

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SCHEDULE B SOUTH PLATTE RIVER IMPROVEMENTS FOR
GRANT FRONTIER – OVERLAND PARKS
CITY AND COUNTY OF DENVER

Agreement No. 14-03.07

THIS AGREEMENT, made this _____ day of _____, 2014, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY AND COUNTY OF DENVER, a municipal corporation duly organized and existing under and by virtue of the Constitution of the State of Colorado (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted, (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES now desire to proceed with design and construction of drainage and flood control improvements for Schedule B of the South Platte River Improvements for Grant Frontier – Overland Parks (hereinafter called "PROJECT"); and

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. SCOPE OF AGREEMENT

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. SCOPE OF PROJECT

- A. Final Design. PROJECT shall include the final design of improvements by the CITY. Specifically, the final design of facilities shall extend from approximately STA 1+50 to STA 45+50, as shown on Exhibit A attached hereto and incorporated herein by this reference.
- B. Construction. PROJECT shall include construction by DISTRICT of the drainage and flood control improvements as set forth in the final design including vegetation establishment.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. DISTRICT acknowledges that (i) CITY does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of

CITY. It is understood and agreed that any payment obligation of CITY hereunder, whether direct or contingent, shall extend only to funds duly and lawfully appropriated and encumbered by the Denver City Council for the purpose of this Agreement, and paid into the Treasury of CITY.

B. PARTIES agree that for the purposes of this Agreement PROJECT costs by the DISTRICT shall consist of and be limited to the following:

1. Construction of improvements;
2. Construction Contingency mutually agreeable to PARTIES.

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

C. It is understood that PROJECT costs as defined above are not to exceed \$3,850,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AMOUNT</u>
1. Construction	3,300,000
2. Construction Contingency	330,000
Grand Total	\$3,630,000

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

D. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Maximum Contribution</u>
DISTRICT	00.00%	\$ -0-
CITY	100.00%	\$3,630,000
TOTAL	100.00%	\$3,630,000

5. MANAGEMENT OF FINANCES

(a) As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal or other sources of funding without limitation and without prior Board approval.

(b) The City intends to meet its dollar contribution under this Agreement in part with use of funds obtained pursuant to a Funding Support Agreement between City and The Greenway Foundation attached hereto as Exhibit B and incorporated herein (“Greenway Foundation Funding Agreement”), and a Grant Agreement between City and The State Board of the Great Outdoors Colorado Trust Fund attached hereto as Exhibit C and incorporated herein (“GOCO Grant Agreement”). The City shall ensure compliance with the provisions of the Greenway Foundation Funding Agreement and the GOCO Grant Agreement and the City shall require the contractors for this PROJECT to perform in accordance with the terms and conditions of the Greenway Foundation Funding Agreement and the GOCO Grant Agreement.

(c) Payment of each party's full share (CITY - \$3,630,000; DISTRICT - \$0) shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares.

6. FINAL DESIGN

CITY shall contract with a consultant team to provide Professional Engineering and Design Services. CITY, with the assistance of DISTRICT, shall supervise and coordinate the final design. Final design services shall consist of, but not be limited to, the following:

- A. Compilation and submittal of applications for, and approval the 401 and 404 permits;
- B. Preparation and submittal of the CLOMR for approval;
- C. Preparation of detailed construction plans and specifications approved by the CITY and the DISTRICT;
- D. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications.

CITY shall provide any written work product by the consultant team to DISTRICT.

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE

CITY shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the property is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not

dispose of or change the use of the properties without approval of DISTRICT. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. In the event CITY breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement.

8. MANAGEMENT OF CONSTRUCTION

A. Costs. Construction costs shall consist of those costs as incurred by the lowest best-value bidder(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.

B. Construction Management and Payment

1. DISTRICT, with the assistance of CITY, shall administer and coordinate the construction-related work as provided herein.
2. DISTRICT, with assistance and approval of CITY, shall advertise for construction bids; conduct a bid opening; prepare construction documents; and award construction contract(s). CITY shall ensure compliance with the provisions for competitive procurement set forth in the Denver City Charter at 2.3.3(A)(i) and Section 20-56 of the Denver Revised Municipal Code (“DRMC”); for payment of prevailing wages set forth in Sections 20-76 through 20-79, DRMC; and for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained, respectively, in Sections 28-31 through 28-91, DRMC.
3. DISTRICT shall require the contractor to provide adequate liability insurance that includes and is approved by CITY. The contractor shall be required to indemnify CITY according to CITY’s standard construction contract indemnification provision. Copies of the insurance coverage shall be provided to CITY.
4. DISTRICT, with assistance of CITY, shall coordinate field surveying; staking; inspection; testing; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications

and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY on a weekly basis.

5. CITY with the approval of DISTRICT shall contract with a consultant team to provide Professional Engineering and Design Services. Services will include the development of design plans and specifications, design support during construction (explanatory sketches; revisions of contract plans); shop drawing review; and review of material submittals..
6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
7. DISTRICT shall review and approve contractor billings and send them to CITY for approval. DISTRICT shall remit payment to contractor based on billings approved by PARTIES.
8. DISTRICT, with assistance and written concurrence by CITY, shall prepare and issue all written change or work orders to the contract documents.
9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
10. DISTRICT shall provide CITY a set of reproducible "as-built" plans.

C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that CITY shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at CITY's request, shall assist CITY with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific maintenance obligations of CITY and assistance from DISTRICT shall be set forth in a contract between DISTRICT and CITY, upon acceptance of DISTRICT's annual Maintenance Work Program. DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

CITY agrees to regulate and control the floodplain of the South Platte River within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that CITY cannot obligate itself by contract to exercise its police powers. If CITY fails to regulate the floodplain of the South Platte River within CITY in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and CITY shall cooperate fully.

11. TERM OF AGREEMENT

The term of this Agreement shall commence upon final execution by all PARTIES and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officers for CITY shall be the Manager of Public Works, 201 West Colfax Avenue, Department 606, Denver, Colorado 80202, and the Manager of Parks and Recreation, 201 West Colfax Avenue, Department 606, Denver, Colorado 80202.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative(s) to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or CITY. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

CITY shall be responsible for coordinating with DISTRICT the information developed by the various consultants hired by CITY and for obtaining all concurrences from DISTRICT needed to complete PROJECT in a timely manner. DISTRICT agrees to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by CITY to DISTRICT.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the CITY where PROJECT is located.

18. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

23. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of CITY and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of CITY and/or DISTRICT.

24. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

25. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. et seq. The following language shall be included in any contract for public services: "The Consultant or Contractor shall not and by signing this Agreement certifies that it does not knowingly employ or contract with an illegal alien to perform work under this Agreement. Consultant or Contractor shall not enter into a subcontract with a subcontractor that fails to certify to the Consultant or Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Consultant or Contractor affirms that they have verified through participation in the Colorado Employment Verification program established pursuant to 8-17.5-102 (5)(c) C.R.S. or the Electronic Employment Verification Program administered jointly by the United States Department of Homeland Security and the Social Security Administration that Consultant or Contractor does not employ illegal aliens. Consultant or Contractor is prohibited from using these procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

In the event that the Consultant or Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Consultant or Contractor shall be required to:

- A. Notify the subcontractor and PARTIES within three days that the Consultant or Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three days of receiving the notice required the Subcontractor does not stop employing or contracting with the illegal alien; except that the Consultant or Contractor shall not terminate the contract with the Subcontractor if during such three days the Subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Consultant or Contractor is required under this Agreement to comply with any reasonable request by the Colorado Department of Labor and Employment (CDL) made in the course of an investigation the CDL is undertaking pursuant to its legal authority.

Violation of this section of this Agreement shall constitute a breach of this Agreement and may result in termination by PARTIES. Consultant or Contractor shall be liable to PARTIES for actual

and consequential damages to PARTIES resulting from such breach pursuant to §8-17.5-101(3) C.R.S. PARTIES shall also report any such breach to the Office of the Secretary of State. Consultant or Contractor acknowledges that the CDL may investigate whether Consultant or Contractor is complying with the provision of the Agreement. This may include on-site inspections and the review of documentation that proves the citizenship of any person performing work under this Agreement and any other reasonable steps necessary to determine compliance with the provisions of this section."

27. GOVERNMENTAL IMMUNITIES

The PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any PARTY of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (Section 24-10-1-1, C.R.S., et seq.) as now or hereafter amended or otherwise available at law or equity.

28. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of the CITY, the DISTRICT or any other entity not a party hereto.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year first above written.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

(SEAL)

By _____

ATTEST:

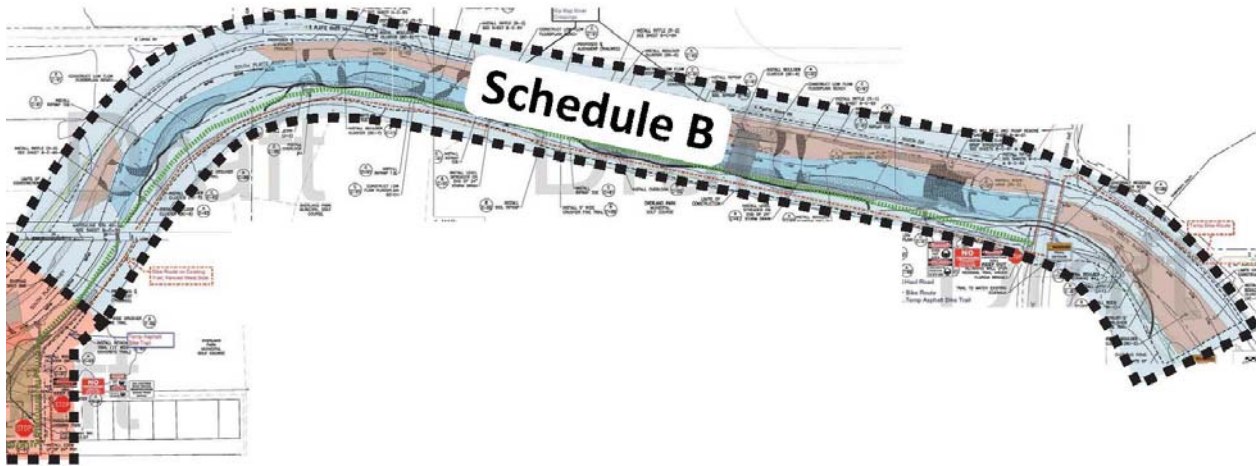
Title Executive Director

Date _____

AGREEMENT REGARDING
DESIGN AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
SCHEDULE B SOUTH PLATTE RIVER IMPROVEMENTS FOR
GRANT FRONTIER – OVERLAND PARKS
CITY AND COUNTY OF DENVER

Agreement No. 14-03.07

Exhibit A



Schedule B: GFO River	
GOCO	\$ 1,000,000.00
NRD - Shattuck	\$ 1,596,237.30
CWCB	\$ 306,250.00
CCD	\$ 493,434.00
UDFCD	\$ 104,078.70
Total	\$ 3,500,000.00

Contract Control Number: PARKS-201415731-00

Contractor Name: URBAN DRAINAGE AND FLOOD CONTROL

By: Paul A. Hindman

Name: Paul A. Hindman
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: David Bennetts



Name: DAVID BENNETTS
(please print)

Title: MANAGER, DCM PROGRAM
(please print)



Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Exhibit B

FUNDING SUPPORT AGREEMENT

THIS FUNDING SUPPORT AGREEMENT (“Agreement”) by and between **THE GREENWAY FOUNDATION** (the “Grantor” or “The Greenway Foundation”), a Colorado nonprofit corporation, whose principal place of business is 5299 DTC Blvd., Suite 710, Greenwood Village, CO 80111, and the **CITY AND COUNTY OF DENVER**, a municipal corporation organized and existing by virtue of Article XX of the *Constitution of the State of Colorado*, (hereinafter, the “City” or the “Grantee”), acting by and through the Departments of Parks and Recreation and Public Works.

RECITALS:

- A. The mission of the River Vision Implementation Plan (RVIP) is to:
- Maximize the health and safety of the South Platte River corridor for Greenway users.
 - Improve ecological health and sustainability of the South Platte River corridor.
 - Enhance visibility and accessibility to the South Platte River corridor for the public.
 - Continue the environmental and economic transformation of the South Platte River corridor.
 - Identify and expand resource opportunities and partnerships to implement the South Platte River corridor vision.
- B. The initial effort to implement the RVIP recommendations - is to design and construct improvements in the Overland Regional Park (also known as Grant-Frontier Park) and Johnson-Habitat Park/Vanderbilt Park (“Improvements”), hereinafter referenced as the RVIP Phase 1 Project. These parks are owned by the City.
- C. At the time of this Agreement, it is estimated that the overall cost to implement and complete the RVIP Phase 1 Project is \$16,045,290.
- D. The Greenway Foundation is a nationally accredited organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the “Code”), and is a publicly supported charitable organization within the meaning of Section 170(b)(1)(A)(vi) of the Code.

- E. The City is a governmental entity exempt from federal taxes.
- F. The Greenway Foundation has received various monies as partial funding for implementation of specified aspects of the RVIP and wishes to pass through certain funding to assist the City to implement the RVIP Phase 1 Project. If The Greenway Foundation determines to further assist in the funding and implementation of RVIP Phase 1 Project, the Parties may amend this Agreement as to how such Greenway Foundation funding assistance is to be utilized.
- G. The RVIP Phase 1 Project will be implemented by the City with funding provided by The Greenway Foundation under this Agreement and numerous other funding sources as stated herein.

NOW THEREFORE, in consideration of the terms of this Agreement, the parties hereto agree as follows:

1. FUNDING ASSISTANCE.

- a. The Greenway Foundation solicited and received funds to assist the City in the implementation of certain aspects of the RVIP, as identified in **Exhibit A Greenway Foundation Support for the RVIP Phase 1 Project**, attached and incorporated by reference herein.
- b. The Greenway Foundation hereby agrees to provide funding support to the City in the amount of **TWO MILLION THREE HUNDRED AND NINETY ONE THOUSAND TWO HUNDRED AND TEN DOLLARS (\$2,391,210)** to be used to partially fund the City's implementation of the RVIP Phase 1 Project as described herein, payable as follows: \$250,000 as an in-kind grant representing the completed 30% design for the Grant-Frontier/Overland/Florida Avenue Boat Chute Project and \$2,141,210 will be paid as reimbursement for costs reasonably and necessarily incurred by the City to complete the implementation of the RVIP Phase I Project under this Agreement.
- c. The financial support provided by The Greenway Foundation from the Shattuck Funds requires proof of a minimum of a 1:1 match by the time funds are remitted by the Colorado Department of Public Health and Environment. The various anticipated funding sources and expenditure schedule for the RVIP Phase 1 Project are set out in **Exhibit B River Vision Implementation Plan Phase I Project**,

Anticipated Funding (August 21, 2013) and Timeline, incorporated by reference herein, which evidences the required match.

- d. The City may, to raise additional funds beyond that provided by The Greenway Foundation, designate the funds other than Shattuck and Shattuck matching funds specified in Exhibit B as matching funds for the City to secure additional funding.
- e. It is expressly understood and agreed that if any obligation is imposed on the City to make payments to any party as a result of this Agreement, then such obligation shall only extend to monies appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for the purposes of this Agreement. The Greenway Foundation acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the City's Revised Municipal Code.
- f. The Greenway Foundation's participation in this Agreement is based upon the City's representation, upon which representation The Greenway Foundation relies, that the anticipated budget for this project is \$16,045,290 and that the City will seek and request City Council appropriation of the funds listed in Exhibit B. The City will request the Denver City Council to appropriate, pay into the Treasury of the City, and encumber for the purposes of this Agreement the funds specified in Exhibit B for future years.
- g. The Greenway Foundation represents, upon which representation City relies, that it has received approval from the State of Colorado for a grant to The Greenway Foundation to assist funding the City for performance of portions of the Colorado Water Conservation Board Grant, Routing #51882, Contract # C150509 ("CWCB Grant"), copy attached as **Exhibit C** and incorporated by reference herein.
- h. The Greenway Foundation represents, upon which representation City relies, that it has received approval from the State of Colorado for a grant to assist funding the City for performance of portions of the Colorado Department of Public Health and Environment Grant, Routing #13FEA 41026, PO FEA HAZ 1341026 ("Shattuck

Grant”), copy attached as **Exhibit D** and incorporated by reference herein. Denver represents, upon which representation The Greenway Foundation relies, that the funding sources set forth in Exhibit B will be available to match the minimum required of The Greenway Foundation by the Shattuck Grant, by the time such funds are remitted by CDPHE, to satisfy condition (3) of the *Colorado Natural Resource Trustee Resolution (October 13, 2011) Concerning Greenway Foundations’ Proposal for Administration of Shattuck Chemical Natural Resource Damages Funds*.

2. **COORDINATION AND LIAISON.** The Greenway Foundation agrees that, during the term of this Agreement, all responsibilities of the City hereunder shall be coordinated through the Managers of the Parks Department and Public Works Department (the “Managers”) or the Managers’ designated representatives. Any and all provisions, representations and terms set forth in the RECITALS above are incorporated into this Agreement by reference.
3. **TERM.** This Agreement shall become effective as of the date of execution and shall remain in effect until March 31, 2016 unless terminated sooner as provided herein.
4. **THE GREENWAY FOUNDATION RESPONSIBILITIES.**
 - a. The Greenway Foundation has provided City with a copy of each of The Greenway Foundation Funding Support Agreements listed in Exhibit A and will provide the City with a copy of any amendments, modifications, or revisions of same in a timely manner.
 - b. As more specifically set forth in **Exhibit E Scope of Work** (the “Work”), incorporated by reference herein, The Greenway Foundation shall: (i) prepare and submit all reports and meet all reporting requirements of The Greenway Foundation Funding Support Agreements; (ii) provide all administrative and liaison activities required or incidental to The Greenway Foundation Funding Support Agreements; (iii) submit the City’s requests for reimbursement of costs incurred pursuant to this Agreement, within 30 days after receipt, to the Colorado Water Conservation Board and the Colorado Department of Public Health and Environment; and, (iv) reimburse the City within sixty (60) days of the date of The Greenway Foundation receipt of payment in regard to each reimbursement request.

