



## COLORADO

### Colorado Water Conservation Board

Department of Natural Resources

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Jared Polis, Governor

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Director

Rebecca Mitchell CWCB Director

**TO:** Colorado Water Conservation Board Members

**FROM:** Andrea Harbin Monahan, Watershed and Flood Protection Section

**DATE:** March 15-16, 2022

**AGENDA ITEM:** Agenda Item 23 - South Platte River - DISH Network Easement

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#### Staff Recommendation:

Staff recommends Board approval of the Easement Agreement (EA) for DISH, dependent on 408 certification of the project by the U.S. Army Corps of Engineers and issuance of a CLOMR by FEMA. The EA would be signed once these two authorizations are received.

#### Background:

In the 1980's, the United States Army Corps of Engineers (USACE) constructed the Chatfield Downstream Channel Improvement Project (Project). The Project consisted of improvements to the flow of water in the channel of the South Platte River in Arapahoe County to (1) provide drainage, (2) flood control, and (3) water flow. As part of its participation in the Project, the CWCB currently owns and controls approximately 7 miles of the South Platte River floodplain and channel lands through Littleton in Arapahoe County. The CWCB's management of this land is subject to the terms of agreements dated September 7, 1977 and January 29, 1980 between the CWCB and the USACE, which obligate the CWCB to operate and maintain the Project improvements.

The CWCB has been receiving and acting on requests for easements on land owned by the CWCB as part of the Project, and the Board's approval of such requests are guided by the CWCB's Easement Guidelines for the Chatfield Downstream Channel Improvement Project.

#### Discussion:

For the last couple of years, CWCB staff, along with the Attorney General's office, has been working with DISH, located at 5701 S Santa Fe Drive, Littleton, CO 80210, to draft an easement agreement for use of CWCB-owned land that is adjacent to the DISH building, owned by Echostar BSS Corporation.

The proposed improvements covered by the easement agreement include:

- Back-payment for a concrete plaza that was constructed in 1985 and encroaches on CWCB-owned land,



- Minor improvements on the concrete plaza consisting of planters,
- Landscaping,
- A split-rail fence extending a total distance of about 2,000 feet along the river side of the plaza,
- A Falcon 9 rocket booster exhibit, along with related infrastructure consisting of two support columns, light poles, retaining walls, a wrought iron fence and gate, concrete pad and concrete sidewalk.

DISH has been working with the United States Army Corps of Engineers (USACE) and South Suburban Parks and Recreation District (SSPRD) to obtain the appropriate permissions and permits. The USACE has determined that the proposed improvements, with the exception of the Falcon 9 rocket booster and related infrastructure, will not impact the flood capacity of the South Platte River channel. The hydraulic report issued by DISH includes a no-rise certification for the South Platte River due to the rocket booster installation, which indicates no adverse impacts to the 100-year flood carrying capacity of the channel as a result of the proposed project. The rocket booster will span Littles Creek and will be situated on three fixed columns, two of which are situated within the CWCB right-of-way. The proposed installation of the Falcon 9 rocket booster is still pending a Corps of Engineers 408 (Change of Use) permit and the easement agreement includes language that omits the Falcon 9 rocket booster from the agreement if the 408 permit is not approved by the USACE. In addition, the project does have minor impacts to the floodway of Littles Creek, a right bank tributary entering the South Platte River at the site. Although the portions of the project that impact the floodway of Littles Creek are situated outside the CWCB right-of-way, staff has required DISH to obtain a Conditional Letter of Map Revision (CLOMR) from FEMA in order to comply with basic requirements of the National Flood Insurance Program. Issuance of this CLOMR is still pending as well.

SSPRD has an existing recreational easement through this area for maintenance of the Mary Carter Greenway Trail. SSPRD is currently undergoing a greenway study to determine potential improvements to the Mary Carter Greenway Trail and may require that DISH temporarily remove the 2,000-foot-long fence along the trail to accommodate trail improvements, language for which has been incorporated into the easement agreement. SSPRD has indicated that it has no objection to the easement agreement.

The City of Littleton has indicated their support for the project as the local government entity.

Using Method II of the attached 2005 Easement Fee Structure, a fee will be assessed of \$91,465, which was calculated from the square footage of the easement area, a base price of \$10 per square foot, and the percent impact of the proposed improvements. An additional fee of \$19,899 is being assessed, also based on Method II, as back-payment for the concrete plaza that was constructed in the mid-80's on CWCB-owned property without an easement agreement in place.



