppel or prescription.

11. CHANGE IN CIRCUMSTANCES. The parties hereby acknowledge that the uses of the Property prohibited herein, and other uses inconsistent with the purposes of this Easement, may become significantly more valuable than the Reserved Rights and that neighboring properties may in the future be entirely put to uses not permitted hereunder. It is the parties' belief that any such changes will increase the benefit to the public of the continuation of this Easement and that none of the aforementioned changes shall justify extinguishing or terminating this Easement. In addition, the inability to carry on any of the Reserved Rights shall neither impair the validity of this Easement nor constitute grounds for its termination or extinguishment.
12. ENFORCEMENT; COSTS.
 - a. If Grantee, in its reasonable belief, finds a violation of this Easement by Grantor, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either: (i) restore the Property to its condition prior to the violation to the extent reasonably practical; (ii) dispute in writing that a violation has occurred; or (iii) provide a written explanation to Grantee as to why the alleged violation should be permitted. If Grantor responds as provided in (ii) or (iii), the parties agree to meet with each other as soon as reasonably possible to resolve the disagreement.
 - b. If a resolution of the disagreement cannot be achieved at such meeting, the parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. When, after notice to Grantor and a reasonable opportunity to cure a violation or resolve any disputes, in Grantee's reasonable opinion, an ongoing or imminent violation by Grantor could irreversibly diminish or impair the Conservation Values, Grantee may, in its sole discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists or has occurred, Grantee may obtain an injunction to stop the violation, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation to the extent reasonably practical. Nothing in the paragraph is intended or shall be construed as limiting Grantor's rights or defenses in any legal action against it.
 - c. In the event any action is brought to resolve a dispute among the parties related to this Easement, the prevailing party in such action shall be entitled to recover reasonable costs and attorney fees from the non-prevailing party, including any costs of restoration necessitated by a violation hereof.
13. DIVISION OF PROCEEDS. The rights of Grantee created by this Easement constitute a vested real property interest. In the event of condemnation of the Property, the values of Grantee's and Grantor's interests shall be computed as follows:
 - a. If all or any portion of the Property is being sought by an entity that has the power of condemnation, the fair market value of the Property as if unencumbered by this Easement shall be determined by the court in the condemnation proceeding, or by the agreement of Grantor, Grantee and the condemning entity.
 - b. Once the fair market value of the Property as if unencumbered by this Easement has been established pursuant to the above, the value of Grantor's and Grantee's respective interests in the Property shall be a percent of the fair market value of the Property as if unencumbered by this Easement as follows:
 - i. Grantor's interest shall be ninety percent (90%).

ii. Grantee's interest shall be ten percent (10%).

To the extent any condemnation proceeds are less than the fair market value of the Property, Grantor and Grantee shall each be entitled to the percentage specified above.

14. SUBSEQUENT TRANSFERS. Any time fee title ownership of the Property is conveyed, Grantor shall pay a one hundred dollars (\$100.00) transfer fee to Grantee within five (5) business days after closing on the conveyance unless Grantee has waived this requirement in writing. In addition, Grantor shall incorporate by reference the terms of this Easement in any deed or other legal instrument entered into subsequent to the Effective Date by which it divests itself of any interest in the Property, including, without limitation, a leasehold interest. Grantor shall give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

15. NOTICE, APPROVAL AND DISCRETION OF GRANTEE.

a. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than ten (10) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to the action's consistency with the purpose of this Easement.

b. Procedure. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within ten (10) days of receipt of written request therefore. Grantee's approval may be withheld only upon a reasonable determination by Grantee that an action as proposed would be inconsistent with the purpose of this Easement. If Grantee fails to respond to a request for approval within such ten (10) day period, Grantee shall be deemed to have approved such request.

c. Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

16. NOTICE ADDRESSES. Written notices required under this Easement and all other correspondence among the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

To the Grantor:

City Manager's Office
City of Commerce City
7887 E. 60th Ave.
Commerce City, CO 80022

With Copies to:

City Attorney's Office

To Grantee:
Adams County Parks and
Community Resources
9755 Henderson Road

With Copies to:
County Attorney's Office

Brighton, CO 80601

17. GENERAL PROVISIONS.

- a. Severability. If any provisions of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to entities or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- b. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.
- c. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purpose of § 38-30.5-101, *et seq.*, C.R.S. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- d. Entire Agreement; Amendment. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. If circumstances arise under which an amendment to, or modification of, this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualifications of this Easement under any applicable law and must be consistent with prior encumbrances listed herein; and provided further that the prior written approval of the Trustees shall be required. Any amendment or alteration hereto must be: (i) in writing, signed and notarized by both parties; (ii) consented to in writing by the Trustees; and (iii) recorded in the records of the Clerk and Recorder of Adams County, Colorado. Any amendment or alteration shall not enlarge or modify the obligations of a prior owner of the Property.
- e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f. Acts beyond Party Control. Nothing contained in this Easement shall be construed to entitle a party to bring any action against the other party for any injury to, or change in, the Property resulting from causes beyond the parties' control, including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by a party under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.
- g. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Property.

- h. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of its interest in the Easement or the Property, except that liability for acts or omissions occurring prior to transfer and during the period of ownership of the Property by the transferring party shall survive transfer.
- i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- j. Counterparts. The parties may execute this instrument in any number of counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the first recorded counterpart shall be controlling.
- k. Joint Obligation. The obligations imposed by this Easement upon Grantor and Grantee shall be joint and several.
- l. No Third Party Rights. This instrument creates no enforcement or other rights in persons or entities not parties to this Easement except as specifically provided herein.
- m. Termination of the Trustees. In the event the Trustees are dissolved, terminated, or the Trustees merge into another entity, the rights and obligations of the Trustees hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Office of the Attorney General.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date first set forth above.

GRANTOR:

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

APPROVED AS TO FORM:

Gregory D. Graham, Asst. City Attorney

RECOMMENDED AND APPROVED:

Carolyn J. Keith, CPRP, Director
Department of Parks, Recreation & Golf

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing Conservation Easement in Gross was subscribed and sworn to before me this _____ day of _____, 2014, by Sean Ford, Mayor of the City of Commerce City, Grantor.

Witness my hand and official seal.

NOTARY PUBLIC

(Seal)

GRANTEE:

ADAMS COUNTY, COLORADO

By : *[Signature]*
Chair, Board of County Commissioners

APPROVED AS TO FORM:

[Signature]
Adams County Attorney

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS _____)

The foregoing Conservation Easement in Gross was subscribed and sworn to before me the 13th
day of January, 2014, by Chaz Tedesco, Chair of the
Board of County Commissioners for Adams County, Grantee.

Witness my hand and official seal.

[Signature]
NOTARY PUBLIC

(Seal)

CHRISTINE REEFE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20004028635
MY COMMISSION EXPIRES SEPTEMBER 28, 2016

Exhibit A

Parcel Number: 0182512202001

SUB:RIETHMANN GARDENS DESC: PLOT 9 EXC HIWAY

Parcel Number: 0182501300008

SECT,TWN,RNG:1-3-68 DESC: PARC B BEG AT PT 190/5 FT W OF SE COR SW4 SEC 1 SD PT ALSO BEING SWLY LN OF S H NO 33 TH CONT W TO PT ON E LN SOUTH PLATTE RIVER TH NLY ALG E LN OF SD RIVER TO PT ON SWLY LN SD HIWAY TH S 45D 39M E ALG S H NO 33 342/3 FT M/L TO POB 2/74A