- c. The Greenway Foundation has provided to the Managers a copy of the 30% complete design drawings for the Grant-Frontier Park, Pasquinel's Landing Park, River access and boat launch just south of West Florida Avenue, riparian habitat along the River from West Dartmouth Avenue to West Florida Avenue; and, fish habitat adjacent to river banks for both game fish and high planes fish.
- d. Within 24 hours of receipt, The Greenway Foundation shall provide to the City a copy of any stop work order and/or notice of termination or expiration issued by a funding source pertaining to any of The Greenway Foundation Funding Support Agreements.

5. CITY RESPONSIBILITIES.

- a. The City and its employees, agents, contractors, and subcontractors will generally provide planning, design, construction, and construction oversight of the RVIP Phase 1 Project, as more specifically set forth in **Exhibit E Scope of Work** (the "Work"). The Work will be performed in accordance with the requirements of each of The Greenway Foundation Funding Support Agreements, except as set forth herein, as well as industry standards and practice and in compliance with all applicable federal, state and local health, safety and environmental statutes, laws, ordinances, regulations and rules. The construction portion of the Work shall be *substantially complete* by June, 2015; and the City will provide information for The Greenway Foundation's closeout reports within nine (9) months following final completion, as those terms are defined in the City and County of Denver Department of Aviation, Department of Public Works Standard Specifications for Construction, General Contract Conditions, 2011 Edition (also known as the 'Yellow Book').
- b. The City shall be the contracting authority for any portion of the Work which it contracts.
- c. City will provide or make available, once monthly, information necessary for The Greenway Foundation to report to its funding sources as required by The Greenway Foundation Funding Support Agreements and to close out The Greenway Foundation's Funding Support Agreements requirements.

- d. City shall submit reimbursement requests once monthly, in a form acceptable to The Greenway Foundation, and shall accompany each request with the following: (1) copies of all invoices from City's contractors; and (2) copies of all materials receipts.
 - e. City shall supervise, direct, control, pay, and be responsible for all employees, agents, contractors and subcontractors, and will only utilize those in the business of providing the services and material necessary to complete the RVIP Phase 1 Project.
6. **INDEPENDENT STATUS.** In performing the Work, the City and its employees, agents, contractors and subcontractors are not acting as an agent, servant or employee of The Greenway Foundation. The City is solely responsible for necessary and adequate Workers' Compensation insurance, to the extent required by law, and shall be responsible for withholding reporting and remitting any and all federal and state income taxes deducted from employee wages, as well as any legally required employer funding. The City and its employees, agents, contractors and subcontractors are not entitled to unemployment insurance benefits from or attributable to The Greenway Foundation.
7. **COMPLIANCE WITH LAWS, RELEASES, LICENSES, PERMITS.** The City shall observe and comply with all applicable federal, state and local laws. The City shall obtain all releases, licenses, permits and other authorizations required to perform the Work under this Agreement.
8. **CONFIDENTIALITY.**
- a. The Greenway Foundation agrees that it shall not disclose to any third party any information concerning the customers, trade secrets, methods, processes or procedures or any other confidential, financial or business proprietary information of the City which The Greenway Foundation learns during the course of its performance of this Agreement, without the prior written consent of the City. This obligation shall survive the cancellation or other termination of this Agreement.
 - b. Open Records: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. (2010), and that in the event of a request to the City for

disclosure of such information, the City shall advise The Greenway Foundation of such request in order to give The Greenway Foundation the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and The Greenway Foundation may intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Greenway Foundation further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of The Greenway Foundation's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

9. EXAMINATION OF RECORDS. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of The Greenway Foundation, 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. Any authorized agent of The Greenway Foundation has the right to access and the right to examine any pertinent books, documents, papers and records of the City, subject to any and all provisions regarding confidentiality, 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.

10. FLOWDOWN REQUIREMENTS.

- a. The provisions of the CWCB Grant are expressly required of the City as subgrantee under such Grant EXCEPT that the City shall not indemnify, save, nor hold harmless the Greenway Foundation nor the State, its employees and agents for any act or omission of the City; and further EXCEPT that Sections 21 (J), (K) and (L) of the CWCB Grant are not applicable to this Agreement; and further EXCEPT as the Parties specifically allocate CWCB Grant responsibilities herein.

- b. The provisions of the Shattuck Grant are expressly required of the City as subgrantee under such Grant EXCEPT that the City shall not indemnify, save, nor hold harmless the Greenway Foundation nor the State, its employees and agents for any act or omission of the City; and further EXCEPT as the Parties specifically allocate Shattuck Grant responsibilities herein.
- c. The City shall require its contractors to perform in accordance with the terms and conditions of the CWCB and Shattuck grants, including insurance, notification and the City shall incorporate those terms and conditions into its contracts to perform the work under this Agreement. The City shall require ECI Site Construction, Inc., as a contractor of the City under this Agreement, to indemnify The Greenway Foundation and list them as additional insureds under their policies required by this Agreement.

11. REPORTS AND RECORDS.

- a. The Greenway Foundation retains primary responsibility for all administrative, reporting and liaison obligations under each of the Funding Agreements listed in Exhibit A. City agrees to provide The Greenway Foundation with information once monthly, to satisfy The Greenway Foundation's reporting obligations under such grants.

12. CHANGES. The parties may modify this Agreement upon mutual agreement evidenced by an Amendatory Agreement executed in the same manner as this Agreement.

13. TERMINATION. Either party may terminate this Agreement with cause by providing notice of intent to terminate for cause, and will give ten (10) days from the date the notice was sent to cure the default. Upon termination of the Agreement, the Manager may nevertheless complete the Work with other funding.

14. PROPERTY RIGHTS. Upon successful completion of the Work in accordance with the Agreement, or upon the City's termination of the Agreement for cause, any and all interest The Greenway Foundation has or may have in the title to and ownership of all improvements, Work, Materials and supplies purchased or paid for with funds under this Agreement shall vest in the City. The Parties shall cooperate in the preparation

and execution of any documentation necessary to transfer title and ownership of such property.

15. INTELLECTUAL PROPERTY RIGHTS.

- a. The Parties intend that any and all interest The Greenway Foundation has or may have in all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the City and paid for by The Greenway Foundation pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. The City shall disclose all such items to The Greenway Foundation for such rights to attach, and failing to do so, no such rights shall attach.
- b. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall be the nonexclusive property of the City at the time the Materials are created.
- c. To the extent that the Materials are not a "work made for hire," The Greenway Foundation (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity upon full and complete performance of the Work in accordance with this Agreement, and all provisions of the Greenway Foundation Funding Support Agreements.
- d. The Greenway Foundation, under a 2011 contract with the Colorado Water Conservation Board, completed a 30% design, valued at \$250,000, for certain aspects of Phase 1 of the RVIP Phase 1 Project, namely the Grant-Frontier Park, Pasquinel's Landing Park, River access and boat launch just south of West Florida Avenue, riparian habitat along the River from West Dartmouth Avenue to West Florida Avenue; and, fish habitat adjacent to river banks for both game fish and high planes fish. Any and all interest the Greenway Foundation has or may have in all property rights to the 30% design and related documents, specifications and data on any media whatsoever (collectively, "Materials"), are hereby assigned and

transferred to, and shall belong to, the City and the City may use these documents in any manner it deems appropriate.

- e. The Greenway Foundation, under a 2012 contract with the Colorado Water Conservation Board is providing funding for 100% construction design documents in the amount of \$437,500 , for certain aspects of the RVIP Phase 1 Project, namely the Grant-Frontier Park, Pasquinel's Landing Park, River access and boat launch just south of West Florida Avenue, riparian habitat along the River from West Dartmouth Avenue to West Florida Avenue; and, fish habitat adjacent to river banks for both game fish and high planes fish.

16. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS. This Agreement is intended as the complete integration of all understandings between the parties as to the RVIP Phase 1 Project. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect nor bind the City. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

17. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS. The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Greenway Foundation's obligations for preserving confidentiality of trade secrets and other information shall

survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

18. ASSIGNMENT & SUBCONTRACTING. Neither party shall have the right or power to assign its rights or obligations hereunder without the express written consent of the other. Any attempt to do so without such consent shall be null and void and shall give the other party the right to cancel and terminate this Agreement. In the event consent is properly given, the provisions of this Agreement shall bind and benefit the parties hereto and their successors and assigns.

Greenway Foundation acknowledges that the City will perform the Work through various employees, agents, contractors and subcontractors, which does not require further approval. City shall remain fully responsible to The Greenway Foundation for the City's performance under this Agreement even though some aspects thereof are performed by others serving the City as independent contractors. The Greenway Foundation's responsibilities under this Agreement are limited to paragraph A and The Greenway Foundation is not liable for any negligence of the independent contractors retained by the City or any claims, damages expenses, losses or costs arising from any of City's contractors or subcontractors.

19. INSURANCE. The City is a public entity within the meaning of the Colorado Governmental Immunity act (CGIA), section 24-10-101, et seq., C.R.S., as amended. The parties agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Therefore, at all times during the term of this Agreement, including any renewals or extensions, City shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA including coverage for Workers' Compensation and Employers' Liability, Commercial General Liability and Auto Liability. When the City uses the services of such independent contractors, City shall require such independent contractors to obtain, at a minimum, the insurance coverage required by the CWCB and Shattuck Grants, listing both The Greenway Foundation, and if required by any each Greenway Foundation Funding Support Agreement, the Funding Source as an additional insured

and loss payee. Evidence of self-insurance or other insurance coverage shall be provided by the City's Risk Administrator upon request.

20. NOTICES. All notices or other communications shall be in writing to the addresses listed below and shall be delivered personally during normal business hours to the appropriate office, above, or by prepaid U.S. Certified Mail, Return Receipt Requested. Mailed notice shall be deemed effective upon deposit with the U.S. Postal Service. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered but such substitutions shall not be effective until actual receipt of written notification.

The Greenway Foundation, Inc.
Attn: Jeff Shoemaker, Executive Director
5299 DTC Blvd, Suite 710
Greenwood Village, CO 80111

And the City at:

Manager, Department of Parks
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

and

Manager of Public Works (or Designee)
201 West Colfax Avenue, Dept. 604
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock Street, Suite 353
Denver, Colorado 80202

21. WHEN RIGHTS AND REMEDIES NOT WAIVED. In no event shall any action by one party hereunder constitute or be construed to be a waiver by that party of any breach of covenant or default which may then exist on the part of the other party, and one party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the one party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

- 22. NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, both parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and both parties further agree to insert the foregoing provision in all subcontracts hereunder.
- 23. CONFLICT OF INTEREST.** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Greenway Foundation further agrees not to hire or contract for services any official, officer, or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.8, 1.2.9 and 1.2.12.
- 24. GOVERNING LAW, VENUE.** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.
- 25. LEGAL AUTHORITY.** The Greenway Foundation assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of The Greenway Foundation do hereby warrant and guarantee that he/she or they have been fully authorized by The Greenway Foundation to execute this Agreement on behalf of The Greenway Foundation and to validly and legally bind The Greenway Foundation to all the terms, performances and provisions herein set forth.
- 26. NO THIRD PARTY BENEFICIARY.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action

relating to such enforcement, shall be strictly reserved to the City and the Greenway Foundation, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements, including but not limited to subcontractors, subconsultants and suppliers. It is the express intention of the City and The Greenway Foundation that any person other than the City or The Greenway Foundation receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. SEVERABILITY. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

28. PARAGRAPH HEADINGS. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

29. COUNTERPARTS OF THIS AGREEMENT. This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

30. ORDER OF PRECEDENCE.

In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

31. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. Greenway Foundation consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. 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.

32. CITY EXECUTION OF AGREEMENT. The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

- Exhibit A Greenway Foundation Support for the RVIP Phase 1 Project
- Exhibit B River Vision Implementation Plan Phase I Project, Anticipated Funding (August 21, 2013) and Timeline
- Exhibit C Colorado Water Conservation Board Grant, Routing #51882, Contract # C150509
- Exhibit D Colorado Department of Public Health and Environment Grant, Routing #51882, Contract # C150509
- Exhibit E Scope of Work (August 20, 2013)

**REMAINDER OF PAGE INTENTIONALLY BLANK –
SIGNATURE PAGES FOLLOW**

Contract Control Number: PARKS-201310330-00

Grantor Name: The Greenway Foundation

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of September 19, 2013.



SEAL

CITY AND COUNTY OF DENVER

ATTEST:

Debra Johnson
Debra Johnson, Clerk and Recorder,
Ex-Officio Clerk of the City and
County of Denver

By Cary Kennedy
Cary Kennedy, Deputy Mayor

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By Mitchel T. Behr
Mitchel T. Behr, Assistant City
Attorney


By Cary Kennedy
Cary Kennedy, Manager of Finance

By Dennis J. Gallagher
Dennis J. Gallagher, Auditor



Contract Control Number: PARKS-201310330-00

Grantor Name: The Greenway Foundation

By:  _____

Name: JEFF SNOENKER
(please print)

Title: EXEC. DIRECTOR
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



**Exhibit A
Greenway Foundation Support
for the
RVIP Phase 1 Project
Contract No. 201310330-00**

Source of Greenway Funding Support	Amount	In-Kind	
Private Foundations	\$ 134,473		
Colorado Water Conservation Board, Routing #51882, Contract # C150509	\$ 437,500		
Shattuck Grant	\$1,569,237		
Funding Total	\$ 2,141,210		
Colorado Water Conservation Board Routing #51882, Contract # C150509		\$ 250,000 (30% design)	
Agreement Total			\$ 2,391,210

Exhibit B
River Vision Implementation Plan Phase 1 Project
Anticipated Funding

August 21, 2013
 Contract Control No. 201310330-00

Vanderbilt/Johnson-Habitat			
FUNDING SOURCE	Funds Available (n.1)	Total Funding (\$)	In Kind (\$)
Great Outdoors Colorado	NOW	1,411,900	---
Great Outdoors Colorado (Trails)	NOW	267,191	---
2013 CIP	NOW	1,500,000	---
2014 CIP	Jan-14	2,000,000	---
2015 CIP	Jan-15	1,000,000	---
CCD Bond	NOW	728,080	---
CW-General Trail Improvements	NOW	79,452	---
TGF -Private Foundations	Sep-13	134,473	---
UDFCD 2014	Jan-14	450,000	---
Environmental Protection Agency (In-Kind)	N/A	---	188,605
sub-total		7,571,096	188,605
Grant Frontier/Overland			
FUNDING SOURCE	Funds Available (n.1)	Total Funding (\$)	In Kind (\$)
Great Outdoors Colorado	NOW	1,920,909	---
Great Outdoors Colorado (Trails)	NOW	1,000,000	---
CW-General Trail Improvements	NOW	111,723	---
CW-General Trail Improvements	NOW	108,825	---
Rocky Mountain Arsenal	Dec-13	1,000,000	---
DOW/ Fishing is Fun	Jan-14	76,000	---
TGF -CWCB WSRA - 2	Sep-13	437,500	---
TGF -Shattuck NRDS Funds	Sep-13	1,569,237	---
UDFCD 2012	NOW	350,000	---
UDFCD 2013	NOW	900,000	---
TGF -CWCB WSRA (In-Kind)	N/A	---	250,000
sub-total		7,474,194	250,000
Contaminated Soils Management @ Vand/John-Hab			
FUNDING SOURCE	Funds Available (n.1)	Total Funding (\$)	In Kind (\$)
CW-Remediation (various CCD sources)	Dec-13	1,000,000	---
sub-total		1,000,000	0
PROJECT TOTAL		16,045,290	

n.1 These are the dates when receipt/acceptance of funding sources is anticipated.

STATE OF COLORADO
Colorado Water Conservation Board
Grant Agreement
with
The Greenway Foundation
Contract Number C150509

TABLE OF CONTENTS

1. PARTIES.....	1
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.....	1
3. RECITALS.....	1
4. DEFINITIONS.....	2
5. TERM and EARLY TERMINATION.....	2
6. STATEMENT OF WORK.....	3
7. PAYMENTS TO GRANTEE.....	3
8. REPORTING - NOTIFICATION.....	4
9. GRANTEE RECORDS.....	4
10. CONFIDENTIAL INFORMATION-STATE RECORDS.....	5
11. CONFLICTS OF INTEREST.....	5
12. REPRESENTATIONS AND WARRANTIES.....	6
13. INSURANCE.....	6
14. BREACH.....	7
15. REMEDIES.....	8
16. NOTICES and REPRESENTATIVES.....	9
17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE.....	10
18. GOVERNMENTAL IMMUNITY.....	10
19. STATEWIDE GRANT MANAGEMENT SYSTEM.....	10
20. GENERAL PROVISIONS.....	11
21. COLORADO SPECIAL PROVISIONS.....	13
22. SIGNATURE PAGE.....	15
EXHIBIT A: STATEMENT OF WORK.....	Attached
EXHIBIT B: PERFORMANCE MONITORING PROVISIONS.....	Attached

1. PARTIES

This Grant Agreement (hereinafter called “Grant”) is entered into by and between The Greenway Foundation (hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Department of Natural Resources, Colorado Water Conservation Board (hereinafter called the “State or CWCB”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority for the agency entering into this Contract arises from Colorado Revised Statutes (CRS) 39-29-109(2)(c), 37-75-104(2)(c) and 37-75-102 et al., and Senate Bill 06-179 adopted by the 2006 General Assembly, and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The Water Supply Reserve Account provides money for grants and loans to complete water activities, which are broadly defined and include water supply and environmental projects and/or studies. This Grant is for the Denver South Platte River Implementation Project – Frontier/Overland Final Design in the Metro Basin.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

“Budget” means the budget for the Work described in **Exhibit A**.

B. Evaluation

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in §6 and **Exhibit A**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A and B**.

D. Goods

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

E. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

F. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

G. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

H. Program

“Program” means the Water Supply Reserve Account grant program that provides the funding for this Grant.

I. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and **Exhibit A and B**.

J. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

K. Sub-grantee

“Sub-grantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

L. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A and B**, including the performance of the Services and delivery of the Goods.

M. Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM and EARLY TERMINATION.

Initial Term-Work Commencement

The Parties respective performances under this Grant shall commence on the later of either the Effective Date or December 1, 2012. This Grant shall terminate on December 31, 2013 unless sooner terminated or further extended as specified elsewhere herein.

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** on or before December 31, 2013. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Sub-grantees shall be considered Grantee's or Sub-grantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is \$500,000, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**. The maximum amount payable by the State to Grantee during each State fiscal year of this Grant shall be:

\$500,000 in FY2013
\$500,000 in FY2014, minus any funds expended in FY2013

i. Advance, Interim and Final Payments

Any payment allowed under this Grant or in **Exhibit A** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or

otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

B. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget. The State's total consideration shall not exceed the maximum amount shown herein.

C. Matching Funds

Grantee shall provide matching funds as provided in **Exhibit A**

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

Grantee shall submit a report to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit A and B**.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the Colorado Department of Natural Resources.

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

D. SubGrants

Copies of any and all subGrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subGrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subGrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the Record Retention Period) until the last to occur of the following: **(i)** a period of three years after the date this Grant is completed or terminated, or **(ii)** final payment is made hereunder, whichever is later, or **(iii)** for such further period as may be necessary to resolve any pending matters, or **(iv)** if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to

evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or inequity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. The State shall notify the Grantee in writing and notate any State records and information that are classified by the State as being "Confidential" and given to the Grantee in connection with its performance hereunder. The provisions of this Section 10 shall only apply to such notated records and information.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Sub-grantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent

the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantees Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Sub-grantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Sub-grantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Sub-grantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to sub-Grantees that are not "public entities".

B. Sub-Grantees

Grantee shall require each Grant with Sub-grantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee and Sub-grantee employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket Grantual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Sub-grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

Grantee and the State shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee and Sub-grantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Sub-grantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Grantee and all Sub-grantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Sub-grantee shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any sub-grant, Grantee and each Sub-grantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Grants with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or sub-Grants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part.

Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made.

Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Grantee's employees, agents, or Sub-grantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Chris Sturm, Program Manager, Water Supply Planning Section
Colorado Water Conservation Board
1580 Logan Street, Suite 200
Denver, CO 80203
Chris.Sturm@state.co.us

B. Grantee:

Jeff Shoemaker, Executive Director
The Greenway Foundation
1040 S. Gaylord Street, Suite 201
Denver, CO 80209
wjs@greenwayfoundation.org

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the nonexclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's nonexclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Grant Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the CWCB, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or

correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and SubGrants

Unless otherwise specified in Exhibit A, Statement of Work, Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subGranted without the prior, written consent of the State. Any attempt at assignment, transfer, subGranting without such consent shall be void. All assignments, subGrants, or Sub-grantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subGranting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §20(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Sub-grantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by both parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF GRANTS - TOOLS AND FORMS.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those

provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The provisions of the main body of this Grant,
- iii. **Exhibit A and B.**

J. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

K. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

M. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

21. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Grants except where noted in italics.

A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 4. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. 5. COMPLIANCE WITH LAW.

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G. 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contact or incorporated herein by reference shall be null and void.

H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. 9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. 11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.

[*Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or Grant with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant or enter into a Grant with a Sub-grantee that fails to certify to Grantee that the Sub-grantee shall not knowingly employ or Grant with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Sub-grantee and the Granting State agency within three days if Grantee has actual knowledge that a Sub-grantee is employing or Granting with an illegal alien for work under this Grant, (c) shall terminate the subGrant if a Sub-grantee does not stop employing or Granting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the Granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the Granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

L. 12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

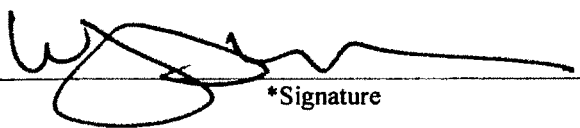
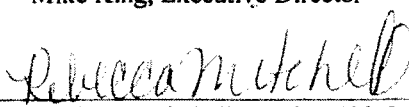
THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

22. SIGNATURE PAGE

Grant Routing Number _____

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

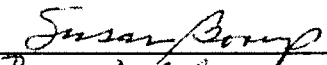
*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<p align="center">GRANTEE The Greenway Foundation</p> <p>By: Jeff Shoemaker Title: Executive Director</p>  <p align="center">*Signature</p> <p>Date: <u>29-NOV-12</u></p>	<p align="center">STATE OF COLORADO John W. Hickenlooper GOVERNOR Department of Natural Resources Mike King, Executive Director</p>  <p>By: Rebecca Mitchell, Section Chief Water Supply Planning, CWCB</p> <p>Signatory avers to the State Controller or delegate that Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: <u>12-08-2012</u></p>
<p align="center">2nd Grantee Signature if Needed</p> <p>By: Title:</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: <u>NA</u></p> <p align="center">Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: 

Susan Berup, State Controller

Date: 1/11/2013

Exhibit A – Scope of Work

Introduction and Background

This water activity addresses non-consumptive needs and interests of multiple basins by finalizing design of recreation and habitat improvement concepts presented in the community-based, multi-stakeholder vision documents - the RISO Master Plan and South Platte RVIP. The proposed project will help sustain environmental and recreational needs of statewide significance. The project is also identified in the Metro Basin Needs Assessment Report (March 2011) as addressing non-consumptive needs, specifically targeting habitat restoration and recreation improvements.

This Water Supply Reserve Account (WSRA) grant will progress the South Platte River Recreation and Habitat Improvements Preliminary Design effort through final design. The design effort will focus on preparing final design drawings and specifications for bidding and securing required permits for river improvements targeting non-consumptive needs including boating, tubing, fishing and wildlife enhancements in this urban environment.

Within the Project Area, non-native and invasive vegetation species will be removed and replaced with representative native vegetation within the South Platte River watershed. The vegetation will be monitored and maintained for a minimum of three years to allow them to establish the new plants and to out-compete the return of non-native and invasive vegetation. New trees (e.g. plains cottonwood, narrowleaf cottonwood, peach leaf willow), new shrubs (e.g. willows, chokecherry, snowberry) and native grasses will be planted and established.

This project will result in significantly improved access for recreation, including boat launch ramps and jetties, access trails and trailheads (within the immediate vicinity of the south Platte River) and new trail segments affected by grading and re-vegetation work as well as bank re-grading/wetlands/native vegetation restoration to allow users to engage in a variety of recreational activities.

Proposed improvements at Grant Frontier Park and Pasquinel's Landing include laying back a portion of the east bank of the River, establishing emergent benches, and design of in-channel habitat structures for native fish species and macroinvertebrates. Laying back the slope and establishing an emergent bench will reconnect the River to a floodplain, providing additional habitat for riparian and avian wildlife. Several bank areas will require boulder retaining walls to help retain the grade to establish these bench areas. The drop structure near West Evans Avenue will be modified to promote fish movement (upstream and downstream) and develop additional foraging and spawning areas in addition to providing enhanced boating opportunity.

Proposed improvements at Overland Park include establishing a series of pools and riffles to provide aquatic habitat (resting, foraging and spawning). The pools and riffles will be established by lowering the existing drop structure near Florida Avenue and distributing the elevation upstream; essentially the single drop structure at Florida Avenue will be split into a series of habitat-friendly riffles and pools; this will also improve boating, because the existing drop structure is dangerous to navigate.

Proposed in-channel habitat structures throughout the Project Area include bendway weirs, jetties, and large woody debris. These structures will promote variation in river flow depth and velocity and provide protective cover for fish. A concept plan figure is provided with this Water Supply Reserve Account Grant Application showing the proposed improvements. Please note that the design of the two playgrounds shown in the concept plan figure is not included in this scope of work, but it is shown on the concept plan for completeness; the two playgrounds will be designed under a separate agreement.

Summarized below is the proposed Scope of Work.

Task 1 – Project Management and Meetings

Upon Notice to Proceed, The Greenway Foundation and its consultants (hereafter referred to as the Team) will conduct/participate in a project kick-off meeting with stakeholders. The kick-off meeting will address the following:

- Project and scope overview
- Schedule
- Communications procedures
- Review of information currently available
- Requests for Additional Information
- Goals and expectations

The kick-off meeting will include a visit to the project site by The Team and interested stakeholders to assess and confirm site conditions and further identify project issues.

The Team will update the Preliminary Design Project Management Plan (PMP). The updated PMP will include the detailed scope, schedule including key milestones and deliverables, project team, and budget. As part of the PMP update, the Team will work with the stakeholders to define project expectations. The PMP will also include updated summaries of anticipated coordination between stakeholders and permitting agencies. Updates will also be provided to reflect final design quality assurance and quality control, including names of technical reviewers and technical review milestones.

A detailed project schedule will be developed and updated on an as needed basis to reflect any substantive changes in the plan.

Funding for construction has been committed through grants and stakeholder matching funds. Because of the significant contributions from numerous stakeholders, coordination and progress meetings will be required for a variety of agencies; all attempts will be made to minimize the number of meetings and maximize agency participation. The Team will conduct up to 24 meetings/workshops with the River Vision Coordination Committee (RVCC), Urban Drainage and Flood Control District (UDFCD), and/or the City and County of Denver (CCD) throughout the duration of the project to review progress, discuss key issues, exchange ideas, and make decisions. The scope of these meetings will generally include a discussion of work completed, budget and schedule status, potential problem areas and solutions, and technical matters. The Team will prepare agenda and minutes for each meeting and distribute to the UDFCD's and CCD's Project Manager electronically. Key decisions will be prepared by the Team and tracked in a decision log.

The Team will maintain a project eRoom to facilitate scheduling, project documents, and related coordination. Members will be added to the e-Room at the stakeholders' request. The Team will hold biweekly internal conference calls to update project progress, schedule, and specific design issues. Summaries from these meetings will be posted to the eRoom.

The Team will provide monthly progress reports which will accompany invoices and include task status, critical decisions, planned activities, an updated schedule and changes to the PMP. In addition, the Team will submit monthly invoices for review and approval. Invoices will include the monthly progress report and a schedule update.

Assumptions

- Up to 2 meetings per months for 12 months with RVCC
- Up to 2 meetings per months for 12 months with CCD/UDFCD
- Up to 4 meetings with CDOT

Deliverables

- Kick-off meeting summary
- Project Management Plan Update
- eRoom start-up and maintenance
- Monthly progress reports (12 assumed)
- Bi-weekly progress meetings and summaries

Task 2 – Data Acquisition and Field Investigations

The Team will obtain updated information regarding the project and project site, as available. The Team will contact City and County of Denver (CCD) staff and Urban Drainage and Flood Control District (UDFCD) to discuss updated hydrologic information and/or hydraulic modeling as well as review invasive species eradication techniques as per CCD and UDFCD. All information and pertinent data will be incorporated into the project on an as-needed basis.

As part of this task, the Team will perform additional site investigations, including obtaining additional field survey and geotechnical parameters, as required for final design. Surveying and mapping will be conducted in a manner that conforms to applicable UDFCD and CCD requirements.

The Team will further evaluate specific geotechnical and groundwater conditions at critical structures, as required for final design. Samples obtained from the exploration program will be tested to determine pertinent index and engineering properties.

In addition, the Team will coordinate grading, schedules, assist with permitting efforts, and coordinate with other tree thinning and tree removal efforts.

Assumptions

- The Team will identify right-of-way and easement information from the Denver County Assessor's Office and information provided by project stakeholders (e.g. CCD and UDFCD).

Deliverables

- The Team will provide updated project mapping developed in this task.
- Geotechnical related design considerations will be included in an updated geotechnical report.

Tasks 3 through 5 – Final Design Development (60-, 90-, and 100-percent design documents)

Final design development, which includes preparation of 60-percent (Task 3), 90-percent (Task 4), and 100-percent (task 5) design drawings, will build upon the 30-percent design previously developed. Technical specifications and cost opinions will also be developed for each final design milestone. The design will incorporate final hydraulic modeling results (see Task 6) and additional site investigations (see Task 2), as required for final design. The design review process will be in accordance with UDFCD and CCD requirements and will include internal QA/QC of design drawings, project specifications, and cost opinions at 60-percent, 90-percent and 100-percent completion milestones.

Task 6 – Floodplain Analysis and Hydraulic Modeling

The Team will develop and provide the necessary hydraulic data for the Floodplain Development Permit and CLOMR associated with this scope of work. The Team will update the 30-percent design HEC-RAS hydraulic model based on updated information collected in Task 2 and associated design refinements.

This model shall use the update base mapping data to finalize cross-sections at specific locations within the project area that will be used to quantify low and flood flow characteristics through the project area.

The Team will utilize the current conditions hydraulic model to assess the impacts of improvements on regulatory (100-year) and low (bankfull) flows. This “proposed conditions” model will be updated regularly as the design progresses. A sediment transport analysis will also be performed to confirm channel stability. Based on discussions with UDFCD, the Team assumes UDFCD will prepare and submit the CLOMR for the proposed project, although the Team will assist UDFCD and/or CCD in the preparation of a CLOMR by providing the hydraulic models prepared under this task.

Assumptions

- Regulatory model will be provided by UDFCD
- CLOMR prepared by UDFCD with information provided by the Team under this scope of work

Deliverables

- Hydraulic models and results, as required, to support the CLOMR effort

Task 7 – Permitting

The Team will assist UDFCD and CCD in obtaining necessary regulatory approval for implementation of the proposed improvements. This task will include providing the necessary exhibits and documentation to support the permitting process.

As part of this task, the Team will develop and provide necessary material required to secure permits associated with the improvements described in this scope of work. Anticipated permits include the 404 permit, floodplain development permit, Denver Project Controls Office review and approvals, and other Right-of Way permits. Material to be provided by the Team could include site plans, development plans, project descriptions, erosion and sedimentation control plans (i.e., Stormwater Management Plan), and hydraulic and sediment transport analysis data. Based on discussions with UDFCD, the Team assumes that UDFCD will prepare the Section 404 permit application. Preparation of the 404 permit application is not included in this task (to be completed under a separate contract), but the Team will provide technical information associated with this scope of work required to complete the 404 permit application.

Exhibit A - Proposed Schedule for Denver South Platte River Implementation Project – Grant Frontier/Overland Final Design

Task	Date											
	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13
Task 1 - Project Management and Meetings ¹												
Task 2 - Additional Data Acquisition and Field Investigations												
Task 3 - 60% Design												
Task 4 - 90% Design												
Task 5 - 100% Design												
Task 6 - Floodplain Analysis and Hydraulic Modeling												
Task 7 - Permitting												

1. Assumed notice to proceed December 1, 2012

Senior Project Manager	Technical Director	Project Manager	Engineer/Scientist	Engineer/Scientist	Engineer/Scientist	Designer/Drafter	Cost Estimator	Principal Landscape Architect	Landscape Architect	Landscape Architect	Landscape Architect	Admin/Word Processing
Shoemaker	Johnson	Bogan	Murphy	Eom	Mugele	Simpson	Laakso	Shenks	Wilson			
\$225.00	\$200.00	\$155.00	\$145.00	\$135.00	\$100.00	\$90.00	\$175.00	\$140.00	\$110.00	\$85.00	\$70.00	\$85.00
99	0	60	120	0	0	0	0	40	304	28	0	24
70	0	0	16	0	0	8	0	4	108	84	40	6
40	68	16	96	0	148	128	24	76	184	240	240	44
40	36	12	64	0	128	108	16	8	128	48	12	28
40	10	8	38	16	84	80	16	6	112	44	24	12
0	12	4	32	52	100	24	0	0	0	0	0	4
0	12	12	56	24	80	16	0	0	0	0	0	16
Total Hours	289	138	422	92	540	364	56	134	836	444	316	134
Cost	\$65,025.00	\$27,600.00	\$61,190.00	\$12,420.00	\$54,000.00	\$32,760.00	\$9,800.00	\$18,760.00	\$91,960.00	\$37,740.00	\$22,120.00	\$11,390.00