Construction of the rocket booster and related infrastructure may not begin until the FEMA CLOMR and the Corps of Engineers 408 certification are obtained. This EA will be signed once these approvals have been received.

**Attachments:**

Easement Agreement

Chatfield Downstream Channel Improvement Project Easement Fee Structure

Map of easement area



## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into this \_\_\_\_ day of March, 2023 (the "Effective Date") by and between the STATE OF COLORADO, acting by and through the Department of Natural Resources, Colorado Water Conservation Board whose address is 1313 Sherman Street, Denver, CO 80203, (hereinafter, the "Grantor"), and DISH Satellite Services Corporation, a Delaware corporation, whose address is 9601 South Meridian Boulevard, Englewood, Colorado 80112 (hereinafter, the "Grantee").

WHEREAS, the Grantor is an agency of the State of Colorado created and controlled by Title 37, Article 60, C.R.S., which functions for the welfare and benefit of the State of Colorado and its inhabitants; and

WHEREAS, the United States Army Corps of Engineers ("Corps") has constructed improvements to the flow of water in the channel of the South Platte River in Arapahoe County, State of Colorado, with said improvements known as the Chatfield Downstream Channel Improvement Project ("Improvement Project"); and

WHEREAS, the primary purpose of the Improvement Project is to provide drainage, flood control and water flow regulation; and

WHEREAS, the Corps and the Grantor entered into two agreements which gave the Grantor the responsibility of acquiring land, easements, and rights-of-way for the Improvement Project and the duty of maintaining and operating the flood control works; and

WHEREAS, the Grantor has acquired certain fee title interests, rights-of-way and easements within the Improvement Project right-of-way for the purposes of construction and maintenance of the Improvement Project; and

WHEREAS, Grantee, in the process of purchasing the Riverfront Mall building adjacent to the Improvement Project right of way (the "Grantee-Owned Property"), discovered that a concrete plaza at the west entrance of the building, which was constructed by the Writer Corporation in 1985, encroaches onto land owned by the Grantor; and

WHEREAS, Grantee now wishes to place minor improvements on the concrete plaza, consisting of planters, and to place landscaping and a split-rail fence, extending a total distance of about 2,000 feet, along the river side of the plaza on land owned by the Grantor; and

WHEREAS, Grantee also wishes to place a Falcon 9 rocket booster on public display, along with related infrastructure (consisting of two (2) support columns, light poles, retaining walls, a wrought iron fence and gate, concrete pad and concrete sidewalk, as shown on the diagrams attached hereto as Exhibit D), materials and support (collectively, the "Booster"), a portion of which will be located on land owned by the Grantor; and

WHEREAS, Grantee wishes to acquire and Grantor is willing to grant an easement for said plaza and above-described minor improvements, and landscaping and fencing along the river side of the plaza, as well as for installation and display of the Booster; and

WHEREAS, the Grantor approved granting such easements to the Grantee at the Grantor's March 16, 2023 Board meeting known as agenda item 21.

WITNESSETH:

That, for and in consideration of a one-time payment of ninety-one thousand, four hundred sixty-five dollars (\$91,465) for payment for the term of this Easement Agreement, and a one-time payment of nineteen thousand, eight hundred ninety-nine dollars (\$19,899) for past use of the existing concrete plaza located within the easement area described in Exhibit A, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and the keeping and the performance of the covenants and agreements hereinafter expressed, Grantor hereby grants, conveys, transfers and delivers to Grantee a non-exclusive easement upon the following property (hereinafter, the "Property") located in the County of Arapahoe, State of Colorado, to wit:

LEGAL DESCRIPTION OF THE APPROXIMATELY 0.325 ACRES / 14,161 SQUARE FOOT EASEMENT AREA FOR THE CONCRETE PLAZA, LANDSCAPING, AND THE 2,000-FOOT-LONG FENCE, IS ATTACHED HERETO AS EXHIBIT A

LEGAL DESCRIPTION OF THE EASEMENT AREA FOR THE BOOSTER IS ATTACHED HERETO AS EXHIBIT C

TO HAVE AND TO HOLD, subject to the covenants and agreements hereinafter expressed and subject to any existing or recorded easements and rights-of-way, for the purpose of using the Property for: (1) a concrete plaza and minor improvements on the concrete plaza, consisting of planters, and to place landscaping and a split-rail fence along the river side of the plaza, with the fence extending a total distance of about 2,000 feet, as shown on the diagrams attached hereto as Exhibit B and incorporated herein; and (2) installation and display of the Booster, as shown on the diagrams attached hereto as Exhibit D and incorporated herein (clause (1) and clause (2) collectively, the "Easement"), for a period of twenty-five (25) years, to commence upon the Effective Date.

