

Intergovernmental Agreement Regarding the High Line Canal

This Intergovernmental Agreement Regarding the High Line Canal ("Agreement") is entered into this ____ day of _____ 2024 ("Effective Date"), between the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water"), and the Board of County Commissioners of the County of Arapahoe, State of Colorado ("Arapahoe County"). Collectively, Denver Water and Arapahoe County shall be referred to as the "Parties," or individually as a "Party."

Recitals

A. Denver Water is the record owner of the property commonly known as the High Line Canal, generally 100-feet wide extending from Waterton Canyon in Douglas County towards its termination in Adams County, together with property, easements, rights of way and land necessary or incidental to the use, occupancy, ownership or operation of said Canal ("Canal").

B. Over the last century, the Canal has served several roles, including a water delivery system, a multi-purpose public recreational trail, and an urban natural ecosystem. With the encouragement of Denver Water, and the efforts of the High Line Canal Conservancy ("Conservancy") and twelve cities, counties, and special districts through which the Canal traverses ("Jurisdictional Partners"), the Canal has evolved into a valued community recreational and environmental amenity while retaining its utility as a water delivery system with stormwater use.

C. Denver Water entered into an agreement ("Funding Agreement") with the Conservancy in 2020 to support transition of the Canal away from its historic use for irrigation to a regional greenway and green infrastructure system for stormwater as identified in The Plan for the High Line Canal produced by the Conservancy dated September 2019. One element of the Funding Agreement was the creation of the Stewardship Fund, which was meant to provide funding to support maintenance of the Canal. Denver Water's intent in entering into the Funding Agreement was to provide sufficient financial resources to maintain the core maintenance activities on the Canal in perpetuity as its maintenance funding was reduced to support only Water Works Purposes, defined below.

D. The Stewardship Fund was to be created with the Conservancy raising \$10 million and Denver Water matching \$5 million by December 31, 2025, to benefit the Canal. In addition, Denver Water also committed to contributing \$5 million of property to the Stewardship Fund. The fund was intended to function like an endowment that would support maintenance expenditures from investment gains. A financial model was included in the Funding Agreement to serve as a guide for the fund's operation, which may be modified by future agreements among Denver Water, Arapahoe County, and the Conservancy. The model included:

- 1) Maintenance to be funded by the Stewardship Fund,
- 2) Maintenance funded by the Jurisdictional Partners, assuming they would be using the Canal for recreation or stormwater or both through use agreements, and
- 3) Denver Water's maintenance funding for its irrigation use, which would decrease over time.

E. Denver Water and Arapahoe County entered into an Intergovernmental Agreement for Conveyance of High Line Canal Property dated December 13, 2023, pursuant to which Denver Water agreed to convey and Arapahoe County agreed to accept certain portions of the Canal located in Adams, Arapahoe and Denver Counties (collectively, the "Property"). Closing is currently scheduled for June 13, 2024 ("Closing"). Denver Water will retain an easement on the Property for Water Works Purposes.

F. Denver Water intends to convey a conservation easement to the Conservancy to protect the Property subject to Denver Water's reserved "Water Works Purposes," as described in Article X of the Charter of the City and County of Denver, as it may be modified, amended, superseded or replaced, including but not limited to the ability to install, maintain, replace, improve, remove, operate, and grant permission for other water providers' use of any portion of below- or above-ground water works structures or improvements within the Property in Denver Water's sole and absolute discretion.

G. Pursuant to C.R.S. §§ 29-1-203, *et seq.*, and § 18(2)(a) of Article XIV of the Colorado Constitution, the Parties may cooperate and contract with each other to provide any lawful governmental function or service.

H. Ensuring that the Property can be used for all permitted purposes under the conservation easement, including but not limited to Water Works Purposes, will take some coordination and cooperation. Accordingly, the Parties wish to set forth in this Agreement their respective responsibilities that will take effect after conveyance of the Property to Arapahoe County.