Other Direct Costs

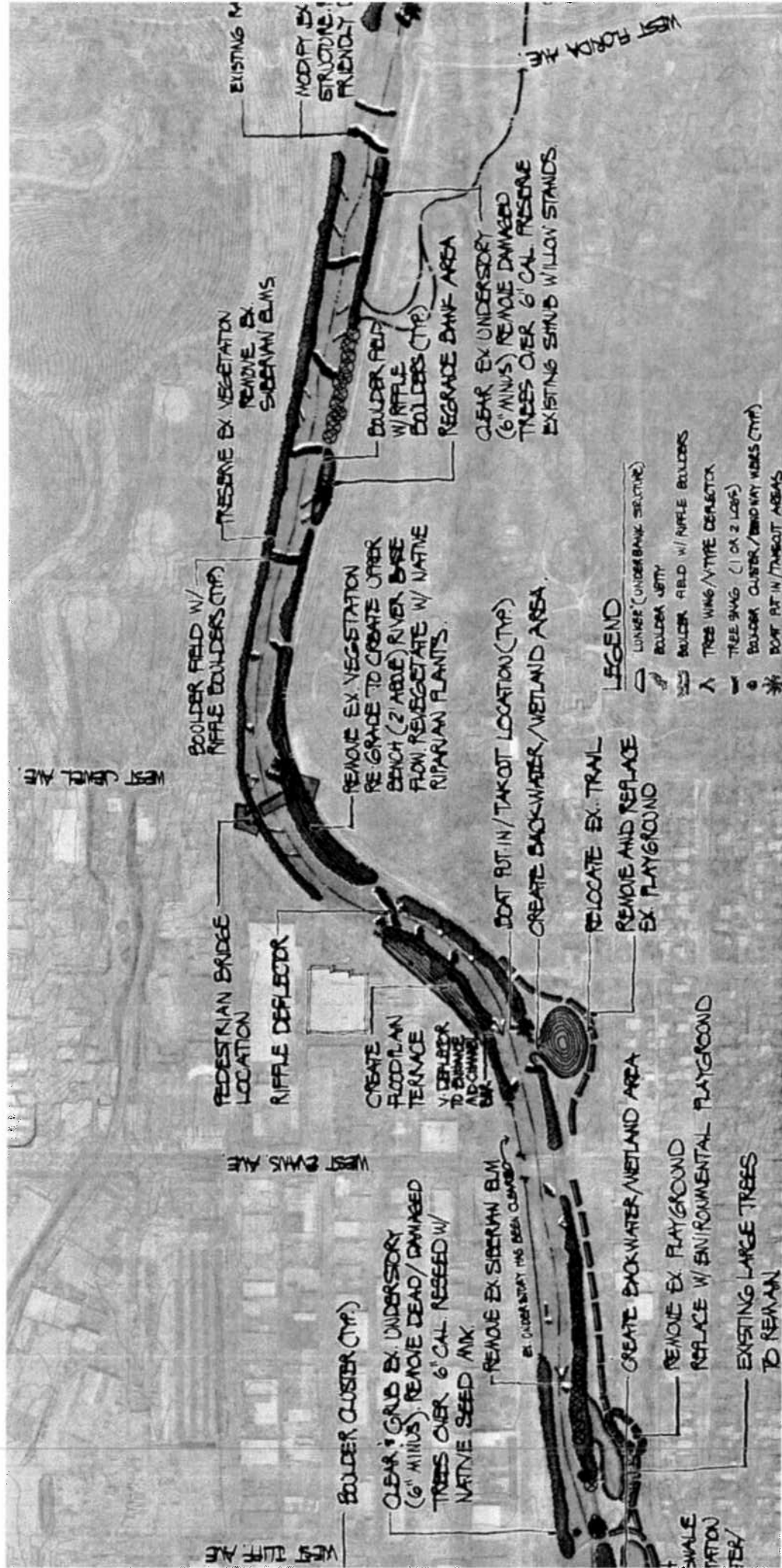
Copies No.	Mileage Miles	Total
\$ 0.25	0.555	
502	500	\$ 403.00
500	200	\$ 236.00
2500	0	\$ 625.00
2500	0	\$ 625.00
2500	0	\$ 625.00
500	100	\$ 180.50
500	100	\$ 180.50
9502	900	
\$2,400.00	\$500.00	\$2,875.00

Subcontractors

Survey/Easements	Utility Locates	Geotechnical Investigation	Total
\$ -	\$ -	\$ -	\$ -
\$ 20,000.00	\$ 7,500.00	\$ 7,500.00	\$ 35,000.00
\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -
\$ -	\$ -	\$ -	\$ -
\$ 20,000.00	\$ 7,500.00	\$ 7,500.00	\$ 35,000.00

Total Costs

Labor	Subcontract	Other Direct Costs	Total
\$ 92,435.00	\$ -	\$ 403.00	\$ 92,838.00
\$ 41,680.00	\$ 35,000.00	\$ 236.00	\$ 76,916.00
\$ 141,340.00	\$ -	\$ 625.00	\$ 141,965.00
\$ 75,160.00	\$ -	\$ 625.00	\$ 75,785.00
\$ 57,910.00	\$ -	\$ 625.00	\$ 58,535.00



GRANT FRONTIER / OVERLAND POND AREAS CONCEPTUAL

DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT

ROUTING NO. 13 FEA 41026

CONTRACT

STATE:

State of Colorado for the use & benefit of the
Department of Public Health and Environment
Hazardous Materials and Waste Management Div
4300 Cherry Creek Drive South
Denver, CO 80246-1530

CONTRACTOR:

The Greenway Foundation
5299 DTC Blvd., Suite 710
Greenwood Village, CO 80111

CONTRACT MADE DATE:

01/28/2013

CONTRACTOR ENTITY TYPE:

Colorado Nonprofit Corporation

PO/SC ENCUMBRANCE NUMBER:

PO FEA HAZ1341026

BILLING STATEMENTS RECEIVED:

Monthly

TERM:

This contract shall be effective upon approval
by the State Controller, or designee, or on
02/01/2013, whichever is later. The contract
shall end on 12/31/2015.

STATUTORY AUTHORITY:

25 CFR 16-104.7

CONTRACT PRICE NOT TO EXCEED:

\$ 1,743,597.00

FEDERAL FUNDING DOLLARS: \$ 0.00

STATE FUNDING DOLLARS: \$ 1,743,597.00

PROCUREMENT METHOD:

Vendor Specified by NRD Trustee Resolution

MAXIMUM AMOUNT AVAILABLE PER FISCAL YEAR:

Phase 1: \$0.00

Phase 2: \$1,743,597.00

Covering FY13 – FY16

BID/RFP/LIST PRICE AGREEMENT NUMBER:

Not Applicable

LAW SPECIFIED VENDOR STATUTE:

Not Applicable

PRICE STRUCTURE:

Cost Reimbursement

STATE REPRESENTATIVE:

Susan Newton
CDPHE – HMWMD – B2
4300 Cherry Creek Drive South
Denver, CO 80246-1530

CONTRACTOR REPRESENTATIVE:

Jeff Shoemaker
The Greenway Foundation
5299 DTC Blvd., Suite 710
Greenwood Village, CO 80111

SCOPE OF WORK:

Provide funding for the construction activities within the South Platte River Environmental
Restoration Project within the Grand Frontier and Overland Reach of the South Platte River in
Denver as approved by the Natural Resource Trustees.

EXHIBITS:

The following exhibits are hereby incorporated:

- Exhibit A - Additional Provisions (and any of its Attachments; e.g., A-1, A-2, etc.)
- Exhibit B - Statement of Work (and any of its Attachments; e.g., B-1, B-2, etc.)
- Exhibit C - Option Letter

COORDINATION:

The State warrants that required approval, clearance and coordination has been accomplished from and with appropriate agencies.

APPROVAL:

In no event shall this contract be deemed valid until it shall have been approved by the State Controller or his/her designee.

PROCUREMENT:

This contractor has been selected in accordance with the requirements of the Colorado Procurement Code.

PRICE PROVISIONS:

Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services and/or deliverables. The liability of the State at any time for such payments shall be limited to the encumbered amount remaining of such funds.

Authority exists in the laws and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment.

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

GENERAL PROVISIONS

The following clauses apply to this contract. In some instances, these general clauses have been expanded upon in other sections/exhibits of/to this contract. To the extent that other provisions of the contract provide more specificity than these general clauses, the more specific provision shall control.

1. Governmental Immunity. Notwithstanding any other provision to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et.seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 et.seq., CRS and the risk management statutes, Section 24-30-1501, et.seq., CRS as now or hereafter amended.
2. Available Funds-Contingency
 - a. Available Funds. The State is prohibited by law from making commitments beyond the term of the State's current fiscal year; therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the available amount remaining of such encumbered funds. In the event that state funds become unavailable for this Contract, as determined by the State, the State may immediately terminate this Contract or amend it accordingly.
 - b. Federal Funds Contingency. Payment pursuant to this contract, if in federal funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. In the event that said funds, or any part thereof, become unavailable, as determined by the State, the State may immediately terminate this contract or amend it accordingly without liability including liability for termination costs.
3. Billing Procedures. The State shall establish billing procedures and requirements for payment due the Contractor in providing performance pursuant to this contract. The Contractor shall comply with the established billing procedures and requirements for submission of billing statements. The State shall comply with CRS 24-30-202(24) when paying vendors upon receipt of a correct notice of the amount due for goods or services provided hereunder.
4. Exhibits - Interpretation. Unless otherwise stated, all referenced exhibits are incorporated herein and made a part of this contract. Unless otherwise stated, the terms of this contract shall control over any conflicting terms in any of its exhibits. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) the Special Provisions of this Contract; 2) the Additional Provisions **Exhibit A** and its attachments if included; 3) the Contract (other than the Special Provisions); 4) the RFP if applicable and attached; 5) the Scope/Statement of Work **Exhibit B** and its attachments if included; 6) the Contractor's proposal if applicable and attached; 7) other exhibits/attachments in their order of appearance.

The conditions, provisions, and terms of any RFP attached hereto, if applicable, establish the minimum standards of performance that the Contractor must meet under this Contract. If the Contractor's Proposal, if attached hereto, or any attachments or exhibits thereto, or the Scope/Statement of Work Exhibit B, establish or create standards of performance greater than those set forth in the RFP, then the Contractor shall also meet those standards of performance under this Contract.

5. Notice and Representatives. For the purposes of this contract, the representative for each party is as designated herein. Any notice required or permitted may be delivered in person or sent by registered or certified mail,

return receipt requested, to the party at the address provided, and if sent by mail it is effective when posted in a U.S. Mail Depository with sufficient postage attached thereto. Notice of change of address or change of representative shall be treated as any other notice.

6. Contractor Representations - Qualifications/Licenses/Approvals/Insurance. The Contractor certifies that, at the time of entering into this contract, it and its agents have currently in effect all necessary licenses, certifications, approvals, insurance, etc. required to properly provide the services and/or supplies covered by this contract in the state of Colorado. Proof of such licenses, certifications, approvals, insurance, etc. shall be provided upon the State's request. Any revocation, withdrawal or non-renewal of necessary license, certification, approval, insurance, etc. required for the Contractor to properly perform this contract, shall be grounds for termination of this contract by the State.

Contractor certifies that it is qualified to perform such services or provide such deliverables as delineated in this contract.

7. Legal Authority. The Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and bind the Contractor to its terms. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.

8. Insurance – Contractor. During the term of this contract, and any renewals or extensions thereof, Contractor, and its Subcontractors shall, and hereby agrees to, obtain, maintain, and keep in force at all times during the term of this contract an insurance policy or policies, issued by a company authorized to do business in Colorado, in the kinds and minimum amounts, and under the conditions specified below.

- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of their employment.

Self-insured

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or covering premises operations, fire damage, independent contractors, products and operations, blanket contractual liability, personal injury, and advertising liability with the following conditions:

1. Occurrence; 2. General aggregate; 3. \$1,000,000 products and completed operations aggregate; and 4. \$1,000,000 any one fire.

If the aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
- d. The State of Colorado shall be named as an additional insured on the Commercial General Liability policy. Coverage required of the contract will be primary over any insurance or self-insurance program carried by Contractor or the State of Colorado.
- e. The insurance shall include provisions preventing cancellation or non-renewal without at least thirty (30) calendar days prior written notice to the State by certified mail.
- f. The Contractor will require all insurance policies in any way related to the contract and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights

of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

- g. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
- h. The Contractor shall provide certificates showing insurance coverage required by this contract to the State by the effective date of the contract. No later than fifteen (15) calendar days prior to the expiration date of any such coverage, the Contractor shall deliver to the State certificates of insurance evidencing renewals thereof. At any time upon request in writing, and the Contractor shall thereupon provide to the State, evidence satisfactory to the State of compliance with the requirements of the State may apply to the contract.
- i. The Contractor shall provide such other insurance coverages as may be specifically requested by the State.

*exclusive
property
confidential*

- 9. Rights in Data, Documents and Computer Software or Other Intellectual Property including without limitation, databases, software, documents, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this contract shall be the exclusive property of the State. Unless otherwise stated, all such material shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this contract without the prior written consent of the State. All documentation, accompanying the intellectual property or otherwise, shall comply with the State requirements which include but is not limited to all documentation being in a paper, human readable format which is useable by one who is reasonably proficient in the given subject area. Software documentation shall be delivered by Contractor to the State that clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages. The documentation shall contain source code which describes the program logic, relationship between any internal functions, and identifies the disk files which contain the various parts of the code. Files containing the source code shall be delivered and their significance to the program described in the documentation. The documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated. The Contractor warrants that the delivered software will be sufficiently descriptive to enable maintenance and modification of the software. The State's ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

If any material is produced under this Contract and the parties hereto mutually agreed that said material could be copyrighted by Contractor or a third party, then the State, and any applicable federal funding entity, shall, without additional cost, have a paid in full, irrevocable, royalty free, and non-exclusive license to reproduce, publish, or otherwise use, and authorize others to use, the copyrightable material for any purpose authorized by the Copyright Law of the United States as now or hereafter enacted. Upon the written request of the State, the Contractor shall provide the State with three (3) copies of all such copyrightable material.

- 10. Confidential or Proprietary Information. Subject to the Public (Open) Records Act, section 24-72-101, *et seq.*, C.R.S., as amended, if the Contractor obtains access to any records, files, or other information of the State in connection with, or during the performance of, this Contract, then the Contractor shall keep all such records, files, or other information confidential and shall comply with all laws and regulations concerning the confidentiality of all such records, files, or information to the same extent as such laws and regulations apply to the State. Any breach of confidentiality by the Contractor, or third party agents of the Contractor, shall constitute good cause for the State to cancel this Contract, without liability to the State. Any State waiver of an alleged breach of confidentiality by the Contractor, or third party agents of the Contractor, does not constitute a waiver of any subsequent breach by the Contractor, or third party agents of the Contractor. Contractor shall protect the confidentiality of all information used, held, created or

received in connection with this Contract and shall insure that any subcontractors or agents of Contractor protect the confidentiality of all information under this Contract. Contractor shall use and disclose confidential information only for purposes of this Contract and for the operation and administration of the Contractor. Contractor shall implement appropriate safeguards as are necessary to prevent the use of disclosure of confidential information and shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards for the electronic transmission of confidential information which are appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. Contractor shall promptly notify the State if Contractor breaches the confidentiality of any information covered by this Contract.

The Contractor must identify to the State the information that it considers confidential or proprietary. This is a continuing obligation. Confidential or proprietary information for the purpose of this paragraph is information relating to Contractor's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, information which is in the public domain, or information which is or could have been acquired/developed independently by the State or a third party. Notwithstanding the foregoing, the State shall not be in violation of its obligations under this section should it disclose confidential information if such disclosure is, in the sole opinion of the State's legal counsel, required by applicable law and/or legal process (including, but not limited to, disclosures required pursuant to the Colorado (Open) Public Records Act, sections 24-72-201, *et. seq.*, C.R.S., as now or hereafter amended). The State shall endeavor to provide notice to the Contractor, as promptly as practicable under the circumstances, of any demand, request, subpoena, court order or other action requiring such disclosure, in order to afford Contractor the opportunity to take such lawful action as it deems appropriate to oppose, prevent or limit the disclosure, solely at its own instance and expense; but nothing herein shall be construed to require the State to refuse or delay compliance with any such law, order or demand.

11. Records Maintenance, Performance Monitoring & Audits. The Contractor shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the program/project or the delivery of services under this contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Contractor records.

The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with this contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, guardian, or the State. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its agents, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its agents, if any, with a copy or written explanation of these requirements before access to confidential data is permitted.

The C
ins.
year
terms
immed.

6 yrs.

eral government or their designee, to perform audits and/or
ime during the term of this contract and for a period of six (6)
, to assure compliance with the state or federal government's
mance. Any amounts the State paid improperly shall be
e recovered in accordance with other remedies.

All such records, documents, communications, and other materials shall be the property of the State unless otherwise specified and shall be maintained by the Contractor in a central location as custodian for the State on behalf of the State, for a period of six (6) years from the date of final payment or submission of the final federal expenditure report under this contract, unless the State requests that the records be retained for a longer period, or until an audit has been completed with the following qualification. If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the six (6) year period, or if audit findings have not been resolved after a six (6) year period, the materials shall be retained until the resolution of the audit findings.

The Contractor shall permit the State, any other governmental agency authorized by law, or an authorized designee thereof, in its sole discretion, to monitor all activities conducted by the Contractor pursuant to the terms of this contract. Monitoring may consist of internal evaluation procedures, reexamination of program data, special analyses, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

12. Taxes. The State, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. 39- 26-114(a) and 203, as amended]. The Contractor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.
13. Conflict of Interest. During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this contract.

Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor's fully performing his/her obligations to the State under the terms of this contract, without the prior written approval of the State.

In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

Further, the Contractor, and its subcontractors or subgrantees, shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of the Contractor, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of the employee's immediate family;
- c. The employee's partner; or
- d. An organization which employees, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. The Contractor's, subcontractor's, or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor's potential contractors, or parties to subagreements.

14. Inspection and Acceptance (Services) and Contractor Warranty. The State reserves the right to inspect services provided under this contract at all reasonable times and places during the term of the contract. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with contract requirements, the State may require the contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the State may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

Contractor warrants that all supplies furnished under this contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Contractor shall, at its option, repair or replace any supplies that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the State all written manufacturer warranties relating to the supplies and to deliver such written warranties to the State.

15. Adjustments in Price. Adjustments to contract prices are allowable only so long as they are mutually agreeable by the parties and so long as they are included within a contract amendment made prior to the effective date of the price adjustments and made pursuant to the State of Colorado Fiscal Rules, signed by the parties, and approved by the State Controller or designee. The Contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data Section of the Colorado State Procurement Rules. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:
 - a. By agreement on a fixed-price adjustment;
 - b. By unit prices specified in the contract;
 - c. In such other manner as the parties may mutually agree; or
 - d. In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.
16. Contract Modifications. This contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. If either the State or the Contractor desires to modify the terms and conditions of this Contract, then the parties shall execute a standard written amendment to this Contract initiated by the State. The standard written amendment must be executed and approved in accordance with all applicable laws and rules by all necessary parties including the State Controller or delegate.
17. Litigation. The Contractor shall within five (5) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency notify the State that it is a party defendant in a case which involves services provided under this contract. The Contractor shall deliver copies of such document(s) to the State's Executive Director. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.
18. Notice of Breach and Dispute Resolution: If the State or the Contractor believes in good faith that the other party has failed to timely complete a deliverable, or has otherwise committed a material breach of this Contract, then the non-breaching party shall notify the breaching party in writing of the alleged breach within ten (10) business days of: 1) the date of the alleged breach if the non-breaching party is aware of the breach at the time it occurs; or 2) the date that the non-breaching party becomes aware of the breach.