I. GRANTOR AND GRANTEE MUTUALLY EXPRESSLY COVENANT AND AGREE:

1. The above recitals are specifically incorporated herein by reference.
2. If at any time during the term of this Easement Agreement Grantee does not for a period of 366 consecutive days make use of this Easement for the purpose aforesaid, Grantor may in its sole discretion immediately declare such Easement abandoned and shall so notify Grantee by certified mail with return receipt requested. In the event of such abandonment the consideration shall be forfeited.
3. This Easement is non-exclusive and the grant of Easement is subject to and subordinate to any and all use by the Grantor and any and all previously granted easements, rights-of-way, licenses and conveyances, recorded or unrecorded; provided, however, that Grantor will not materially interfere with the Easement granted herein. It is Grantee's sole responsibility to determine the existence of any rights, uses or installations conflicting with Grantee's use of the Property hereunder. Grantee agrees to not interfere with any use in the Easement area by any other party under a previous grant, whether granted by Grantor or previous owner. Grantee understands and agrees that Grantor makes no representations concerning ownership of nor warrants title to any of the Property. To the extent that this grant of Easement may encroach on lands not owned or controlled by Grantor, Grantee assumes all responsibility for any such encroachment.
4. Grantee expressly recognizes that South Suburban Parks and Recreation will be implementing its Mary Carter Greenway Plan as early as the spring of 2023, which may require Grantee to remove and/or relocate all or a portion of the 2,000-foot-long fence located on the Property. Grantee shall, at the expense of Grantee, remove and/or relocate any portion of the fence that interferes with the Mary Carter Greenway Plan to the extent required by South Suburban Parks and Recreation as part of the Mary Carter Greenway Plan, provided that Grantor shall provide Grantee with no less than forty-five (45) days' prior written notice of such required removal and/or relocation. The determination of what constitutes interference with the Mary Carter Greenway Plan shall be at the sole discretion of South Suburban Parks and Recreation. In the event that removal and/or relocation of any portion of the fence is required on a temporary basis, then Grantee may, without prior notice or consent of Grantor, restore the removed and/or relocated portion of the fence to its original location, provided that the same is done in accordance with the instructions or approval (including in accordance with the specified timing) of South Suburban Parks and Recreation.
5. During the term of the Easement Agreement, the Grantor shall have the right to dispose of the Property or to use the same for other purposes subject to the rights and privileges herein granted to the Grantee. Grantor reserves the right to grant additional easements to third parties, provided that said easements do not materially interfere with the Easement granted herein.
6. At the request of the Grantee, and if approved by the Grantor, this Easement may be renewed for successive terms provided that: (1) Grantee has complied with all the terms and conditions set forth herein, (2) Grantee delivers written notice to Grantor of Grantee's intent to exercise such option at least 180 calendar days prior to the last day of the relevant term, and (3) payment in full of the consideration for the whole next ensuing term accompanies the said written notice to review. Failure of Grantee to timely apply or exercise its option for a successive term shall not be automatic grounds for non-renewal of the Easement Agreement. Grantee is required to pay consideration for use of the Easement after expiration of the Easement Agreement and CWCB can require such payment at any time during or after the renewal option window as specified in this Section 6. Grantor's approval of said renewals of the Easement shall not be unreasonably withheld. Grantee's consideration for each renewal of this Easement shall be the sum set forth above as consideration for this Easement, adjusted for inflation in an amount directly proportional to the annualized percentage change in the Consumer Price Index (published by the Bureau of Labor Statistics, All Urban Consumers, Current Series, Index for Denver-Aurora-Lakewood, CO) for the previous Easement term, unless otherwise determined by Grantor, provided however that the amount of consideration for the Easement is not unreasonably increased.
7. The terms and conditions of the Easement granted herein shall be in compliance with and subordinate to the terms of the September 7, 1977 and January 29, 1980 Agreements between the United States Army Corps of Engineers and the Colorado Water Conservation Board ("Agreements"), which are incorporated herein by reference. This covenant and agreement includes but is not limited to the maintenance and operational requirements on the Grantor and its designees

under those Agreements and the requirement that Grantor and its designees have unlimited access to the lands covered by this Easement to perform all necessary activities under those Agreements. The Grantee shall cooperate with the Grantor and its designees in the performance of such maintenance and operational requirements. Material noncompliance by the Grantee with this provision shall be grounds for immediate termination of this Easement Agreement by the Grantor, provided that, prior to exercising such termination right, Grantor must provide Grantee with prior written notice of such material noncompliance and at least one hundred eighty (180) days to cure such material noncompliance; in the event that Grantee cures such material noncompliance, then the foregoing termination right shall lapse with respect to such material noncompliance.