Agreement

1. Financial Contribution and Maintenance by Denver Water. Denver Water is committed to fulfilling its obligations under the Funding Agreement. Denver Water may seek to amend the Funding Agreement if necessary to facilitate transition of the Property to Arapahoe County. The Funding Agreement model assumed Denver Water would spend a total of \$2,715,000 during the original transition period from 2021 through 2031 for maintenance of the Canal as needed for irrigation runs when in priority, and direct unused budget towards other maintenance such as tree removal and trimming, debris removal, pest and weed control. The annual amount expended was

anticipated to reduce incrementally from \$650,000 in 2021, to \$440,000 in 2022 and then gradually each year until reaching \$100,000 in 2030. The \$100,000 was meant to represent Denver Water's cost to maintain its Water Works Purposes. Exhibit A, attached and incorporated, details how Denver Water will maintain the Canal and how the remaining Denver Water spending from the funding model will occur. Denver Water will not fund additional maintenance for non-Water Works Purposes beyond 2025.

2. Stewardship Fund. A total of \$2,803,613 from the Stewardship Fund is planned to be spent on the Canal in the reaches to be transferred to Arapahoe County in the years 2023 to 2025. Exhibit B, attached and incorporated, details the work plan in place as of the Effective Date that Denver Water and the Conservancy have developed regarding expenditure of the \$2,803,613. The Parties agree that the work plan may be modified separately from this Agreement. Denver Water agrees to approve additional use of the Stewardship Fund through the end of the Transition Period to support ownership transition of the Property if agreed to by the Conservancy, Denver Water, and Arapahoe County. The Parties will work with the Conservancy to coordinate future expenditures of the Stewardship Fund.

3. Additional Maintenance. In the event Arapahoe County requests the completion of work on the Property that exceeds the amount detailed in Exhibit A committed by Denver Water or beyond December 31, 2025, Arapahoe County shall be responsible for paying for such work. Depending on availability, Denver Water may agree to perform or contract the additional work requested by Arapahoe County at Arapahoe County's expense. Arapahoe County is not obligated by this Agreement to perform or pay for work on the Property that is requested by third parties.

4. Authorization. By separate agreement, Arapahoe County will authorize Denver Water to access the Property to perform the Transition Period maintenance work described in this Agreement and the exhibits.

5. Transition Responsibilities. From Closing to December 31, 2026 ("Transition Period"), Arapahoe County and Denver Water will work together to transition all Property management responsibilities from Denver Water.

- a. From Closing through the Transition Period, in consultation with Arapahoe County, Denver Water will continue to take the lead in processing requests for new and modified encumbrances on the Property and managing agreements related to the Property, including but not limited to recreation leases. The intent of this period is to allow Arapahoe County staff to learn how Denver Water processes these requests and for Arapahoe County to implement necessary processes and systems to track these requests. In the event Arapahoe County wishes to assume primary responsibility for such administration before the end of the Transition Period, it shall provide Denver Water with written notice of such intent and Denver Water shall surrender such responsibility on the date requested by

Arapahoe County. Notwithstanding reserved Water Works Purposes, at all times after Closing, Arapahoe County shall have final approval as to the terms and conditions for any new and modified encumbrances on the Property issued by Arapahoe County.

- b. During the Transition Period, Denver Water will:
 - i. Inform in a timely manner Arapahoe County of any new activity on the Property and new information concerning the Property that Denver Water has learned.
 - ii. Advise Arapahoe County on Denver Water's past management practices and procedures concerning the Property.
 - iii. Remain available for consultation regarding impacts to the Property and disputes that arise from encumbrances existing as of the Effective Date.
 - iv. Continue to serve on the Canal Collaborative's leadership teams and technical advisory committees.
 - v. Assist Arapahoe County in negotiations of recreation and stormwater leases affecting the Property.
- c. In the event Arapahoe County wishes for Denver Water to continue to manage all or a portion of the encumbrances and agreements relating to the Property beyond December 31, 2026, Denver Water agrees to negotiate in good faith toward an agreement whereby Arapahoe County would pay Denver Water to continue to perform some or all of the above-described tasks beyond the Transition Period.