Upon receipt of written notice of an alleged breach of the Contract, the breaching party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, within which to cure the alleged breach or to notify the non-breaching party in writing of the breaching party's belief that a material breach of this Contract has not occurred. Failure of the breaching party to cure or respond in writing within the above time period shall result in the non-breaching party being entitled to pursue any and all remedies available at law or in equity.

Except as herein specifically provided otherwise, disputes concerning the performance of this contract which cannot be resolved by the designated contract representatives shall be referred in writing to a senior departmental management staff designated by the department and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

The Contractor and its sureties shall be liable for any damage to the State resulting from the Contractor's breach, whether or not the Contractor's right to proceed with the work is terminated. The State reserves the right, in its sole discretion, to determine whether or not to accept substituted performance tendered by the Contractor or the Contractor's sureties and acceptance is dependent upon completion of all applicable inspection procedures.

19. Remedies: In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Contractor. Without limitation, these remedial actions include:
- a. withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
 - b. require the vendor to take necessary action to ensure that the future performance conforms to contract requirements; and/or
 - c. request the removal from work on the contract of employees or agents of Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
 - d. deny payment for those services or obligations which have not been performed and which due to circumstances caused by Contractor cannot be performed, or if performed would be of no value to the State; denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
 - e. suspend Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
 - f. modify or recover payments (from payments under this contract or other contracts between the State and the vendor as a debt due to the State) to correct an error due to omission, error, fraud and/or defalcation; and/or
 - g. terminate the contract.

These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

20. Termination.

- a. Termination for Default. The State may terminate the contract for cause. In the event this contract is terminated for cause, the State will only reimburse the Contractor for accepted work or deliverables received up to the date of termination. In the event this contract is terminated for cause, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Contractor is determined. If it is determined that the Contractor was not in default then such termination shall be treated as a termination for convenience as described herein. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this contract.
- b. Termination for Convenience. The State shall have the right to terminate this contract at any time the State determines necessary by giving the Contractor at least twenty (20) calendar days prior written notice. If notice is so given, this contract shall terminate on the expiration of the specified

time period, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.

In the event that the State terminates this contract under the Termination for Convenience provisions, the Contractor is entitled to submit a termination claim within ten (10) days of the effective date of termination. The termination claim shall address and the State shall consider paying the following costs:

- I. the contract price for performance of work, which is accepted by the State, up to the effective date of the termination;
- II. reasonable and necessary costs incurred in preparing to perform the terminated portion of the contract;
- III. reasonable profit on the completed but undelivered work up to the date of termination;
- IV. the costs of settling claims arising out of the termination of subcontracts or orders, not to exceed 30 days pay for each subcontractor;
- V. reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the contract amount reduced by amounts previously paid by the State to the Contractor.

- c. Immediate Termination. This contract is subject to immediate termination, in whole or in part, by the State without further liability in all of the following circumstances:

- I. In the event that the State determines that the health, safety, or welfare of persons receiving services may be in jeopardy;
- II. Upon verifying that the Contractor has engaged in or is about to participate in fraudulent or other illegal acts; or
- III. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract.

21. Stop Work Order. Upon written approval by the State Procurement Officer or delegee, the State may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the Contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, as legally extended, the State Procurement Officer or delegee shall either:

- a. Cancel the stop work order; or
- b. Terminate the work covered by such order; or
- c. Terminate the contract.

If a stop work order issued under this clause is properly canceled, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified accordingly in writing pursuant to the terms of this contract dealing with contract modifications, if:

- a. The stop work order results in increased time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

- b. The Contractor asserts claim for such an adjustment within thirty (30) days after the end of the period of work stoppage.

If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

- 22. Venue. The parties agree that exclusive venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

- 23. Understanding of the Parties.

- a. Complete Integration. This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.
- b. Severability. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
- c. Binding Agreement. Except as herein specifically provided otherwise, it is expressly understood and agreed that this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. All rights of action relating to enforcement of the terms and conditions shall be strictly reserved to the State and the named Contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.
- d. Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
- e. Continuing Obligations. The State and the Contractor's obligations under this contract shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.
- f. Assignment and Change In Ownership, Address, Financial Status. Except as herein specifically provided otherwise, the rights, duties and obligations of the Contractor arising hereunder cannot be assigned, delegated, subgranted or subcontracted except with the express prior written consent of the State, which consent shall not be unreasonably withheld. In the case of assignment or delegation, Contractor and the State shall execute the standard State novation agreement prior to the assignment or delegation being effective against the State. The subgrants and subcontracts permitted by the State shall be subject to the requirements of this contract. The Contractor is responsible for all subcontracting arrangements, delivery of services, and performance of any subgrantor or subcontractor. The Contractor warrants and agrees that any subgrant or subcontract, resulting from its performance under the terms and conditions of this contract, shall include a provision that the said subgrantor or subcontractor shall abide by the terms and conditions hereof. Also, the Contractor warrants and agrees that all subgrants or subcontracts shall include a provision that the subgrantor or subcontractor shall indemnify and hold harmless the State. The subgrantors or subcontractors must be certified to work on any equipment for which their services are obtained.

This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller – as distinguished from the State Controller – and the Contractor assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

The Contractor is required to formally notify the State prior to, or if circumstances do not allow prior notification then immediately following, any of the following:

- I. change in ownership;
 - II. change of address;
 - III. the filing of bankruptcy.
- g. Force Majeure. Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure.” As used in this contract “force majeure” means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions, strikes or other labor disputes; freight embargoes; or unusually severe weather.
- h. Changes In Law. This contract is subject to such modifications as may be required by changes in applicable federal or State law, or their implementing rules, regulations, or procedures. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in the form of a written amendment to this Contract that has been previously executed and approved in accordance with applicable law.
- i. Media or Public Announcements. Unless otherwise provided for in this Contract, the Contractor shall not make any news release, publicity statement, or other public announcement, either in written or oral form that concerns the work provided under this Contract, without the prior written approval of the State. The Contractor shall submit a written request for approval to the State no less than ten (10) business days before the proposed date of publication. The State shall not unreasonably withhold approval of the Contractor’s written request to publish. Approval or denial of the Contractor’s request by the State, shall be delivered to the Contractor in writing within six (6) business days from the date of the State’s receipt of Contractor’s request for approval.

If required by the terms and conditions of a federal or state grant, the Contractor shall obtain the prior approval of the State and all necessary third parties prior to publishing any materials produced under this Contract. If required by the terms and conditions of a federal or state grant, the Contractor shall also credit the State and all necessary third parties with assisting in the publication of any materials produced under this Contract. It shall be the obligation of the Contractor to inquire of the State as to whether these requirements exist and obtain written notification from the State, as Contractor deems appropriate.

24. Intellectual Indemnity. Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s), or any part thereof, supplied by Contractor under this agreement constitutes infringement of any patent, copyright, trademark, or other proprietary rights, provided that the State gives Contractor written notice within twenty (20) days of receipt by the State of such notice of such claim or suit, provides assistance and cooperation to Contractor in connection with such action, and Contractor has sole authority to defend or settle the claim. Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense.

Should the State not choose to participate, Contractor shall keep the State advised of any settlement or defense.

Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State for all liability incurred by the State as a result of such infringement. Contractor shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction, awarded or agreed to by Contractor regarding such claims or suits.

If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, Contractor, after consultation with the State, shall do one of the following at Contractor's expense:

- a. produce for the State the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof; or
- b. replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and State specifications; or
- c. suitably modify the products, or part thereof.

Except as otherwise expressly provided herein, Contractor shall not be liable for any costs or expenses incurred without its prior written authorization.

Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon:

- a. the use of an altered release if Contractor had not consented to the alteration; or
- b. the combination, operation or use of the product(s) with programs or data which were not furnished by Contractor, if such infringement would have been avoided if the programs or data furnished by persons or entities other than Contractor had not been combined, operated or used with the product(s); or
- c. the use of product(s) on or in connection with equipment or software not permitted under this contract if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.

25. Conformance with Law. If this Contract involves federal funds or compliance is otherwise federally mandated, the Contractor and its agent(s) shall at all times during the term of this contract strictly adhere to all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Without limitation, these federal laws and regulations include:

- a. Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, A-133, and The Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable;
- b. the "Hatch Act" (5 U.S.C. 1501-1508) and Public Law 95-454, Section 4728. These federal statutes declare that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs;
- c. the "Davis-Bacon Act" (40 U.S.C. 276A-276A-5). This federal Act requires that all laborers and mechanics employed by contractors or subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor;
- d. 42 U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794. These federal Acts mandate that no person shall, on the grounds of race, color, national origin, age, or disability, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by federal funds;

- e. the "Americans with Disabilities Act" (Public Law 101-336; 42 U.S.C. 12101, 12102, 12111 - 12117, 12131 - 12134, 12141 - 12150, 12161 - 12165, 12181 - 12189, 12201 - 12213 and 47 U.S.C. 225 and 47 U.S.C. 611);
 - f. if the Contractor is acquiring an interest in real property and displacing households or businesses in the performance of this Contract, then the Contractor is in compliance with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act", as amended, (Public Law 91-646, as amended, and Public Law 100-17, 101 Stat. 246 - 256);
 - g. when applicable, the Contractor shall comply with the provisions of the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (Common Rule);
 - h. Section 2101 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, which prohibits the use of federal money to lobby the legislative body of a political subdivision of a State; and
 - i. If the Contractor is a covered entity under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d - 1320d-8, the Contractor shall comply with applicable HIPAA requirements. **If Contractor is a business associate under HIPAA, Contractor hereby agrees to, and has an affirmative duty to, execute the State's current HIPAA Business Associate Agreement. In this case, Contractor must contact the State's representative and request a copy of the Business Associate Agreement, complete the agreement, have it signed by an authorized representative of the Contractor, and deliver it to the State.**
 - j. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required there under. This Act is also referred to as FFATA.
26. Contractor Affirmation. If this Contract involves federal funds or compliance is otherwise federally mandated, then by signing and submitting this Contract the Contractor affirmatively avers that:
- a. the Contractor is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. 701 et seq.);
 - b. the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; the Contractor shall comply with all applicable regulations pursuant to Executive Order 12549, including, Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. 98.510 (1990); and,
 - c. the Contractor shall comply with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including, Certification and Disclosure, 29 C.F.R. 93.110(1990).
27. Annual Audits. If the Contractor expends federal funds from all sources (direct or from pass-through entities) in an amount of \$500,000 or more during its fiscal year, then the Contractor shall have an audit of that fiscal year in accordance with Office of Management and Budget (OMB) Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). If the Contractor expends federal funds received from the State in an amount of \$500,000 or more during its fiscal year, then the Contractor shall furnish one (1) copy of the audit report(s) to the State's Internal Audit Office within thirty (30) calendar days after the Contractor's receipt of its auditor's report or nine (9) months after the end of the Contractor's audit period, whichever is earlier. If (an) instance(s) of noncompliance with federal laws and regulations occurs, then the Contractor shall take all appropriate corrective action(s) within six (6) months of the issuance of (a) report(s).
- If the Contractor submits an annual indirect cost proposal to the State for review and approval, then the Contractor's auditor shall audit the proposal in accordance with the requirements of OMB Circulars A-21 (Cost Principles for Educational Institutions), A-87 (Cost Principles for State, Local, and Tribal Governments), or A-122 (Cost Principles for Non-Profit Organizations), whichever is applicable.
28. Holdover. In the event that the State desires to continue the services provided for in this Contract and a replacement contract has not been fully executed by the expiration date of the Contract, this Contract may

be extended unilaterally by the State for a period of up to two (2) months upon written notice to the Contractor under the same terms and conditions of the original Contract including, but not limited to, prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.

29. Survival of Certain Contract Terms. Notwithstanding anything in this contract to the contrary, the parties understand and agree that all terms and conditions of this contract which may require continued performance, compliance, or effect beyond the termination date of the contract and shall survive such termination date and shall be enforceable by the State as provided herein in the event of failure to perform or comply by the Contractor.
30. Indemnification. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
31. **STATEWIDE CONTRACT MANAGEMENT SYSTEM** *[This section shall apply when the Effective Date is on or after July 1, 2009 and the maximum amount payable to Contractor hereunder is \$100,000 or higher]*

By entering into this Contract, Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be evaluated in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Statement of Project of this Contract. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and a final review and rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation determine that Contractor demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Public Health and Environment and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (ii) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.



SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]

Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

This page left intentionally blank.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR:

**THE GREENWAY FOUNDATION
(a nonprofit corporation)**

Legal Name of Contracting Entity



Signature of Authorized Officer

JEFF SHOEMAKER

Print Name of Authorized Officer

EXE. DIR.

Print Title of Authorized Officer

STATE OF COLORADO:

**JOHN W. HICKENLOOPER,
GOVERNOR**

By: _____
For Executive Director

Department of Public Health and Environment

Department Program Approval:

By: _____

**LEGAL REVIEW
John W. Suthers, Attorney General**

By: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER:
David J. McDermott, CPA**

By: _____

Date _____

This page left intentionally blank.

ADDITIONAL PROVISIONS
To Contract Dated 01/28/2013 - Contract Routing Number 13 FEA 41026

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

1. This Contract contains state funds.

The state funds come from the Natural Resource Damage (NRD) Recovery Fund (NRD Fund) authorized by C.R.S. section 25-16-104.7, as amended. The purpose of the NRD Fund is to provide for the restoration, replacement, or acquisition of natural resources which have been injured, destroyed, or lost as a result of the release of hazardous substances (hereinafter collectively referred to as "Restoration"). The NRD Funds received by the state and federal agencies for damages in the Shattuck Site area are to be used for the Restoration of and improvement of natural resources damaged or lost because of the operations of the g operations in the area.

al agencies formed a combined Work Group and issued a Solicitation for Proposals in ough the Attorney General's Office. The Work Group consulted with and held public determine the preferred activities that could be funded in the area. The Contractor ved approval for the accomplishment of several restoration and improvement projects the South Platte River in the affected area. The NRD Trustees' Resolution is attached nt A-1 and incorporated by this reference.

provisions in this Contract are for the express purpose of implementation and construction of the final design. As part of Phase 1 (See ¶3 below), the Contractor is responsible for securing the funding necessary to produce the final design documents, permitting and pre-construction costs.

The Contractor shall be allowed to use the funds in this Contract as the basis for matching funds in order to secure additional funding sources.

3. **Phased Contract**

This Contract is a two-phase contract. Phase 1 covers all activities related to securing required additional funds, design and pre-construction. Phase 1 does not include any funding. Phase 2 covers construction related activities, e.g. actual construction, construction oversight, etc., and includes all of the funding in this contract. The commencement of Phase 2 is subject to the option of the State, as specified below.

The State may require the Contractor to begin performance on the next contract phase as outlined in the Statement of Work in Exhibit B and at the same terms and same conditions stated in the contract. If the State exercises this option, it will provide written notice to the Contractor at least 30 days prior to the end of the current phase in a form substantially equivalent to **Exhibit C**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original contract.

The Option Letter shall be accompanied by a Budget and Construction Schedule that is agreed upon between the Contractor and the HMWMD Project Officer, as provided and described in the Statement of Work, Exhibit B. The agreed upon Budget and Construction Schedule shall be included in all construction subcontracts that result from the final design documents.

Construction activities taking place prior to execution of the Option Letter for Phase 2 will not be reimbursed.

4. Contractor understands and accepts that the total value of this Contract is a not-to-exceed amount. Contractor will not be reimbursed beyond the stated amount of this Contract. Further, Contractor agrees that payments are limited by the agreed upon amounts of the Budget and Construction Schedule, and therefore may not reach the Contract value.

5. To receive compensation under this Contract, the Contractor shall submit a signed **Monthly Reimbursement Invoice Form**. The Reimbursement Invoice Form must be submitted within **sixty (60)** calendar days of the end of the billing period for which services were rendered. Expenditures shall be in accordance with the Statement of Work attached hereto as **Exhibit B** and incorporated herein and the associated Budget and Construction Schedule.

The Contractor shall provide the following documentation with the completed invoice; (1) copies of all time sheets for work to be reimbursed, (2) copies of all invoices from Contractor's subcontractors, (3) copies of all materials receipts, (4) other reasonable materials as requested by the Hazardous Materials and Waste Management Division (HMWMD) Project Officer (or other designated State Representative) necessary to support a request for reimbursement, and (5) Phase 2 Monthly Progress Reports. This supporting documentation shall be submitted with the completed CDPHE Reimbursement Invoice Form and sent to:

Susan Newton
HMWMD Project Officer
HMWMD – RP – B2
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

To be considered for reimbursement, Reimbursement Invoice Forms pursuant to this Contract must be received within a reasonable time after the period for which reimbursement is requested, but in no event any later than **sixty (60)** calendar days after the relevant performance has occurred. Final Reimbursement under this Contract must be received by the State within a reasonable time after the expiration or termination of this Contract; but in any event no later than **sixty (60)** calendar days from the effective expiration or termination date of this Contract.

Unless otherwise provided for in this Contract, "Local Match", if any, shall be included on all invoices as required by funding source.

6. Time Limit for Acceptance of Deliverables
- a. Evaluation Period. The State shall have **thirty (30)** calendar days from the date a deliverable is delivered to the State by the Contractor to evaluate that deliverable, except for those deliverables that have a different time negotiated by the State and the Contractor.
 - b. Notice of Defect. If the State believes in good faith that a deliverable fails to meet the design specifications for that particular deliverable, or is otherwise deficient, then the State shall notify the Contractor of the failure or deficiencies, in writing, within **ten (10)** calendar days of: 1) the date the deliverable is delivered to the State by the Contractor if the State is aware of the failure or deficiency at the time of delivery; or 2) the date the State becomes aware of the failure or deficiency. The above time frame shall apply to all deliverables except for those deliverables that have a different time negotiated by the State and the Contractor in writing pursuant to the State's fiscal rules.
 - c. Time to Correct Defect. Upon receipt of timely written notice of an objection to a completed deliverable, the Contractor shall have a reasonable period of time, not to exceed **thirty (30)** calendar days, to correct the noted deficiencies.
7. Health Insurance Portability and Accountability Act (HIPAA) Business Associate Determination. The State has determined that this contract does not constitute a Business Associate relationship under HIPAA.