8. Grantor's approval of this Easement Agreement is dependent on the Corps' approval and has no force and effect until the Corps has issued certification under 33 U.S.C. 408 ("408 Certification") for changes to the Improvement Project, which is under review by the Corps as of the Effective Date. If the Corps denies any required 408 Certification for placement of the improvements described herein upon the Property, then this Easement Agreement shall be null and void and will have no legal effect. If the Corps denies 408 Certification for the Booster only, then Grantor's approval of an easement will be valid only as to the improvements described in Exhibits A and B to this Easement Agreement, in which case Grantor will issue a revised easement agreement to Grantee for the improvements described in Exhibits A and B to this Easement Agreement.
9. This Easement is granted for the purpose of: (1) the existing concrete plaza, and placement by Grantee of minor improvements on the existing concrete plaza, consisting of planters, and to place landscaping and a split-rail fence along the river side of the plaza, with the fence extending a total distance of about 2,000 feet, on land owned by the Grantor; and (2) installation and display of the Booster, a portion of which will be located on land owned by the Grantor. If the Grantee desires to materially change the improvements that are located within the Easement, Grantee may do so only upon written approval by Grantor, unless Grantee decides to remove any improvements, in which case written approval by Grantor is not necessary.
10. The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the Property.
11. If this Easement is granted pursuant to §24-82-201 C.R.S., as amended, this Easement Agreement shall not be deemed valid unless and until approved by the officials and officers of the State of Colorado as required by §24-82-202 C.R.S., as amended, or such assistants as they may designate, or as otherwise required. Signature by the Grantor shall be deemed to be verification of approval of the commission or board of the agency across the Property of which this Easement is hereby granted.
12. Grantee may not assign its interests and obligations under this Easement Agreement without prior written consent of the Grantor, except that Grantee may, upon 7 days prior notice, assign its interests and obligations under this Easement Agreement (1) in connection with any transfer and/or conveyance of the Grantee-Owned Property, and/or (2) to any person or entity controlling, controlled by, or under common control with Grantee, without obtaining the prior written consent of the Grantor. The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto and all covenants shall apply to and run with the land unless otherwise specifically noted.
13. The signatories aver that they are familiar with § 18-8-301, C.R.S. et. seq., (Bribery and Corrupt Influences) and § 18-8-401, C.R.S. et. seq., (Abuse of Public Office), and that no violation of such provisions is present.
14. This Easement Agreement including all exhibits, supersedes any and all prior written or oral agreements, and there are no covenants or agreements between the parties except as set forth herein with respect to the use of the Property by Grantee. No addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent amendment hereto shall have any force or effect unless embodied in a written agreement executed and approved by the officials and officers of the State of Colorado, or such assistants as they may designate, as required by applicable laws of the state of Colorado, state fiscal rules, or policies of the Office of the State Controller.
15. Grantee shall be responsible for recording this Easement Agreement with the Clerk and Recorder's Office in the county or counties in which the Property is located. Grantee shall provide Grantor with a conformed copy of the recorded Easement Agreement.
16. Any notice required or permitted by this Easement Agreement may be delivered in person, sent via electronic mail, or sent by registered or certified mail, return receipt requested, to the party at the address(es) as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto. Any notice sent by electronic mail shall be effective on the date sent to the email address(es) set forth below or on the date notification of failed delivery is received by the sending party, subject to, in the event of a failed delivery, the

sending party delivering or sending a copy of such notice by another method (i.e., a non-email method) permitted under this Section 15 no later than the immediately following business day.

