

**High Line Canal Funding Agreement**  
**Project: Littleton Irrigated Tree Planting Pilot**

THIS AGREEMENT (“Agreement”) is made this [XX] day of \_\_\_\_\_, 2025 (“the Effective Date”) by and between **CITY OF LITTLETON**, a home-rule city and political subdivision of the State of Colorado, whose address is 2255 W. Berry Avenue, Littleton, CO 80120 (“City”), and the **HIGH LINE CANAL CONSERVANCY**, a Colorado non-profit organization, whose address is 4010 E. Orchard Road, Centennial, Colorado 80121 (“Conservancy”) (each individually, a “Party” and together referred to as the “Parties”).

**Recitals**

**A.** The Plan for the High Line Canal (The Plan, 2019) identifies community priorities for the High Line Canal including improving the environmental health of the corridor.

**B.** The City and the Conservancy have partnered on tree planting and watering since 2021, shifting from truck watering trees to evaluating irrigation, to developing an irrigated tree planting pilot. The irrigated tree planting pilot is sometimes referred to as the “Project.”

**C.** The Conservancy has engaged the community in the vicinity and tree planting is the top priority for nearby neighbors.

**D.** The Conservancy has committed funding to support implementation of the Project and has secured this funding.

**E.** The City has secured matching funding for the Project from Arapahoe County Open Spaces.

**F.** The City is prepared to advance construction of the Project in 2025 and has requested the Conservancy’s share of funding.

**G.** The Conservancy is prepared to grant funds to the City for completion of the Project, subject to the terms and conditions set forth in this Agreement.

**Agreement**

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants herein, and the following terms and conditions, the Parties agree as follows:

**1. Construction.** The City shall construct the Project in substantial conformance with the plans, budget and uses attached hereto as Exhibit A (the “Plans and Budget”).

**2. Conservancy Funding.** The Project is estimated to cost Three Hundred Fifty Three Thousand Dollars (\$353,000.00) (the “Total Project Costs”), which Total Project Costs include construction contingency based on the Plans and Budget. Subject to the terms and conditions set forth in this Agreement, the Conservancy agrees to fund a portion of the design, engineering and construction of the Total Project Costs in an amount of One Hundred Twenty Thousand Dollars (\$120,000.00) (the “Conservancy Contribution”). The Conservancy plans to

expend a portion of the Conservancy Contribution directly on contracted design and engineering services. The Conservancy Contribution may only be used towards the costs set forth in the Plans and Budget and may not be used to pay for administrative costs (such as salaries associated with administering the Conservancy Contribution, office supplies, etc.), non-fixed assets (such as maintenance equipment) or other costs not already approved by the Conservancy in writing and set forth in the Budget.

**3. Release of Funds.** The Conservancy plans to expend funds associated with design and engineering of the Project. Once the designs are completed and accepted by the City, the Conservancy shall release the remaining Conservancy Contribution to the City. The Conservancy Contribution shall be used by the City solely to complete the Project, in substantial conformity with the Plans and Budget.

**4. Project Modifications.** The City may not make any Material Modifications to a Project without the prior written approval of the Conservancy. "Material Modifications" may include, but are not necessarily limited to, changes in the scope of the Project or changes to the design of the Project requiring alterations to the Plans and Budget. The City shall promptly inform the Conservancy of any anticipated Material Modifications. The City shall provide a request for a Material Modification to the Conservancy in writing (a "Material Modification Request"), together with documentation explaining the proposed Material Modification, and the Conservancy shall have [15] business days after receipt of the Material Modification Request and supporting documentation to approve or deny the Material Modification Request, or to ask for additional information. If no response is received by the City within this time period, the City shall proceed in good faith within the Project intent. The Conservancy will not unreasonably withhold approval of a Material Modification Request.

**5. Project Deadlines.** The City shall complete the Project in a timely fashion, in a good and workmanlike manner, free of mechanics liens and claims, in accordance with applicable laws, and consistent with this Agreement and the Conservancy's approvals related to the Project. The City shall complete the Project no later than November 2026 (a "Final Completion Date").