EXHIBIT A

8. **Public Notices.** All news releases, press releases or other formal announcements pertaining to this Contract and its activities shall acknowledge that funding is provided by the Natural Resource Damage Fund of the State of Colorado and requires the approval by CDPHE prior to release.
9. **Prohibition of Lobbying.** The Contractor shall not use funds provided under this Contract for the purpose of lobbying as defined in C.R.S. 24-6-301(3.5) (a).
10. **Subcontractor Agreements.** The Contractor may invoke subcontractor agreements for the performance of some, or all, of the services provided the procurement follows an open, transparent, and competitive process. However, in all cases Contractor shall remain solely responsible to CDPHE for the timely and complete performance of all project deliverables. The Contractor's subcontractors, if any, shall be subject to all terms and conditions of this Contract. Contractor shall notify the HMWMD Project Officer of the identity of any subcontract agreements and the nature of the work to be undertaken prior to commencement of work by the subcontractor.

**COLORADO NATURAL RESOURCE TRUSTEE
RESOLUTION October 13, 2011
CONCERNING GREENWAY FOUNDATION'S PROPOSAL FOR
ADMINISTRATION OF SHATTUCK CHEMICAL NATURAL RESOURCE
DAMAGES FUNDS**

WHEREAS, the Colorado Natural Resource Trustees are responsible for the management and direction of Colorado's natural resource damages program;

WHEREAS, the Shattuck Chemical Company ("Shattuck") natural resource damages ("NRDs") settlement established a fund of approximately \$1.7 million for projects that restore, replace or acquire the equivalent of the resources injured near the Shattuck site;

WHEREAS, the Greenway Foundation, on behalf of the Overland Park Neighborhood association, the South Platte River Riparian Integrity Group ("SPRRING"), and Denver City Council members, has proposed a comprehensive plan for administering the Shattuck NRDs settlement funds plus matching funds;

WHEREAS, the plan presented by the Greenway Foundation requests the Shattuck NRDs money to restore riparian areas and habitat across an approximately two mile stretch of the South Platt, all within 2 miles of the Shattuck site;

NOW THEREFORE, the Colorado Natural Resource Trustees resolve as follows:

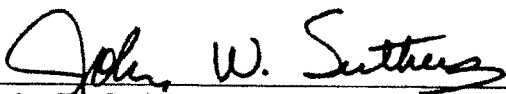
The Trustees do hereby approve the Greenway Foundation ~~the~~ as the recipient of the approximately \$1.7 million Shattuck NRDs funds pursuant to the following terms and conditions:

- (1) The funds will be used only for the environmental restoration projects outlined in the Greenway Foundation "Request for NRDs Funds" document;
- (2) The Greenway Foundation will continue to consult with Trustee staff during development of construction documents;
- (3) The Greenway Foundation must show proof of a minimum 1 to 1 match of the NRDs funds before the funds will be remitted;
- (4) The funds will be available on a reimbursement basis and remitted pursuant to the State's NRDs fund distribution policy and standard State contracting procedures;

COLORADO NATURAL RESOURCE TRUSTEE RESOLUTION, October 13, 2011, CONCERNING GREENWAY FOUNDATION'S PROPOSAL FOR ADMINISTRATION OF SHATTUCK CHEMICAL NATURAL RESOURCE DAMAGES FUNDS

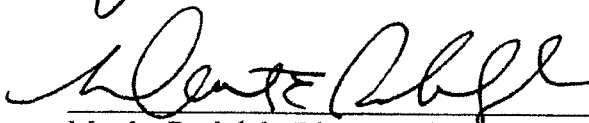
(5) The Greenway Foundation shall provide periodic updates to the Trustees on the progress of the restoration projects;

(6) This approval is valid for five years.



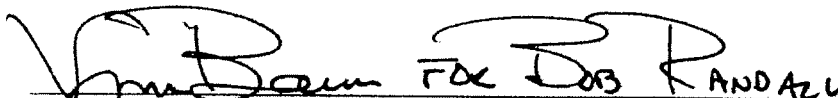
John W. Suthers, Attorney General, State of Colorado

10/13/2011
Date



Martha Rudolph, Director of Environmental Programs,
Colorado Department of Public Health and Environment

10/13/2011
Date



Bob Randall, Deputy Director, ~~Division of Reclamation,~~
~~Mining and Safety,~~ Colorado Department of Natural Resources

10/13/2011
Date

STATEMENT OF WORK
To Contract Dated 01/28/2013 - Contract Routing Number 13 FEA 41026

These provisions are to be read and interpreted in conjunction with the provisions of the Contract specified above.

I. Project Description:

The funds will be used to improve the riparian flood plain and eliminate non-native and invasive species within the project reach, construct emergent benches within the channel banks, construct in channel aquatic habitat structures, and modify existing grade control structures to enhance habitat opportunities to increase biological diversity within this reach of the South Platte River (hereinafter "the Project").

It is the express intent of the parties to create a contracting vehicle through which the parties may enter into an agreement for the request, purchase and delivery of technical services involved in providing approved activities for this Contract. The activities are subject to the review and approval of the Natural Resource Trustees Council established for this purpose in accordance with the stipulations identified in the settlement of the U.S. District Court Case Number 01-D-2402(OES), August 2002, between the State of Colorado and the United States Environmental Protection Agency and the various defendants.

II. Performance Requirements/Deliverables:

This Contract is a two phase contract. Phase 1 covers all activities related to fund raising, design and pre-construction. Phase 1 does not include any funding. Phase 2 covers construction related activities and includes all of the funding in this contract.

Phase 1

1. Phase 1 activities are for the identification of, solicitation and obtaining additional funding for the Project as required by the Colorado Natural Resource Trustee Resolution, **Attachment A-1**. The Contractor may use these additional funds to support activities in either Phase of this Contract. The Contractor is required to provide a written quarterly report to the HMWMD Project Officer concerning the funding activities, status and funding-sources.

The additional funds required by the Colorado Natural Resource Trustee Resolution in **Attachment A-1**, are a match to the NRD Funds provided by this Contract. Accordingly, the Contractor, "must show proof of a minimum 1 to 1 match of the NRDs funds before the funds will be remitted." In no event shall the minimum matching requirement increase the contract value.

2. The Contractor shall identify and secure additional funding for the design, construction documents and permitting for implementation of the "South Platte River Environmental Restoration Project" proposal submitted by the Contractor to the Trustees in December 2011. The final design documents shall be construction ready and implement the environmental restoration and habitat improvements along the South Platte River from West Harvard Avenues to West Florida Avenue.
3. To initiate discussions for implementation of Phase 2, the Contractor shall provide a written notice to the HMWMD Project Officer that they have: (1) secured the requisite additional funding in Phase 1, (2) completed the final design, and (3) completed the solicitation and procurement of construction services.

The Contractor shall provide or cause to be provided to the HMWMD Project Officer a copy of the 100% construction design with engineers stamp.

Both parties shall jointly develop a Budget and Construction Schedule for Phase 2. The Budget and Construction Schedule shall be developed using the final design to ascertain the applicable construction schedule and construction costs. The Budget and Construction Schedule shall identify the actual work group

elements in the design and construction phase. The Budget and Construction Schedule shall be submitted with the Option Letter, attached hereto as **Exhibit C**, which is necessary to initiate Phase 2.

Construction activities taking place prior to execution of the Option Letter for Phase 2 will not be reimbursed.

Phase 2

4. The Contractor shall provide for the construction and construction oversight of the Project. The Budget and Construction Schedule shall include a cost breakout for significant activities within the four specific reaches, specified below. The Contractor shall insure that all subcontractors are using the same Budget and Construction Schedule. The Contractor provided the conceptual Master Plan to the Colorado Natural Resource Trustees, which provided for activities in four specific reaches:
 - a. Grant Frontier Park
 - b. Florida Avenue Drop Structure Modification
 - c. Pasquinel's Landing
 - d. Overland Park Improvements.

Only activities that support construction in these specific areas will be reimbursed.

5. Phase 2 Reporting

The Contractor is required to submit monthly progress reports. Progress reports shall identify activities performed in the previous period, scheduled activities for upcoming quarter. Project report should contain both narrative activity report as well as financial status summary report. Activities to be reported on include but not limited to:

- a. Construction Activities,
- b. Activities related to community coordination and communication neighborhood organizations impacted by the Project,
- c. Project Completion Report.

6. Meetings

The Contractor is required to participate in meetings as requested by CDPHE and/or the Colorado Natural Resource Trustee Trustees.

III. Monitoring:

CDPHE's monitoring of this Contract for compliance with performance requirements will be conducted throughout the contract period by the HMWMD Project Officer. Methods used will include review of documentation reflective of performance to include progress reports and site visits, inspections, surveys, electronic data, etc. The Contractor's performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

IV. Resolution of Non-Compliance:

The Contractor must be notified by email within 30 calendar days of discovery of a compliance issue. Within 30 calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented by email and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the HMWMD Project Officer and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is/are resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the Remedies section of the General Provisions of this Contract.

OPTION LETTER

Date:	State Fiscal Year:	Option Letter No.	CMS Routing #
--------------	---------------------------	--------------------------	----------------------

1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.

- a. Option to renew only *(for an additional term)*
- b. Change in the amount of goods within current term
- c. Change in amount of goods in conjunction with renewal for additional term
- d. Level of service change within current term
- e. Level of service change in conjunction with renewal for additional term
- f. Option to initiate next phase of a contract

2) **REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:

- a. **For use with Options 1(a-e):** In accordance with Section(s) _____ of the Original Contract routing number _____ between the State of Colorado, Insert Name of Department or Higher Ed Institution, and Contractor's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at a cost/price specified in Section _____, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Identify the Section, Schedule, Attachment, Exhibit etc.
- b. **For use with Option 1(f), please use the following:** In accordance with Section(s) _____ of the Original Contract routing number _____ between the State of Colorado, Insert Name of Department or Higher Ed Institution, and Contractor's Name, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc for the term beginning Insert start date and ending on Insert ending date at the cost/price specified in Section _____
- c. **For use with all Options 1(a-f):** The amount of the current Fiscal Year contract value is increased/decreased by \$ amount of change to a new contract value of Insert New \$ Amt to as consideration for services/goods ordered under the contract for the current fiscal year indicate Fiscal Year. The first sentence in Section _____ is hereby modified accordingly. The total contract value including all previous amendments, option letters, etc. is Insert New \$ Amt.

3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p>STATE OF COLORADO John W. Hickenlooper, GOVERNOR Department of Public Health and Environment</p> <hr/> <p>By: Lisa Ellis, Purchasing & Contracts Unit Director</p> <p>Date: _____</p>	<p>PROGRAM APPROVAL:</p> <p>By: _____</p>
---	--

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
 David J. McDermott, CPA

By: _____

Date: _____



Exhibit E
Scope of Work and Responsibilities
August 20, 2013
Contract Control No. 201310330-00

The following table presents a list of tasks to be performed in the implementation of the RVIP Phase I Project, with responsibility for each task allocated to The Greenway Foundation (TGF) or City and County of Denver (CCD). The tasks are grouped in Design, Pre-Construction and Construction Phases and arranged by TGF Funding Sources. Each task is referenced back to the original TGF Funding Source document (see column titled "Section Citation", which original documents contain a more full statement of the task, which is incorporated by reference herein.

DESIGN PHASE							
GRANT SOURCES							
Name	Location / Project	Stated Purpose for Use of Funds	Section Citation	Tasks	Due Date / Timing	Responsibility	Submitted / Deliverable
CWCB - 30% Design	Overland/Grant-Frontier	Preliminary Design		NA - work is complete and grant is fulfilled			
CWCB - 60-100% Design	Overland/Grant-Frontier	SPR Implementation Project - Final Design	7.A.I	Payment Requests by Task- submit Invoice in State approved format	Monthly	The Greenway Foundation	Payment Request
			Exhibit A	Task 1: Project Management and Meetings	Dec 2012 - Nov 2013	CCD	Kickoff meeting summary, monthly Progress Reports/Invoice; bi-weekly progress meetings and summaries - send to TGF; CCD responsible for 16 total mts.
			Exhibit A	Task 2: Data Acquisition and Field Investigation	Dec 2012 - Feb 2013	CCD	Project Management Plan update, eRoom start-up and maintenance; bi-monthly mtgs with RVCC, CCD and UDOT; TGF responsible for 36 total mts.
			Exhibit A	Task 3: 60% Design Documents	Feb 2013 - May 2013	CCD	Updated project mapping; updated geotechnical report; Monthly Progress Report/Invoice - send to TGF
			Exhibit A	Task 4: 90% Design Documents	May 2013 - August 2013	CCD	Monthly Progress Report/Invoice - send to TGF; 60% design documents
			Exhibit A	Task 5: 100% Design Documents	Aug 2013 - Oct 2013	CCD	Monthly Progress Report/Invoice - send to TGF; 90% design documents
			Exhibit A	Task 6: Floodplain Analysis and Hydraulic Modeling	Feb 2013 - Oct 2013	CCD	Monthly Progress Report/Invoice - send to TGF; Hydraulic models and results, as required, to support UDOT's CDMR effort.
			Exhibit A	Task 7: Permitting	Dec 2012 - Nov 2013	CCD	Monthly Progress Report/Invoice - send to TGF; technical information to UDOT to support its 404 permit application, floodplain development permit, Denver PCO approval, ROW, and other permits required to construct the improvements.
			8.A	Reporting: Evaluation and Review of Grantee's performance and final status of Grantee's obligations	Upon expiration or sooner termination	The Greenway Foundation	
			8.D and 20A	SubGrants: Copies of all SubGrants shall be submitted to CWCB for approval	Apr-13	The Greenway Foundation	CWCB Approval of SubGrantee contract to Denver, Contract Control No. PARKS-201310330-00
9.A-D	Records: Maintain all records, documents, communications, notes and other written materials, electronic media files and communications relating to the Grant	Upon request and available for inspection, Monitoring + Auditing	The Greenway Foundation and CCD	Each organization is to maintain its own documentation.			
PRE-CONSTRUCTION PHASE							
GRANT SOURCES							
Name	Location / Project	Stated Purpose for Use of Funds	Section Citation	Tasks	Due Date / Timing	Responsibility	Submitted / Deliverable
Shattuck - Phase 1	Overland/Grant-Frontier	Identify, solicit and obtain funds; develop budget and schedule for Ph 2; prepare option letter	Exhibit B.II.3	Demonstrate securing of matching funds;	January 2013 - June 2013	The Greenway Foundation	Quarterly reports re fund-raising to CDPHE, copy to CCD.
				Prepare 100% Construction Documents	Aug 2013 - Oct 2013	CCD	100% plans and specifications - send to TGF
				Solicitation and procurement of construction services	Prior to Option Letter	CCD	RFP and contract with CMGC - send to TGF
			Exhibit B.II.3	Develop Budget and Construction Schedule	Prior to Option Letter	CCD	Construction Budget and Construction Schedule - send to TGF
			Exhibit B.II.3	Prepare and submit Option Letter	Prior to construction	The Greenway Foundation	Option Letter
CONSTRUCTION PHASE							
PRIVATE CASH SOURCES							
Name	Location / Project	Stated Purpose for Use of Funds	Section Citation	Tasks	Due Date / Timing	Responsibility	Submitted / Deliverable
DTU	Vanderbilt/Johnson-Habitat	Fisheries and aquatic improvements: channel and bank mods; drop structure mods; in stream structures; access; riparian habitat.		Final Report	Upon completion	The Greenway Foundation	Final Report
				Partial Construction of: bank modification for habitat; access to river for fishing; native riparian habitat	Substantial Completion by June 2015	CCD	Progress report/Invoice demonstrating expenditures for construction of in-river improvements
El Pomar	Johnson-Habitat	Phase One - J-H Outdoor Learning Center		Final Report	Upon completion	The Greenway Foundation	Final Report
				Partial Construction of Outdoor Learning Center	Substantial Completion by June 2015	CCD	Monthly Progress reports/Invoices demonstrating expenditures for construction Outdoor Learning Center
Gates Family Foundation	Johnson-Habitat	Design and Construction of Johnson-Habitat Park		Final Report	Upon completion	The Greenway Foundation	Final Reports
Johnson Foundation	Johnson-Habitat	J-H Outdoor Learning Center		(2) Final Reports	Upon completion	The Greenway Foundation	Final Reports
				Partial Construction of Outdoor Learning Center	Substantial Completion by June 2015	CCD	Progress report/Invoice demonstrating expenditures for construction Outdoor Learning Center
GRANT SOURCES							
Name	Location / Project	Stated Purpose for Use of Funds	Section Citation	Tasks	Due Date / Timing	Responsibility	Submitted / Deliverable
Shattuck - Phase 2	Overland/Grant-Frontier	Improve riparian flood plain; eliminate non-native/invasives; construct emergent benches; construct channel aquatic habitat; modify ex drop structure(s)	Exhibit A.5	Reimbursement Invoice Form	Monthly	The Greenway Foundation	
			Exhibit B.II.4	Construction and construction oversight	For the duration of construction, construction start anticipated date is November 2013	CCD	
			Exhibit B.II.5	Reporting: Construction activities; activities related to community/ neighborhood communications;	Monthly for the duration of construction and/or funding	The Greenway Foundation	Monthly Progress Reports
				Construction of in-river improvements	Substantial Completion by June 2015	CCD	Monthly Progress Report/Invoice - send to TGF, including narrative activity report and financial status summary report.
				Community/neighborhood outreach + communication	As appropriate	CCD	Monthly Progress Report/Invoice - send to TGF
Exhibit B.II.5	Reporting: Project Completion Report	Upon completion	The Greenway Foundation				
Exhibit B.II.5	Monitoring: review of progress reports, site visits, inspections, surveys, electronic data, etc.	At set intervals during performance period	The Greenway Foundation				

Exhibit C

GRANT AGREEMENT

Project Name: The Next Evolution of Denver's South Platte River
Project Completion Date: June 19, 2015
GOCO Contract No.: 12616

PARTIES TO AGREEMENT

Board/GOCO: The State Board of the Great Outdoors Colorado Trust Fund
Grantee: City and County of Denver
Date: June 19, 2012

EXHIBITS

Exhibit A Project Summary
Exhibit B Approved Budget

RECITALS

A. The State Board of the Great Outdoors Colorado Trust Fund (referred to herein as "GOCO" or the "Board") is a political subdivision of the State of Colorado, created by Article XXVII of the Colorado Constitution, adopted at the November, 1992 General Election, which article appropriates a portion of the net proceeds of the Colorado Lottery to GOCO and directs GOCO to invest those proceeds in the State's parks, wildlife, open space and recreational resources.