Parcel Number: 0182512102040

SUB:RIETHMANN GARDENS DESC: PLOTS 25 AND 26 EXC PARCS

Parcel Number: 0182512102041

SUB:RIETHMANN GARDENS DESC: THAT PT OF PLOTS 26 27 28 35 36 37 & 63 RIETHMANN GARDENS SUBD OF A PT 12/3/68 DESC AS BEG AT N4 COR OF SD SEC TH S ALG N/L C/L 186/20 FT TO A PT ON WLY ROW LN OF I-270 TH S 45D 39M E 963/85 FT TO TRUE POB TH CONT S 45D 39M E 1675 FT TH S 44D 20M W 40 FT TH N 56D 41M W 347 FT TH N 62D 37M W 1249/74 FT TO A PT ON NELY LN OF CHANNEL OF SAND CREEK TH N 56D 22M W 141/47 FT TH N 44D 20M E 497/19 FT TO TRUE POB

Parcel Number: 0182512102042

SUB:RIETHMANN GARDENS DESC: THAT PT OF PLOTS 35 36 37 & 63 RIETHMANN GARDENS SUBD OF PT 12/3/68 DESC AS BEG AT N4 COR OF SD SEC TH S ALG N/S C/L 186/20 FT TO A PT ON SLY ROW LN OF I-270 TH S 45D 39M E 2638/85 FT TO TRUE POB TH CONT S 45D 39M E 468/15 FT TO A PT ON WLY ROW LN OF BRIGHTON BLVD TH S 36D 03M W 90 FT TO A PT ON NELY LN OF THE CHANNEL OF SAND CREEK TH N 56D 22M W ALG SD NELY LN OF THE CHANNEL OF SAND CREEK 2052/23 FT TO A PT TH S 62D 37M E 1249/74 FT TH S 56D 41M E 347 FT TH N 44D 20M E 40 FT TO TRUE POB

ATTACHMENT 1 TO EXHIBIT A

**REGIONAL TRANSPORTATION DISTRICT
REAL PROPERTY
TO BE ACQUIRED
FROM**

**PARCEL NO. NM-24
STA. 381+ TO STA. 382+**

WE HOLDINGS, INCORPORATED

FOR

NORTH METRO COMMUTER RAIL PROJECT

ATTACHMENT 1 TO EXHIBIT A

PARCEL NO. NM-24

Date: June 10, 2013

DESCRIPTION


Parcel No. NM-24 of the RTD North Metro Corridor Commuter Rail Project, being a portion of a parcel described at Book 2435, Page 904, recorded on March 6, 1980 in the Adams County Clerk and Recorder's Office, Adams County, Colorado, located in the Northwest and Northeast Quarters of Section 12, Township 3 South, Range 68 West of the 6th Principal Meridian, City of Commerce City, Adams County, Colorado, being more particularly described as follows:

COMMENCING at the East Sixteenth Corner between said Section 12 and Section 1 of the same Township and Range (a found 3-1/2" aluminum cap in range box stamped "LANE ENG. SVC. 1.064036 E 1/16 S1 S12 1996 LS 16837"); WHENCE the Northeast Corner of said Section 12 (a found 3-1/4" aluminum cap with 2 inch diameter pipe in range box stamped "T3S R68W R67W 1 6 12 7 1991 LS 17488") bears N89°49'43"E a distance of 1317.87 feet (basis of bearing – assumed); THENCE S62°54'21"W a distance of 1454.53 feet to the northwest corner of said parcel, being the POINT OF BEGINNING;

THENCE N89°56'12"E coincident with the north line of said parcel a distance of 4.23 feet;

THENCE S30°30'00"W a distance of 83.14 feet to the northwesterly line of said parcel; THENCE N27°55'19"E coincident with northwesterly line a distance of 81.07 feet to the POINT OF BEGINNING.

Containing 152 square feet, (0.003 Acres), more or less.