6. Denver Water's Water Works Purposes.

- a. The Parties understand that not all Water Works Purposes involve irrigation deliveries.
- b. Denver Water will continue to operate and maintain the Canal for Water Works Purposes as needed with its operations and maintenance budget. After conveyance of the Property, Denver Water will provide Arapahoe County with an annual operating and maintenance plan for the portions of the Canal owned by Arapahoe County.
- c. Denver Water will coordinate with Arapahoe County regarding any planned installations of new or modified improvements on the Property that are needed for Water Works Purposes. Denver Water agrees not to

allow any mechanic's liens to be filed against the Property as a result of Water Works Purposes.

- d. Denver Water will contractually require its contractors working on the Property to indemnify, defend, and hold harmless Arapahoe County and its officers, directors, employees, agents, and contractors against and from all claims, counterclaims, demands, and actions (including without limitation actions, demands, expenses, costs, attorneys' fees, court costs and judgments) arising out of Denver Water's contractors' work related to the Property. In addition, Denver Water shall contractually require all contractors and subcontractors performing work on the Property to maintain commercially reasonable types and levels of insurance required by Arapahoe County and to include Arapahoe County as an additional insured, evidenced by providing Arapahoe County with a copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies. If Denver Water fails to obtain Arapahoe County being indemnified and named as an additional insured as described above, Denver Water shall be responsible for any reimbursement to Arapahoe County, to the extent permitted by law, that would have been paid through the contractor's or subcontractor's insurance.

- e. As Denver Water determines that it no longer needs Canal facilities such as wasteways, measurement flumes, headgates, siphons, etc., it shall generally leave them in an "as is" condition, except as otherwise agreed to by the Parties. Denver Water will seal or remove unneeded headgates to prevent discharge of water, leave wasteways in an open condition so that stormwater can discharge from the Canal unless otherwise requested and coordinated with Arapahoe County, and leave flumes in place. For facilities that may present an attractive nuisance, Denver Water will reasonably decommission those facilities in coordination with Arapahoe County. Annually, Denver Water will provide written notification to Arapahoe County of the facilities on the Property that are no longer needed for Water Works Purposes, and Arapahoe County shall take over responsibility for them following Denver Water's activities described in this paragraph. For purposes of paragraph 6.h., the facilities described in this paragraph shall be considered to exclusively serve Water Works Purposes unless stormwater users have been otherwise approved in writing to pass flows through such facilities with corresponding proportional maintenance commitments or until Denver Water provides written notice in accordance with this paragraph to Arapahoe County that Denver Water will not continue to use the facilities or that Denver Water has decommissioned them. Denver Water's notice that it will not continue to use a facility shall not be construed as abandonment of its Water Works Purposes reserved in the conservation easement and in the deed conveying the Property.

- f. Denver Water shall be responsible for monitoring and maintaining all the facilities necessary to conduct Water Works Purposes that are currently existing on the Property or that Denver Water installs on the Property in the future.
- g. If the Property and/or any third-party improvements sustain any damage as a result of the Water Works Purposes, Denver Water shall restore the damaged Property and/or third-party improvements to their preexisting condition at its sole expense in a timely manner, unless separate agreements with any third party exist dictating otherwise or if such third-party improvements were unauthorized.
- h. To the extent permitted by law, Denver Water shall indemnify Arapahoe County against (i) any claims for personal injury, death, or damage to property or improvements that result exclusively from Water Works Purposes, and (ii) any legal actions exclusively concerning Denver Water's water rights.

7. Irrigation Uses. Denver Water is in the process of reducing irrigation uses of the Canal. Arapahoe County understands that if Denver Water runs irrigation water in the Canal, it will only do so when water is available generally between April 1 and November 1 each year. Denver Water can communicate general operating plans, but it cannot predict when the canal will be in priority and when water will be available for diversion. For reaches of the Property still being used for irrigation purposes, if Denver Water has provided notification to Arapahoe County of planned irrigation flows pursuant to this paragraph, Arapahoe County shall ensure that any use of that reach shall not prevent the passage of Denver Water's irrigation flows.

8. Coordination of Irrigation Flows and Stormwater. Due to the importance of coordination of the multiple uses of the Canal, the Parties have set forth initial operating procedures in this Agreement. The Parties agree that these procedures can be changed by mutual agreement in the event circumstances change.