B. In 2011, GOCO created a statewide grant program, pursuant to which eligible entities could apply for river-based land acquisition and/or developed recreation project grants (the "River Corridors Initiative"). Grantee listed above (the "Grantee") submitted a detailed project application (the "Project Application") which contemplates certain park and trail improvements. The Board approved the park and trail improvement components of Grantee's Project Application on June 19, 2012, as described in GOCO's project summary (the "Project Summary"), attached hereto as Exhibit A, both of which are incorporated herein by reference (the "Project"), subject to the execution of a detailed grant agreement, and subject to the terms and conditions set forth herein. GOCO and Grantee each have on file a copy of the Project Application.

C. The Project Application contains components not included in the attached Project Summary and therefore not included in the Grant covered by this Agreement. Grant funds may be used solely for those components described in the Funding Uses section of the Project Summary.

D. The parties intend this agreement to be the detailed grant agreement required by GOCO (the "Agreement").

NOW, THEREFORE, in consideration of the parties' mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into the terms of this Agreement.
2. **Representations and Warranties of Grantee.**
 - a. Grantee is a City and County, duly organized in accordance with the laws of Colorado and has full and lawful authority to enter into, and comply with the terms of, this Agreement.
 - b. Grantee has provided GOCO with a resolution adopted by Grantee's governing body authorizing Grantee's acceptance of the Grant, subject to the terms and conditions of this Agreement, and designating an appropriate official to sign this Agreement on Grantee's behalf.
 - c. Grantee warrants that it has good and sufficient title to the property or properties on which the Project is to be located (the "Property"). GOCO may require Grantee to provide evidence of its ownership of the Property and encumbrances against the Property satisfactory to GOCO in GOCO's discretion prior to funding.
3. **Grant and Project.** Subject to the terms and conditions set forth in this Agreement, the Board hereby awards to Grantee a sum not to exceed Four Million Six Hundred Thousand Dollars (\$4,600,000) (the "Grant"). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the final plans, specifications, designs and uses approved by the Board.
4. **Project Scope.** The Project consists of three components: the development/redevelopment of Vanderbilt/Johnson-Habitat Parks; the development/redevelopment of Grant Frontier/Overland Parks, and the development/redevelopment of portions of the South Platte Regional Trail (individually, a "Component"). The Board's Grant funds 100% of Grantee's request for the Vanderbilt/Johnson-Habitat (\$1,411,900) and Grant Frontier/Overland (\$1,920,909) parks components; therefore, Grantee shall complete those components as described in the Project Application. The Board's Grant partially funds the Regional Trail component (\$1,267,191); therefore, Grantee shall complete the portions of trail construction presented in the Project budget. Grantee shall not materially modify the Project or the Project budget (attached hereto as Exhibit B, the "Budget") without the prior written approval of the Executive Director of GOCO ("Executive Director") or the Executive Director's designee, such approval to be in GOCO's sole discretion. Any material modification to the Project undertaken without GOCO's prior written consent may be deemed a breach of this Agreement by GOCO, entitling GOCO to all remedies available under this Agreement. If Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Project

Application, Grantee will promptly so advise the Board, and cooperate in good faith to seek a resolution before any further funds are advanced.

5. **Grantee Efforts.** Grantee shall complete the Project in a timely fashion, in a good and workmanlike manner, and consistent with this Agreement and GOCO's approvals related to the Project.

6. **Completion Date.** Grantee shall complete the Project and submit its Final Reports no later than June 19, 2015 (the "Completion Date") which is three calendar years after the Board's approval of the Project. Grantee may request an extension of the Completion Date in compliance with GOCO's Overdue Grants Policy. If Grantee determines with reasonable probability that the Project will not or cannot be completed by the Completion Date or any extended completion date, Grantee will promptly so advise the Board, and cooperate in good faith to seek a resolution before any further funds are advanced. Grantee acknowledges that it has received or otherwise has access to the Overdue Grants Policy.

7. **Matching Funds.** Grantee shall obtain the matching cash and in-kind contributions for the Project as reflected in the Budget and as required by GOCO policy, and shall provide such evidence of the same as GOCO may require in its reasonable discretion.

8. **Disbursement of Funds.**

a. **Progress Payment:** Grantee may opt to receive a portion of the Grant funds after starting but prior to completing work on a Component (a "Progress Payment"). Grantee shall provide GOCO with a progress report detailing expenditures and progress made to date ("Progress Report"). The Progress Report must be submitted using GOCO's Progress Report form (available at www.goco.org or by contacting GOCO). GOCO may, in its discretion, request additional documentation to support making a Progress Payment. A Progress Payment shall not exceed GOCO's percentage of expected overall costs for that Component (as determined by the GOCO-approved budget) applied to the value of documented eligible expenses or 50% of the Grant, whichever is less. A Progress Payment shall be considered a loan until the Component is complete and Final Payment (as defined below) has been made.

b. **Final Payment:** Once a Component is complete (or, at the Grantee's option, when the Project is complete), Grantee shall submit a final report to GOCO detailing the accomplishments of and expenditures related to that Component or the Project (the "Final Report"). A Component or the Project is "complete" when all facilities, trails or other improvements included in that Component or the Project have been built and are ready for their intended use. The Final Report must be submitted using GOCO's Final Report form (available at www.goco.org or by contacting GOCO). GOCO may, in its discretion, request additional documentation before its approval of the contents of the Final Report. Upon GOCO's review and approval of the Final Report, GOCO shall pay the outstanding balance on the Grant (the "Final Payment"), subject to any reductions contemplated by any provision of this Agreement.

9. **Conditions for Disbursement of Funds.** Except as provided in Paragraph 10 below, the Grant is subject to the following requirements and conditions.

a. The Grant and all matching funds shall be used only for eligible costs. The Grant and all matching funds may not be used to pay for maintenance costs, administrative costs (such as salaries associated with administering the Grant, office supplies, telephone, or travel expenses), non-fixed assets (such as athletic or maintenance equipment), or any other costs deemed to be ineligible by the Board, at the Board's sole discretion.

b. Disbursement of Grant funds shall be made on the basis of costs actually incurred by Grantee and supported by written documentation (receipts, bills, etc.). GOCO may, in its discretion, depending on the nature of the Project, require documentation of mechanics lien waivers or waivers of claims to public project performance bonds as a precondition to any disbursement under this Agreement.

c. Except as otherwise agreed to in advance by GOCO in accordance with the terms of this Agreement, no material modifications may be made to the Project. Material modifications to the Project to which GOCO has not agreed may result in a reduction in the Grant. "Material modifications" may include, but are not necessarily limited to, a reduction in the total cost of the Project, a reduction in the size or number of recreational development components to be constructed, changes to the nature of the recreational development components to be constructed, or any other variance from the Project as presented in the Project Application. It is the sole responsibility of Grantee to inform GOCO of any such modifications to the Project. GOCO strongly encourages Grantee to contact GOCO in writing when it becomes aware of or wishes to make any such modifications, however seemingly minor, to the Project.

10. **Waiver.** The Executive Director or the Executive Director's designee may in such person's discretion, waive or agree to modify one or more of the obligations in sections 8, 9, and 16 of the Agreement, or may permit performance of one or more of such obligations subsequent to disbursement.

11. **Payment of Grant Subject to Sufficient Net Lottery Proceeds.** Payment of the Grant is subject to GOCO's determination in its sole discretion that it has received and has available sufficient net lottery proceeds to fund the Grant. In determining the sufficiency of net lottery proceeds, GOCO may consider all facts and circumstances as it deems necessary or desirable in its discretion, including, but not limited to, adequate reserves, funding requirements and/or commitments for other past, current and future grants, and past, current and future GOCO operating expenses and budgetary needs.

12. **Project Operation and Maintenance.**

a. Grantee shall operate, manage, and maintain each Component of the Project in a reasonable state of repair for the purposes specified in the Project Application for a period of 25 years from the date of completion or the useful life of the Component, in accordance with product warranties and/or the generally accepted standards in the parks/recreation community,

and provide and maintain access to the Project and to the Property, regardless of the Property's ownership.

b. Failure to comply with the provisions of Paragraph 12.a. may be deemed a breach by Grantee under Paragraph 21, below.

c. GOCO shall not be liable for any cost of maintenance, management or operation of the Project.

d. Within 60 days of a reasonable request by the Board, Grantee will provide the Board with adequate records reflecting the operating and maintenance costs of the Project and provide the Board with such other information concerning the use of the Project by the public and the impact of the Project.

13. **Public Access.** Grantee agrees, for itself and its successors in interest, to allow reasonable public access to the Project for the term specified in Section 12. Grantee may temporarily close such public access for construction, maintenance, emergency situations, or other reasonable purposes.

14. **Compliance with Regulatory Requirements and Federal and State Mandates.** Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, permits, approvals, and other similar requirements. To the extent permitted by law, Grantee will indemnify and hold the Board harmless from any liability for any failure to comply with any such applicable requirements.

15. **Nondiscrimination.** During the performance of this Agreement, Grantee and its contractors, subcontractors and agents shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, or any other basis prohibited by local, state or federal law. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Further, during the performance of this Agreement, Grantee and anyone acting on behalf of Grantee shall not engage in any unlawful discrimination in permitting access and use of the Project.

16. **Publicity and Project Information.**

a. Grantee shall erect and maintain a sign at a prominent location on the Project site acknowledging the assistance of Great Outdoors Colorado and the Colorado Lottery. GOCO will provide such signs at no cost to Grantee. Alternatively, GOCO will provide reproducible samples of its logo to Grantee for custom signs.

i. GOCO shall approve in advance the design of any permanent sign materially varying from the signs provided by GOCO. To obtain such approval, Grantee shall submit to

GOCO plans describing the number, design, placement, and wording of signs and placards. Plans shall be submitted to the Board for review and approval prior to completion of the Project.

- ii. The Board may withhold Final Payment pending evidence of placement of permanent signage.
- b. Grantee shall acknowledge Board funding in all publicity issued by it concerning the Project.
- c. Grantee shall cooperate with the Board or the Board's designee in advance in preparing public information pieces related to the Project.
- d. Grantee shall give the Board the right and opportunity to use information gained from the Project.
- e. Grantee shall give the Board a minimum 30 days' notice of Project grand openings, dedications, or other events.
- f. Grantee shall give timely notice of the Project, its inauguration, significance, and completion to the local members of the Colorado General Assembly, members of the board of county commissioners of the county or counties in which the Project is located, as well as to other appropriate public officials.
- g. Grantee shall provide quality digital photographs (or printed photographs, if unable to provide digital photographs) of the completed Project with the Final Report.
- h. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with GOCO or acting on behalf of GOCO.

17. **Liability.**

- a. Grantee shall be responsible for, and to the extent permitted by law (including any constitutional or statutory limitations on the ability of a governmental entity to provide indemnification), indemnify, defend and hold harmless the Board, its officers, agents and employees from any and all liabilities, claims, demands, damages or costs (including reasonable legal fees) resulting from, growing out of, or in any way connected with or incident to Grantee's performance of this Agreement. Grantee hereby waives any and all rights to any type of express or implied indemnity or right of contribution from the State of Colorado, the Board, its members, officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement. Grantee acknowledges that Grantee is the owner of the Project and the Property upon which it is located, or has control of the Project and the Property, and that GOCO neither possesses nor controls the Project, the Property, nor the operations of the Project.
- b. Anything else in this Agreement to the contrary notwithstanding, no term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of

the immunities, rights, benefits or protection provided to the Board under the Colorado Governmental Immunity Act ("CGIA") as amended or as may be amended in the future (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted). This provision may apply to Grantee if Grantee qualifies for protection under the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.* The Board and Grantee understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the Board, its members, officials, agents and employees may be controlled and/or limited by the provisions of the CGIA. The parties agree that no provision of this Agreement shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of the Board, its members, officers, agents and employees.

18. **Audits and Accounting.** Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The accounts, documents, and records related to the Project shall be retained by Grantee for not less than five (5) years following the date of disbursement of funds under this Agreement. The Board, or its designated agent, shall have the right, upon reasonable notice to Grantee, to audit the books and records of Grantee which pertain to the Project and to the use and disposition of the Grant. While Grantee is not required to use GAAP (Generally Accepted Accounting Principles), Grantee shall use reasonable and appropriate accounting systems in maintaining the required records hereunder.

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

20. **Withdrawal of Board Funding; Termination of Agreement.** Anything else in this Agreement or otherwise to the contrary notwithstanding, the Board may withdraw, in whole or in part, the Grant and/or terminate this Agreement, and/or seek a refund of payments already made if the Board determines in its discretion that:

- a. facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Grant as contemplated infeasible or impractical;
- b. any material modifications in the scope or nature of the Project have occurred from that which was presented in the Project Application and such material modifications have not received the prior written approval of GOCO;
- c. any statement or representation made by Grantee in the Project Application, this Agreement, the Progress Report, the Final Report, or otherwise is untrue, inaccurate or incomplete in any material respect;
- d. the results of GOCO's review of the Progress Report or the Final Report are not acceptable to GOCO;
- e. the Project will not or cannot be completed by the Completion Date or any extensions granted thereto or delays in the implementation of the Project have occurred which, in the Board's judgment, make the Project impracticable;

- f. the Project will not or cannot be completed within the Budget or any approved modifications, or the total Project cost and/or Grantee's matching funding are reduced;
- g. title to or encumbrances against the Property are or become such that Grantee is unable to complete the Project, or the Project and/or the Property are or become unavailable for public use;
- h. sufficient net lottery proceeds are not available to fund the Grant.

21. **Breach.**

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

i. Prior to payment of Grant:

- A. Withdraw the Grant and terminate this Agreement; and,
- B. Deny Grantee eligibility for participation in future Board grants, loans or projects.

ii. After payment (partial or full) of Grant:

- A. Deny Grantee eligibility for participation in future Board grants, loans or projects;
- B. Seek specific performance of Grantee's obligations under this Agreement;
- C. Receive reimbursement in full of disbursement made under the Grant.

b. 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. In the event GOCO must pursue any remedy hereunder and is the substantially prevailing party, GOCO shall be awarded its costs and reasonable legal fees, including costs of collection.

22. **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.

23. **Assignment.** Grantee may not assign its rights under this Agreement without the consent of the Board, which consent shall be in the discretion of the Board. Any assignment shall require that, at a minimum, the assignee is eligible to receive grants from the Board and assumes Grantee's ongoing obligations under this Agreement.

24. **Applicable Law.** This Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall lie exclusively in the State Courts of the City and County of Denver.

25. **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 remedies provisions hereunder, neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.

26. **Severability.** If any provision of this Agreement, or the application thereof, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision, other than those as to which it is found to be invalid, shall remain in full force and effect.

27. **Time is of the Essence.** Time is of the essence in this Agreement.

28. **Survival.** The terms and provisions of this Agreement and the parties' covenants hereunder shall survive the funding of the Grant and the completion of the Project.

29. **Fax and Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by telecopy or e-mail as if they were original signatures.

30. **Third Party Beneficiary.** The Board and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Board and Grantee, and that no third party beneficiaries are intended.

31. **Construction.** Each party hereto has reviewed and revised (or requested revisions of) this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.

32. **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.

33. **Entire Agreement.** Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes to this Agreement shall be valid unless made as an amendment to this contract, approved by the Board, and signed by the parties.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of the ___ day of _____ 2012.

STATE BOARD OF THE GREAT
OUTDOORS COLORADO TRUST FUND

GRANTEE:
CITY AND COUNTY OF DENVER

By: _____
Lise Aangeenbrug
Executive Director

By: _____
Name: _____
Title: _____

EXHIBIT A
Project Summary

River Corridors Initiative Project Summary

#12616

Rank: 2

Project Name:	South Platte River	Avg. Reviewer Score: 86.33
Applicant:	City and County of Denver	GOCO Staff Score: 91.00
County/COUNTIES:	Denver	Avg. Overall Score: 88.67

Note that the Project Description below discusses all project elements proposed by the applicant. The "Funding Uses" section discusses those project elements staff recommends funding.

1. Project Description

The South Platte River cuts through the middle of Denver and the City has been working for years to protect and provide access to it. The beneficiary of an early GOCO Legacy grant, the City has realized its vision of the River as a recreation destination in the Confluence Park area downtown. The City's goal now is nothing less than to make the Platte "the premier outdoor recreation destination and environmental education resource for the city and the state."

Having completed extensive planning, the City is ready to make its vision a reality and proposes this project to take several existing parks in South Denver and remake them into wilderness-in-the-City amenities unlike anything else found in Denver, rebuild the heavily-used trail connecting them, and to add new park space in the River North neighborhood.

Project components include:

Grant Frontier and Overland Parks both sit on the Platte in south Denver. The City proposes to improve access to the South Platte along a 1.5-mile stretch between the parks, and add fishing improvements, boat put-ins/take-outs, nature trails, an environmental playground, and other park amenities.

About a half-mile farther north of Grant Frontier/Overland sit Vanderbilt and Johnson-Habitat Parks. The City will add trails, fishing docks, and other amenities to allow for recreational use of the existing Vanderbilt Lake, which is currently inaccessible for recreation. Just downstream and adjacent is Johnson-Habitat; the City intends to add urban camping, river access, a children's forest, environmental education facilities, and new park amenities to create an urban wilderness-type experience.