Grantor:

Colorado Water Conservation Board  
Flood Protection Section  
1313 Sherman Street, Rm 721  
Denver, CO 80203

Email: DNR\_CWCBfloodprotection@state.co.us

Grantee:

DISH Satellite Services Corporation  
Attn: Real Estate Team  
9601 South Meridian Boulevard  
Englewood, CO 80112

Email: realestate@dish.com

Cc: Real Estate Programs  
Attn: Manager of Real Estate Programs  
1525 Sherman Street, Suite 112  
Denver, CO 80203

Email:

Cc: DISH Satellite Services Corporation  
Attn: General Counsel  
9601 South Meridian Boulevard  
Englewood, CO 80112

Email: DishLegalNotices961@dish.com

Notice of change of address shall be treated as any other notice.

17. Grantor reserves all rights to any and all metallic and non-metallic minerals, ores and metals of any kind and character, including but not limited to coal, asphaltum, stone, sand, gravel aggregate, oil and gas in, on, or under said Easement.
18. If any part of this Easement Agreement is found, decreed or held to be void or unenforceable, the remainder of the provisions of this Easement Agreement shall not be affected thereby and shall remain in full force and effect.
19. This Easement Agreement shall be governed by the laws of the State of Colorado.
20. The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of either party, its departments, institutions, agencies, enterprises, boards, officials, and employees is controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq. C.R.S. and §24-30-1501, et seq. C.R.S. Any provision of this Easement Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Grantor in accordance with the above cited laws.

## II. GRANTOR EXPRESSLY COVENANTS:

1. Grantee and Grantee's agents, assigns and successors shall have access at all times, subject to Grantor's security policies and procedures, to the Property for use and maintenance of the concrete plaza, improvements thereon, and landscaping, as well as for installation, display, use and maintenance of the Booster. Upon non-renewal, abandonment or termination of the Grantee's rights and privileges under this Easement Agreement, the Grantee's rights to access shall terminate.

## III. GRANTEE EXPRESSLY COVENANTS:

1. Grantor shall have, during the continuance of this Easement, the right to dispose of the Property and to use the Property for other purposes provided such use does not materially interfere with the Easement granted herein. This Easement is subject to any prior easements granted by the Grantor, and to all prior easements of record whether granted by Grantor or previous owner. In the event Grantor shall, in the future, wish to grant additional easements or rights of way which encroach upon the Easement granted herein, Grantee expressly agrees and covenants it will consent to share the Property, provided the proposed additional easements or rights of way do not materially interfere with the purpose for which this Easement is granted or the rights and privileges granted to Grantee in this Agreement.
2. In the event of termination or if the Easement Agreement is not renewed, Grantor may, at its sole discretion, retain all improvements (except for the Booster) without compensation to Grantee or, Grantee, at its expense, shall, upon written request by Grantor, remove all improvements (except for the Booster) constructed by Grantee from the Property within ninety (90) days of termination and restore the Property as nearly as is practicable to the condition of the land existing immediately prior to Grantee's first use. With respect to the Booster, in the event of termination or if the Easement Agreement is not renewed, Grantee shall retain the Booster (including, without limitation, all related infrastructure, materials and support) and Grantee, at its expense, shall, upon written request by Grantor, remove the Booster from the

Property within one hundred eighty (180) days of termination and restore the Property as nearly as is practicable to the condition of the land existing immediately prior to Grantee's first use. Grantor shall determine in its sole discretion whether the restoration complies with this paragraph. In the event that Grantee does not remove the improvements (other than the Booster) within such 90-day period, Grantor shall have the option to either (1) remove the improvements (other than the Booster) and restore the Property to its prior condition and bill the Grantee for the cost of removal and restoration, or (2) consider such improvements (other than the Booster) abandoned and the improvements (other than the Booster) shall become the property of Grantor. In the event that Grantee does not remove the Booster within the 180-day period specified above, Grantor shall have the option to remove the Booster (including, without limitation, all related infrastructure, materials and support) and restore the Property to its prior condition and bill the Grantee for the cost of removal and restoration; under no circumstances whatsoever shall the Booster be considered abandoned or become the property of Grantor. Except as otherwise provided herein, termination of this Easement Agreement shall be by operation of law. If this Easement Agreement is so terminated, consideration paid shall be forfeited.

