

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into between City of Littleton, Colorado ("City"), a political subdivision of the State of Colorado, and THE GREENWAY FOUNDATION ("Greenway"), a Colorado nonprofit corporation doing business at 1855 S. Pearl Street, Suite 40, Denver, CO 80218, jointly the "Parties."

RECITALS

WHEREAS, the United States Army Corps of Engineers Omaha District ("Corps") owns and operates Chatfield Reservoir and Dam. By Contract dated March 1, 1979, the Corps provided storage space to the State of Colorado ("State") to control and manage the use of water stored in the space including and below elevation 5432 feet.

WHEREAS, by letter of approval and record of decision ("ROD") dated May 29, 2014, the Corps authorized the reallocation of an additional 20,600 acre feet of storage space, as determined by the volume between elevation 5,432 feet and elevation 5,444 feet, from the exclusive flood control pool to joint use flood control-conservation purposes, including storage for municipal and industrial water supply, agriculture, environmental restoration, and recreation and fishery habitat protection and enhancement ("Reallocation Pool").

WHEREAS, the Department of the Army and the Colorado Department of Natural Resources ("CDNR") entered into an agreement dated October 9, 2014 by which CDNR acquired the right to use for water storage purposes the Reallocation Pool storage space referenced above.

WHEREAS, the State and various water providers along the South Platte River Basin ("Water Providers") negotiated and agreed upon a Fish, Wildlife, and Recreation Mitigation Plan for the Chatfield Reallocation Project, approved by the Colorado Parks and Wildlife Commission on January 9, 2014, pursuant to Section 37-60-122.2, C.R.S., and subsequently approved by the Colorado Water Conservation Board ("CWCB") on January 28, 2014, defining the mitigation actions required by the State of Colorado in connection with the Chatfield Reallocation Project ("Mitigation Plan").

WHEREAS, Section 4.2.1.2.4 of the Mitigation Plan calls for the creation of an environmental storage space ("Environmental Pool") within the Reallocation Pool for the primary purpose of timed releases to alleviate low flow conditions downstream of Chatfield Reservoir. The Plan proposes that 1,000 acre feet of the Environmental Pool will be acquired by Colorado Parks & Wildlife ("CPW"), and 600 acre feet will be acquired by the CWCB. The Plan states that CPW will have control over water stored within the Environmental Pool and will have the authority to make releases as it deems appropriate.

WHEREAS, CDNR entered into agreements with Water Providers by which the right to store water in the Reallocation Pool, as well as the costs of construction and mitigation associated therewith, are allocated to Water Providers. As relevant here, by agreement effective October 16, 2015, CDNR granted to the CWCB the right to use 7,057 acre feet of

storage space in Chatfield Reservoir. Additionally, by agreement effective October 16, 2015, CDNR granted to CPW the right to use 1,000 acre feet of storage space in Chatfield Reservoir.

WHEREAS, the State, Water Providers, and the City and County of Denver acting by and through its Board of Water Commissioners (“Denver Water”), entered into an agreement dated October 15, 2015, by which the parties agreed to collaborate to create the Environmental Pool. The parties agreed that CPW would manage the Environmental Pool in accordance with the terms of the Mitigation Plan and that the Environmental Pool would have a maximum volume of 2,100 acre feet, unless enlarged by the mutual consent of all the parties.

WHEREAS, Greenway is soliciting donations for the Environmental Pool from entities concerned with conservation and restoration of the South Platte River.

WHEREAS, City has been asked by Greenway to contribute \$75,000 (10 acre-feet of water @ \$7,500/acre-foot) to the Environmental Pool in order to have water released at strategic times to improve the overall health of the South Platte River.

NOW THEREFORE, in consideration of the promises set forth herein, the Parties agree as follows:

Article I – Contribution to Environmental Pool Shares

1. Overview

A. The Parties agree that increasing the capacity of the Environmental Pool will serve to enhance to flow of the South Platte River during low-flow conditions, which will benefit the public and the environment by improving water quality, enhancing habitat for plant and animal species, and facilitating recreation along the river.

B. Currently, only 1,600 of the 2,100 acre feet available storage capacity have been dedicated to the Environmental Pool. Greenway and Denver Water have partnered to obtain commitments to fund the remaining 500 acre feet of available storage space.