Prepared by:
Kenneth W. Carlson PLS 24949
For and on behalf of Jacobs Engineering Group Inc.
707 17th Street, Suite 400
Denver, CO 80202
303.820.5240


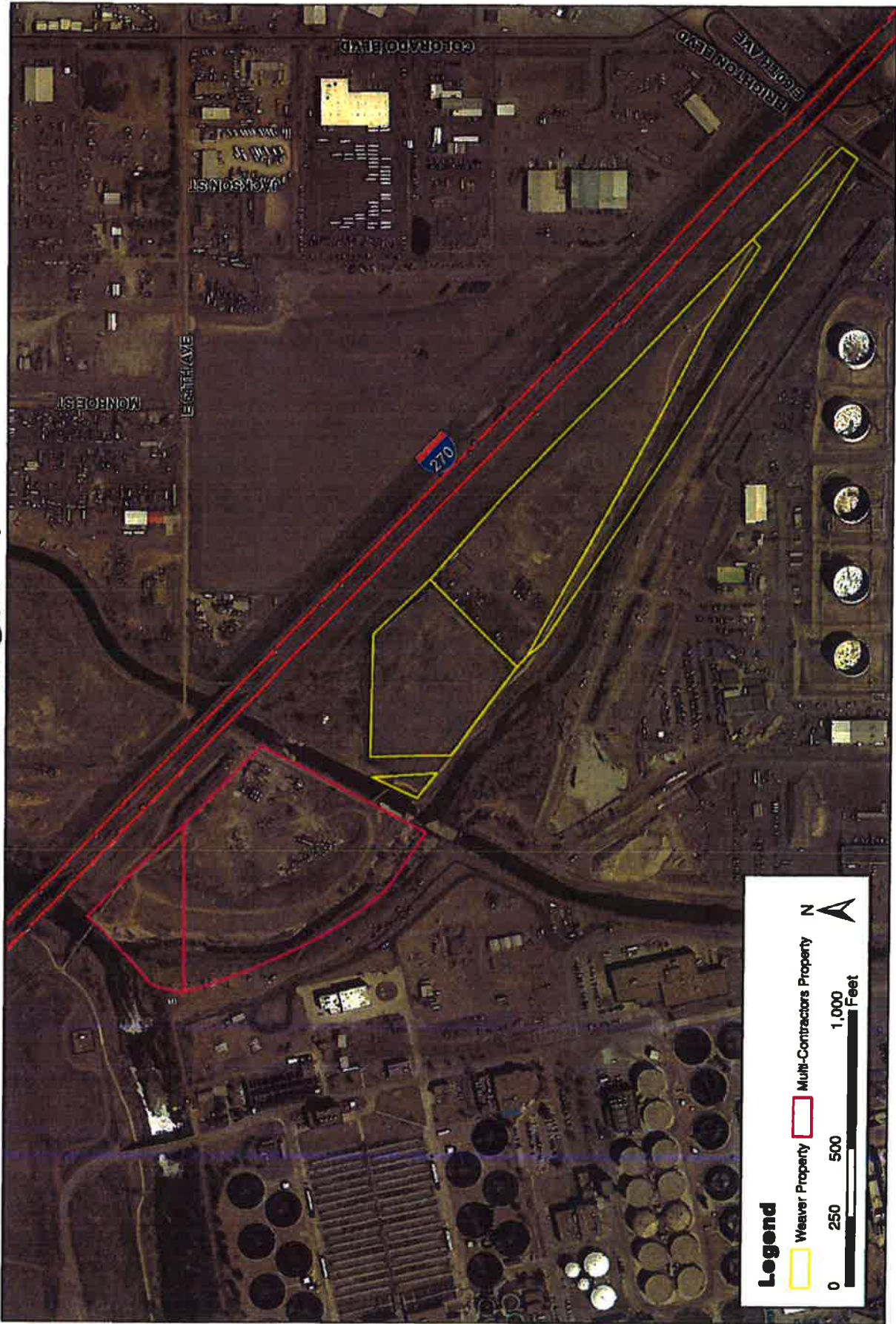


EXHIBIT B





Parks & Community Resources Department
Adams County Regional Park
9755 Henderson Road, Brighton, CO 80601
PHONE 303.637.8000 FAX 303.637.8015

MEMORANDUM

TO: Keisha Hirsch, Executive Assistant to the BoCC
Doug Edelstein, Deputy County Attorney

FROM: Shannon McDowell, Open Space Program Manager

RE: Hold Conservation Easement for Commerce City

DATE: January 9, 2014

Hi Keisha and Doug:

Enclosed are three copies of the conservation easement we will be holding for Commerce City. Doug, please review and sign these and send them on to Keisha. As I said in my e-mail yesterday, they ended up not changing the language in the recital now, but are reserving the right to modify it later.