- a. Denver Water is working toward retiring irrigation contracts with customers on the Canal and will notify Arapahoe County as customers are removed.
- b. For reaches of the Canal downstream of the last customer, Denver Water will provide Arapahoe County written notice that it does not intend to utilize the Canal downstream of this point for open channel irrigation deliveries, which could potentially allow stormwater entities to utilize the Canal as part of their facilities related to MS4 permitting with the State. If after providing this notice, Denver Water needs to begin using reaches of the Canal for open channel irrigation, which negatively impacts a stormwater entity's use of the Canal, Denver Water will work with the entity to resolve the conflict or compensate the entity for damages that occur.

- c. For reaches of the Canal upstream of the farthest downstream customer, Denver Water shall provide Arapahoe County with at least seven days' notice of any potential intent to run the Canal for irrigation. Since the irrigation flows could occur concurrently with stormwater flows into the Canal, Denver Water in coordination with Arapahoe County and any stormwater entities utilizing the Canal will monitor the Canal and weather patterns and, if directed by Arapahoe County or the stormwater entities, Denver Water will stop irrigation diversions into the Canal and open upstream wasteways on the Canal, to reduce use of capacity in the Canal by irrigation.
9. Operating Plan. The Parties have developed an Operating Plan for 2024 and 2025 in Exhibit A, describing how Denver Water will operate its Water Works Purposes and how other uses and installations on the Property will be authorized. The Parties agree to work together in good faith to agree upon a process to approve requests for encumbrances that protect the rights of both Parties. Once agreed upon, that process along with any associated form documents and agreements on fees to charge third parties may be added to the Operating Plan. Before the end of 2025, the Parties will jointly develop an Operating Plan to take effect in 2026. The Operating Plan shall be reviewed annually by each Party's Operational Contact and modified at any time upon written agreement by the Operational Contacts, whose contact information is included in the Operating Plan. The Operating Plan is designed to facilitate cooperation and coordination between the Parties and among the multiple uses for the Property. As such, the Parties agree that they shall not charge each other for any review of proposed uses of the Property or for occupancy of the Property.
10. Improvements Interfering with Water Works Purposes.
 - a. Denver Water shall remain available for consultation regarding requests for new and modified encumbrances on the Property. Denver Water reserves the right to charge a review fee to requesting parties other than Arapahoe County after the Transition Period to review proposed projects and ensure that they will not interfere with Water Works Purposes. The process for consultation as to whether an improvement interferes with Water Works Purposes shall be described in the Operating Plan. The Parties agree that the scope of Denver Water's review may be different in different sections of the Property.
 - b. Denver Water shall not require Arapahoe County to remove any improvement existing on the Property as of the Effective Date or installed on the Property by Denver Water.
 - c. Arapahoe County is responsible for either removal or modification of any new improvement on the Property that interferes with Water Works

Purposes and was authorized by Arapahoe County without following the process described in the Operating Plan.

- d. In the event that a third party installs an unauthorized improvement on the Property that interferes with Denver Water's Water Works Purposes, the Parties shall work together to require the third party to either obtain approval for the improvement (and make any necessary modifications for such approval) pursuant to the Operating Plan or remove it.
- e. To the extent permitted by law, Denver Water shall hold Arapahoe County harmless for any damage or impacts to Water Works Purposes exclusively caused by (i) an Arapahoe County use of the Property to which Denver Water has agreed; (ii) a third party's use of the Property that is authorized by Arapahoe County and Denver Water; and (iii) a third party's unauthorized use of the Property.

11. Property Records. Denver Water shall provide Arapahoe County in a timely manner with all Property information in Denver Water's possession that Arapahoe County requests. At least 30 days prior to destruction of any records Denver Water believes are related to the Property, Denver Water shall notify Arapahoe County and provide Arapahoe County the opportunity to take possession of the records.

12. Term. This Agreement shall remain in effect for so long as Denver Water maintains its reservation of Water Works Purposes on any portion of the Property then owned by Arapahoe County.