The City proposes to improve about three miles of the South Platte trail between and extending beyond the two hubs discussed above. Improvements consist of widening the concrete trail, adding an adjacent crusher fines trail, and installing a pedestrian bridge.

In north Denver (about 7.5 river-miles north of the southern projects discussed above), the City proposes to acquire seven parcels (five of which are contiguous to one another) totaling about one acre in the River North area for eventual conversion into a river-side park in a part of town that is converting from industrial to residential.

2. Staff Comments / Rationale for the Recommendation

Denver has big plans for the South Platte. And GOCO is happy to hear them. The parks as they currently exist simply don't fill the needs of the City or the neighborhoods they serve. There is little or no access to the river and the trails are outdated and don't meet the City's current standards. The City's plans for these parks are truly visionary and, if realized, will raise the bar for urban river parks – the urban camping, ADA river access, and environmental playground are particularly exciting components. The City is committing 1-to-1 match and has been successful in securing all but \$100,000 of it, so GOCO's investment will be well-leveraged. Even for a big city like Denver, this is a substantial commitment. Taking full advantage of its long-standing partnership with the Greenway Foundation and others, this project will reach youth via both the facilities to be built and programming to be offered. The GOCO Strategic Plan calls for close-to-home recreational opportunities; 16,500 people live in the neighborhoods adjacent to these parks. These park components are sufficiently compelling that staff recommends full funding be allocated to them.

The City requested \$8,000,000 in GOCO funding. With limited available funds, staff simply couldn't recommend full funding. The first components cut were the River North acquisitions, as recommended by the City in each of its less-than-100% budgets. GOCO has already invested in the River North area with both planning and acquisition grants. These particular acquisitions, though, are less timely and less urgent in two ways: they don't appear ready to move forward from a transaction standpoint and they likely won't be developed into parks for perhaps years to come. The total request for trail construction is very high, so we reduced it to about 1/3 of the request; the City is working on identifying the extent of trail it can build at that level.

Reviewer Comments:

- Vision is well-developed and persuasive; we can't have enough riparian trails and parks in cities.
- Urban camping is a wonderful and unique addition.
- Adjacency to densely populated, low-income neighborhoods is key. It's nice to see underserved populations getting access to the improved parks, the river, and a better trail system.
- Simply the most impactful project in this set of applications. Availability to youth/families is huge.

3. Funding Sources

The applicant/grantee will be responsible for providing funding to complete the project as described in the "Funding Uses" section below. If an award is made, GOCO staff will work with the applicant to meet project needs and balance the release of GOCO funds with GOCO's cash flow needs.

Contributor	Proposed Budget with GOCO Award	Percentages of Project Value
GOCO Award – Local Gov't	\$4,600,000	37%
Cash Match	\$7,820,723*	63%
<i>Total Value:</i>	\$12,420,723	100%

* Represents 100% of proposed match for park redevelopment components and \$3,050,303 in match for trail components.

4. Funding Uses

GOCO will require the applicant/grantee to sign a grant agreement agreeing to a budget and work plan for project elements that will use GOCO funds for the following purposes. The applicant/grantee shall provide GOCO with an updated/revised budget and work plan reflecting amounts for these project elements:

- Development of Vanderbilt/Johnson-Habitat Parks
- Development of New Regional Trails
- Development of Grant Frontier/Overland Parks

GOCO will reserve the right to review and approve the updated/revised budget and work plan so that it matches the GOCO grant amount (if any) and GOCO's expectations for what the applicant will accomplish with this project.

5. Proposed Conditions

There are no special conditions.

EXHIBIT B
Budgets

GREAT OUTDOORS COLORADO 2012 RIVER CORRIDORS INITIATIVE

OVERALL BUDGET - 100%

City and County of Denver - The South Platte River Corridor Initiative

Project Cost	GOCO	Match	Total Cost
Development Project #1 - Vanderbilt/Johnson-Habitat	1,411,900	1,388,035	2,799,935
Development Project #2 - New Regional Trails	1,267,191	3,050,304	4,317,495
Development Project #3 - Grant Frontier/Overland	1,920,909	3,688,071	5,608,980
Subtotal Project Costs	4,600,000	8,126,410	12,726,410
Land Donations			Value of Donation
	0		0
	0		0
	0		0
	0		0
	0		0
Subtotal Land Donations			0
TOTALS	4,600,000	8,126,410	12,726,410

CALCULATION OF MATCH REQUIREMENTS

Item	Explanation	Requirement	Actual	Meets Requirement?
Minimum Match	25%/Total Costs	3,181,602	8,126,410	Yes
Minimum Cash Match	10%/Total Costs	1,272,641	6,969,463	Yes

PLEASE NOTE:

Throughout this entire budget, entries in **RED** will be calculated for you; please don't alter these cells or formulas. Please be sure to fill in all the **GREEN** data. Please contact GOCO if you have any questions, need to add additional sheets, identify errors in calculations, etc.

**Development Project #1 - Vanderbilt/Johnson-Habitat
Proposed Budget**

CASH	Source of Funds	Date Secured		GOCO Grant Request	Applicant Match (\$)	Partner Match (\$)	Amount of CTF Funds (\$)	Total Funding (\$)
	Great Outdoors Colorado	Pending		1,411,900				\$1,411,900
	City and County of Denver RMNA NRDS Funds	3/14/2012			503,980			\$503,980
	EPA	3/1/2012				188,605		\$188,605
	DOW/ Fishing is Fun	Pending				100,000		\$100,000
	DTU (Denver Trout Unlimited)	2/17/2012				25,000		\$25,000
	Johnson Foundation	3/5/2012				12,500		\$12,500
	UD/DCD	2/27/2012				557,949		\$557,949
IN-KIND	[List Source]							\$0
	[List Source]							\$0
	[List Source]							\$0
				\$1,411,900	\$503,980	\$884,054		\$2,799,935
CASH	Use of Funds	Number of Units	Cost Per Unit	GOCO Funds	Applicant Funds	Partner Funds	CTF Funds	Total Funding (\$)
CATEGORY 1 - Riverbank	Riverbank Modifications/ Improved Access (CY)	7,000	30	55,225	27,522	127,145		\$309,892
	Clean and Grub Vegetative Understory (SF)	110,000	0.15	900	5,500	10,092		\$16,492
	Enhance Fish Habitat In-stream structures (EA)	4	7,496			29,985		\$29,985
	Bank Stabilization (CY)	2,170	100	125,000		91,889		\$216,889
	Tree Removal/ Invasive Species (EA)	200	350	40,000		29,964		\$69,964
	Native Riparian Seed (SF)	120,000	0.15	17,991		-		\$17,991
	Habitat restoration/ Deciduous Tree Planting (EA)	128	500		3,951	63,967		\$63,967
	Cottonwood Trees - bare root whips (EA)	210	23		29,750	1,297		\$5,247
	Shrub/ Riparian Plants (EA)	7,000	6.25		11,200	978		\$13,728
	Wetland/ Submerged Aquatic Plants (EA)	7,000	6.25	13,000	11,200	11,538		\$43,728
	Establishment Irrigation (SF)	130,000	0.75	15,000	10,000	64,954		\$89,954
CATEGORY 2 - River Access/ Boat Launch @ Vanderbilt/Johnson-Habitat								
	Signature Recreational River Access/ Boat Launch (EA)	1	399,795	390,000	9,795	-		\$399,795
	Secondary Recreational River Access/ Boat Launch (EA)	1	49,974	49,974				\$49,974

CATEGORY 3 - Landscape Restoration/ Upland Children's Forest @ Vanderbilt/Johnson-Habitat	Site Work (CY)	Import Topsoil (CY)	Clear and Grub Vegetative Understory (SF)	Tree Removal/ Invasive Species (EA)	Native/ Riparian Seed (SF)	Habitat Restoration/ Deciduous Tree Planting (EA)	Shrub/ Riparian Plants (EA)	Establishment Irrigation (SF)	Fire Ring and Overlook Plaza (EA)	Outdoor Classroom (EA)	Environmental Education (EA)	Kids Camp Recreational Area (LS)	Access Trails (SF)	Rest Areas/ Trailheads (EA)	Restrooms - SST (EA)	Clear and Grub Vegetative Understory (SF)	Interpretive Overlook/ Dock at Vanderbilt Lake (EA)	Native/ Riparian Seed (SF)	Environmental Education (EA)	Design, Engineering and On the Ground Construction Management	USE OF FUNDS - CASH SUBTOTAL
	8,000	5,650	300,000	50	280,000	150	1,000	280,000	1	1	1	1	10,000	2	2.00	15,000	1	15,000	1	1	
	5.00	15	0.15	350	0.15	500	6.25	0.75	49,974	49,974	29,985	9,995	4.50	4,997	36,981	0.15	34,982	0.15	34,982	474,333	
	39,980	50,000	44,977	17,491	30,000	67,000	5,000	160,000	49,974	49,974	29,985	9,995	44,977	9,995	73,962	2,249	34,982	2,249	34,982	\$1,411,900	
	-	34,707	-	-	-	-	1,247	49,892	-	-	-	-	-	-	-	-	-	-	-	154,034	
	539,980	584,797	544,977	517,491	541,978	574,962	56,247	5209,892	549,974	549,974	529,985	59,995	544,977	59,995	573,962	52,249	534,982	52,249	534,982	\$2,545,395	
																				270,198	
																				541,560	
																				721,935	
																				50	
																				\$0	

IN-KIND	Use of Funds	No. of Units / Hours	Cost Per Unit / Hour	GOCCO Funds	Applicant Funds	Partner Funds	CTE Funds	Total Funding (\$)
Professional Services								
vendor/service provider								\$0.00
vendor/service provider								\$0.00
Materials								
vendor/service provider								\$0.00
vendor/service provider								\$0.00
Equipment								
vendor/service provider								\$0.00
vendor/service provider								\$0.00
	USE OF FUNDS - IN-KIND SUBTOTAL				\$0.00	\$0.00		\$0.00
	10% Contingency			\$0	\$92,421	\$162,119	\$0	\$254,540
	TOTAL PROJECT COST			\$1,411,900	\$503,980	\$884,054	\$0	\$2,799,935

CALCULATION OF MATCH REQUIREMENTS

Item	Explanation	Requirement	Actual	Meets Requirement?
Minimum Match	25%/Total Costs	\$699,984	\$1,388,035	Yes
Minimum Cash Match	10%/Total Costs	\$279,993	\$1,133,495	Yes

CALCULATION OF GOCCO %

50.43%

**Development Project #2 - New Regional Trails
Proposed Budget**

CASH	Source of Funds	Date Secured	Number of Units	Cost Per Unit	GOCO Grant Request	Applicant Match (\$)	Partner Match (\$)	Amount of CTF Funds (\$)	Total Funding (\$)
	Great Outdoors Colorado	Pending			1,267,191				1,267,191
	City and County of Denver	3/16/2012				3,050,304			3,050,304
	(List Source)								
	(List Source)								
	(List Source)								
TOTAL SOURCE OF FUNDS					1,267,191	3,050,304			4,317,495
CASH	Use of Funds								
CATEGORY 7 - Concrete and Crusher Fines Trail									
	Sawcut and Remove Asphalt Paving (SY)		6,369	10		63,626			\$63,626
	Earthwork (LS)		1	370,000		370,000			\$370,000
	Asphalt Paving (SY)		3,900	70		272,883			\$272,883
	Riprap Bank Stabilization (CY)		1,150	80		91,954			\$91,954
	Drainage Structures (LS)		1	20,833		20,833			\$20,833
	Guardrail (LF)		500	35		17,490			\$17,490
	Concrete Retaining Wall (2'-6" height) (CY)		295	800		235,979			\$235,979
	Red Concrete Rumble Strip (SF)		6,300	7.60		44,100			\$44,100
	Concrete Sidewalk (5' wide) (LF)		1,400	25		34,972			\$34,972
	Concrete Curb & Gutter (LF)		3,300	25		82,467			\$82,467
	Concrete (12' wide) & Crusher Fines (4' wide) Trail		8,200	201	1,074,790	570,927			\$1,645,717
	Concrete Trail (12' wide) (LF)		1,100	175	192,401				\$192,401
	Soil Prep, Seed, and Mulch (SF)		147,250	0.35		51,538			\$51,538
	Utility Relocations (LS)		1	111,458		111,458			\$111,458
	Mile High Youth Corps - Crusher Fines Trail (4' wide) (LF)		728,000	15		10,913			\$10,913
	Mile High Youth Corps - Crusher Fines Trail (4' wide) (LF)		160	160		25,587			\$25,587
Design, Engineering and On the Ground Construction Management									
USE OF FUNDS - CASH SUBTOTAL						653,076			\$653,076
					\$1,267,191	\$2,657,804	\$0	\$0	\$3,924,996

IN-KIND	Use of Funds	No. of Units / Hours	Cost Per Unit / Hour	GOCO Funds	Applicant Funds	Partner Funds	CTF Funds	Total Funding (\$)
Professional Services								
vendor/service provider								\$0.00
vendor/service provider								\$0.00
Materials								
vendor/service provider								\$0.00
vendor/service provider								\$0.00
Equipment								
vendor/service provider								\$0.00
vendor/service provider								\$0.00
	USE OF FUNDS - IN-KIND SUBTOTAL				\$0.00	\$0.00		\$0.00
	10% Contingency				\$392,500	\$0		\$392,500
	TOTAL PROJECT COST			\$1,267,191	\$3,050,304	\$0	\$0	\$4,317,495

CALCULATION OF MATCH REQUIREMENTS

Item	Explanation	Requirement	Actual	Meets Requirement?
Minimum Match	25% Total Costs	\$1,079,374	\$3,050,304	Yes
Minimum Cash Match	10% Total Costs	\$431,750	\$2,657,804	Yes

CALCULATION OF GOCO %

GOCO % of Total Costs **29.33%**

**Development Project #3 - Grant Frontier/Overland
Proposed Budget**

CASH	Source of Funds	Date Secured	Number of Units	Cost Per Unit	GOCO Grant Request	Applicant Match (\$)	Partner Match (\$)	Amount of CTF Funds (\$)	Total Funding (\$)
	Great Outdoors Colorado	Pending			1,920,909				1,920,909
	City and County of Denver RMNA NRDS Funds	3/14/2012				496,020			496,020
	CWCB W/SRA	9/13/2011					250,000		250,000
	Shaluck NRDS Funds	10/13/2011					1,700,000		1,700,000
	UDFCD	2/27/2012					1,242,051		1,242,051
	[List Source]								
	[List Source]								
	[List Source]								
TOTAL SOURCE OF FUNDS					1,920,909	496,020	3,192,051		5,608,980
CASH	Use of Funds				GOCO Funds	Applicant Funds	Partner Funds	CTF Funds	Total Funding (\$)
CATEGORY 9 - Fish Habitat	In-Stream Structural Modifications for River Access		2,000	290	137,000		448,000		580,000
	Modify Existing Drop Structure Near Evans (LS)		1	280,000	228,909		51,091		280,000
	Modify Existing Drop Structure @ Florida (LS)		1	1,200,000	850,000		350,000		1,200,000
CATEGORY 10 - Boat Put-	Jetties (Each)		8	47,888			383,101		383,101
CATEGORY 11 - Access Trails	Access Trails and Trailheads (Each)		4	19,990	79,959				79,959
CATEGORY 12 - Potential	Tree Removal/Invasive Species (Each)		550	350		17,209	175,192		192,401
	Clear and Grab Vegetative Understorey (SF)		400,000	0.15		14,963	45,006		59,969
	Promote Growth of Native Vegetation and Nativ		20,000	30	540,087		59,606		599,693
	Bank Stabilization (CY)		3,000	100		22,467	277,379		299,846
	Deciduous Tree Planting (Each)		100	500		9,969	40,005		49,974
	Shrub/Riparian Plantings (Each)		27,500	6.25		24,851	146,936		171,787
	Native/Riparian Seed (SF)		400,000	0.15		11,963	48,006		59,969
CATEGORY 13 -	Environmental Playground (Each)		1	199,898		199,898			199,898
	Environmental Education (Each)		3	29,985	89,954				89,954
Design, Engineering and On the Ground Construction Management						126,120	726,401		852,521
USE OF FUNDS - CASH SUBTOTAL					1,920,909	427,441	2,750,723		5,099,072

IN-KIND	Use of Funds	No. of Units / Hours	Cost Per Unit / Hour	GOCO Funds	Applicant Funds	Partner Funds	CTF Funds	Total Funding (\$)
Professional Services								
Vendor/service provider								\$0.00
Vendor/service provider								\$0.00
Materials								
Vendor/service provider								\$0.00
Vendor/service provider								\$0.00
Equipment								
Vendor/service provider								\$0.00
Vendor/service provider								\$0.00
	USE OF FUNDS - IN-KIND SUBTOTAL			\$0.00	\$0.00	\$0.00		\$0.00
	10% Contingency			\$0	\$68,579	\$441,328		\$509,907
	TOTAL PROJECT COST			\$1,920,909	\$496,020	\$3,192,051	\$0	\$5,608,980

CALCULATION OF MATCH REQUIREMENTS

Item	Explanation	Requirement	Actual	Meets Requirement?
Minimum Match	23%/Total Costs	\$1,402,245	\$3,688,071	Yes
Minimum Cash Match	10%/Total Costs	\$560,898	\$3,178,163	Yes

CALCULATION OF GOCO %

34.25%

Contract Control Number: PARKS-201310332-00

Grantor Name: State of Colorado The State Board of the Great
Outdoors Colorado Trust Fund

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

Debra Johnson

By [Signature]

APPROVED AS TO FORM:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By [Signature]

By Beth Mackinnon

By Debra J. Gallagher
Auditor



33. **Entire Agreement.** Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes to this Agreement shall be valid unless made as an amendment to this contract, approved by the Board, and signed by the parties.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of the 15 day of August 2012.

STATE BOARD OF THE GREAT
OUTDOORS COLORADO TRUST FUND

GRANTEE:
CITY AND COUNTY OF DENVER

By:


Lise Aangeonbrug
Executive Director

By:


Name: Michael B. Hancock
Title: Mayor