If possible, I need this to be put on the agenda for Monday, January 13th as Commerce City plans to purchase the land on Friday, January 17th and the conservation easement will be recorded as part of the transaction. Please let me know when the conservation easement has been signed and I would be happy to come pick it up so I can deliver it to Commerce City.

Keisha, Commerce City will be recording this once all signatures are complete, so there is no need for you to record it as well.

I know this is late notice, but I greatly appreciate your help in getting it approved quickly! Let me know if there is anything else you need. Thank you!



STAFF SUMMARY

DEPARTMENT/NAME/PHONE: Shannon McDowell, Parks, 303-637-8031 *SM*

SUBJECT: Execute conservation easement with Commerce City on two properties

BACKGROUND:

The City of Commerce City is planning to acquire two parcels of land along Sand Creek using Natural Resource Damage funds from the Rocky Mountain Arsenal settlement. The properties are near the confluence of Sand Creek and the South Platte River. A requirement of utilizing Natural Resource Damage funds is that the land be protected with a conservation easement. Commerce City plans to use one conservation easement to encumber both properties. Commerce City has asked whether Adams County would be willing to hold the conservation easement on this land. We have reciprocated with Commerce City on conservation easements in the past and each currently hold one of the others' easements.

The 12-acre Multi-Contractors property is located at the confluence of Sand Creek and the South Platte River while the 30-acre Weaver property is located along Sand Creek southeast of the Multi-Contractors property. See the attached map for details on each property's location. Suncor has a responsibility to clean up benzene that was spilled across the Multi-Contractors property. Similarly, Commerce City will perform remediation activities on the Weaver property to mitigate contamination from PCB's and VOC's associated with its past use as transformer storage. Both properties will also undergo a restoration process to return the properties to their original vegetative state. Adams County will not be responsible for remediation or restoration activities, we will simply be responsible for ensuring that the terms of the conservation easement are met in perpetuity.

Acquisition of these properties will allow Commerce City to realign the Sand Creek Trail and add benches and shelters for trail users. The Sand Creek Regional Greenway Partnership may also use the property for environmental education programs.

Commerce City plans to close on these properties on January 17th, 2014. The conservation easement would need to be executed at the same time for Commerce City to obtain Natural Resource Damage funds.

COST & SOURCE OF FUNDING: The only costs associated with holding the conservation easement will be the yearly monitoring that is required to ensure the conservation values associated with the property are being maintained. Parks staff is currently working on creating a detailed policy for stewardship endowments that could be used to fund perpetual monitoring, however, the stewardship endowment policy is not developed enough to be utilized. Commerce City has indicated they are willing to hold some

of Adams County's conservation easements as a type of exchange in lieu of making payment to create a stewardship endowment.

TIMING: Commerce City would like to close on the properties January 17th, 2014. The conservation easement would need to be executed at the same time.

INTERESTED AND/OR INVOLVED PARTIES: Commerce City, Colorado Parks and Wildlife (distributors of Natural Resource Damages settlement funds), land owners

POLICY REQUIREMENTS, IF ANY: None.

AGENCIES, DEPARTMENTS, OFFICE COORDINATED WITH: Parks Department, City of Commerce City, Colorado Parks and Wildlife