13. Correction. It is Denver Water's intention to convey property interests to Arapahoe County that are located along the High Line Canal channel corridor as of the Effective Date, generally 100-200 feet in width. The Parties shall cooperate to correct mutually acknowledged errors in the deeds, legal description, and assignments, including typographical, spelling, or clerical errors and conveyances or assignments outside the High Line Canal corridor. The Parties shall make such corrections by written agreement. Denver Water further agrees that Arapahoe County may quitclaim back to Denver Water any property interests mistakenly conveyed to Arapahoe County. Any corrections shall be recorded in the records of the Clerk and Recorder of the county or counties in which the affected property interest is located.

14. Dispute Resolution. If a dispute relating to this Agreement arises among the Parties, the Parties shall first consider any proposed resolution of the matter. If the matter is not resolved, the Parties shall promptly convene a meeting to be attended by persons with decision-making authority regarding the subject matter of the dispute. The meeting attendees shall attempt in good faith to negotiate a resolution of the dispute. If the dispute is still not resolved within 20 days after the meeting, the Parties shall be free to pursue any other legal remedy. In the event of legal proceedings, the Parties agree to

seek a prompt resolution, and that each Party shall pay its own costs and expenses, including attorney fees.

15. Force Majeure. The Parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement solely caused by the following events: natural disaster, flood, fire, war, or public enemy. Events not listed in the preceding sentence, including, but not limited to, epidemics such as the COVID-19 pandemic, economic conditions, and labor strikes, shall not be considered force majeure events. Furthermore, flooding that is caused by use of the Canal for irrigation or stormwater purposes shall not be considered a force majeure event. As a condition precedent to invoking this force majeure clause, the invoking Party must provide timely written notice detailing the reasons why the force majeure event has made performance under the Agreement terms impossible, and the invoking Party must immediately take all reasonable measures to mitigate or avoid damages to the other Party.

16. Severability. If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement will remain enforceable to the fullest extent permitted by law.

17. Venue and Governing Law. This Agreement shall be deemed performable in the City and County of Denver, notwithstanding that the Parties may find it necessary to take some action outside the City and County. The sole venue for any dispute resulting in litigation shall be in the District Court in and for the City and County of Denver. This Agreement shall be governed by and construed under the laws of the State of Colorado.

18. Compliance with Laws. The Parties agree to comply with all applicable local, state, and federal requirements during the term of this Agreement.

19. No Operating Obligation. Nothing herein shall be deemed or construed as creating any obligation on either Party to operate its facilities in any particular manner.

20. Assignment. No assignment by either Party of its rights under this Agreement shall be binding on the other Party unless the other Party shall have assented to such assignment with the same formality as employed in the execution of this Agreement. This Agreement is intended to benefit only the Parties. No other person or entity, including but not limited to the Jurisdictional Partners and any holders of encumbrance agreements on the Property, is intended by the Parties to be a third-party beneficiary of this Agreement.

21. Waiver. No Party shall waive its rights hereunder by failing to exercise its rights; any such failure shall not affect the right of such Party to exercise at some future time the rights not previously exercised.

22. Entire Agreement/Modification/Survival. This Agreement is the entire contract between Denver Water and Arapahoe County concerning operation and maintenance of

the Property. The Parties intend for this Agreement to replace their Memorandum of Understanding Regarding the High Line Canal dated July 26, 2023, which shall no longer be in effect. However, this Agreement has no effect on the Intergovernmental Agreement for Conveyance of High Line Canal Property between Denver Water and Arapahoe County dated December 13, 2023, which shall not merge with this Agreement. No modification of any terms or conditions of this Agreement shall be valid or enforceable unless in writing and fully executed by Denver Water and Arapahoe County.

23. Notice and Contact. The Parties shall contact the persons listed below for all matters related to administration of this Agreement. All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other Party; or (b) seven (7) days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by e-mail. If notice is provided by e-mail, the notifying Party must follow up with a hard copy of the notice sent by United States mail; however, the notice will be effective as of the original e-mail date.