**6. Extensions.** If the City determines that the Project will not be completed by the Final Completion Date, the City may request an extension of such Final Completion Date by written request to the Conservancy, including detailed information regarding the reason for the delay (the "Extension Request"). Staff of the Conservancy ("Staff") shall review the first Extension Request and shall have 15 days after receipt of the Extension Request to approve or deny the Extension Request. Provided the City has been working diligently and in good faith towards completion of the Project, Staff will cooperate with the City in good faith to extend the Final Completion Date. The Conservancy will not unreasonably withhold approval of an Extension Request and acknowledges and agrees that an extension is appropriate in the event of unforeseen circumstances beyond the control of the City, including third party delays in granting the permits and approvals necessary for construction of the Project. Any subsequent Extension Request will require review by the Board of Directors of the Conservancy (the "Board"). The Board shall have 30 days after receipt of the Extension Request to approve or deny the Extension Request, which Extension Request may only be approved upon a showing that the delay was caused by unforeseen circumstances beyond the control of the City.

**7. Increased Total Project Costs.** If at any time during its efforts to complete the Project, the City determines that the Total Project Cost will exceed the amount set forth in Section 2 of this Agreement, the City shall notify the Conservancy of the amount of difference and the reasons for the difference. Further, the City shall provide the Conservancy with an action plan that demonstrates the actions the City intends take to ensure completion of the Project, including any additional funding sources the City intends to utilize or Material Modifications the City believes are necessary to complete the Project (such as a reduction in scope). The Conservancy is under no obligation to provide any additional financial assistance beyond the Conservancy Contribution.

**8. Unused Funds.** If any portion of the Conservancy Contribution remains once the Project has been completed in accordance with the Plans and Budget, the remaining portion of the Conservancy Contribution shall be returned to the Conservancy unless an alternative use of funds is mutually agreed upon in writing by the parties. The City may not use any portion of the Conservancy Contribution towards any costs or projects other than the Project specified in this Agreement.

**9. Maintenance.** The City shall maintain the Project after their completion. The Conservancy shall not be liable for any cost of maintenance, management or operation of the Project.

**10. Inspection.** Throughout the term of this Agreement, the Conservancy shall have the right to inspect the Project to ascertain compliance with this Agreement.

**11. Conservancy's Assumption of City Obligations.** In the event that: (1) the City fails to complete the Project by its Final Completion Date and has not obtained an extension of such Project Completion Date; or (2) has obtained an extension of the Project Completion Date and thereafter fails to work diligently and in good faith to complete the Project, the Conservancy, or its designated representative, shall have the option, upon thirty days advance written notice to the City, to enter onto the subject property and take whatever steps are reasonably necessary to complete such Project (the "Assumption Option") in accordance with the approved Plans and Budget. In the event the Conservancy exercises the Assumption Option, the City shall be liable to the Conservancy for the reasonable costs incurred by the Conservancy to complete the applicable Project in accordance with the approved Plans and Budget. Within thirty (30) days of incurring a cost as part of its exercise of the Assumption Option, the Conservancy shall provide the City with written evidence of such cost and the City shall thereafter have 30 days to reimburse the Conservancy for the cost.

**12. Breach.**

a. City's Breach. In the event the City breaches any of the terms, covenants, representations, or conditions of this Agreement, the Conservancy may elect to enforce any and all remedies available at law or in equity, including without limitation, any of the following:

- i. Deny the City eligibility for participation in future Conservancy funding opportunities or projects.
- ii. Seek specific performance of the City's obligations under this Agreement;

- iii. Seek reimbursement of part or all of the Conservancy Contribution; and
- iv. Exercise the Assumption Option described in Section 11 of this Agreement.

b. Conservancy's Breach. In the event the Conservancy breaches any of the terms, covenants, representations, or conditions of this Agreement, the City may elect to enforce any and all remedies available at law or in equity, including without limitation, any of the following:

- i. Deny the Conservancy eligibility for participation in future City funding opportunities or projects; and
- ii. Seek specific performance of the Conservancy's obligations under this Agreement.

c. The foregoing remedies are cumulative and may be exercised independently or in combination and are not exclusive to one another or to any other remedies available at law or in equity. If a Party must pursue any remedy hereunder and is the substantially prevailing party, such Party shall be awarded its costs and reasonable legal fees, including costs of collection.

### **13. Indemnification.**

- a. Except to the extent that the injuries to person or property of third parties arise due to the negligence of willful misconduct of the City, its agents, employees and contractors, (for which the City agrees to indemnify the Conservancy as provided below), and to the extent permitted by law, the Conservancy hereby agrees to protect, defend, indemnify and hold harmless the City, its members, officers, agents, volunteers, council members and employees from any and all liabilities, losses, suits, claims, judgments, fines and demands (including reasonable legal fees) for injuries to third parties or property arising out of the negligence or willful misconduct of the Conservancy in undertaking the obligations of the Conservancy under this Agreement.
- b. Except to the extent that the injuries to person or property of third parties arise due to the negligence or willful misconduct of the Conservancy (for which the Conservancy agrees to indemnify the City as provided below), and to the extent permitted by law, the City hereby agrees to protect, defend, indemnify and hold harmless the Conservancy, its members, officers, agents, volunteers, board members and employees from any and all liabilities, losses, suits, claims, judgments, fines and demands (including reasonable legal fees) for injuries to third parties or property and for any other matter arising out of relating to the negligence or willful misconduct of the City, its agents, employees and contractors in performing the obligations of the City under this Agreement.
- c. The Parties shall require their respective contractors performing work for the Project to list the Parties as additional insured on their coverage.