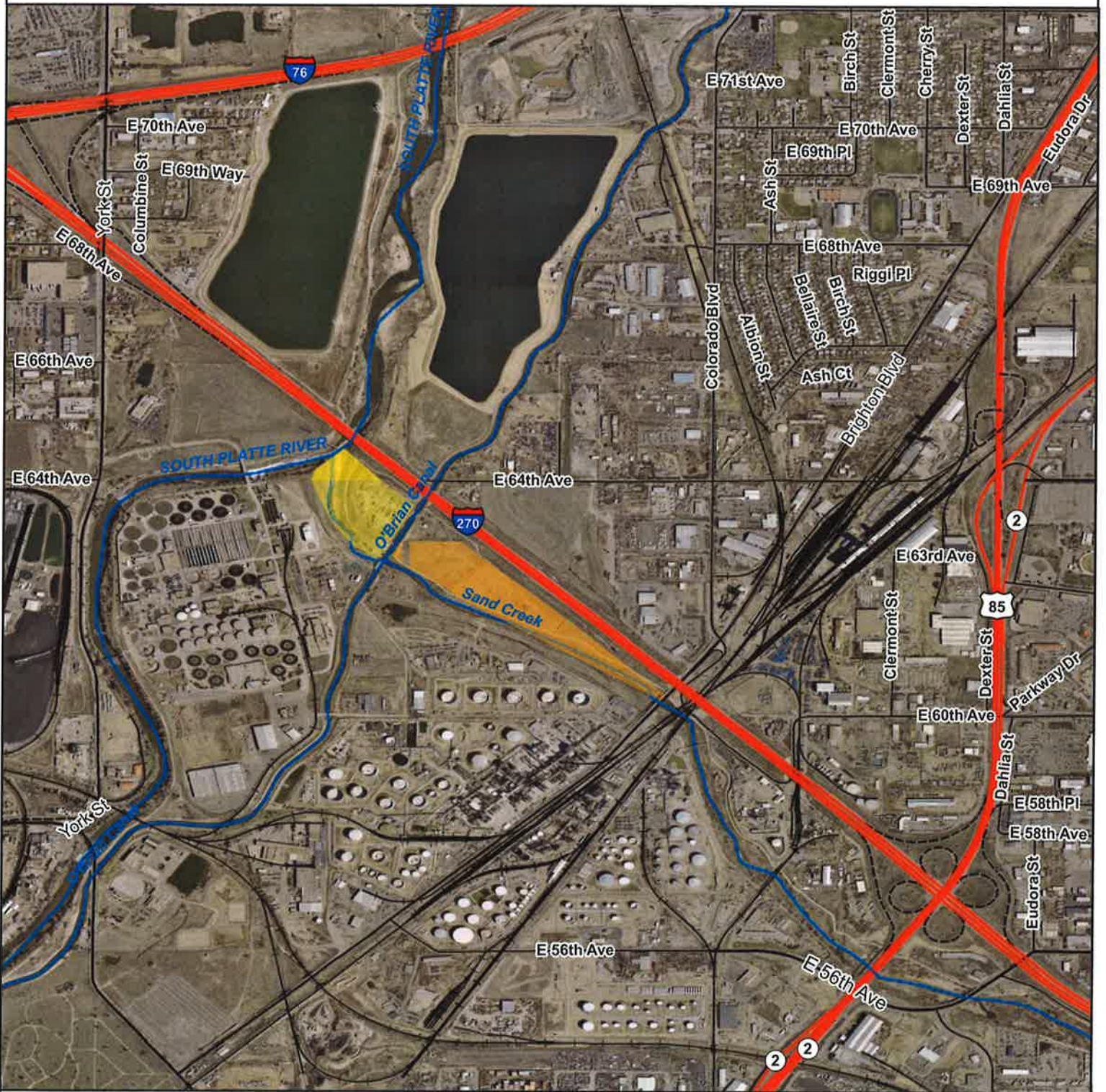
BOCC OPTIONS: Execute the conservation easement; Do not execute the conservation easement

REQUIRED/RECOMMENDED ACTION: Staff recommends that the Board execute the conservation easement as conservation of these properties will enhance the Sand Creek Regional Greenway Trail, a major recreational asset to the citizens of Adams County.



ADAMS COUNTY
COLORADO

Commerce City Conservation Easements



LEGEND

- 3 Section Numbers
- Road
- Trail
- Railroad
- Major Water
- Lakes
- Multi-contractors property
- Weaver property



For display purposes only.