Denver Water:

Denver Water
Property Management
1600 West 12th Avenue
Denver, CO 80204
Fax: 303-628-6224
Email: amy.heidema@denverwater.org
Phone: 303-628-6625

Copy to:

Denver Water
Office of General Counsel
1600 West 12th Avenue
Denver, CO 80204
Fax: 303-628-6478
Email: alix.joseph@denverwater.org
Phone: 303-628-6083

County:

Arapahoe County Open Spaces
6934 S. Lima Street, Suite A
Centennial, CO 80112
Email: open_space@arapahoegov.com
Phone: 720-874-6540

Copy to:

Arapahoe County Attorney's Office
5334 S. Prince Street
Littleton, CO 80120
E-mail: Attorney@arapahoegov.com
Phone: 303-795-4639

or such other persons or addresses as the Parties may have designated in writing.

24. Business Days. If the expiration of any period specified under this Agreement falls on a Saturday, Sunday or legal holiday for which U.S. mail service is not provided, then such date or period shall be extended to the next business day.

25. Charter of the City and County of Denver. This Agreement is made under and conformable to Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System. The Charter provisions are

incorporated by this reference and supersede any apparently conflicting provisions otherwise contained in this Agreement.

26. Governmental Immunity Act. The Parties understand and agree that the Parties are relying upon, and have not waived, the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it may be amended from time to time.

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

The Parties have executed this Agreement as of the Effective Date.

ATTESTED:

**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS**

By: _____
Secretary

By: _____
President

APPROVED:

By: _____
Chief Operations and
Maintenance Officer

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:
CITY AND COUNTY OF DENVER

By: _____
Office of General Counsel

By: _____
Timothy M. O'Brien, CPA
Auditor

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ARAPAHOE, STATE
OF COLORADO**

By: _____

Margina Pingenot, Open Spaces Director,
on behalf of the Board of County
Commissioners
pursuant to Resolution No. 24-077

Exhibit A
2024 and 2025 Operating Plan

Anticipated Denver Water Maintenance for Water Works Purposes

During 2024 and 2025, Denver Water’s Water Works Purposes will include maintaining the Canal in the same manner it has historically. This typically includes the following items:

1. Irrigation – Denver Water monitors the water supply in the South Platte basin and forecasts whether the Canal water right might come into priority for a period that would justify an irrigation run. If an irrigation run is forecasted to be likely, Denver Water staff will prepare the Canal for an irrigation run. This includes inspection and removal of large debris. If the irrigation run occurs, Denver Water staff will manage the flows through the Canal and perform debris removal as the water moves debris to the downstream wasteways.
2. Reactive Tree Maintenance – Denver Water will remove trees that become damaged from storms or age and pose an immediate threat to public safety, operation of the Canal or are likely to result in property damage.
3. Noxious Weed Mitigation – Denver Water will contract with a firm that has expertise in monitoring the Canal for noxious weed growth and provides treatments to address these weeds as required by applicable local ordinances and state noxious weed law.
4. Mowing – Denver Water will contract with a firm to mow the Canal typically twice per year under normal precipitation conditions for the purposes of carrying irrigation water, monitoring the channel from the maintenance road and complying with local ordinances.
5. Mosquito Treatment – During the summer months, Denver Water will monitor standing water in the Canal and distribute mosquito treatment pellets/briquets in pools of standing water designed to kill mosquito larvae. This work is coordinated with Denver Department of Public Health to provide the frequency of treatments to manage mosquito populations as best as practical.
6. Trash Pickup – Denver Water will remove trash that has been dumped in the Canal that has a significant impact on irrigation flow. The mowing contractor will also pick up trash in advance of mowing that could damage their mowing equipment.
7. Encampment Cleanup – When major encampments develop on the Canal, Denver Water will coordinate the approach for mitigation with the underlying jurisdictions. Depending on the location of the encampment, the responsibility for cleanup varies. For example, road underpasses are typically licensed to the jurisdiction, requiring them to perform the cleanup. In other cases, Denver Water will perform the cleanup.