C. Specifically, Denver Water has agreed to fund 250 acre feet of storage space for the Environmental Pool so long as Greenway successfully obtains funding for the remaining 250 acre feet.

D. To further the purposes of the Environmental Pool, City has made a one-time pledge to fund ten (10) acre feet of storage capacity for the Environmental Pool at a cost of \$7,500 per acre foot. City will pay \$75,000 to Greenway, which Greenway will subsequently pay to CWCB for the purpose of dedicating 10 acre feet of storage capacity to the Environmental Pool.

E. The \$7,500 per acre foot cost represents the full cost to the City. Future costs related to the Corps’ operations, maintenance, and repairs to its facilities are not part of the City’s pledge and will be funded by others.

2. Agreement

A. The City agrees to pay to Greenway on or before December 31, 2018, seventy-five thousand DOLLARS AND NO CENTS (\$75,000) ("Contract Amount") in one lump sum to enable Greenway to purchase 10 acre feet of storage capacity in Chatfield Reservoir to the Environmental Pool, in accordance with the Mitigation Plan.

B. Upon receipt of payment from the City, Greenway agrees to pay the Contract Amount to the CWCB on or before December 31, 2018, to dedicate 10 acre feet of storage capacity in Chatfield Reservoir to the Environmental Pool, in accordance with the Mitigation Plan.

C. If Greenway does not perform its obligations as set forth in Section 2(B) above, Greenway will return the Contract Amount to the City within thirty (30) days.

D. If the ROD authorizing the Reallocation Project is overturned pursuant to *Audubon Society of Greater Denver v. United States Army Corps of Engineers*, case no. 1:14-cv-02749-PAB, Greenway shall return the Contract Amount to the City within thirty (30) days after a final judgment is issued.

Article II – General Provisions

1. No Assignment. No right or obligation granted by this Agreement shall be assigned by either party.

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

3. Venue; Governing Law. Venue for any dispute over any issue resulting from this Agreement shall be in the District Court for Arapahoe County, Colorado. The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado.

4. Term of Agreement. This Agreement will commence on the date executed by the City as indicated on the City's signature page. Upon receipt of payment from the City, the terms of this Agreement and all obligations of the Parties shall terminate. Integration. This Agreement shall be construed and enforced as the fully integrated expression of the Parties' contract with respect to the matters and subjects addressed in this Agreement. No express or implied covenant not specifically set forth shall be deemed to be a part of this Agreement.

5. Effect on Prior Contracts. Except as specifically referenced and altered by this Agreement, any other agreements between the Parties shall remain in full force and effect.

6. Examination of Records. Any authorized agent of the City has the right to access and the right to examine any pertinent books, documents, papers and records of Greenway, involving transactions related to the Agreement until the latter of three (3) years after the

final payment under the Agreement or expiration of the applicable statute of limitations.

7. Representatives. The following representatives are designated to accept or give any request, approval, notice or the like provided for by this agreement:

For the City:

Mayor
City of Littleton
2255 W. Berry Avenue
Littleton, CO 80120

City Manager
City of Littleton
2255 W. Berry Avenue
Littleton, CO 80120

For Greenway:

Executive Director of The Greenway Foundation
1855 S. Pearl St., Suite 40
Denver, CO 80210

8. Payment Obligation. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the City Council of the City of Littleton, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

9. No Third Party Beneficiary. Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or Greenway receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

10. No Authority to Bind City to Contracts. Greenway lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City.

11. Severability. Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

16. No Discrimination in Employment. In connection with the performance of work

under the Agreement, Greenway may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability.

17. Compliance with All Laws. Greenway shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and the State of Colorado.

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

19. Survival of Certain Provisions. The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable.

20. No Construction Against Drafting Party. The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

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IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to execute this Agreement on their behalf.

Dated this ____ day of _____, 2017.

CITY OF LITTLETON,
STATE OF COLORADO

ATTEST:

City Clerk

Approved as to form:

The Greenway Foundation

By:

Title:

Subscribed and sworn to before me this ____ day of _____, 2017,
by _____.

Notary Public

My commission expires: _____