**14. Audits and Accounting.** The City shall maintain standard financial accounts, documents, and records relating to the construction, use, and management of the Project. The accounts, documents, and records related to the Project shall be retained by the City for not less than 3 years following the date of disbursement of the Conservancy Contribution. The Conservancy, or its designated agent, shall have the right, upon reasonable notice to the City, to audit the books and records of the City which pertain to the Project and to the use and disposition of the Conservancy Contribution.

**15. Ownership of Design Documents.** All design documents prepared in connection with the Project (the “Design Documents”) are the joint property of the Conservancy and the City.

**16. Good Faith.** There is an obligation of good faith on the part of both Parties, including the obligation to make timely communication of information which may reasonably be believed to be material to the other Party.

**17. Notice.** Any notice required to be given by the terms and provisions of this Agreement or by any law or governmental regulation, by the Parties, shall be in writing (unless otherwise required by such law or regulation) and (a) shall be deemed to have been served and given upon personal delivery or (b) shall be deemed to have been served and given upon receipt if sent by electronic mail transmission or (c) shall be deemed to have been served and given two (2) business days after deposited by either registered or certified mail in a United States mail chute or general or branch United States post office with postage fully prepaid thereon with return receipt requested or (d) shall be deemed to have been served and given on (1) business day after being sent by overnight delivery from a location in the United States with a nationally recognized overnight courier service providing for written receipt. Notice shall be delivered or addressed to the Party hereto to who directed at the following address:

To the Conservancy:                      High Line Canal Conservancy  
4010 E. Orchard Road  
Centennial, CO 80121  
Attn: Suzanna Fry Jones  
suzanna@highlinecanal.org

With a Copy To:                      Kaplan & Kirsch LLP  
1675 Broadway, Suite 2300  
Denver, CO 80202  
Attn: Heather Haney  
[ghaney@kaplankirsch.com](mailto:ghaney@kaplankirsch.com)

To the City:                              City of Littleton  
2255 W. Berry Avenue  
Littleton, CO 80120  
Attn: James Becklenberg  
jbecklenberg@littletongov.org

With a Copy To:

City of Littleton  
2255 W. Berry Avenue  
Littleton, CO 80120  
Attn: Reid Betzing  
rbetzing@littletongov.org

**18. No Joint Venture.** Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the Parties hereto other than independent contracting parties. Except as permitted under the Assumption Option provisions hereunder, neither Party shall have the express or implied right to act for or on behalf of, or in the name of, the other Party.

**19. Compliance with Regulatory Requirements.** The City hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to entitlements and regulatory permits, nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, local, state and federal regulations and environmental laws, and other similar requirements.

**20. Miscellaneous.** The following provisions apply:

a. Modifications. This Agreement or any part thereof may not be modified, except by written agreement executed by both Parties.

b. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties agree that the proper venue, in the event of litigation concerning this matter, shall be Arapahoe County, Colorado.

c. Assignment. The City may not assign its rights under this Agreement without the consent of the Conservancy, which consent may be withheld in the Conservancy's sole discretion. Any assignment shall require that, at a minimum, the assignee is eligible to receive funding from the Conservancy and assumes the City's ongoing obligations under this Agreement.

d. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity of all other provisions shall in no way be affected.

e. Waiver. The failure of either Party to enforce a term hereof shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same, similar or different nature. No waiver shall be enforceable hereunder unless signed by the Party against whom the waiver is sought to be enforced.

f. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements and understandings related to the work to be performed under this Agreement.

g. Survival. The terms and provisions of this Agreement and the Parties' covenants hereunder shall survive the funding of the Conservancy Contribution and the completion of the Project.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[SIGNATURE BLOCKS TO BE ADDED]

**CITY OF LITTLETON, CO**

ATTEST

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM

\_\_\_\_\_  
CITY ATTORNEY



## EXHIBIT A

### Plans and Budget