3. Grantee's use is subject to the purpose and need of the Improvement Project and the Agreements and Grantee may not use this grant of Easement for any purpose other than that which is specifically described herein. If the Property is used by Grantee for any purpose other than stated herein, such other use is grounds for termination of the Easement by Grantor, and all of the right, title and interest of Grantee (and Grantee's successors or assigns) in and to the Property become null and void, and the Property shall absolutely revert to and revest in Grantor as fully and completely as if this instrument had not been executed, without the necessity for suit or re-entry and Grantee shall remove improvements as provided above. Grantor may terminate this Easement Agreement at any time it or the Corps reasonably and in good faith determine use by the Grantee is contrary to the Improvement Project or the Agreements, provided that, prior to exercising such termination right, Grantor must provide Grantee with prior written notice of such determination and at least one hundred eighty (180) days to alter or cure the use by Grantee that Grantor and/or the Corps alleges is contrary to the Improvement Project or the Agreements; in the event that Grantee alters or cures such use, then the foregoing termination right shall lapse with respect to such use. In no event will Grantor claim that use by Grantee that is consistent with the terms of this Easement Agreement is grounds for termination under this Section absent new or additional information not known as of the Effective Date, except the parties recognize that the Corps is not bound by this Easement Agreement and may at any time determine that Grantee's use is contrary to the Improvement Project or the Agreements, in which case Grantor may terminate this Easement Agreement pursuant to this Section III.3. No act or omission on the part of any beneficiary of this paragraph shall be a waiver of the operation or enforcement of the paragraph.
4. It shall be the sole responsibility of the Grantee to obtain and maintain all necessary and applicable local, state and federal approvals and permits for the purposes set forth herein. Grantee shall comply with all rules, regulations, laws, ordinances and policies authoritatively promulgated pertaining to the use of the Easement lands, including but not limited to local, state and federal flood plain regulations. Grantee shall comply with all applicable laws and ordinances (and all rules, regulations, and requirements of any governmental authority promulgated thereunder) controlling environmental standards and conditions of Grantee's use of the Property. If any such law, ordinance, rule, regulation, or requirement is violated as a result of Grantee's use of the Property and/or its operations on the Property, Grantee shall protect, defend, indemnify and hold harmless Grantor from and against any penalties, fines, costs and expenses including legal fees and court costs incurred by Grantor. Noncompliance by the Grantee with this paragraph and/or any such permit, rule regulation, or policy shall be grounds for immediate termination of this Easement Agreement by the Grantor, provided that, prior to exercising such termination right, Grantor must provide Grantee with prior written notice of such noncompliance and at least one hundred eighty (180) days to cure such noncompliance; in the event that Grantee cures such noncompliance, then the foregoing termination right shall lapse with respect to such noncompliance.
5. Grantee agrees to indemnify, defend and hold harmless the Grantor against all liability, loss and expense and against all claims and actions based upon or arising out of injury or death to persons or damage to property, caused by any acts or omissions of Grantee, its successors, assigns, agents or contractors or arising out of Grantee's use of the Property. In the event that Grantee contracts for any work to be performed on the Property, Grantee shall require its contractors and subcontractors, except the Corps, to indemnify, defend and hold harmless Grantor, its employees and agents, and the Corps from any and all claims, damages and liabilities whatsoever for injury or death to persons or damage to property arising from the contractors' and/or subcontractors' actions or inactions. All contractors and subcontractors shall be required to abide by and follow the provisions of this Easement Agreement.
6. Grantee warrants that, throughout the term of this Easement Agreement, Grantee shall maintain continual commercial general liability insurance covering its use of the Easement, with said insurance policy naming Grantor as an additional insured. Copies of the current Accord Form 27 evidencing said insurance and additional insured endorsement(s) are attached to this Easement Agreement as Exhibit E and incorporated herein. Notices of renewal of this insurance shall be provided to Grantor on an annual basis. Said policy shall provide coverage in the amounts as necessary to meet



potential liabilities under by the Colorado Governmental Immunity Act (Article 10, Title 24, C.R.S.), both now and as hereafter amended. Grantee shall require each contract with a contractor to include the insurance requirements necessary to meet such contractor's liabilities. The Grantor shall be named as additional insured on all Commercial General Liability Insurance policies required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees hereunder.