8. Financial Contribution and Maintenance by Denver Water. Per the operational model in the Funding Agreement, Denver Water is committed to spending \$1,425,000 for the total 63 miles of the Canal that was planned to be maintained with support from the Stewardship Fund, which is approximately \$22,620 per mile. The Property, the reach of the Canal to be conveyed to Arapahoe County, is 45 miles long, including the 5-mile reach in Adams County. Therefore, Denver Water is committed to spending \$1,017,900 on the Property in 2024 and 2025 for the typical maintenance work described above. Denver Water will perform these activities and account for all costs incurred and provide updates to Arapahoe County on a quarterly basis. In the event that the costs incurred through December 31, 2025, are less than the amount committed to the Property, Denver Water will commit any unused funds out of its \$1,017,900 budget to complete additional maintenance work of the types described in Exhibit B, which includes an estimated \$161,000 of planned vegetation work in the City of Aurora. Denver Water will seek input from Arapahoe County as to where this additional work should be prioritized.

Review of Proposed Improvements to Ensure they Do Not Interfere with Water Works Purposes

The Deed to Arapahoe County reserves Water Works Purposes for Denver Water. The Conservation Easement states that no other use of the Property shall impair or limit uses for Water Works Purposes without Denver Water's permission. To ensure that Denver Water's Water Works Purposes are not impaired, Denver Water shall be given the opportunity to review any proposed use with any of the following characteristics. Arapahoe County agrees not to permit any use with any of the following characteristics without Denver Water's express, written permission. In the event Denver Water requires modifications to the requested use in order to permit it, Denver Water shall coordinate directly with the party proposing the improvement and consult with Arapahoe County as needed. If Denver Water prefers to issue its own license agreement for the requested use, in addition to any Arapahoe County agreement, Denver Water shall first provide a copy of the license agreement for Arapahoe County's review, and the Parties shall work together to resolve any conflicts between their respective agreements.

1. Installations of below-ground facilities that cross the channel to ensure a minimum of 3 feet from the utility to bottom of the channel bed.
2. Construction activity of any kind that removes native fill below the high-water elevation as calculated in the Mile High Flood District's High Line Canal Operational Model.
3. Construction activity that requires excavation of the low side (embankment) of the canal bank. Plantings of deep-rooted vegetation (> 5 feet) within 10 feet of the top of canal bank.
4. Above-ground installations (i.e., poles, manholes, etc.) within 10 feet of the top of canal bank.

5. Installations of all uses within 25 horizontal feet or 10 vertical feet of Denver Water's pipelines and structural facilities (i.e., headgates, wasteways, siphons, etc.). Denver Water has provided Arapahoe County the GIS location for all current pipelines and structural facilities. Denver Water shall provide Arapahoe County GIS files with updated locations when Denver Water modifies existing or constructs new pipelines and structural facilities. Arapahoe County shall not be responsible for any conflicts where Denver Water failed to provide such GIS locations.
6. Installation of structures that restricts the channel's hydraulic capacity below what is currently depicted in Mile High Flood District's High Line Canal Stormwater and Operations Master Plan - 2018 (i.e., low bridge decks, grading that modifies the channel geometry, etc.).
7. Conveyance of water into the Canal that results in an overall excess of channel capacity as determined by the Mile High Flood District's High Line Canal Operational Model.
8. Projects that could impede Denver Water's access through the canal maintenance road for more than 1 hour.
9. Projects that propose grading operations within the Canal limits.
10. Projects that propose structure heights (i.e., installing low chord bridges or culverts) of eight feet or less of clear distance above the canal bottom to allow for the passage of maintenance equipment beneath the structure and to remove debris from the structure itself.

Operational Contacts

- A. The Operational Contact for Denver Water shall be:

Tom Roode
Chief Operation and Maintenance Officer
303-628-7033
tom.roode@denverwater.org

- B. The Operational Contact for Arapahoe County shall be:

Glen Poole
Open Space Operations Manager
720-874-6826
gpoole@arapahoegov.com

- C. A Party may change its Operational Contact by notifying the other Party's Operational Contact by email.

Exhibit B – Stewardship Fund Work to be Completed Between 2023 and 2025

Denver Water and the Conservancy developed the Stewardship Fund to support High Line Canal maintenance as Denver Water maintenance decreased over time. The original concept envisioned a relatively small amount of fund withdrawal in the early years, allowing the fund to grow for use in later years. However, in order to support requests of underlying jurisdictional partners to take on additional routine maintenance, Denver Water and the Conservancy are committed to use more of the funding up front to get the Property into an improved condition for the transition of ownership to Arapahoe County.