7. Grantee agrees that all excavations or other temporary removal of soil as required for Grantee's use of the Property for the purposes set forth herein shall be properly replaced, and Grantee shall seed, restore and revegetate the surface to substantially its condition existing prior to the disturbance as reasonably possible. Grantee shall be responsible at all times for the immediate repair or replacement of, or reimbursement for any damage to the Property due to Grantee's use of the Property for the purposes set forth herein. Routes of ingress and egress for construction or for maintenance are to be limited to the minimum necessary locations, and all work areas created must be obliterated, protected against erosion, and restored to the former condition of the land, as nearly as possible by Grantee. Grantor shall determine, in its sole discretion, whether Grantee's restoration complies with this paragraph. In the event Grantee fails to perform the restorative or revegetative work required by this paragraph to the sole satisfaction of Grantor, and after thirty (30) days prior written notice specifying with particularity the failure and indicating the remedial steps needed to cure same, Grantor shall be allowed to perform said work, and Grantee shall pay within thirty (30) days all direct and indirect costs incurred by Grantor for restorative or revegetative work including, but not limited to, regrading, filling, revegetation, erosion control, and replacing of soil.
8. Grantee shall provide Grantor with as-built drawings prepared and signed by a licensed Colorado professional engineer showing the location of the landscaping and improvements constructed, installed or placed on the Property (including location and depth of any improvements located underground) within thirty (30) days after completion of construction of such improvements.
9. The Grantor may, in its reasonable discretion, require the Grantee to relocate a portion or portions of improvements (except for the Booster) on the Property by giving the Grantee at least ninety (90) days prior written notice of such requirement. All relocation costs shall be paid by the Grantee. In the event that Grantee does not relocate the improvements (other than the Booster) within such 90-day period, Grantor shall have the option to either (1) relocate the improvements (other than the Booster) and restore the Property to its prior condition and bill the Grantee for the cost of relocation and restoration, or (2) consider such improvements (other than the Booster) abandoned and the improvements (other than the Booster) shall become the property of Grantor. With respect to the Booster, the Grantor may, in its reasonable discretion, require the Grantee to relocate the Booster (including, without limitation, all related infrastructure, materials and support) on the Property by giving the Grantee at least one hundred eighty (180) days prior written notice of such requirement. All relocation costs shall be paid by the Grantee. In the event that Grantee does not relocate the Booster within such 180-day period, Grantor shall have the option to relocate the Booster and restore the Property to its prior condition and bill the Grantee for the cost of relocation and restoration; under no circumstances whatsoever shall the Booster be considered abandoned or become the property of Grantor. This Section III.9 is subject to Section I.4, above.
10. The Grantee understands and agrees that its improvements on the Property are subject to damage and total loss without liability accruing to the Grantor as a result of flooding or as the result of maintenance and operation of the Improvement Project by the Grantor, the Grantor's designees, or the Corps.
11. The construction, storage and movement of vehicles, trucks and machinery shall be conducted at all times so as to minimize any disruption to recreational trails and paths while maximizing public safety. At all times during construction and maintenance activities, all of the recreation trails and paths shall remain open, unless adequate detours including signage and fencing are provided by the Grantee. Grantor acknowledges that installation of the Booster (including, without limitation, related infrastructure, materials and support) may cause some disruption to and closure of recreational trails, paths and the surrounding area; Grantee shall use reasonable efforts to minimize disruption and closures during such installation. Grantee acknowledges South Suburban Parks and Recreation is the local authority operating the recreation trail. Grantee shall obtain local authority approval prior to accessing the trail for construction or maintenance activities.

*[Remainder of page intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, the parties hereto have caused this Easement Agreement to be executed the day and year first above written.

GRANTOR:  
STATE OF COLORADO  
Jared Polis, Governor  
Acting by and through the

Department of Natural Resources

By: \_\_\_\_\_  
Executive Director

APPROVED:

STATE OF COLORADO  
Department of Personnel & Administration  
State Buildings & Real Estate Programs

By: \_\_\_\_\_  
Executive Director

GRANTEE:  
DISH Satellite Services Corporation,  
a Delaware corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
\_\_\_\_\_

**Colorado Water Conservation Board**  
**Flood Protection Section**  
**Easement Guidelines for the Chatfield Downstream**  
**Channel Improvement Project**  
**November 2001**

**Background**

The Colorado Water Conservation Board has been receiving and acting on requests for easements on land owned by the CWCB as part of the Chatfield Downstream Channel Improvement Project. The Board requested that staff develop guidelines to assist with the administration of easement requests for the property owned by CWCB.

In the 1980s, the United States Army Corps of Engineers (Corps) constructed the Chatfield Downstream Channel Improvement Project (Project). The Project consisted of improvements to the flow of water in the channel of the South Platte River in Arapahoe County to provide (1) drainage (2) flood control, and (3) water flow. As part of its participation in the Project, the CWCB currently owns and controls approximately 7 miles on the South Platte River floodplain and Channel Lands through Littleton, Colorado in Arapahoe County. The CWCB's management of this land is subject to the terms of the September 7, 1977 and January 29, 1980 Agreements (Corps Agreements) between the CWCB and the Corps, which obligate the CWCB to operate and maintain the Project improvements. On May 5, 1997, the CWCB entered into a Contract for and Conveyance of Easement with the South Suburban Park and Recreation District ("South Suburban Contract") that conveyed an easement to South Suburban for certain recreational facilities.