Arapahoe County and Canal Collaborative partners are also in the process of developing a Natural Resource Management Plan that will better define the types of maintenance needed along the High Line Canal through the varied states of vegetation. Because this plan will not be completed until 2025, the Conservancy in coordination with Arapahoe County and Denver Water has developed an up-front maintenance program to improve the condition of the Property through targeted natural resource restoration that is anticipated to be aligned with recommendations of the Natural Resource Management Plan.

The following natural resource restoration priorities have been used to develop the plan for work during the Transition Period (through December 31, 2026).

- Remove and prune all hazard trees of the High Risk category as recommended in the 2022 Canal-wide Tree Risk Assessment
- Remove downed vegetation and woody debris from the Canal channel
- Remove and treat invasive Russian olive
- Adaptively manage ash trees over 6” in diameter by removing those in poor health and inoculating those in good or excellent health

The Conservancy has estimated the costs shown in the table below to perform this scope using the existing inventory data.

County	High Hazard Removal		High Hazard Pruning		Brush Removal		Russian Olive Removal		Ash Tree Removal		Ash Tree Treatment		Total Spend
	#trees	estimate	#trees	estimate	#miles	estimate	#trees	estimate	#trees	estimate	#trees	estimate	
Arapahoe - SW	273	\$696,100	20	\$10,000	20.24	\$483,028	346	\$160,525	137	\$101,800	177	\$28,455	\$1,479,908
Arapahoe - NE	52	\$183,700	8	\$4,000	12.57	\$299,983	121	\$56,800	29	\$22,100	43	\$6,983	\$573,566
Denver - SW	49	\$120,000	16	\$8,000	7.21	\$85,000	73	\$12,233	101	\$172,067	36	\$18,075	\$415,374
Adams	6	\$22,000	0	\$0	4.75	\$113,359	8	\$2,625	3	\$1,950	6	\$945	\$140,879
Subtotal	380	\$1,021,800	44	\$22,000	44.77	\$981,369	548	\$232,183	270	\$297,917	262	\$54,458	\$2,609,727
Management Fee 5%		\$51,090		\$1,100		-		-		\$14,896		-	\$67,086
Management Fee 10%		-		-		\$98,137		\$23,218		-		\$5,446	\$126,801
Grand Total		\$1,072,890		\$23,100		\$1,079,506		\$255,401		\$312,812		\$59,904	\$2,803,613

The following notes are related to the reaches of the Property in each County shown in the table above. These reaches have been defined to describe the extents of the Property to be transferred to Arapahoe County.

- Arapahoe – SW – includes the reach of the Property from County Line Rd. to Hampden Ave. including Littleton, Centennial, Greenwood Village, Cherry Hills Village; the Holly Hills area; and a portion of unincorporated Arapahoe County
- Arapahoe – NE – includes the reach of the Property in Arapahoe County from Quebec to the Adams County boundary at Colfax, including both unincorporated Arapahoe County and Aurora
- Denver – includes the reach of the Property in Denver east of I-25 to Havana St. that generally crosses between Denver and unincorporated Arapahoe County multiple times. It excludes the portion of Denver from Hampden to I-25 and the Green Valley Ranch portion of the High Line Canal.
- Adams – reach from north of Colfax to Green Valley Ranch

Denver Water has authorized this work to be funded from the Conservancy’s Stewardship Fund; it will be completed between late 2023 and the end of 2025. Denver Water will manage a portion of this work with the use of its contractors. The remaining portions of the work will be managed by the Conservancy utilizing contractors that are performing work for Mile High Flood District on other reaches of the canal. Denver Water has agreed the Stewardship Fund can also be

used to reimburse the Conservancy a management fee for its role in coordinating this Transition Period work up to 5% for the work done by Denver Water's contractors and 10% for the work the Conservancy is managing independently from Denver Water. While Denver Water will have management responsibilities for the work, it is not charging a management fee.

Because the unit costs for this work are variable depending on site conditions, the commitment is for the total funding of \$2,803,613. The actual amount of work completed will be managed to this funding maximum to get done as much of the scope as possible. Denver Water will provide quarterly reports on completed Stewardship Fund work to Arapahoe County through 2025.