The Board receives easement requests from utility companies, special districts, developers, engineers, municipalities, environmental and recreational groups and individuals. In evaluating such easement requests, the CWCB will use the following guidelines.

**Guideline considerations**

1. No easement shall be granted to any party except by action of the Board in a regularly scheduled Board Meeting.
2. The CWCB shall evaluate all easement requests in conformance with its obligations under the Corps Agreements. No easement may interfere with flood protection and public safety.
3. For all easement requests, the CWCB shall consider impacts to its obligations under the South Suburban Contract. CWCB staff should be contacted to obtain a map that shows the management areas for the Recreation Lands and Flood Conveyance Lands under the South Suburban Contract.
4. Upon receipt of an easement request, the CWCB staff will acknowledge the request by sending a confirmation letter to the applicant, scheduling a field inspection and preparing a field report that will be attached to staff's request to the Board for action on the request.

5. Formal Easement requests submitted to the CWCB must include the following items which must be received by CWCB staff no later than 30 days prior to the scheduled Board meeting at which the applicant seeks Board consideration:

- A) A completed easement application form.
  - B) A detailed explanation of the proposed purpose and use(s) of the easement.
  - C) A site-survey prepared by a licensed surveyor of the property covered by the proposed easement.
  - D) The proposed grantee shall transmit a copy of an easement request letter and full application packet to the following parties: 1) The U.S. Army Corps of Engineers-Omaha District, 2) the Urban Drainage and Flood Control District, and 3) The South Suburban Parks and Recreation District. Mailing addresses can be obtained from the CWCB.
  - E) For all drainage easement requests, a site drainage study and plan must be completed.
  - F) Easement requests within the 100-year floodplain of the Chatfield Downstream Channel Improvement Project must include a hydraulic analysis. The analysis will show any flood conveyance impacts of the proposed feature within the requested easement.
  - G) A written statement demonstrating awareness of and compliance with the applicable local, state and federal environmental and floodplain regulations pertaining to the property covered by the proposed easement.
6. Any and all easements granted shall be for a maximum term of 25 years but are eligible for to be renewed upon Board approval.
7. The CWCB may charge fees for easements in accordance with the easement fee structure, which may be amended by the CWCB from time to time.
8. In determining whether to grant an easement and in determining the fee charged for an easement, the CWCB may consider, but is not limited to consideration of, the following factors:
- A. Whether the requesting party is a:
    - 1) Governmental body,
    - 2) Private governed utility, or
    - 3) Private entity.
  - B. Whether the area under, upon, or over which the easement is requested is:
    - 1) An undeveloped area that will never be developed,
    - 2) An undeveloped area held primarily for future development,
    - 3) A developed area with minimal usage, or

- 4) A developed area with heavy usage.
  - C. Whether use of the easement by the requesting party would:
    - 1) Restrict or require a change in the current use of property, or
    - 2) Require maintenance and repairs that would interfere with other uses of property by the CWCB or other entities.
  - D. Whether the granting of the easement will adversely affect CWCB activities, functions or programs directly or indirectly related to the proposed easement property.
  - E. Whether the granting of the easement is in the best interest of the CWCB and the State of Colorado.
  - F. Whether there is a viable alternative for the easement on adjacent or nearby property not owned by the CWCB.
  - G. Whether the requesting party will agree to be responsible for maintaining improvements on or under the proposed easement property such as underground pipe, etc. for the term of the easement.
- 9. All easement documents shall be reviewed by the Attorney General's Office prior to the execution of such documents by the Director.
  - 10. The CWCB will not approve easement requests for permanent structures such as buildings, storage facilities, or decks.
  - 11. The CWCB will review easement requests that involve facilities such as drainage structures, parks, trees, benches, trails, and other public amenities on a case-by-case basis.
  - 12. The CWCB may waive all or part of the fees usually charged for an easement if it determines that an easement would benefit the State and /or the public.

### **Other considerations**

The CWCB may grant approval for temporary construction and access easements that have no permanent impact on the property involved. The CWCB may consider factors other than those listed herein when reviewing easement requests.



# DISH Network Proposed Improvements

